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DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

JUNE 23, 2020 - JULY 1, 2020

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Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5314. June 23, 2020]

SPOUSES ELENA and ROMEO CUÑA, SR., *complainants, vs.* **ATTY. DONALITO ELONA,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; *SUI GENERIS* FOR THEY ARE NEITHER PURELY CIVIL NOR PURELY CRIMINAL BUT IS RATHER AN INVESTIGATION BY THE COURT INTO THE CONDUCT OF ITS OFFICERS; ISSUE TO BE DETERMINED IS WHETHER A MEMBER OF THE BAR IS STILL FIT TO CONTINUE TO BE AN OFFICER OF THE COURT IN THE DISPENSATION OF JUSTICE. — We agree with the recommendation of the OBC that there is no ground to suspend the resolution of the instant proceedings pending the institution of the civil action by respondent against complainants. "A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether [a member of the bar] is still fit to continue to be an officer of the court in the dispensation of justice."

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 11 THEREOF; A LAWYER'S ATTITUDE OF DISOBEYING THE ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP) MANIFESTS HIS/HER CLEAR LACK OF RESPECT TO THE INSTITUTION AND

ITS ESTABLISHED RULES AND REGULATIONS AND IS VIOLATIVE THEREOF; CASE AT BAR. — His attitude of disobeying the orders of the IBP manifests his clear lack of respect to the institution and its established rules and regulations. The IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers. In this regard, it is only proper to remind respondent to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority. For his behavior, respondent violated Canon 11 of the CPR.

3. ID.; ID.; ID.; RULE 10.3, CANON 10 AND RULE 12.04, CANON 12 THEREOF; VIOLATED IN CASE AT BAR. — While there is no express prohibition on the filing of supplemental motions for reconsideration, piecemeal filings thereof is a manifestation of respondent's intent to delay the instant proceedings and his propensity to ignore basic rules of procedure, which are, first and foremost, designed to expedite the resolution of cases pending in courts. If respondent had enough resolute to have his case disposed with reasonable dispatch, he would have filed his supplemental motions within reasonable length of time, and not long after the issuance of the subject resolutions. In as much as disbarment proceedings are *sui generis* and are thus, not confined within the rigidity of technical rules of procedure, respondent cannot simply be allowed to do as he pleases and expect this Court, including herein complainants, to wait and wonder if he will file his pleadings and supporting evidence or not. All told, respondent's acts are in contravention of Rules 10.3 and 12.04, Canons 10 and 12, respectively, of the CPR.

4. POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF AGRARIAN REFORM (DAR) MEMORANDUM CIRCULAR NO. 12-09 (DAR MANUAL ON LEGAL ASSISTANCE); LAYS DOWN THE PROCEDURE TO BE OBSERVED BY TRIAL ATTORNEYS OF THE DAR IN THE ACCEPTANCE FOR REPRESENTATION OF JUDICIAL AND QUASI-JUDICIAL CASES AND IN HANDLING OF AGRARIAN LAW IMPLEMENTATION CASES; VIOLATED IN CASE AT BAR. — DAR Memorandum Circular No. 12-09 (DAR-MC 12-09), or the DAR Manual on Legal Assistance, lays down the procedure to be observed by Trial Attorneys of the DAR in "the acceptance for

representation of judicial and quasi-judicial cases and in the handling of agrarian law implementation (ALI) cases." Significantly, while the DAR allows its Trial Attorneys to render legal assistance to qualified agrarian reform beneficiaries in ALI cases, we note, however, that respondent in this case failed to prove with certainty that: (1) complainants were tenant farmers or agricultural lessees at the time their application for the property was pending before the Bureau of Lands; and/or (2) their case falls within the purview of ALI cases. Respondent's claim that he handled complainants' case in his *official capacity* as Trial Attorney of the DAR is, therefore, of doubtful veracity, if not wholly improper under relevant DAR rules. On this point, we are inclined to conclude that respondent acted in his private capacity as counsel for complainants.

5. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; PROHIBITED FROM ENGAGING IN PRIVATE PRACTICE OF THEIR PROFESSION UNLESS AUTHORIZED IN WRITING BY THEIR AGENCY HEADS. — Section 7(b)(2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees, provides that government officials or employees are prohibited from engaging in private practice of their profession. x x x Along the same lines, Memorandum Circular No. 17, series of 1986 (MC 17-86), provides that no government officer or employee shall engage in any private business, profession, or undertaking unless authorized in writing by their respective department heads: The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; SPECIAL POWER OF ATTORNEY, BEING A NOTARIZED DOCUMENT, CARRIES IN ITS FAVOR THE PRESUMPTION OF REGULARITY; CASE AT BAR. — [T]he IBP and the OBC failed to observe that the SPA, which even bears the signature of both complainants, is notarized. Being a notarized document, it carries in its favor the presumption of regularity. While the Court is aware that as a rule, clear and convincing evidence is needed to overcome its recitals, it bears stressing, however, that the required quantum of proof in disbarment proceedings is substantial evidence. x x x [I]n the absence of substantial evidence that complainants did not

understand the contents of the SPA, or that they did not execute the same freely and voluntarily, it is presumed regular on its face with respect to its execution, including the recitals stated therein.

7. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ANY MONEY OR PROPERTY COLLECTED FOR THE CLIENT COMING INTO THE LAWYER'S POSSESSION SHOULD BE PROMPTLY DECLARED AND REPORTED TO HIM/HER; CASE AT BAR. — This Court has consistently held that any money or property collected for the client coming into the lawyer's possession should be promptly declared and reported to him or her. x x x Clearly, respondent's act of unduly withholding from complainants OCT No. P-29483 until such time they reimburse him of the expenses incurred by him in their favor was without basis and, therefore, constituted a clear transgression of his duties as a member of the bar.

8. ID.; ID.; ATTORNEYS' LIENS; APPLY NOT ONLY TO THE BALANCE OF THE ACCOUNT BETWEEN THE ATTORNEY AND HIS/HER CLIENT, BUT ALSO TO THE FUNDS AND DOCUMENTS, SUCH AS CERTIFICATES OF TITLE OF THE LAND, OF THE CLIENT WHICH MAY COME INTO THE ATTORNEY'S POSSESSION IN THE COURSE OF HIS/HER EMPLOYMENT. — [A] lawyer is entitled to a lien over funds, documents and papers of his client which have lawfully come into his possession. Under Canon 16, Rule 16.03 of the CPR, he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client." Along the same lines, Section 37, Rule 138 of the Rules of Court provides for attorney's retaining lien. x x x The attorney's retaining lien applies not only to the balance of the account between the attorney and his/her client, but also to the funds and documents, such as certificates of title of the land, of the client which may come into the attorney's possession in the course of his/her employment.

9. ID.; ID.; PENALTY OF DISBARMENT, JUSTIFIED IN CASE AT BAR. — The penalty for violation of Canon 16 of the CPR ranges from suspension for six months, to suspension for one year, or two years, and even disbarment depending on the amount involved and the severity of the lawyer's misconduct. Guided

by this Court's rulings for acts committed in violation of Rules 16.01 and 16.03, taking into consideration respondent's transgressions of Rules 10.3, 12.04, and Canon 11 of the CPR, and in view of his engagement in the unauthorized practice of law, disbarment of the respondent is justified in this case.

D E C I S I O N

***PER CURIAM*:**

Before this Court is a Complaint[1] for Disbarment dated November 15, 1999 filed by spouses Romeo Cuña, Sr. and Elena Cuña (complainants) against Atty. Donalito Elona (respondent) for violation of specific provisions of the Code of Professional Responsibility (CPR).

Antecedent Facts

The Complaint was originally filed before this Court. After respondent filed his Answer[2] to the complaint, this Court, by Resolution dated July 18, 2001,[3] referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/decision.

Upon referral of the case by the IBP to IBP Davao City, several mandatory conferences were held. During the mandatory conference on May 26, 2006, complainants, through counsel, and respondent appeared thereat and submitted their respective admissions and stipulation of facts.[4] The Hearing Officer set another mandatory conference on October 19, 2006 for the presentation of evidence, which respondent, however, failed to attend despite due notice thereof. Complainants, through counsel, on the other hand, proceeded to mark their documentary exhibits *ex parte*.[5] The parties were then ordered to submit their

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[1] *Rollo*, pp. 2-6.

[2] *Id.* at 22-31.

[3] *Id.* at 33.

[4] *Id.* at 77-95.

[5] *Id.* at 96-100.

respective Position Papers. Only the complainants filed their Position Paper[6] which reiterated the allegations and arguments in their complaint.

Report and Recommendation of the Investigating Commissioner

On March 1, 2007, the Hearing Officer issued an Order submitting the case for resolution and forwarded all records of the case to the IBP for its appropriate action.[7] Accordingly, on July 24, 2007, then Investigating Commissioner Salvador B. Hababag (Investigating Commissioner) of the IBP Commission on Bar Discipline issued his Report and Recommendation[8] finding respondent to have violated Canons 16 and 17 of the CPR and recommending that respondent be suspended from the practice of law for a period of six months with stern warning that commission of similar offenses shall be dealt with more severely.[9]

The Investigating Commissioner concluded in this wise:

> Respondent's deliberate failure to disclose to the complainants that he extracted a contract to sell with the buyer, Law [F]irm Ilagan, Te[,] *et al.*, for seven million one hundred thousand (₱7,100,000.00) pesos on terms manifested malicious taking x x x advantage o[f] his moral dominion and emotional and intellectual control over complainants who are impoverished and [not] mentally equipped to grasp the gravity of his acts/omission and by preparing a Special Power of Attorney and to enjoin them to sign and authorize him to represent complainants manifested lack of integrity and propriety on his part. x x x[10]

Report and Recommendation of the Board of Governors (BOG)

The BOG, in its Resolution No. XVIII-2007-137[11] dated September 28, 2007, adopted and approved the Investigating

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[6] *Id.* at 116-144.

[7] *Id.* at 148.

[8] *Id.* at 351-353.

[9] *Id.* at 353.

[10] *Id.* at 352.

[11] *Id.* at 349.

Commissioner's Report and Recommendation with modification that the recommended penalty of suspension from the practice of law be increased to three years. On January 4, 2008, respondent filed his Motion for Reconsideration[12] praying that Resolution No. XVIII-2007-137 be reconsidered and set aside, and a new one be entered dismissing the complaint for lack of merit,[13] which was, however denied by the IBP-BOG in Resolution No. XX-2012-46[14] dated January 15, 2012. Meanwhile, the IBP-BOG received respondent's Supplemental Motion for Reconsideration[15] (of Resolution No. XVIII-2007-137 dated February 29, 2008) on June 10, 2008.

On February 28, 2012, the IBP forwarded the case to this Court for proper disposition pursuant to Section 12, Rule 139-B of the Rules of Court.[16] In an Indorsement Letter[17] dated April 17, 2012, the IBP referred additional records to this Court, which included respondent's Urgent Motion for Reconsideration (of Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings[18] dated April 10, 2012 filed with the IBP on even date, which prayed, among others, for the suspension of the resolution of the instant case pending the filing of a civil complaint for collection of a sum of money by respondent against complainants.

Report and Recommendation of the Office of the Bar Confidant (OBC)

In a Resolution[19] dated September 26, 2012, this Court referred to the OBC respondent's Motion for Reconsideration (of

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[12] *Id.* at 354-363.

[13] *Id.* at 362.

[14] *Id.* at 426.

[15] *Id.* at 370-412.

[16] *Id.* at 424.

[17] *Id.* at 433.

[18] *Id.* at 434-436.

[19] *Id.* at 445.

Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings for evaluation, report, and recommendation. Thus, on May 22, 2015, the OBC issued its Report and Recommendation[20] which recommended respondent's suspension from the practice of law for three years. The OBC found respondent to have violated Rule 16.01, Canon 16 of the CPR for his failure to properly account for the money and property entrusted to him by complainants.

As to respondent's prayer to suspend the resolution of the administrative proceedings pending the filing of a civil complaint for collection of a sum of money which respondent intends to institute against complainants, the OBC held that there was no ground to suspend the administrative case considering that the resolution of the civil case has no bearing on the outcome of the disbarment proceedings.

The OBC also emphasized that respondent should have inhibited himself from acting as counsel for complainants considering that he was a Trial Attorney of the Department of Agrarian Reform (DAR) at the time complainants' application for the subject property was pending with the Bureau of Lands. The OBC observed that respondent even took advantage of his position as Trial Attorney in his dealings with complainants which led to their eventual acquisition of the subject property and the subsequent sale thereof to the buyer without complainants' knowledge or consent. The OBC also found that respondent failed to account for and return the purchase price of the property and, by his own admissions, refused to deliver Original Certificate of Title (OCT) No. P-29483 to complainants despite their repeated demands. The OBC thus recommended respondent's suspension from the practice of law for three years.

On June 17, 2015, the IBP received respondent's Supplemental Motion for Reconsideration dated May 22, 2015 of Resolution No. XVIII-2007-137[21] which was later indorsed to this Court on June 23, 2015.[22]

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[20] *Id.* at 446-450.

[21] *Id.*, unpaginated.

[22] *Id.*, unpaginated.

Complainants' Allegations

In their Complaint and Position Paper, complainants alleged that they were applicants/occupants of a Four Thousand Two Hundred Ninety-Seven (4,297) square meters parcel of land situated in Tagum City, Davao Del Norte. At the instance of and through the efforts of herein respondent, complainants, in September of 1992, were able to acquire ownership and possession of the property by virtue of a favorable decision of the Bureau of Lands.

Sometime in January 1996, respondent made complainants sign a Special Power of Attorney (SPA)[23] which gave respondent absolute authority to sell the property to third parties. Respondent did not explain the contents of the SPA and the implications thereof to herein complainants.

During the period from March to June 1996, respondent, on several occasions, released to complainants various sums of money ranging between One Thousand Pesos (₱1,000.00) to Two Hundred Thousand Pesos (₱200,000.00). Complainants alleged, however, that respondent did not advise them of their source, and for what reason the sums of money were released to them.

After respondent paid to the government the appraised value of the land which amounted to One Hundred Seven Thousand Four Hundred Twenty-Four and 40/100 Pesos (₱107,424.40), the owner's duplicate of OCT No. P-29483 covering the property was issued in the name of herein complainants in July of 1996. OCT No. P-29483, however, remained in the possession of respondent despite complainants' repeated demands to return the same. For this reason, complainants were constrained to file a complaint against respondent before the Office of the Ombudsman (OMB) for violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act on the ground of respondent's willful refusal to turn over to them OCT No. P-29483. It was during the proceedings before the OMB that they discovered respondent's alleged misconduct.

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

It was revealed to complainants that without their knowledge and consent, respondent, sometime in May of 1996, entered into a Contract to Sell[24] involving the property with the Davao City Law Firm of Ilagan, Te, Escudero, Laguindam, & Jocom ("Buyer") under the following terms and conditions:

1) PRICE AND TERMS OF PAYMENT: The purchase price of the land shall be SEVEN MILLION ONE HUNDRED THOUSAND (₱7,100,000.00) PESOS, Philippine Currency, to be paid by the VENDEE in the following manner:

a. TWO MILLION (₱2,000,000.00) PESOS to be paid upon execution of this Contract to Sell, and

b. FIVE MILLION ONE HUNDRED THOUSAND (₱5,100,000.00) PESOS to be paid upon the eviction of occupants/squatters on the land and after delivery of a clean title and possession of the land in favor of the herein VENDEE free from occupants and squatters[.][25]

Complainants alleged that respondent received from the buyer Four Million Pesos (₱4,000,000.00) as down payment and/or partial payment of the property, thus leaving a balance of Three Million One Hundred Thousand Pesos (₱3,100,000.00) of the property's total purchase price under the Contract to Sell. Considering the same, complainants concluded that the sums of money released to them from March to June 1996 were derived from the ₱4,000,000.00 received by respondent from the buyer as partial payment of the property.

Respondent's Allegations

By way of rebuttal, respondent averred in his Answer to complainants' Complaint, and Motion for Reconsideration of Resolution No. XVIII-2007-137 that it was complainants themselves who availed of his services in his capacity as Trial Attorney III of the DAR to handle their application for the property which, at that time, was already pending before the Bureau of Lands in Tagum City, Davao Del Norte.

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[24] *Id.* at 130-133.

[25] *Id.* at 131.

Several years after their application with the Bureau of Lands was granted in their favor, complainants, due to financial constraints, requested assistance from respondent in securing the funds needed for the survey and segregation of the subject property, and payment of the acquisition value including its subsequent titling. In this regard, respondent suggested to complainants to sell the property to an interested buyer and utilize the proceeds of the sale to settle all expenses for the survey, segregation, and titling of the property. Pursuant to respondent's proposal, complainants agreed to execute a notarized SPA in favor of respondent which authorized him to sell and convey the property for and in complainants' behalf. Respondent further alleged that he endeavored to explain the contents of the SPA to complainants in detail. Complainants then agreed that they will only collect Three Million Pesos (₱3,000,000.00) of the purchase price of the property from the prospective buyer,[26] while the remainder thereof will be given to respondent after the latter finally secures a title of the property and dispose the same to any interested buyer.

After entering into a Contract to Sell with the buyer, respondent received Six Hundred Fifty Thousand Pesos (₱650,000.00) as partial payment of the purchase price of the property, which respondent released to complainants in various sums ranging from One Thousand Pesos (₱1,000.00) to Two Hundred Thousand Pesos (₱200,000.00) during the period from March 1996 to August 1998 as evidenced by a number of acknowledgment receipts[27] signed by complainants. Notably, respondent later claimed in his Supplemental Motion for Reconsideration dated May 22, 2015 that he only received Four Hundred Fifty Thousand Pesos (₱450,000.00) from Atty. Timothy C. Te, one of the named partners of the buyer. Respondent further alleged that he did not receive ₱4,000,000.00 from the buyer, and that said amount was, in fact, released to a certain Atty. Sergio Serrano.

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[26] *Id.* at 393.

[27] *Id.* at 379-397 and 401.

In his Supplemental Motion for Reconsideration dated February 29, 2008, respondent claimed that pursuant to and in compliance with complainants' obligations under the Contract to Sell, respondent, for the benefit of complainants, incurred expenses amounting to Eight Hundred Nine Thousand Four Hundred Ninety-Five and 61/100 Pesos (₱809,495.61), particularly for the titling of the property, relocation of illegal settlers, and the development of their resettlement area.

Complainants later demanded from the buyer One Million Pesos (₱1,000,000.00) as partial payment of the property. However, considering that the property was not completely cleared of illegal settlers, the buyer refused to release the said amount in their favor. For this reason, complainants demanded from respondent to turn over to them OCT No. P-29483. While respondent admitted that he refused to turn over to complainants OCT No. P-29483, respondent averred that such was justified by their refusal, notwithstanding repeated demands, to reimburse him of all monies advanced by him pursuant to the Contract to Sell, which respondent claims to be over and above the amount received by him from the buyer.

Our Ruling

We find that respondent deserves to be sanctioned for his unbecoming behavior as a member of the bar.

Disbarment Proceedings are Sui Generis

At the outset, we take note of respondent's Urgent Motion for Reconsideration and/or Motion to Suspend Proceedings dated April 10, 2012, which prayed, among others, for the suspension of the resolution of the instant case pending his filing of a civil complaint for collection of a sum of money against complainants.

We agree with the recommendation of the OBC that there is no ground to suspend the resolution of the instant proceedings pending the institution of the civil action by respondent against complainants.

"A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the

court into the conduct of its officers. The issue to be determined is whether [a member of the bar] is still fit to continue to be an officer of the court in the dispensation of justice."[28] Thus, in *In re: Almacen*,[29] this Court held that:

> Accent should be laid on the fact that disciplinary proceedings like the present are *sui generis*. Neither purely civil nor purely criminal, this proceeding is not — and does not involve — a trial of an action or a suit, but is rather an investigation by the Court into the conduct of its officers. x x x Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. x x x (Citations omitted)

Based on record, the civil case for sum of money has not been filed before any courts of law. This makes respondent's motion to suspend proceedings premature, if not misplaced. Even supposing a civil case against complainants is already pending before the court, the resolution of this case shall proceed as respondent's administrative liability is not dependent on the resolution of the civil case for sum of money. Conversely, findings of the court in relation to the pending civil case does not necessarily result in administrative exculpation. So long as the quantum of proof in administrative cases against lawyers, which is substantial evidence, is met, then respondent's liability attaches. *Gonzales v. Alcaraz*[30] is instructive on this point, to wit:

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[28] *Yoshimura v. Panagsagan*, A.C. No. 10962 (Formerly CBD Case No. 10-2763), September 11, 2018.

[29] G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600-601.

[30] 534 Phil. 471, 482 (2006).

Respondent's administrative liability stands on grounds different from those in the other cases previously filed against him; thus, the dismissal of these latter cases does not necessarily result in administrative exculpation. Settled is the rule that, being based on a different quantum of proof, the dismissal of a criminal case on the ground of insufficiency of evidence does not necessarily foreclose the finding of guilt in an administrative proceeding.

Non-filing of Position Paper and Piecemeal filing of Supplemental Pleadings

Rule 139-B of the Rules of Court, which was the applicable rule at the time the instant complaint was filed with this Court on November 15, 1999, governs the investigation of administrative complaints against lawyers by the IBP. The Rule states that every case heard by an Investigating Commissioner shall be reviewed by the IBP-BOG upon the record and evidence transmitted to it by the Investigating Commissioner with his report.[31] If the IBP-BOG, by the vote of a majority of its total membership, determines that the lawyer should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to this Court for final action.[32]

It is thus essential, if not indispensable, on the part of respondent that he files the necessary pleadings, *e.g.*, Answer, Position Paper, and other allied pleadings, which would afford him the opportunity to explain his side of the controversy before the IBP-BOG issues its recommendation and transmits the case to this Court for proper disposition and resolution. On this point, this Court notes that while he appeared during the mandatory conferences before the IBP Davao City, respondent, despite due notice, failed to file his Position Paper as ordered. The records would bear that respondent had more than sufficient time from October 2006 until September 2007, or anytime prior to the issuance of Resolution No. XVIII-2007-137 of the IBP-

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[31] RULES OF COURT, Rule 139-B, Section 12 (a).

[32] *Id.* at Section 12 (b).

BOG, to file his Position Paper (*albeit* belatedly) which respondent, however, clearly failed to do in this case. It bears noting that respondent even failed to appear during the October 19, 2006 mandatory conference for the presentation of the parties' respective evidence despite due notice.

His attitude of disobeying the orders of the IBP manifests his clear lack of respect to the institution and its established rules and regulations. The IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers.[33] In this regard, it is only proper to remind respondent to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority.

For his behavior, respondent violated Canon 11 of the CPR:

CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Notably, it was only on January 4, 2008 that respondent filed his Motion for Reconsideration with the IBP praying for the dismissal of the complaint for disbarment for lack of merit, which the IBP denied in its Resolution No. XX-2012-46. In *Ramientas v. Reyala*,[34] this Court, on one hand, held that the aggrieved party of the disciplinary case can file a motion for reconsideration of the Resolution issued by the IBP-BOG within 15 days from notice thereof. Applicable rules on disciplinary proceedings, on the other hand, do not recognize the filing of a second motion for reconsideration.[35]

Despite the absence of an express provision which allows the filing of additional/supplemental motions and other allied pleadings, respondent filed with the IBP the following: (1)

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[33] *Robiñol v. Bassig*, A.C. No. 11836, November 21, 2017, 845 SCRA 447, 455.

[34] 529 Phil. 128, 135 (2006).

[35] *Id.* in relation to Section 12 (b), Rule 139-B. *See* also *Ramientas v. Reyala*, *id.* at 137-138.

Supplemental Motion for Reconsideration (of Resolution No. XVIII-2007-137) dated February 29, 2008; (2) Urgent Motion for Reconsideration (to Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings dated April 10, 2012; and (3) Supplemental Motion for Reconsideration (of Resolution No. XVIII-2007-137) dated May 22, 2015. Worse still, respondent's Supplemental Motion for Reconsideration dated May 22, 2015 of Resolution No. XVIII-2007-137 was filed more than eight years after the said resolution was issued by the IBP. Moreover, respondent simply filed the aforesaid motions, including the documentary evidence attached thereto, without leave of court or any such motion to admit the same. Respondent did not even attempt to provide a plausible reason as to why copies of his supporting documentary evidence could not be timely produced and furnished to this Court, or any reason that would merit their inclusion in the records of the instant case.

While there is no express prohibition on the filing of supplemental motions for reconsideration, piecemeal filings thereof is a manifestation of respondent's intent to delay the instant proceedings and his propensity to ignore basic rules of procedure, which are, first and foremost, designed to expedite the resolution of cases pending in courts. If respondent had enough resolute to have his case disposed with reasonable dispatch, he would have filed his supplemental motions within reasonable length of time, and not long after the issuance of the subject resolutions. In as much as disbarment proceedings are *sui generis* and are thus, not confined within the rigidity of technical rules of procedure,[36] respondent cannot simply be allowed to do as he pleases and expect this Court, including herein complainants, to wait and wonder if he will file his pleadings and supporting evidence or not.

All told, respondent's acts are in contravention of Rules 10.3 and 12.04, Canons 10 and 12, respectively, of the CPR, which provide:

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

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[36] *Yoshimura v. Panagsagan*, *supra* note 28.

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

Acting as Counsel for Complainants

Complainants alleged that it was respondent who offered his legal services in connection with their application for the property with the Bureau of Lands in Tagum City, Davao Del Norte. From the foregoing recitals, it appears that complainants attempted to impress upon the IBP and this Court that respondent engaged in the unauthorized private practice of law, particularly when he handled their application for the property with the Bureau of Lands whilst being a Trial Attorney of the DAR.

On his part, respondent claimed that complainants themselves availed his services in his capacity as Trial Attorney III of the DAR to handle their application for the property which, at that time, was already pending before the Bureau of Lands. Respondent emphasized that, in any case, he handled complainants' case before the Bureau of Lands in his official capacity as Trial Attorney of the DAR, as in fact, complainants' case was included in his reports to his immediate superior.

On this point, the OBC, in its Report and Recommendation, stressed that respondent should have inhibited himself from acting as counsel for complainants. The OBC observed that respondent even took advantage of his position as Trial Attorney in his dealings with complainants.

We agree with the above conclusion reached by the OBC.

The point at issue is whether respondent, as Trial Attorney III of the DAR, engaged in the unauthorized practice of law. This Court rules in the affirmative.

DAR Memorandum Circular No. 12-09 (DAR-MC 12-09), or the DAR Manual on Legal Assistance, lays down the procedure to be observed by Trial Attorneys of the DAR in "the acceptance for representation of judicial and quasi-judicial cases and in the handling of agrarian law implementation (ALI) cases."[37]

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[37] Section 4, DAR Memorandum Circular No. 12-09 (2009).

Significantly, while the DAR allows its Trial Attorneys to render legal assistance to qualified agrarian reform beneficiaries in ALI cases, we note, however, that respondent in this case failed to prove with certainty that: (1) complainants were tenant farmers or agricultural lessees at the time their application for the property was pending before the Bureau of Lands; and/or (2) their case falls within the purview of ALI cases. Respondent's claim that he handled complainants' case in his *official capacity* as Trial Attorney of the DAR is, therefore, of doubtful veracity, if not wholly improper under relevant DAR rules. On this point, we are inclined to conclude that respondent acted in his private capacity as counsel for complainants.

In this regard, Section 7 (b) (2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees, provides that government officials or employees are prohibited from engaging in private practice of their profession:

> Section 7. *Prohibited Acts and Transactions*. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (b) *Outside employment and other activities related thereto*. – Public officials and employees during their incumbency shall not:
>
> x x x x x x x x x
>
> (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions[.]

Along the same lines, Memorandum Circular No. 17, series of 1986 (MC 17-86), provides that no government officer or employee shall engage in any private business, profession, or undertaking unless authorized in writing by their respective department heads:

The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

> "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors,"

subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

In *Yumol, Jr. v. Ferrer Sr.*,[38] this Court suspended a Commission on Human Rights (CHR) lawyer from the practice of law for failing to obtain a written authority to engage in private practice with a duly approved leave of absence from the CHR. Particularly, we held in *Yumol* that:

> Crystal clear from the foregoing is the fact that private practice of law by CHR lawyers is not a matter of right. Although the Commission allows CHR lawyers to engage in private practice, a written request and approval thereof, with a duly approved leave of

[38] 496 Phil. 363 (2005).

absence for that matter are indispensable. In the case at bar, the record is bereft of any such written request or duly approved leave of absence. No written authority nor approval of the practice and approved leave of absence by the CHR was ever presented by respondent. Thus, he cannot engage in private practice.[39]

Similarly, in *Abella v. Cruzabra*,[40] this Court reprimanded a lawyer for engaging in notarial practice without the written authority from the Secretary of the Department of Justice. Thus:

> It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the D[epartment] [of] J[ustice]. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.[41]

In the instant case, the records do not bear proof that respondent was given written permission or authority to engage in private practice by the Secretary of the DAR. Even assuming that he was authorized by his immediate superiors to handle complainants' application before the Bureau of Lands, such authority is clearly not within the contemplation of MC 17-86.

Special Power of Attorney and Contract to Sell

While they do not deny the existence of the SPA which gave respondent absolute authority to sell the property for and in their behalf, they asserted, however, that respondent failed to explain to them the contents of the SPA and its implications thus rendering the same defective. Following this allegation, complainants then imputed fault upon respondent for surreptitiously executing a Contract to Sell with the buyer covering the subject property without their prior consent.

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[39] *Id.* at 376.

[40] 606 Phil. 200 (2009).

[41] *Id.* at 206-207.

By way of rebuttal, respondent contended that the SPA was executed pursuant to his proposal to complainants — to sell the property to an interested buyer and utilize the proceeds of the sale to settle all expenses for the survey, segregation, and titling of the property. Respondent further insisted that the terms of the SPA were duly explained to them in detail and that complainants were made aware and have understood the contents thereof. It necessarily follows, therefore, that complainants were duly notified of the intended sale of the property, and that respondent was authorized to enter into a Contract to Sell with the buyer.

At the outset, there is a need to ascertain whether the SPA executed by complainants in favor of respondent is defective due to their supposed lack of understanding of its contents. Notably, a finding of a defective SPA will lend credence to complainants' allegation that respondent entered into a Contract to Sell of the property with the buyer without their knowledge and prior authority. Conversely, a valid SPA belies complainants' allegation of respondent's act of concealing from them the sale of the property. Indeed, it would be highly illogical for complainants to execute an SPA in favor of respondent granting him full authority to sell the property if there was no underlying agreement to sell the same as earlier proposed by respondent, and later agreed upon by complainants.

On this point, both the IBP and the OBC observed that respondent, by taking advantage of his moral dominion and intellectual control over complainants, willfully concealed from them the Contract to Sell entered into by him with the buyer in direct contravention of his ethical duties under the CPR.

We disagree.

The existence of the notarized SPA which granted respondent authority to sell the property of complainants is undisputed. Notably, a perusal thereof readily reveals that the same was validly executed by complainants due to the following reasons:[42]

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[42] See *Manuel v. Sarmiento*, 685 Phil. 65, 76 (2012).

First, the IBP and the OBC failed to observe that the SPA, which even bears the signature of both complainants, is notarized. Being a notarized document, it carries in its favor the presumption of regularity. While the Court is aware that as a rule, clear and convincing evidence is needed to overcome its recitals,[43] it bears stressing, however, that the required quantum of proof in disbarment proceedings is substantial evidence. In *Reyes v. Nieva*,[44] we held that:

> [T]here is no evidence to establish that complainant was impelled by any improper motive against respondent or that she had reasons to fabricate her allegations against him. Therefore, absent any competent proof to the contrary, the Court finds that complainant's story of the April 2, 2009 incident was not moved by any ill-will and was untainted by bias; and hence, worthy of belief and credence. In this regard, it should be mentioned that respondent's averment that complainant was only being used by other CAAP employees to get back at him for implementing reforms within the CAAP was plainly unsubstantiated, and thus, a mere self-serving assertion that deserves no weight in law. x x x[45]

Thus, in the absence of substantial evidence that complainants did not understand the contents of the SPA, or that they did not execute the same freely and voluntarily, it is presumed regular on its face with respect to its execution, including the recitals stated therein.

Second, complainants never denied before the IBP and the OBC the genuineness and authenticity of their signatures appearing on the SPA.

Third, respondent's authority to sell the property is clearly spelled out on the SPA in this wise:

> 1.) To sell, assign and transfer to JS Gaisano, NCCC, Felcris and any other persons for such price or prices and under such terms and conditions, as my said attorney-in-fact may deem proper x x x;

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[43] *Philippine Trust Company v. Gabinete*, 808 Phil. 297, 314 (2017).

[44] 794 Phil. 360 (2016).

[45] *Id.* at 375.

2.) To make, sign, execute and deliver any contract of sale or assignment, or any other documents of whatever nature or kind, including the signing, indorsement, cashing, negotiation and execution of promissory notes, checks, money orders or their negotiable instruments which may be necessary or proper in connection with the sale, transfer and/or assignment herein mentioned.[46]

Since the SPA is considered valid and binding, we are inclined to agree with respondent that by executing a written authority to sell the property, complainants knew, at the very least, that it was intended to be sold to third persons. This belied their claim that respondent entered into a Contract to Sell of the property with the buyer without their knowledge and prior authority. Indeed, it would be incredible, if not absurd, for one to execute a written authority to sell a property without any intent of enforcing it, or giving effect to its terms.

It bears noting at this point that even before the Contract to Sell was perfected between respondent and the buyer, and for two years thereafter, complainants were receiving from respondent various sums of money as evidenced by several acknowledgment receipts signed by them. Moreover, the acknowledgment receipts specifically indicated that the amounts paid to complainants were *in partial payment of the property in Tagum City, Davao*.[47] This notwithstanding, the records of the case would bear that complainants, for a period of more than two years, never inquired from respondent the source and for what reason the sums of money were released to them. Certainly, this lends credence to respondent's claim that complainants were indeed aware of the existence of a sale covering the property.

Obligation to make a prompt and accurate accounting of funds and deliver OCT No. P-29483 upon demand.

Complainants contended that respondent retained possession of OCT No. P-29483 despite repeated demands to return the

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[46] *Rollo*, p. 127.

[47] *Id.* at 379-397 and 401.

same. Complainants further claimed that respondent has not delivered to them the money received by respondent from the buyer which supposedly amounted to ₱4,000,000.00.

On his part, respondent admitted that he refused to return to complainants OCT No. P-29483 considering their refusal, notwithstanding repeated demands, to reimburse all monies advanced by him for the titling of the property, relocation of unlawful settlers, and the development of their resettlement area. Moreover, to substantiate his right of possession of OCT No. P-29483, respondent cited an Agreement[48] between complainant Romeo Cuña and a certain Rodrigo Cuña. The pertinent portion thereof states, to wit:

> That as soon as the corresponding title shall be generated and registered at the Register of Deeds of Davao Province the title shall be under the custody of Atty. Donalito M. Elona, who shall kept *[sic]* the same until both parties would be able to sign up an agreement and/or document/s for the partition of the subject landholding by both parties[.][49]

Respondent also contended that he did not receive from the buyer ₱4,000,000.00 and that due to incursion of illegal settlers in the property, respondent received from the buyer partial payment thereof only in the amount of ₱450,000.00. To substantiate his defense, respondent presented various acknowledgment receipts signed by complainants indicating payment to them in various amounts of money which supposedly represented partial payments of the property. Respondent also presented in his Supplemental Motion for Reconsideration dated February 29, 2008 an account of expenses advanced by him for the titling of the property and expenses incurred in relocating illegal settlers, which allegedly amounted to ₱809,495.61. Considering that the expenses disbursed are more than the amount collected from the buyer, respondent averred that he has the right to retain possession of OCT No. P-29483 until he is reimbursed of the costs incurred by him for complainants' property.

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[48] *Id.* at 375.

[49] *Id.*

On this matter, the OBC found respondent liable for his failure to account for and return the purchase price of the property and, by his own admissions, his refusal to deliver OCT No. P-29483 to complainants despite repeated demands.

We agree with the findings of the OBC. This Court has consistently held that any money or property collected for the client coming into the lawyer's possession should be promptly declared and reported to him or her.[50] Canon 16 of the CPR provides that:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

x x x x x x x x x

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Clearly, respondent's act of unduly withholding from complainants OCT No. P-29483 until such time they reimburse him of the expenses incurred by him in their favor was without basis and, therefore, constituted a clear transgression of his duties as a member of the bar.

This Court is not unaware, however, that a lawyer is entitled to a lien over funds, documents and papers of his client which have lawfully come into his possession.[51] Under Canon 16, Rule

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[50] *Luna v. Galarrita*, 763 Phil. 175, 187 (2015).

[51] Canon 16, Rule 16.03 of the Code of Professional Responsibility states: A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

16.03 of the CPR, he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client." Along the same lines, Section 37, Rule 138 of the Rules of Court provides for attorney's retaining lien as follows:

> Section 37. *Attorneys' liens*. – An attorney shall have a lien upon the funds, documents and papers of his client, which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. x x x

The attorney's retaining lien applies not only to the balance of the account between the attorney and his/her client, but also to the funds and documents, such as certificates of title of the land, of the client which may come into the attorney's possession in the course of his/her employment.[52]

While complainants do not deny that respondent expended certain amounts of money for their Property, and the total sum thereof, the fact that he may have a lien for his disbursements does not relieve him from his obligation of returning to complainants OCT No. P-29483 and respondent's failure to do so constitutes professional misconduct.[53] Before respondent can claim a lien on the title, there must be: (1) an agreement between respondent and complainants that respondent will shoulder the expenses incurred relative to the titling of the property and pursuant to the obligations under the Contract to Sell; and (2) an express recognition of his right to retain possession thereof until such time respondent has been reimbursed of his expenses. These circumstances are clearly wanting in this case.

Without such agreement between complainants and respondent, or a recognition of respondent's right to retain OCT No. P-29483, respondent had no authority to withhold the same from complainants. On the premise that money was indeed owed

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[52] *Miranda v. Carpio*, 673 Phil. 665, 672 (2011).

[53] *Rayos v. Hernandez*, 544 Phil. 447, 458 (2007).

to respondent, he was nonetheless duty-bound to deliver OCT No. P-29483 to complainants. What respondent should have properly done in this case was to provide complainants a breakdown of monies he advanced for the property, and turn over to complainants OCT No. P-29483, without prejudice to his filing a case to recover his money claims. *Luna v. Galarrita*[54] is instructive on this point, thus:

> True, the Code of Professional Responsibility allows the lawyer to apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. But this provision assumes that the client agrees with the lawyer as to the amount of attorney's fees and as to the application of the client's fund to pay his lawful fees and disbursements, in which case he may deduct what is due him and remit the balance to his client, with full disclosure on every detail. Without the client's consent, the lawyer has no authority to apply the client's money for his fees, but he should instead return the money to his client, without prejudice to his filing a case to recover his unsatisfied fees.

On this point, this Court cannot rely on the provisions of the Agreement[55] between complainant Romeo Cuña and a certain Rodrigo Cuña considering that the document itself does not state that the property specified therein pertains specifically to the subject property involved in the instant case. Assuming *arguendo* that respondent is authorized to retain possession of OCT No. P-29483 under the Agreement, this is only for a limited purpose and time, *i.e.*, until the parties sign an agreement and/or document/s for the partition of the property.

This Court also notes that respondent admitted having received the amount of ₱650,000.00 from the buyer. And although he released certain amounts to the complainants, this Court is not convinced that he has promptly and accurately accounted for said amount/s to complainants. As mentioned, a lawyer shall account for all money or property collected or received for or

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[54] *Supra* note 50 at 191, citing the findings of the Integrated Bar of the Philippines Investigating Commissioner.

[55] *Rollo*, p. 375.

from the client,[56] and that he/she shall deliver the funds and property of his/her client when due or upon demand.[57] This necessarily encompasses the duty of a lawyer to make a *prompt and accurate* account of his/her client's money in his/her possession.

Here, respondent has not shown that he has promptly delivered the funds received by him to the complainants, as in fact, after respondent received the buyer's partial payment of the property, he did not release the same to complainants in its entirety, but in piecemeal fashion for a period of two years. Unless there is an agreement to the contrary, respondent is required under the CPR to deliver all funds held in his possession within a reasonable time.

It must be emphasized that respondent himself appears to be confounded with the amount of money actually received from the buyer. To recall, respondent claimed in his Answer to complainant's Complaint that he received ₱650,000.00 from the buyer as partial payment of the purchase price of the property. Respondent later claimed in his Supplemental Motion for Reconsideration dated May 22, 2015 that he only received ₱450,000.00 from Atty. Te, one of the named partners of the buyer. Such inconsistency in respondent's claims not only casts serious doubt on the veracity of his assertions, but also manifests respondent's inability to render an accurate account of complainants' money from the sale of the property.

The relationship of attorney and client is rightly regarded as one of special trust and confidence.[58] Thus, when respondent failed to deliver the title to complainants and render a prompt and accurate accounting for the amount actually received by him on behalf of complainants, on the assertion that he has not been reimbursed of the expenses incurred by him, it is a

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[56] Canon 16, Rule 16.01 of the Code of Professional Responsibility states: A lawyer shall account for all money or property collected or received for or from the client.

[57] *Id.*, Rule 16.03.

[58] *Rayos v. Hernandez*, *supra* note 53 at 459.

transgression of the trust reposed in him by his client, and a clear violation of Rules 16.01 and 16.03, Canon 16 of the CPR.

Amount to be returned to complainants

As the records would bear and by his own admission in his pleadings filed before the IBP,[59] respondent received ₱650,000.00 from the buyer as partial payment of the purchase price of the property. Respondent then contended that the amount of the purchase price was released to complainants in various sums of money as evidenced by a number of acknowledgment receipts signed by complainants.[60] Provided below is the breakdown of the amount delivered to complainants:

Date of Receipt	Amount Received
March 14, 1996	₱ 6,000.00
March 28, 1996	2,000.00
April 3, 1996	5,000.00
April 22, 1996	1,350.00
May 14, 1996	1,000.00
May 28, 1996	10,000.00
June 3, 1996	10,000.00
June 7, 1996	10,742.00
June 25, 1996	96,682.00
June 28, 1996	5,000.00
July 12, 1996	20,000.00
August 21, 1996	10,000.00
August 21, 1996	35,000.00
August 21, 1996	10,000.00
August 26, 1996	32,000.00
August 26, 1996	10,000.00
September 2, 1996	20,000.00
October 28, 1996	30,000.00

[59] *Rollo*, *supra* notes 2 and 15.

[60] *Id.* at 371-397.

November 22, 1996	56,000.00
December 2, 1996	2,000.00
January 18, 1997	19,500.00
January 25, 1997	10,000.00
February 12, 1997	15,000.00
March 6, 1997	200,000.00
August 27, 1998	20,000.00
TOTAL AMOUNT	**₱637,274.00**[61]

Notably, complainants failed to refute the figures presented by respondent.

Considering the foregoing recitals, herein respondent is liable to return to complainants the amount of Twelve Thousand Seven Hundred Twenty-Six Pesos (₱12,726.00), representing the balance of the amount received by respondent from the buyer, plus legal interest of *6% per annum* reckoned from the finality of this Decision until full payment.[62]

Penalty of Respondent

The penalty for violation of Canon 16 of the CPR ranges from suspension for six months, to suspension for one year, or two years, and even disbarment depending on the amount involved and the severity of the lawyer's misconduct.[63]

Guided by this Court's rulings for acts committed in violation of Rules 16.01 and 16.03, taking into consideration respondent's transgressions of Rules 10.3, 12.04, and Canon 11 of the CPR, and in view of his engagement in the unauthorized practice of law, disbarment of the respondent is justified in this case.

WHEREFORE, respondent Atty. Donalito Elona is hereby **DISBARRED** and his name **ORDERED STRICKEN OFF** from

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[61] Respondent's computation as shown in his Supplement to Respondent's Motion for Reconsideration erroneously indicated ₱637,224.00 as the total amount delivered to complainants.

[62] *Nacar v. Gallery Frames*, 716 Phil. 267, 282-283 (2013).

[63] *Cerdan v. Gomez*, 684 Phil. 418, 428 (2012).

the Roll of Attorneys effective immediately. He is **ORDERED** to: (1) return OCT No. P-29483 to complainants Romeo Cuña, Sr. and Elena Cuña; (2) deliver to complainants the amount of ₱12,726.00, with interest at the rate of 6% *per annum* from the finality of this Decision until full payment;[64] and (3) promptly submit to this Court written proof of his compliance within fifteen (15) days from payment of the full amount.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into respondent Atty. Donalito Elona's records as attorney. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

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

Gaerlan, J., on leave.

EN BANC

[A.C. No. 12103. June 23, 2020]

JESUS DAVID, *complainant*, *vs.* **ATTY. DIOSDADO M. RONGCAL, ATTY. ILDEFONSO C. TARIO, ATTY. MARK JOHN M. SORIQUEZ, ATTY. EMILIANO S. POMER, ATTY. MARILET SANTOS-LAYUG, and ATTY. DANNY F. VILLANUEVA,** *respondents*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; AS OFFICERS OF THE COURT,

[64] *Nacar v. Gallery Frames*, *supra* note 62.

LAWYERS MUST NOT ABUSE OR MISUSE COURT PROCESSES SO AS TO FRUSTRATE AND IMPEDE THE EXECUTION OF A JUDGMENT, AS THEY HAVE THE UTMOST DUTY TO EXERT EVERY EFFORT TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE; CANONS 1, 10, 12 AND RULES 10.03 AND 12.04 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, VIOLATED BY THE RESPONDENT LAWYERS. — The Court disagrees with the findings and recommendation of the IBP Board of Governors and holds that respondent lawyers Attys. Rongcal, Tario, Soriquez, Pomer, Santos-Layug and Villanueva should be held administratively liable. Procedural rules are designed to serve the ends of justice. The rules ensure that the substantive rights of the parties are protected; hence, they must not be trifled with to the prejudice of any person. Concomitantly, lawyers, as vanguards of the justice system, must uphold the Constitution and promote respect for the legal processes. As officers of the Court, they must not abuse or misuse Court processes so as to frustrate and impede the execution of a judgment. Further, lawyers have the utmost duty to exert every effort to assist in the speedy and efficient administration of justice. These duties of the lawyers are embedded in the CPR under the following Canons and Rules: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES. CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT. Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice. CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE. Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes. A thorough evaluation of the case shows that the respondent lawyers have violated the abovementioned rules.

2. ID.; ID.; ID.; FILING OF FRIVOLOUS MOTIONS WHICH UNDULY DELAYED THE EXECUTION OF A DECISION THAT HAD LONG BEEN FINAL AND EXECUTORY, IS A BLATANT DISREGARD OF THE PRECEPTS OF JUDICIAL PROCESS, AND A CLEAR DEFIANCE OF THE

LAWYER'S SWORN DUTY UNDER THE LAWYER'S OATH TO OBEY THE LEGAL ORDERS OF A DULY CONSTITUTED AUTHORITY AND TO "DELAY NO MAN FOR MONEY OR MALICE." — [T]here is no doubt that the judgment on the forcible entry case remains unexecuted due to the filing of the frivolous motions orchestrated by the respondent lawyers with the sole intention to stall or to delay the enforcement of a final judgment. Ultimately, the dilatory tactics committed by respondent lawyers encroached upon the rights of David as the heir of the winning party in the MCTC Decision. In an attempt to escape liability, respondent lawyers claim that they filed their respective motions to advocate their client's cause and that the issuance of the CLOAs is a sufficient supervening event that can stay or stop the execution of the said judgment. The Court disagrees. The sole issue in an ejectment case is the physical or material possession of the subject property, independent of any claim of ownership by the parties. Hence, respondent lawyers' claim that Cordova subsequently acquired ownership over the subject property as evidenced by the CLOAs is not a supervening event that will bar the execution of the questioned judgment. This is because a forcible entry case like Civil Case No. 1067 does not deal with the issue of ownership. That being said, it is therefore apparent that respondent lawyers abused the legal process when they filed frivolous motions with the intent of delaying the execution of the MCTC Decision that had long been final and executory. It is a blatant disregard of the precepts of judicial process which ultimately resulted in the failure to administer justice on the part of David. Moreover, respondent lawyers' infraction was a clear defiance of their sworn duty under the Lawyer's Oath to obey the legal orders of a duly constituted authority and to *"delay no man for money or malice."*

3. ID.; ID.; ID.; LAWYERS CANNOT HIDE UNDER THE GUISE OF ADVOCATING THE RIGHTS OF THEIR CLIENT, FOR AS MEMBERS OF THE BAR, THEIR OBLIGATIONS TO THE SOCIETY, TO THE COURT AND TO THE LEGAL PROFESSION, TAKE PRECEDENCE OVER THEIR OBLIGATIONS TO THEIR CLIENTS. — [R]espondent lawyers cannot hide under the guise of advocating the rights of their client. As members of the bar, their obligations to the society, to the court and to the legal profession take precedence over their obligations to their clients. The CPR is structured in

such a manner that in serving their clients, the lawyers must ensure that their conduct reflect the values and norms of the legal profession which includes their observance and compliance with judicial process and court procedures.

4. ID.; ID.; ID.; RESPONDENTS FOUND GUILTY OF VIOLATING THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY; PROPER IMPOSABLE PENALTY. — [T]he Court finds respondent lawyers guilty of misconduct. Their act of filing frivolous motions which unduly delayed the execution of a judgment that had long been final and executory is a clear violation of their Lawyer's Oath, Canons 1, 10 and 12, and Rules 10.03 and 12.04 of the CPR. For unduly delaying the administration of justice, the Court deems it proper to mete out the penalty of suspension from the practice of law for a period of one year against Atty. Tario, Atty. Soriquez, Atty. Pomer, Atty. Santos-Layug, and Atty. Villanueva pursuant to current jurisprudence. On the other hand, Atty. Rongcal should suffer a more severe penalty considering that he has been previously sanctioned for immorality in *Vitug v. Atty. Rongcal* docketed as A.C. No. 6313. Thus, the Court imposes upon him the penalty of disbarment.

APPEARANCES OF COUNSEL

Ma. Katrina Nadine G. Juanengo for complainant.

D E C I S I O N

***PER CURIAM*:**

This is a verified complaint for disbarment against six lawyers who allegedly filed various motions so as to delay the execution of a judgment that has long been final and executory.

The Factual Antecedents

Respondents Atty. Diosdado M. Rongcal **(Atty. Rongcal)**, Atty. Ildefonso C. Tario **(Atty. Tario)**, Atty. Mark John M. Soriquez **(Atty. Soriquez)**, Atty. Emiliano S. Pomer **(Atty. Pomer)**, Atty. Marilet Santos-Layug **(Atty. Santos-Layug)**, and Atty. Danny F. Villanueva **(Atty. Villanueva)** were lawyers of Danilo Cordova (Cordova).

On the other hand, complainant Jesus David **(David)** is the heir of Leonardo T. David (Leonardo) who was the plaintiff in a case for forcible entry, entitled *"Leonardo T. David v. Danny Cordova, et al.,"* that was filed before the First Municipal Circuit Trial Court (MCTC) of Dinalupihan-Hermosa, Bataan docketed as Civil Case No. 1067. On January 20, 1998, the MCTC ruled in favor of Leonardo and ordered the defendants to vacate Lot No. 774 covered by Transfer Certificate of Title (TCT) No. T-206001. On July 28, 2005, the Supreme Court upheld the MCTC Decision. Accordingly, an Entry of Judgment was issued on December 16, 2005.[2]

Subsequently, David moved for the issuance of a writ of execution before the MCTC. However, Atty. Rongcal, in behalf of Cordova, filed a Motion to Suspend Proceedings[3] seeking to suspend the issuance of a writ in favor of David. He averred that on December 5, 2006, the Department of Agrarian Reform (DAR) issued an Order declaring his client Cordova the owner of the subject land. TCT-Certificate of Land Ownership Award (CLOA) Nos. 15412, 15413, and 15414 were thereafter issued in his name. As a result thereof, Cordova filed a complaint for nullity of TCT No. T-206001 against the late Leonardo before the Regional Trial Court (RTC) of Bataan. Hence, Atty. Rongcal sought the suspension of the issuance of a writ of execution while the RTC case is still pending.

The MCTC, in its twin Orders[4] dated June 23, 2006, denied the motion to suspend proceedings but granted Leonardo's motion for issuance of a writ of execution and directed the issuance of the said writ. Atty. Rongcal then filed a Motion for Reconsideration[5] but it was denied for lack of merit by the MCTC in its Order dated September 21, 2006.[6]

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[2] *Rollo*, p. 14.

[3] *Id.* at 16-27.

[4] *Id.* at 28-24 and 30-32.

[5] *Id.* at 33-35.

[6] *Id.* at 36-38.

David subsequently filed a Motion for the Issuance of a Special Order of Demolition and Break Open. However, Atty. Rongcal filed a Motion for Inhibition[7] dated December 4, 2006 alleging that Presiding Judge Erasto D. Tanciongco (Judge Tanciongco) acted with partiality in favor of Leonardo and his heirs. Judge Tanciongco then inhibited himself from the case.[8] Judge Ma. Cristina M. Pizarro was appointed as acting presiding judge of the MCTC only on October 3, 2007.

Later on, Atty. Tario filed a Motion to Quash Writ of Execution[9] dated December 17, 2007 and a Manifestation[10] dated January 15, 2008. The MCTC, on May 15, 2008, denied the motion and ordered the issuance of a special order of demolition and break open.[11]

Atty. Tario filed another motion, this time a Motion to Clarify Order and Writ[12] dated July 9, 2008. In its Order[13] dated May 4, 2009, the MCTC denied the motion stating that it was merely filed as a dilatory tactic.

It was only after seven years, or on December 4, 2012, that the MCTC was able to issue a writ of demolition. However, Atty. Soriquez, acting for Cordova, filed a Complaint for Injunction against David before the RTC of Bataan. On February 27, 2013, he filed an Amended Complaint for Injunction (with Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order)[14] seeking to enjoin the implementation of the writ of demolition against his client, Cordova.

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[7] *Id.* at 39-43.

[8] *Id.* at 44-48.

[9] *Id.* at 49-52.

[10] *Id.* at 53-54.

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

[12] *Id.* at 60-63.

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

[14] *Id.* at 66-72.

David filed an Urgent Manifestation before the RTC informing the trial court that the MCTC Decision sought to be enjoined has long been final and executory. In turn, Atty. Pomer filed an Urgent Counter-Manifestation (with Motion for Issuance of Subpoenas)[15] dated March 8, 2013.

Acting on the motions of Cordova's counsels, the RTC initially issued a writ of preliminary injunction enjoining the execution of the MCTC Decision. However, it subsequently recalled its Order thereby allowing David to proceed with the execution.[16]

Unfortunately, Cordova, this time through Atty. Santos-Layug, filed an Urgent Motion to Quash and/or Recall Writ of Demolition that was issued on December 4, 2012 with Entry of Appearance.[17] Atty. Villanueva, also in Cordova's behalf, subsequently filed a Very Urgent *Ex Parte* Reiterative Manifestation and Motion[18] which also prayed to defer and to hold in abeyance the enforcement of the writ until finality of the lifting and/or recall of the writ of preliminary injunction previously issued by the RTC of Bataan.

Atty. Villanueva likewise subsequently filed a Recusation[19] seeking the inhibition of then MCTC Presiding Judge Franco Paulo Arago from resolving the two previous motions he and Atty. Santos-Layug filed in behalf of their client. He also filed a Comment/Opposition[20] praying for the recall and lifting of the writ of demolition.

Based on the above backdrop, David filed the instant complaint against respondent lawyers. He alleged that the respondent lawyers had conspired in filing frivolous motions thereby stalling the execution of the MCTC Decision for almost 16 years. David

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[15] *Id.* at 73-76.

[16] *Id.* at 85; see Writ of Demolition.

[17] *Id.* at 77-81.

[18] *Id.* at 86-88.

[19] *Id.* at 94-98.

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

also averred that the respondent lawyers have consciously adopted Cordova's claim that the TCT-CLOA Nos. 15412, 15413, and 15414 were issued in his name despite knowing that these were fake and spurious.

Only Atty. Rongcal and Atty. Villanueva filed their separate answers. In his answer, Atty. Rongcal claimed that he represented Cordova because he sincerely believed that his client has a valid and legal title over the subject land. On the other hand, Atty. Villanueva asserted that he was merely protecting the interest of Cordova as the owner of the subject land pursuant to the TCT-CLOAs that were issued by the DAR after the MCTC Decision became final and executory.

Report and Recommendation of the Integrated Bar of the Philippines:

On December 19, 2013, Investigating Commissioner Erwin A. Aguilera (Aguilera) conducted a mandatory conference between the parties. Afterwards, the parties were directed to submit their respective position papers.

On January 20, 2014, Attys. Soriquez, Pomer and Santos-Layug filed their Position Paper[21] alleging that the execution of the final and executory MCTC Decision can still be restrained because of a supervening event that is, the issuance of the TCT-CLOAs to Cordova as the owner of the subject land. Thus, the complaint against them should be dismissed for lack of factual or legal basis as it was only filed to strike fear in their hearts for defending Cordova.

Notably, Atty. Tario neither filed an answer nor a position paper in the case at bench.

In his Report and Recommendation[22] dated April 30, 2014, Investigating Commissioner Aguilera recommended the dismissal of the complaint.

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[21] *Id.* at 283-291.

[22] *Id.* at 360-368.

However, the Integrated Bar of the Philippines (IBP) Board of Governors issued Resolution No. XXI-2014-823[23] on October 11, 2014 reversing the recommendation of the Investigating Commissioner. It recommended that Atty. Tario, Atty. Soriquez, Atty. Pomer, Atty. Santos-Layug, and Atty. Villanueva be suspended from the practice of law for a period of one year and Atty. Rongcal for a period of three years, considering that he was previously sanctioned by the IBP in *Vitug v. Atty. Rongcal*[24] docketed as A.C. No. 6313.

Aggrieved, respondent lawyers moved for reconsideration.

In the Resolution No. XXII-2017-809[25] dated January 27, 2017, the IBP Board of Governors granted respondent lawyers' motion for reconsideration, *viz.*:

RESOLVED to GRANT the Motion for Reconsideration and REVERSE the earlier decision of suspension from the practice of law for one (1) year and three (3) years to DISMISSAL of the administrative complaint as recommended by the Investigating Commissioner.

RESOLVED FURTHER to direct the National Director of the Commission on Bar Discipline IPG Ramon S. Esguerra to prepare an extended resolution explaining the Board's action.

The Issue

Ultimately, the sole issue for resolution in this case is whether respondent lawyers committed acts in violation of their Oath and the Code of Professional Responsibility (CPR).

The Court's Ruling

The Court disagrees with the findings and recommendation of the IBP Board of Governors and holds that respondent lawyers Attys. Rongcal, Tario, Soriquez, Pomer, Santos-Layug and Villanueva should be held administratively liable.

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[23] *Id.* at 358-359.

[24] 532 Phil. 615 (2006).

[25] *Id.* at 450-451.

Procedural rules are designed to serve the ends of justice. The rules ensure that the substantive rights of the parties are protected; hence, they must not be trifled with to the prejudice of any person.

Concomitantly, lawyers, as vanguards of the justice system, must uphold the Constitution and promote respect for the legal processes.[26] As officers of the Court, they must not abuse or misuse Court processes so as to frustrate and impede the execution of a judgment.[27] Further, lawyers have the utmost duty to exert every effort to assist in the speedy and efficient administration of justice. These duties of the lawyers are embedded in the CPR under the following Canons and Rules:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

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

CANON 12 – A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

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

A thorough evaluation of the case shows that the respondent lawyers have violated the abovementioned rules.

To recapitulate, the MCTC Decision in Civil Case No. 1067 became final and executory on December 16, 2005 as evidenced by an Entry of Judgment issued by this Court. However, it took seven years for the MCTC to issue a writ of demolition on December 4, 2012 due to the following motions filed by respondent lawyers:

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[26] Canon 1, Code of Professional Responsibility.

[27] *Millare v. Montero*, 316 Phil. 29, 30 (1995).

a. Motion to Suspend Proceedings dated June 12, 2006 filed by Atty. Rongcal;
b. Motion for Reconsideration dated July 4, 2006 that was also filed by Atty. Rongcal;
c. Another Motion for Inhibition dated December 4, 2006 filed by Atty. Rongcal;
d. Motion to Quash Writ of Execution dated December 17, 2007 that was filed by Cordova; and,
e. Motion to Clarify Order and Writ dated July 9, 2008, filed by Atty. Tario.

Notwithstanding the issuance of the writ of demolition by the MCTC, the same was not immediately executed on account of the several motions filed by respondent lawyers just for the purpose of quashing the writ or stalling its implementation. These motions were:

a. Amended Complaint for Injunction (with Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order) that was filed by Atty. Soriquez on February 27, 2013;
b. Urgent Counter-Manifestation (With Motion for Issuance of Subpoena) dated March 8, 2013 filed by Atty. Pomer;
c. Urgent Motion to Quash and/or Recall Writ of Demolition that was issued on December 4, 2012 with Entry of Appearance dated July 11, 2013 filed by Atty. Santos-Layug;
d. Very Urgent *Ex Parte* Reiterative Manifestation and Motion dated July 23, 2013 filed by Atty. Villanueva;
e. Comment/Opposition dated August 2, 2013 filed by Atty. Villanueva;
f. Recusation dated August 6, 2013 filed by Atty. Villanueva; and
g. Motion for Voluntary Inhibition dated March 10, 2014.

Given the foregoing, there is no doubt that the judgment on the forcible entry case remains unexecuted due to the filing of the frivolous motions orchestrated by the respondent lawyers with the sole intention to stall or to delay the enforcement of a final judgment. Ultimately, the dilatory tactics committed by respondent lawyers encroached upon the rights of David as the heir of the winning party in the MCTC Decision.

In an attempt to escape liability, respondent lawyers claim that they filed their respective motions to advocate their client's cause and that the issuance of the CLOAs is a sufficient supervening event that can stay or stop the execution of the said judgment.

The Court disagrees.

The sole issue in an ejectment case is the physical or material possession of the subject property, independent of any claim of ownership by the parties.[28] Hence, respondent lawyers' claim that Cordova subsequently acquired ownership over the subject property as evidenced by the CLOAs is not a supervening event that will bar the execution of the questioned judgment.[29] This is because a forcible entry case like Civil Case No. 1067 does not deal with the issue of ownership.[30]

That being said, it is therefore apparent that respondent lawyers abused the legal process when they filed frivolous motions with the intent of delaying the execution of the MCTC Decision that had long been final and executory. It is a blatant disregard of the precepts of judicial process which ultimately resulted in the failure to administer justice on the part of David.

Moreover, respondent lawyers' infraction was a clear defiance of their sworn duty under the Lawyer's Oath to obey the legal orders of a duly constituted authority and to *"delay no man for money or malice."*[31]

Furthermore, respondent lawyers cannot hide under the guise of advocating the rights of their client. As members of the bar, their obligations to the society, to the court and to the legal profession take precedence over their obligations to their clients. The CPR is structured in such a manner that in serving their

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[28] *Holy Trinity Realty Development Corporation v. Abacan*, 709 Phil. 653, 654 (2013).

[29] *Id.* at 657.

[30] *Id.*

[31] *Avida Land Corporation v. Argosino*, 793 Phil. 210, 211 (2016).

clients, the lawyers must ensure that their conduct reflect the values and norms of the legal profession which includes their observance and compliance with judicial process and court procedures.

All told, the Court finds respondent lawyers guilty of misconduct. Their act of filing frivolous motions which unduly delayed the execution of a judgment that had long been final and executory is a clear violation of their Lawyer's Oath, Canons 1, 10 and 12, and Rules 10.03 and 12.04 of the CPR.

For unduly delaying the administration of justice, the Court deems it proper to mete out the penalty of suspension from the practice of law for a period of one year against Atty. Tario, Atty. Soriquez, Atty. Pomer, Atty. Santos-Layug, and Atty. Villanueva pursuant to current jurisprudence.[32]

On the other hand, Atty. Rongcal should suffer a more severe penalty considering that he has been previously sanctioned for immorality in *Vitug v. Atty. Rongcal* docketed as A.C. No. 6313.[33] Thus, the Court imposes upon him the penalty of disbarment.

WHEREFORE, Atty. Diosdado M. Rongcal, Atty. Ildefonso C. Tario, Atty. Mark John M. Soriquez, Atty. Emiliano S. Pomer, Atty. Marilet Santos-Layug, and Atty. Danny F. Villanueva

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[32] *Id.* at 225.

[33] 532 Phil. 615, 633 (2006). The dispositive portion of the Decision reads:

WHEREFORE, premises considered, we find Atty. Diosdado M. Rongcal GUILTY of immorality and impose on him a FINE of ₱15,000.00 with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

The charge of misappropriation of funds of the client is REMANDED to the IBP for further investigation, report and recommendation within ninety (90) days from receipt of this Decision.

Let a copy of this decision be entered in the personal record of respondent as an attorney and as a member of the Bar, and furnished the Bar Confidant, the Integrated Bar of the Philippines and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

are found **GUILTY** of violating the Lawyer's Oath, Canons 1, 10 and 12, and Rules 10.03 and 12.04 of the Code of Professional Responsibility.

Atty. Ildefonso C. Tario, Atty. Mark John M. Soriquez, Atty. Emiliano S. Pomer, Atty. Marilet Santos-Layug, and Atty. Danny F. Villanueva are hereby **SUSPENDED** from the practice of law for a period of one year effective upon receipt of this Decision. Further, they are **STERNLY WARNED** that a repetition of a similar offense shall be dealt with more severely.

On the other hand, Atty. Diosdado M. Rongcal is hereby **DISBARRED** and his name **ORDERED STRICKEN OFF** from the Roll of Attorneys effective immediately.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the records of respondents. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

Atty. Ildefonso C. Tario, Atty. Mark John M. Soriquez, Atty. Emiliano S. Pomer, Atty. Marilet Santos-Layug, and Atty. Danny F. Villanueva are **DIRECTED** to immediately file a Manifestation to the Court that their suspension has started, furnished all courts and quasi-judicial bodies where they have entered their appearance as counsels.

SO ORDERED.

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

Gaerlan, J., on leave.

EN BANC

[A.C. No. 12768. June 23, 2020]

FELICITAS H. BONDOC, represented by CONRAD H. BAUTISTA, *complainant*, *vs.* **ATTY. MARLOW L. LICUDINE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; SHOULD ACT AND COMPORT THEMSELVES IN A MANNER THAT WOULD PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY OF THE LEGAL PROFESSION. — Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.

2. ID.; ID.; LAWYER'S OATH; REQUIRES LAWYERS TO SERVE THEIR CLIENTS WITH COMPETENCE, AND TO ATTEND TO THEIR CLIENT'S CAUSE WITH DILIGENCE, CARE AND DEVOTION. — The Lawyer's Oath requires every lawyer to "delay no man for money or malice" and to act "according to the best of [his or her] knowledge and discretion, with all good fidelity as well to the courts as to [his or her] clients." A lawyer is duty-bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion. This is because a lawyer owes fidelity to his client's cause and must always be mindful of the trust and confidence reposed on him.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); CANON 1, RULE 1.01 THEREOF; INSTRUCTS THAT AS OFFICERS OF THE COURT, LAWYERS ARE BOUND TO MAINTAIN NOT ONLY A HIGH STANDARD OF LEGAL PROFICIENCY, BUT ALSO OF MORALITY, HONESTY, INTEGRITY, AND FAIR DEALING. — Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected

to respect and abide by the law, and thus, avoid any act or omission that is contrary to the same. Rule 1.01 of the Code states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. It instructs that as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.

4. ID.; ID.; ID.; CANON 16, RULES 16.01, 16.02 AND 16.03 THEREOF; REQUIRE LAWYERS TO DULY ACCOUNT ALL THE MONEYS AND PROPERTIES OF HIS CLIENT. — Canon 16, Rules 16.01, 16.02, and 16.03 of the Code require that a lawyer must duly account all the moneys and properties of his client.

5. ID.; ID.; MONEY ENTRUSTED TO A LAWYER FOR A SPECIFIC PURPOSE MUST BE RETURNED IMMEDIATELY UPON A DEMAND, IF NOT UTILIZED; FAILURE TO RETURN GIVES RISE TO A PRESUMPTION THAT HE/SHE HAS MISAPPRORIATED IT IN VIOLATION OF THE TRUST REPOSED ON HIM/HER. — Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client. Morever, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.

6. ID.; ID.; LAWYER'S OATH, CANONS 1 AND 16, AND RULES 1.01, 16.01, 16.02, AND 16.03 OF THE CPR, VIOLATED IN CASE AT BAR; PENALTY. — Having established his administrative liability, the Court must determine the proper penalty to be imposed upon respondent. In *Rollon v. Atty. Naraval*, the Court suspended the respondent therein from the

practice of law for two (2) years for failing to render any legal service even after receiving money from the complainant and for failing to return the money and documents he received. Similarly, in *Agot v. Atty. Rivera*, the lawyer neglected his obligation to secure his client's visa and failed to return his client's money despite demand. The Court suspended him from the practice of law for two (2) years. In this case, as respondent violated the Lawyer's Oath, Canons 1 and 16, and Rules 1.01, 16.01, 16.02, and 16.03 of the Code, he is suspended from the practice of law for two (2) years. With respect to the amounts received from complainant, the Court finds that these must be returned by respondent because he did not comply with the legal services agreed upon. Disciplinary proceedings revolve around the determination of the respondent-lawyer's administrative liability, which must include those intrinsically linked to his professional engagement. Consequently, respondent must return the amount of CAD$2,000.00 to complainant with interest at the legal rate of six percent (6%) *per annum* from the date of demand until full payment.

7. ID.; ID.; A LAWYER OWES TO HIMSELF/HERSELF AND TO THE ENTIRE LEGAL PROFESSION TO EXHIBIT DUE RESPECT TOWARDS THE INTEGRATED BAR OF THE PHILIPPINES (IBP) AS THE NATIONAL ORGANIZATION OF ALL THE MEMBERS OF THE LEGAL PROFESSION; DISOBEDIENCE OF THE ORDERS OF THE IBP WARRANTS THE IMPOSITION OF FINE AGAINST THE ERRING LAWYER; CASE AT BAR. — [T]he Court finds that respondent disobeyed the orders of the IBP Commission. It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. x x x Here, the Commission issued a Notice of Mandatory Conference/Hearing on September 4, 2017, notifying the parties to appear on October 12, 2017. Further, on said date, the parties were required to file their position papers. Both orders were disobeyed by respondent. His weak excuse that he thought that his answer would suffice as compliance utterly lacks credence. For his

disobedience of the orders of the IBP Commission, respondent must pay a fine of ₱10,000.00.

D E C I S I O N

GESMUNDO, *J.*:

This is a Complaint[1] filed before the Integrated Bar of the Philippines *(IBP)* Commission on Bar Discipline *(Commission)* against Atty. Marlow L. Licudine *(respondent)* for violations of the Code of Professional Responsibility *(Code)*, the Lawyer's Oath, and Rule 138 of the Rules of Court.

The Antecedents

Sometime in 2015, Felicitas H. Bondoc *(complainant)*, a resident of Alberta, Canada, was looking for a lawyer in the Philippines to handle the civil case for annulment of marriage that she was going to file against her husband, Benjamin Bondoc. A common friend then introduced complainant to respondent, a practicing lawyer in Baguio City.[2]

On October 1, 2015, complainant and respondent agreed on their legal engagement wherein respondent shall file the civil case for annulment on behalf of complainant.[3] The following day, complainant, through her representative, Maurice G. Deslauriers *(Deslauriers)*, deposited to respondent's bank account the amount of 2,000.00 Canadian Dollars *(CAD$)* as initial down payment for the legal fees in the civil case.[4]

Several months passed but complainant did not receive any update regarding the civil case that respondent was supposed to file, despite the payment of the legal fees. Moreover, she discovered that respondent divulged her personal information. Due to respondent's inaction in the civil case and the

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

[2] *Id.* at 2.

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

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

unwarranted disclosure incident, complainant decided to terminate respondent's engagement as counsel.[5]

From February 28 to March 8, 2016, complainant was briefly in the Philippines. During that time, she talked to respondent. According to complainant, respondent said that he already spent the money she gave him but they verbally agreed that he would return half of the amount received within the last week of March 2016. Respondent, however, did not explain where he used the money.

Accordingly, on March 7, 2016, complainant sent a Demand Letter[6] to respondent, requesting for an accounting of fees and the refund of the legal fees she had paid within thirty (30) days from receipt. The said letter was duly received by respondent.[7]

Almost two (2) months thereafter, complainant did not receive any feedback from respondent again. Thus, she sent a Second and Final Demand Letter[8] to respondent, reiterating the request for accounting and the return of the legal fees. Again, the letter was received by respondent.[9]

Over a month thereafter, or in July 2016, respondent still had not complied with her demands. Thus, complainant, through her son Conrad H. Bautista *(Conrad)*, sent text messages to respondent to follow-up on the return of the legal fees and to deposit the same to Conrad's bank account. Respondent replied that Conrad should present an authorization from complainant before he would transact with Conrad.[10]

On July 18, 2016, Conrad sent respondent the Special Authorization signed by complainant and duly sworn to before the Philippine Consulate General in Calgary, Alberta, Canada,

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

[6] *Id.* at 31.

[7] *Id.* at 32-35.

[8] *Id.* at 36.

[9] *Id.* at 37-39.

[10] *Id.* at 4.

authorizing Conrad to transact with respondent.[11] This was duly received by respondent.[12]

After a series of follow-ups, respondent informed Conrad that the funds will probably be ready by August 15, 2016. However, when the said date came, respondent still did not return the demanded legal fees. On August 29, 2016, respondent said that his law office was still completing the legal fees to be refunded to complainant.[13]

For almost two (2) months, or from August 30, 2016 to October 3, 2016, Conrad sent text messages to respondent requesting the return of the legal fees to no avail. On October 3, 2016, respondent simply replied that his office was waiting for remittances.[14]

On October 18, 2016, respondent sent a message to Conrad that their collections in the law office were still not enough but he will be returning the agreed legal fees of complainant by the last week of October.[15] However, on the last day of October 2016, respondent did not respond to Conrad. Thereafter, respondent was never heard of again. Thus, complainant filed this instant administrative case against respondent.

In his Answer,[16] which was belatedly filed before the Commission, respondent countered that sometime in August 2015, complainant was referred to him because she wanted to annul her existing marriage. According to respondent, complainant wanted to avail of the annulment in the Vicariate of Baguio City because it was faster than court proceedings. Respondent advised complainant that he will research on the matter as he was not familiar with Church-instituted annulments;[17]

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[11] *Id.* at 20-24.

[12] *Id.* at 46-47.

[13] *Supra* note 10.

[14] *Id.*

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

[16] *Id.* at 71-77.

[17] *Id.* at 71.

that in October 2015, complainant called respondent and told him she will be availing of his services to file an annulment case in the Philippines;[18] and that complainant sent the agreed acceptance fee of ₱60,000.00 (CAD$2,000.00), through her representative Deslauriers, and her legal documents. Respondent claimed that Deslauriers is the live-in partner of complainant in Canada. Sometime in December 2015, respondent received a call from complainant that he allegedly divulged some of her personal information. He denied such accusation but it made a rift between the respondent and complainant. The latter then stated that she would look for another lawyer for the filing of the nullity of her marriage.[19] Respondent advised complainant that he will not be refunding the acceptance fee she paid because it was already used to prepare the petition for annulment. Respondent also claimed that in March 2016, complainant confirmed that she was not anymore engaging his legal services and that she begged for the recovery of her legal payment.[20]

Respondent further asserted that in June 2016, he received a call from Conrad but he was hesitant to talk to him because he doubted whether Conrad was truly complainant's son. Nevertheless, respondent admitted that he was constantly messaged by Conrad and he informed him that he would be returning half of the legal fees of complainant by the last week of October. However, on October 19 to 20, 2016, typhoon Lawin hit Northern Luzon and he had to go to Kalinga. Respondent claims that before he left, he endorsed the reimbursement of the ₱30,000.00 legal fees of complainant with his law office. On May 27, 2017, he received a copy of this administrative complaint. Upon reviewing their records, respondent was surprised that the envelope containing the money due to complainant was still in their law office. Respondent acknowledged his inadvertence and that he is willing to tender the reimbursement of complainant's money as soon as possible.[21]

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[18] *Id.* at 72.

[19] *Id.* at 73.

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

[21] *Id.* at 74-75.

On September 4, 2017, the Commission issued a Notice of Mandatory Conference/Hearing[22] notifying the parties to appear on October 12, 2017 and requiring them to submit their respective conference briefs. On the said date, only Conrad, complainant's authorized representative, appeared. Due to respondent's failure to appear before the Commission, the conference was terminated. The Commission issued an Order[23] requiring the parties to file their respective position papers. Only complainant filed her position paper.

In her Position Paper,[24] complainant argued, among others, that respondent violated the Lawyer's Oath, Canon 1 and Rule 1.01 of the Code because he unlawfully withheld complainant's money even though he failed to file the required civil case and he was deceptive by giving false hope that the said funds should be returned. She also asserted that respondent violated Canon 16, and Rules 16.01, 16.02, and 16.03 of the Code because he failed to account for the money due to complainant, which raises the presumption of misappropriation. She further claimed that respondent violated Canon 21, and Rules 21.01 and 21.02 of the Code because he wrongfully divulged her personal information.

Report and Recommendation

In its Report and Recommendation[25] dated January 13, 2018, the Commission found that respondent should have returned the money paid by complainant. Respondent's failure to return the client's money and giving false expectation of paying the same despite several demands violate the Lawyer's Oath and Canon 1 of the Code. The Commission recommended the penalty of suspension of one (1) year from the practice of law against respondent.

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[22] *Id.* at 82.

[23] *Id.* at 97.

[24] *Id.* at 98-116.

[25] *Id.* at 169-172.

In its Resolution[26] dated June 28, 2018, the IBP Board of Governors *(IBP Board)* adopted with modification the penalty recommended against respondent to suspension from the practice of law for a period of two (2) years; and payment of a fine of ₱5,000.00 for failure to file his position paper before the Commission.

Respondent filed a Motion for Reconsideration[27] with the IBP arguing he did not file his position paper because he thought that his Answer was sufficient compliance; and that he was willing to return the money of complainant.

In its Resolution[28] dated May 27, 2019, the IBP Board denied the motion for reconsideration and further modified the penalty recommended against respondent requiring that he return the amount of CAD$2,000.00 due to complainant with the applicable interest from the time of demand in 2016.

The Court's Ruling

The Court adopts the findings of the Commission and the recommendation of the IBP Board with modifications.

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.[29]

The Lawyer's Oath requires every lawyer to "delay no man for money or malice" and to act "according to the best of [his or her] knowledge and discretion, with all good fidelity as well to the courts as to [his or her] clients."[30] A lawyer is duty-bound to serve his client with competence, and to attend to his

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[26] *Id*. at 168.

[27] *Id.* at 173-176.

[28] *Id.* at 180-181.

[29] *Judge Dumlao, Jr. v. Atty. Camacho*, A.C. No. 10498, September 4, 2018.

[30] See Lawyer's Oath.

client's cause with diligence, care and devotion. This is because a lawyer owes fidelity to his client's cause and must always be mindful of the trust and confidence reposed on him.[31]

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law, and thus, avoid any act or omission that is contrary to the same.[32] Rule 1.01 of the Code states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. It instructs that as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[33]

On the other hand, Canon 16, Rules 16.01, 16.02, and 16.03 of the Code require that a lawyer must duly account all the moneys and properties of his client, to wit:

> CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
>
> Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.
>
> Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

In this case, the Court finds that respondent violated the Lawyer's Oath, Canons 1 and 16, and Rules 1.01, 16.01, 16.02, and 16.03 of the Code.

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[31] *Vda. de Dominguez v. Atty. Agleron, Sr.*, 728 Phil. 541, 544 (2014).

[32] *Sioson v. Atty. Apoya, Jr.*, A.C. No. 12044, July 23, 2018, 872 SCRA 185, 194-195.

[33] *Billanes v. Atty. Latido*, A.C. No. 12066, August 28, 2018.

Failing to institute the civil case; failing to return the client's money

Respondent was engaged by complainant to file a civil case for annulment of marriage. Complainant paid him the amount of CAD$2,000.00, which he duly acknowledged. However, respondent never performed his duty; he did not even file a petition for annulment of marriage in court. Due to respondent's inaction and complainant's loss of trust and confidence, she terminated his legal services. Notably, complainant only demanded that half of her legal fees be returned to her, even though respondent did not perform any of his legal duties. Complainant sent two Demand Letters[34] to respondent, which was duly received by the latter, but these demands were unheeded.

Complainant's son, Conrad, consistently contacted respondent for the return of the legal fees. However, respondent was either unresponsive or busy making excuses. Respondent promised that he would return half of complainant's money but he never did. His explanation that he did not return complainant's money to Conrad because the latter's identity was questionable deserves scant consideration. Conrad presented a Special Authorization signed by complainant, which was duly sworn to before the Philippine Consulate General in Calgary, Alberta, Canada, authorizing him to transact with respondent. This authorization was furnished to respondent but he still failed to return complainant's money through Conrad.

Finally, respondent's flimsy justification that complainant's money was supposed to be returned to her but was inadvertently left in the case folder is absolutely irresponsible. Respondent had numerous instances and opportunities to return his client's money — through complainant while she was in the Philippines, through Conrad, or even during the Mandatory Conference before the Commission — but he glaringly failed to do so. It shows that from the very beginning, respondent did not have an ounce of eagerness to return his client's entrusted money. Indeed,

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[34] *Rollo*, pp. 31 and 36.

respondent's misdealing towards his client is manifest and obvious.

Respondent's acts of failing to comply with his legal duty to file the civil case and failing to return his client's money violate the Lawyer's Oath, which mandates that no lawyer shall delay any man for money or malice. These acts also violate Canon 1 and Rule 1.01 of the Code because respondent employed devious conduct by manifestly delaying the return of complainant's money. Finally, respondent's failure to return his client's money violates Canon 16 and Rules 16.01, 16.02, and 16.03 of the Code, which requires that a lawyer must account for the client's money and promptly return the same.

Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client.[35] Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.[36]

Proper penalty

Having established his administrative liability, the Court must determine the proper penalty to be imposed upon respondent. In *Rollon v. Atty. Naraval*,[37] the Court suspended the respondent

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[35] *De Borja v. Atty. Mendez, Jr.*, A.C. No. 11185, July 4, 2018, 870 SCRA 376, 385-386.

[36] *Del Mundo v. Atty. Capistrano*, 685 Phil. 687, 693 (2012).

[37] 493 Phil. 24 (2005).

therein from the practice of law for two (2) years for failing to render any legal service even after receiving money from the complainant and for failing to return the money and documents he received. Similarly, in *Agot v. Atty. Rivera*,[38] the lawyer neglected his obligation to secure his client's visa and failed to return his client's money despite demand. The Court suspended him from the practice of law for two (2) years. In this case, as respondent violated the Lawyer's Oath, Canons 1 and 16, and Rules 1.01, 16.01, 16.02, and 16.03 of the Code, he is suspended from the practice of law for two (2) years.

With respect to the amounts received from complainant, the Court finds that these must be returned by respondent because he did not comply with the legal services agreed upon. Disciplinary proceedings revolve around the determination of the respondent-lawyer's administrative liability, which must include those intrinsically linked to his professional engagement.[39] Consequently, respondent must return the amount of CAD$2,000.00 to complainant with interest at the legal rate of six percent (6%) *per annum* from the date of demand until full payment.

Finally, the Court finds that respondent disobeyed the orders of the IBP Commission. It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to

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[38] 740 Phil. 393 (2014).

[39] *Salazar v. Atty. Quiambao*, A.C. No. 12401, March 12, 2019.

serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.[40]

Here, the Commission issued a Notice of Mandatory Conference/Hearing[41] on September 4, 2017, notifying the parties to appear on October 12, 2017. Further, on said date, the parties were required to file their position papers. Both orders were disobeyed by respondent. His weak excuse that he thought that his answer would suffice as compliance utterly lacks credence. For his disobedience of the orders of the IBP Commission, respondent must pay a fine of ₱10,000.00.[42]

WHEREFORE, Atty. Marlow L. Licudine is **GUILTY** of violating Canons 1 and 16, and Rules 1.01, 16.01, 16.02, and 16.03 of the Code of Professional Responsibility and the Lawyer's Oath. He is hereby **SUSPENDED** from the practice of law for two (2) years with a **STERN WARNING** that the repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Further, Atty. Marlow L. Licudine is hereby **ORDERED** to return to complainant Felicitas H. Bondoc the amount of CAD$2,000.00, intended as payment for the legal fees in the civil case for annulment of marriage, with interest at the legal rate of six percent (6%) *per annum* from the date of demand until full payment, within ninety (90) days from the finality of this Decision.

Atty. Marlow L. Licudine is also hereby meted a **FINE** in the amount of ₱10,000.00 for disobedience of the orders of the Integrated Bar of the Philippines—Commission on Bar Discipline. Failure to comply with the foregoing directives will warrant the imposition of a more severe penalty.

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[40] *Ramiscal v. Atty. Orro*, 781 Phil. 318, 324 (2016); citations omitted.

[41] *Rollo*, p. 159.

[42] See *Rollon v. Atty. Naraval*, *supra* note 37.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Marlow L. Licudine's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

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

Gaerlan, J., on leave.

EN BANC

[A.M. No. P-17-3652. June 23, 2020]
(Formerly OCA I.P.I. No. 15-4445-P)

WILLY FRED U. BEGAY, *complainant*, *vs.* **ATTY. PAULINO I. SAGUYOD, CLERK OF COURT VI, REGIONAL TRIAL COURT, BRANCH 67, PANIQUI, TARLAC,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CLERKS OF COURT; 2002 REVISED MANUAL FOR CLERKS OF COURT; ONLY IN THE ABSENCE OF THE BRANCH SHERIFF THAT A CLERK OF COURT MAY FUNCTION AS AN *EX OFFICIO* SHERIFF TO IMPLEMENT WRITS COMING FROM THE BRANCHES OF THE COURT; A BRANCH CLERK OF COURT OVERSTEPS THE BOUNDS OF PROPRIETY REQUIRED OF HIM AS AN EMPLOYEE OF THE COURT WHEN HE OVERSEES THE ENFORCEMENT OF THE WRIT IN AN INTIMIDATING MANNER. — Section D(3)(3.2)(3.2.2.1), Chapter 4 of the 2002

Revised Manual for Clerks of Court provides: 3.2 Clerk of Court as *Ex Officio* Sheriff x x x 3.2.2. Serves processes and implements writs coming from: 3.2.2.1 the branches of the Court in the absence of the branch sheriff; Clearly, the provision mandates the function of a clerk of court as an *ex officio* sheriff to implement writs coming from the branches of the Court only in the absence of the branch sheriff. In the present case, it is worthy to note that the Order dated April 17, 2015 issued by the trial court which granted the *ex parte* motion for a writ of possession, directed the Branch Clerk of Court to issue the writ of possession. On April 20, 2015, respondent Atty. Saguyod issued the Writ of Possession which was addressed to the court's Deputy Sheriff, Sheriff Clemente. Evidently, the circumstances of the case do not warrant the exercise of respondent's function as an *ex officio* sheriff. It bears emphasis that the writ of possession which respondent himself issued, was addressed to the court's Deputy Sheriff Clemente, who was already present at the time of the implementation of the writ. Moreover, the OCA's report revealed that a photograph on record showed that respondent was at the subject property at the time of the implementation and was seen conferring with the officers and lawyers of the Rural Bank of San Luis. Another photograph on record showed respondent angrily pointing his finger at complainant Begay's staff and apparently shouting invectives at them. Hence, Atty. Saguyod's act of overseeing the enforcement of the writ, in an intimidating manner nonetheless, showed that Atty. Saguyod overstepped the bounds of propriety required of him as an employee of the court.

2. ID.; ID.; ID.; ID.; THE MERE PRESENCE OF THE CLERK OF COURT AT THE IMPLEMENTATION OF THE WRIT ALONE IS HIGHLY QUESTIONABLE, AS THE SHERIFF WAS ALREADY PRESENT AT THE TIME OF THE IMPLEMENTATION OF THE WRIT; THE CONDUCT REQUIRED OF COURT PERSONNEL MUST BE BEYOND REPROACH AND MUST ALWAYS BE FREE FROM SUSPICION THAT MAY TAINT THE JUDICIARY. — Time and again, the Court has held that "bare denial of respondent that he did not commit the acts complained of cannot overcome the clear and categorical assertion of the complainant." An assiduous scrutiny of the records of the case would reveal substantial evidence showing that Atty. Saguyod was at the subject property and actively participated in the implementation

of the writ of possession. It must be noted however that no countervailing evidence was offered by Atty. Saguyod. As aptly found by the OCA, respondent's mere presence at the implementation of the writ alone is highly questionable, especially considering that Sheriff Clemente was already present at the time of the implementation of the writ. The Court cannot simply turn a blind eye to what is clearly a conduct which tends to derogate the trust reposed in government officials, who are expected to uphold the highest degree of standards of efficiency in the exercise of their functions. As a court employee, respondent is bound to know that the conduct required of court personnel must be beyond reproach and must always be free from suspicion that may taint the Judiciary.

3. ID.; ID.; ID.; ABSENT SHOWING THAT THE ELEMENTS OF CORRUPTION, A CLEAR INTENT TO VIOLATE THE LAW, OR A FLAGRANT DISREGARD OF ESTABLISHED RULES ARE PRESENT, THE ACT IS CONSIDERED AS A SIMPLE MISCONDUCT; THE ACTUATION OF THE CLERK OF COURT OF BEING PRESENT DURING THE IMPLEMENTATION OF THE WRIT OF POSSESSION IN AN INTIMIDATING MANNER AND HURLING INVECTIVES ON THE COMPLAINANTS CONSTITUTES SIMPLE MISCONDUCT. — Respondent's actuation of being present during the implementation of the writ of possession in an intimidating manner and hurling invectives on the complainants is clearly an act of simple misconduct. Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. A misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. Otherwise, a misconduct is only simple. Since there is no showing that the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present in this case, the respondent's act is considered as a simple misconduct.

4. ID.; ID.; ID.; JUDICIAL DISCIPLINE, RULES APPLICABLE; PENALTY OF DISMISSAL FROM THE SERVICE, IMPOSED UPON THE RESPONDENT FOR SIMPLE MISCONDUCT, CONSIDERING THAT THIS IS THE SECOND TIME THAT HE HAS BEEN FOUND GUILTY THEREOF. — Clerks of court, whose functions are vital to

the prompt and sound administration of justice, cannot be allowed to overstep their powers and responsibilities. Thus, for his improper behavior, the Court finds Atty. Saguyod liable for simple misconduct. Anent the proper penalty to be imposed, the Court was instructive in *Boston Finance and Investment Corp. v. Gonzalez*, on what rule shall govern court personnel, to wit: Fundamentally, the setting of parameters pertaining to the discipline of all court personnel, including judges and justices, clearly fall within the sole prerogative of the Court. The Supreme Court's exclusive authority to set these parameters is based on no other than the 1987 Constitution, which provides: ARTICLE VIII Section 6. The Supreme Court shall have **administrative supervision** over **all courts and the personnel** thereof. x x x Anchored on these constitutional mandates, the Court issued two (2) separate body of rules to govern judicial discipline cases, to wit: (*a*) **Rule 140 of the Rules of Court to apply to judges and justices of lower courts**; and (*b*) **the Code of Conduct for Court Personnel (CCCP)**, which incorporates the RRACCS, **to apply to all judiciary personnel who are not justices or judges**. Since respondent is a clerk of court, the Code of Conduct for Court Personnel, which incorporates the RRACCS, shall apply in this case. Hence, for being liable for simple misconduct, We shall refer to the pertinent provisions of the RRACS as regards the proper penalty to be imposed upon respondent. Section 46(D), Rule 10 of the RRACS classify simple misconduct as a less grave offense with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and the penalty of dismissal for the second offense. In the present case, the OCA's Report revealed that this is not the first time that Atty. Saguyod was found guilty of simple misconduct. In A.M. No. P-12-13102 (*Formerly OCA IPI No. 07-2562-P*) (*Jose S. Villanueva vs. Atty. Paulino L. Saguyod, Clerk of Court VI, Branch 67, Regional Trial Court, Paniqui, Tarlac*), Atty. Saguyod was suspended from the service for a period of three (3) months, and admonished for violating the Code of Conduct for Court Personnel and Section 4(e), Republic Act No. 6713. Considering that Atty. Saguyod is being charged for his second offense of simple misconduct, the penalty of dismissal is deemed proper.

5. ID.; ID.; ID.; THE COURT CANNOT COUNTENANCE ANY ACT OR OMISSION WHICH DIMINISHES OR TENDS TO DIMINISH THE FAITH OF THE PEOPLE IN THE

JUDICIARY. — The Court has repeatedly stressed that it will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus, tainting its image in the eyes of the public. The Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the Judiciary.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is an Affidavit-Complaint[1] filed by Willy Fred U. Begay *(complainant)* against Atty. Paulino I. Saguyod, Clerk of Court VI and George P. Clemente, Sheriff IV, both of Branch 67, Regional Trial Court *(RTC)*, Paniqui, Tarlac, for gross misconduct, discourteous acts, manifest partiality and grave abuse of authority.

The facts, as summarized by the Office of the Court Administrator (*OCA*), are as follows:

Complainant Begay states that he is the owner of Garden of Samantha Memorial Park located in Estacion, Paniqui, Tarlac. The memorial park, consisting of three (3) parcels of land, is under litigation in a case he filed against the Rural Bank of San Luis Pampanga, Inc., docketed as Civil Case No. 008-13, before the RTC, Paniqui, Tarlac. He prays for the nullification of the real estate mortgages, promissory notes, foreclosure proceedings, transfer certificates of title, award of damages, and the issuance of a Writ of Preliminary Injunction *pendente lite* which commanded the Rural Bank of San Luis to desist from obtaining possession of the memorial park.

Unknown to complainant Begay, on 2 December 2014, the Rural Bank of San Luis filed an *ex parte* motion for the issuance of a writ of possession, docketed as Land Case No. 041-14, claiming that it purchased a parcel of land covered by TCT No. 043-2014005232 (one of the parcels of land comprising the subject memorial park) through an extrajudicial foreclosure sale per Certificate of Sale dated 5 February 2013. The Rural Bank's prayer for issuance of a possessory writ was directed against Alejandro P. Bautista, former owner of the

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

property and all other persons who might be in possession of the property.

Complainant Begay avers that the Rural Bank of San Luis failed to disclose in its *ex parte* motion that he was in possession of the subject lot in the concept of an owner; that neither Bautista nor any other individual ever acquired possession of the property; and that there is a case docketed as Civil Case No. 008-13 pending before the RTC of Paniqui, Tarlac, questioning the circumstances whereby the property was transferred to Bautista at the instance and direction of the Rural Bank of San Luis.

In the Order dated 17 April 2015, the trial court granted the *ex parte* motion and directed the Branch Clerk of Court to issue the writ of possession. On 20 April 2015, respondent Atty. Saguyod issued the Writ of Possession addressed to the court's Deputy Sheriff, respondent Clemente. Upon receipt thereof, respondent Sheriff Clemente issued the notice to vacate addressed to complainant Begay, who was not a party to the case nor was mentioned in Civil Case No. 041-14, but not to mortgagor Bautista.

Complainant Begay filed a Motion to Quash dated 21 April 2015 questioning the propriety of the writ of possession and requesting that he be allowed to speak during the hearing on 30 April 2015. However, respondent Atty. Saguyod failed to include him in the said hearing. He states that he filed a Motion to Quash the Writ of Possession on the grounds that he is the real owner who is in actual possession of the subject property. Since he was not made a party to the foreclosure proceedings and to the *ex parte* motion, his right to due process was violated. He adds that there is a pending controversy relative to the foreclosure commenced by the Rural Bank of San Luis, and the issue of ownership needs to be resolved in a full-blown trial.

On 19 May 2015, despite the pendency of the motion to quash, a group led by respondents Sheriff Clemente and Atty. Saguyod implemented the writ and forcibly and furiously took possession of a portion of the memorial park, particularly the lot covered by TCT No. 043-2014005232.

Complainant Begay states that at the time of their takeover, respondent Sheriff Clemente ordered Security Guard Rolando M. Tabilisima to vacate his post and that he be immediately disarmed. He alleges that the security guards and the security agency, the Golden Fort Security Agency, posted by respondents Atty. Saguyod and Sheriff Clemente were not licensed as such within the ambit of Republic

Act No. 5487 as amended. The certification issued by the Supervisory Office for Security and Investigation Agencies (SOSIA) of the National Police Commission shows that the Golden Fort Security Agency is not registered and has no record on file in their office.

Complainant Begay alleges that the dates when respondent Atty. Saguyod received the evidence of the Rural Bank of San Luis and when he conducted the *ex parte* hearing are questionable. In the Order dated 17 April 2015, it states that on 19 March 2015, after examining all the exhibits presented by petitioner Rural Bank of San Luis, the trial court admitted the same and the petition was submitted for resolution. Respondent Atty. Saguyod reported to the Presiding Judge that the *ex parte* hearing for reception of evidence was conducted prior to or not later than 19 March 2015. According to complainant Begay, it was not possible for respondent Atty. Saguyod to have conducted the *ex parte* hearing for the reception of the movant-bank's evidence prior to or not later than 19 March 2015. Rather, the records would show that the Rural Bank of San Luis submitted the judicial affidavit of its witness only on 6 April 2015 and the formal offer of exhibits was received by the trial court on 8 April 2015.

Complainant Begay claims that the participation of respondent Atty. Saguyod in the implementation of the writ is highly questionable considering that it is not within his functions as Clerk of Court of the RTC, Paniqui, Tarlac. He alleges that respondent Atty. Saguyod was not only a mere observer during the implementation of the writ, but was also an active participant as he was conferring with the officers and lawyers of the Rural Bank of San Luis. Respondent Atty. Saguyod was also shouting invectives at complainant Begay's employees and ordering them to leave the premises. He adds that respondents Atty. Saguyod and Sheriff Clemente carefully planned the implementation of the writ as they immediately posted a very large notice that the Rural Bank of San Luis was placed in possession of the subject property pursuant to the writ issued by the trial court.

In its Order dated 9 June 2015, the trial court granted the motion to quash filed by complainant Begay and allowed him to take possession of the subject property covered by TCT No. 043-2014005232 until after the case shall have been resolved with finality. The Order dated 17 April 2015, the Writ of Possession dated 20 April 2015, and the Notice to Vacate dated 20 April 2015 were all recalled and set aside.[2]

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

In its Memorandum[3] dated February 20, 2017, the OCA recommended that Atty. Saguyod be found guilty of simple misconduct and be ordered dismissed from the service, with forfeiture of his retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government including government-owned or controlled corporation, while the administrative complaint against Sheriff Clemente was dismissed for lack of merit.

First, the OCA found that there was nothing irregular when respondent issued the writ of possession. It opined that Atty. Saguyod and Sheriff Clemente cannot be held administratively liable for issuing and implementing the writ of possession since the issuance of the possessory writ against complainant was in accordance with the order of the trial court, the complainant having in possession of the property.

Second, the OCA observed that complainant's allegation that Atty. Saguyod and Sheriff Clemente replaced complainant's security guard with an unlicensed security agency is tenuous since complainant failed to substantiate his claims.

However, the OCA found merit in the allegation against Atty. Saguyod in actively participating in the implementation of the writ of possession. The OCA elucidated that there exists substantial evidence which show that Atty. Saguyod was at the scene during the implementation of the writ of possession, together with the representative and lawyers of the Rural Bank of San Luis. The OCA maintained that Atty. Saguyod's presence during the implementation of the writ, even without any specific act, clearly showed that he was personally involved in the case in one way or another.

Citing Section D (3) (3.2), Chapter 4 of the 2002 Revised Manual for Clerks of Court, the OCA concluded that Atty. Saguyod exceeded his mandate when he was at the subject property during the implementation of the writ of possession. The said provision lays down the functions of the Clerk of Court as an *ex officio* Sheriff, to wit:

[3] *Id.* at 78-85.

3.2 Clerk of Court as *Ex Officio* Sheriff
3.2.1. Serves summonses and notices of raffle in initiatory pleadings with application for temporary restraining order and preliminary injunction;
3.2.2. Serves processes and implements writs coming from:
3.2.2.1. the branches of the Court in the absence of the branch sheriff;
3.2.2.2. the other courts of the country, including the Court of Appeals and the first level courts; and
3.2.2.3. the offices and quasi-judicial agencies of the Government.

On March 21, 2017, the Court *en banc* issued a Resolution,[4] the *fallo* of which reads:

(a) **DISMISS** the complaint against George P. Clemente, Sheriff IV, Regional Trial Court, Branch 67, Paniqui, Tarlac; and

(b) **RE-DOCKET** the complaint against Atty. Paulino I. Saguyod, Clerk of Court VI, same court, as a regular administrative complaint, to wit: A.M. No. P-17-3652 (*Willy Fred U. Begay vs. Atty. Paulino I. Saguyod, Clerk of Court VI, Regional Trial Court, Branch 67, Paniqui, Tarlac*)

The Court's Ruling

The Court is in accord with the findings and observations of the OCA which are duly supported by the facts on record and the applicable laws and jurisprudence on the matter.

Section D (3) (3.2) (3.2.2.1), Chapter 4 of the 2002 Revised Manual for Clerks of Court provides:

3.2 Clerk of Court as *Ex Officio* Sheriff

x x x x x x x x x

3.2.2. Serves processes and implements writs coming from:
3.2.2.1. the branches of the Court in the absence of the branch sheriff;

Clearly, the provision mandates the function of a clerk of court as an *ex officio* sheriff to implement writs coming from the branches of the Court only in the absence of the branch sheriff.

[4] *Id.* at 86.

In the present case, it is worthy to note that the Order[5] dated April 17, 2015 issued by the trial court which granted the *ex parte* motion for a writ of possession, directed the Branch Clerk of Court to issue the writ of possession. On April 20, 2015, respondent Atty. Saguyod issued the Writ of Possession which was addressed to the court's Deputy Sheriff, Sheriff Clemente. Evidently, the circumstances of the case do not warrant the exercise of respondent's function as an *ex officio* sheriff. It bears emphasis that the writ of possession which respondent himself issued, was addressed to the court's Deputy Sheriff Clemente, who was already present at the time of the implementation of the writ.

Moreover, the OCA's report revealed that a photograph on record showed that respondent was at the subject property at the time of the implementation and was seen conferring with the officers and lawyers of the Rural Bank of San Luis. Another photograph on record showed respondent angrily pointing his finger at complainant Begay's staff and apparently shouting invectives at them.[6] Hence, Atty. Saguyod's act of overseeing the enforcement of the writ, in an intimidating manner nonetheless, showed that Atty. Saguyod overstepped the bounds of propriety required of him as an employee of the court.

In his Comment[7] dated August 18, 2015, respondent merely averred that he had no participation in the actual implementation of the said writ and that he merely reminded Deputy Sheriff George P. Clemente to delineate the subject property which is a portion of the memorial garden.

His contention deserves scant consideration.

Time and again, the Court has held that "bare denial of respondent that he did not commit the acts complained of cannot overcome the clear and categorical assertion of the complainant."[8]

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

[6] *Id.* at 82.

[7] *Id.* at 70-77.

[8] *Re: Complaint Against Mr. Ramdel Rey M. De Leon, Executive Assistant*

An assiduous scrutiny of the records of the case would reveal substantial evidence showing that Atty. Saguyod was at the subject property and actively participated in the implementation of the writ of possession. It must be noted however that no countervailing evidence was offered by Atty. Saguyod. As aptly found by the OCA, respondent's mere presence at the implementation of the writ alone is highly questionable, especially considering that Sheriff Clemente was already present at the time of the implementation of the writ.

The Court cannot simply turn a blind eye to what is clearly a conduct which tends to derogate the trust reposed in government officials, who are expected to uphold the highest degree of standards of efficiency in the exercise of their functions. As a court employee, respondent is bound to know that the conduct required of court personnel must be beyond reproach and must always be free from suspicion that may taint the Judiciary.[9]

Respondent's actuation of being present during the implementation of the writ of possession in an intimidating manner and hurling invectives on the complainants is clearly an act of simple misconduct. Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. A misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. Otherwise, a misconduct is only simple.[10] Since there is no showing that the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present in this case, the respondent's act is considered as a simple misconduct.

Clerks of court, whose functions are vital to the prompt and sound administration of justice, cannot be allowed to overstep

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III, Office of Associate Justice Jose P. Perez, on the Alleged Dishonesty and Deceit in Soliciting Money for Investments, A.M. No. 2014-16-SC, January 15, 2019.

[9] *Abanil v. Ramos, Jr.*, 399 Phil. 572, 577 (2000).

[10] *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

their powers and responsibilities.[11] Thus, for his improper behavior, the Court finds Atty. Saguyod liable for simple misconduct.

Anent the proper penalty to be imposed, the Court was instructive in *Boston Finance and Investment Corp. v. Gonzalez*,[12] on what rule shall govern court personnel, to wit:

> Fundamentally, the setting of parameters pertaining to the discipline of all court personnel, including judges and justices, clearly fall within the sole prerogative of the Court. The Supreme Court's exclusive authority to set these parameters is based on no other than the 1987 Constitution, which provides:
>
> ARTICLE VIII
>
> Section 6. The Supreme Court shall have **administrative supervision** over **all courts and the personnel** thereof. (Emphases supplied)
>
> x x x x x x x x x
>
> Anchored on these constitutional mandates, the Court issued two (2) separate body of rules to govern judicial discipline cases, to wit: (*a*) **Rule 140 of the Rules of Court to apply to judges and justices of lower courts**; and (*b*) **the Code of Conduct for Court Personnel (CCCP)**, which incorporates the RRACCS, **to apply to all judiciary personnel "who are not justices or judges."**

Since respondent is a clerk of court, the Code of Conduct for Court Personnel, which incorporates the RRACCS, shall apply in this case. Hence, for being liable for simple misconduct, We shall refer to the pertinent provisions of the RRACS as regards the proper penalty to be imposed upon respondent.

Section 46 (D), Rule 10 of the RRACS classify simple misconduct as a less grave offense with a corresponding penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense, and the penalty of dismissal for the second offense.

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[11] *Nieva v. Alvarez-Edad*, 490 Phil. 460, 471 (2005).

[12] A.M. No. RTJ-18-2520 (formerly OCA I.P.I. No. 14-4296-RTJ), October 9, 2018.

In the present case, the OCA's Report revealed that this is not the first time that Atty. Saguyod was found guilty of simple misconduct. In A.M. No. P-12-13102 *(Formerly OCA IPI No. 07-2562-P) (Jose S. Villanueva vs. Atty. Paulino L. Saguyod, Clerk of Court VI, Branch 67, Regional Trial Court, Paniqui, Tarlac)*, Atty. Saguyod was suspended from the service for a period of three (3) months, and admonished for violating the Code of Conduct for Court Personnel and Section 4 (e), Republic Act No. 6713.

Considering that Atty. Saguyod is being charged for his second offense of simple misconduct, the penalty of dismissal is deemed proper.

The Court has repeatedly stressed that it will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus, tainting its image in the eyes of the public.[13] The Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the Judiciary.[14]

WHEREFORE, the recommendation of the Office of the Court Administrator, being in accord with the facts, law and jurisprudence, is hereby **APPROVED**. Atty. Paulino I. Saguyod, Clerk of Court VI of Branch 67, Regional Trial Court, Paniqui, Tarlac, is found **GUILTY** of simple misconduct and is **DISMISSED** from the service, with forfeiture of his retirement benefits, except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporation, considering that this is the second time that he has been found guilty of simple misconduct.

SO ORDERED.

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

Gaerlan, J., on leave.

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[13] *Judaya, et al. v. Balbona*, 810 Phil. 375, 383 (2017).

[14] *Seliger v. Licay*, 673 Phil. 96, 101 (2011).

EN BANC

[A.M. No. RTJ-12-2337. June 23, 2020]
(Formerly A.M. No. 12-10-224-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant*, *vs.* **HON. MARILYN B. LAGURA-YAP, FORMER PRESIDING JUDGE, BRANCH 28, REGIONAL TRIAL COURT, MANDAUE CITY, CEBU (NOW ASSOCIATE JUSTICE OF THE COURT OF APPEALS),** *respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; MANDATED TO PERFORM ALL THEIR JUDICIAL DUTIES EFFICIENTLY, FAIRLY AND WITH REASONABLE PROMPTNESS; JUDGES OF ALL LOWER COLLEGIATE COURTS MUST DECIDE OR RESOLVE CASE OR MATTERS WITHIN TWELVE (12) MONTHS FROM DATE OF SUBMISSION WHILE JUDGES OF ALL OTHER COURTS ARE GIVEN A PERIOD OF THREE (3) MONTHS TO DO SO. — The Constitution expressly provides that all lower courts should decide or resolve cases or matters within three (3) months from the date of submission. Section 5, Canon 6 of the New Code of Judicial Conduct likewise provides: Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Accordingly, this Court has laid down certain guidelines to ensure compliance with this mandate. More particularly, Supreme Court Administrative Circular No. 13-87 provides: 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve (12) months from date of submission by all lower collegiate courts while all other lower courts are given a period of three (3) months to do so. Supreme Court Administrative Circular No. 1-88 further states: 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. Given the foregoing rules, the Court cannot

overstress its policy on prompt disposition or resolution of cases. Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay. Thus, judges have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three (3) months from the filing of the last pleading, brief or memorandum for lower courts. To further impress upon judges such mandate, the Court has issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would ensure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution.

2. ID.; ID.; ID.; HEAVY CASELOAD, VOLUMINOUS RECORDS, DEATH OF FAMILY MEMBERS AND BEING UNDER STAFFED ARE NOT SUFFICIENT TO EXONERATE A JUDGE FROM LIABILITY FOR FAILURE TO DECIDE CASES WITHIN THE MANDATORY PERIOD. — We have considered the justifications and explanations proffered by Hon. Lagura-Yap — heavy caseload, voluminous records, death of family members, and being understaffed — which, while may be recognized as true and reasonable, are not sufficient to exonerate her from liability. To be sure, the mandatory nature of the period to decide cases provided under the Constitution cannot be considered as beyond the limits of acceptability or fairness.

3. ID.; ID.; ID.; REASONABLE EXTENSIONS OF TIME NEEDED TO DECIDE CASES MUST FIRST BE REQUESTED FROM THE COURT; A JUDGE CANNOT BY HIMSELF/HERSELF CHOOSE TO PROLONG THE PERIOD FOR DECIDING CASES BEYOND THAT AUTHORIZED BY LAW; CASE AT BAR. — We are also aware of the heavy caseload of trial courts, as well as the different circumstances or situations that judges may encounter during trial, such as those averred by Hon. Lagura-Yap. Thus, the Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court. Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it. Unfortunately for Hon. Lagura-Yap, she did not avail of such remedy. A judge cannot by herself choose to prolong the period for deciding cases beyond that authorized by law.

4. ID.; ID.; GROSS INEFFICIENCY; FAILURE TO DECIDE A CASE WITHIN THE REQUIRED PERIOD. — In *Office of the Court Administrator v. Lopez, et al*., the Court reminded "judges to decide cases with dispatch" and "that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge."

5. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; REQUIRED TO WARRANT DISCIPLINARY SANCTIONS IN ADMINISTRATIVE PROCEEDINGS; DEFINED. — Indeed, in administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. We define substantial evidence *as relevant evidence as a* ***reasonable mind*** *might accept as adequate to support a conclusion.* Thus, after much consideration of the facts and circumstances, while the Court has not shied away in imposing the strictest penalty to erring employees, neither can we think and rule unreasonably in determining whether an employee deserves disciplinary sanction.

6. LEGAL ETHICS; JUDGES; GROSS INEFFICIENCY; PENALTY IN CASE AT BAR. — In the present case, considering the number of cases left undecided, *i.e*., a total of one hundred sixty (160) cases, and the lack of any plausible explanation for such failure to decide within the reglementary period, and Hon. Lagura-Yap's failure to submit the certification of pending cases before the JBC, the recommended imposition of a fine equivalent to one (1) year of her current salary is proper.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint against Hon. Marilyn B. Lagura-Yap, Associate Justice of the Court of Appeals, in her capacity as then Presiding Judge, Branch 28, Regional Trial Court *(RTC)*, Mandaue City, Cebu, for gross inefficiency and incompetence for failing to decide cases within the reglementary period to decide, and for dishonesty for her failure to indicate in her application for the position of Associate Justice of the

Court of Appeals her caseload and/or cases submitted for decision, and to accurately and truthfully reflect the actual number of cases submitted for decision in the Monthly Report of Cases submitted to the Office of the Court Administrator *(OCA)*.

To recapitulate, Hon. Lagura-Yap filed her application for the position of Associate Justice of the Court of Appeals on September 20, 2011 with the Judicial and Bar Council *(JBC)*. Subsequently, on February 24, 2012, Hon. Lagura-Yap was appointed as Associate Justice of the Court of Appeals. She then requested for the issuance of a Certificate of Clearance. On July 30, 2012, Atty. Tranne Lee Digao-Ferrer, Branch Clerk of Court, Branch 28, RTC, Mandaue City, Cebu, issued a Certification which enumerated the one hundred thirty-four (134) pending cases submitted for decision during her stint as presiding judge of Branch 28, RTC, Mandaue City, Cebu.[1]

Thus, in its Memorandum Report[2] dated October 17, 2012, the OCA averred that Hon. Lagura-Yap neither requested for additional time to decide the subject cases nor did she give a valid reason regarding the non-resolution of the said pending cases. Consequently, the OCA withheld the processing of Hon. Lagura-Yap's application for clearance.

The OCA likewise stated that in the nomination letter dated November 28, 2011 issued to Hon. Lagura-Yap, she was reminded of A.M. No. 04-5-19-SC which requires that before she could take her oath of office and assume her new responsibilities, she should submit a certification manifesting that she had decided or disposed of the cases assigned to her in her previous position. However, Hon. Lagura-Yap still failed to submit the required certification, and just took her oath of office and assumed her new responsibilities without resolving all the cases submitted for decision in Branch 28, RTC, Mandaue City, Cebu.[3]

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[1] *Rollo*, p. 12.

[2] *Id.* at 1-10.

[3] *Id.* at 10.

Thus, considering Hon. Lagura-Yap's administrative liability arising from her failure to decide pending cases submitted for resolution prior to her promotion, the OCA recommended to the Court that (a) the matter be re-docketed as a regular administrative matter against Hon. Lagura-Yap, former Presiding Judge, Branch 28, RTC, Mandaue City, Cebu; (b) she be imposed a fine in the amount of One Hundred Thousand Pesos (₱100,000.00) for gross inefficiency for her failure to decide one hundred twenty-eight (128) cases submitted for decision within the reglementary period prior to her promotion; and (c) she be admonished to be more circumspect in the performance of her sworn duty.[4]

On November 26, 2012, in a Resolution,[5] the Court, upon the recommendation of the OCA, resolved to re-docket this matter as a regular administrative matter against Hon. Lagura-Yap.

Subsequently, in a Resolution[6] dated March 13, 2013, the Court directed the OCA to:

1) Investigate further whether or not the respondent, in her application to the position of Associate Justice of the Court of Appeals filed before the Judicial and Bar Council, failed to indicate her case load and/or cases submitted for decision that were pending before her court at the time of her application.

2) Investigate further if respondent filed a true and accurate monthly report to the OCA with respect to the status of pending cases and cases submitted for decision before her court prior to and at the time of her application to the position of Associate Justice of the Court of Appeals.

3) Make a report on such findings, together with its recommendation, within ten (10) days from receipt of this Resolution.[7]

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[4] *Id.*

[5] *Id.* at 16.

[6] *Id.* at 18-18A.

[7] *Id.* at 18.

Thus, in compliance with the Court's Resolution, the OCA organized a team to conduct a judicial audit and physical inventory of pending cases, including cases submitted for decision and cases with unresolved/pending motions, in Branch 28, RTC, Mandaue City, Cebu.

Thereafter, based on the team's audit report, it was discovered that there were one hundred thirty-three (133) criminal cases and thirty-five (35) civil cases submitted for decision in Branch 28, RTC, Mandaue City, Cebu, before Hon. Lagura-Yap's promotion. There were one (1) criminal case with an unresolved motion filed on January 22, 2010 and five (5) civil cases with pending motions, the earliest of which was filed on September 6, 2011. Many of those cases were later decided/resolved by then Acting Presiding Judges Raphael B. Yrastorza and Sylva G. Aguirre-Paderanga.

The complete list of cases submitted for decision and incidents submitted for resolution before Hon. Lagura-Yap while she was yet the Presiding Judge of Branch 28, RTC, Mandaue City, Cebu, is as follows:

CRIMINAL CASES
SUBMITTED FOR DECISION

CASE NO.	ACCUSED	NATURE	LATEST COURT ACTION
DU-8168	Duran	Rape	Order dated Jan. 12, 2005 (Judge Yap), the exhibits formally offered by Pros. Carisma are admitted. Judgment was rendered in June 2012 by Judge Yrastorza. (There was no date indicated in the Decision and information was received that Judge Yrastorza personally encodes his Decisions) Original records were forwarded to the Court of Appeals, Cebu, in an Order dated July 9, 2012.

DU-12826	Gabuya, *et al.*	Theft	Order dated Mar. 3, 2007 (Judge Yap), directing the parties to simultaneously submit their Memorandum 30 days from receipt of the Order. No Memorandum filed. PAO's *Ex-Parte* Motion to Submit Case for Decision dated July 31, 2012. Judgment was rendered on Dec. 18, 2012 by Judge Yrastorza.
DU-12265	Ramsey Pabular (Ramsey Patricio)	Viol. of Sec. 5, Art. II, RA 9165	Order dated March 24, 2008 (Judge Yap), directing the parties to simultaneously submit their respective Memorandum 5 days upon receipt of the Order. Memorandum (Accused) filed on Jan. 28, 2010. Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Judgment was rendered on Feb. 25, 2013 by Judge Yrastorza.
DU-7541	Batulan	Viol. of Sec. 16, Art. III, RA 6425, as amended	Order dated Apr. 9, 2008 (Judge Yap), the Prosecution and the Defense were required to simultaneously submit their respective Memorandum 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision.

			Judgment was rendered on July 17, 2012 by Judge Yrastorza.
DU-9554	Roliger Casip	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Apr. 10, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum 30 days from receipt of the Order. No Memorandum was filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 13, 2012 by Judge Yrastorza.
DU-9555	Frederick Bojos	Viol. of Sec. 5, Art. II, RA 9165	Joint Order dated Apr. 10, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 13, 2012 by Judge Yrastorza.
DU-11013	Alabastro, *et al.*	Viol. of Sec. 5, Art. II, RA 9165	Order dated May 5, 2008 (Judge Yap), parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.

			Order dated June 22, 2010 (Judge Yap), case was deemed submitted for decision.
DU-10743	Mahinay	Viol. of Sec. 11, Art. II, RA 9165	Order dated May 7, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum on file. Order dated June 21, 2010 (Judge Yap), case was submitted for decision. Judgment was rendered on Oct. 22, 2012 by Judge Yrastorza.
DU-6436	Ermac, *et al.*	Viol. of Sec. 8, Art. II, RA 6425	Joint Order dated May 14, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum 30 days from x x x date of Order. No Memorandum filed. Order dated Oct. 1, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on July 16, 2012 by Judge Yrastorza.
DU-6437	Ermac, *et al.*	Viol. of Sec. 16, Art. III, RA 6425	Joint Order dated May 14, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No Memorandum filed.

			Order dated Oct. 1, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on July 16, 2012 by Judge Yrastorza.
DU-10926	Pono	Viol. of Sec. 15, Art. II, RA 9165	Order dated May 19, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on Aug. 8, 2012 (promulgated on Aug. 14, 2012) by Judge Yrastorza.
DU-11181	Magtagnob	Viol. of Sec. 5, Art. II, RA 9165	Order dated May 19, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order. No Memorandum filed. Order dated June 21, 2010 (Judge Yap), case was deemed submitted for decision. Joint Judgment was rendered on Aug. 7, 2012 by Judge Yrastorza.
DU-11182	Magtagnob	Viol. of Sec. 5, Art. II, RA 9165	Order dated May 19, 2008 (Judge Yap), the parties were required to simultaneously

			submit their respective Memorandum within 30 days from receipt of this Order. No Memorandum filed. Order dated June 21, 2010 (Judge Yap), case was deemed submitted for decision. Joint Judgment was rendered on Aug. 7, 2012 by Judge Yrastorza.
DU-10481	Comendador	Viol. of Sec. 11, Art. II, RA 9165	Order dated May 26, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order. With or without the memoranda, these cases will be decided upon by the court. Memorandum (Accused) filed on Jan. 8, 2009. Order dated June 24, 2009 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 7, 2012 by Judge Yrastorza.
DU-10482	Comendador	Viol. of Sec. 5, Art. II, RA 9165	Order dated May 26, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order. With or without the memoranda, these cases will be decided upon by the court. Memorandum (Accused) filed on Jan. 8, 2009.

			Order dated June 24, 2009 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 7, 2012 by Judge Yrastorza.
DU-9362	Saladaga, *et al.*	Murder	Order dated July 16, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 21, 2010 (Judge Yap), case was deemed submitted for decision. Judgment was rendered on July 3, 2012 by Judge Yrastorza.
DU-10515	Agujar, *et al.*	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Aug. 5, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 [days] from date of Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Sept. 19, 2012 by Judge Yrastorza.
DU-10516	Agujar, *et al.*	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Aug. 5, 2008 (Judge Yap), the parties were required to simultaneously

			submit their respective Memorandum within 30 days from date of Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Sept. 19, 2012 by Judge Yrastorza.
DU-13124	Lungtad	Viol. of Sec. 11, RA 9165	Joint Order dated Sept. 1, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Sept. 19, 2012 by Judge Yrastorza.
DU-13125	Lungtad	Viol. of Sec. 12, RA 9165	Joint Order dated Sept. 1, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Sept. 19, 2012 by Judge Yrastorza.

DU-8686	Bigkas	Murder	Order dated Sept. 3, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 29, 2009 (Judge Yap), case was submitted for decision. Judgment was rendered on July 2, 2012 by Judge Yrastorza.
DU-13478	Altabarino, *et al.*	Theft	Order dated Sept. 8, 2008 (Judge Yap), parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision.
DU-13750	Rafols	Robbery	Order dated September 22, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Dec. 28, 2013 by Judge Paderanga. It was promulgated on January 17, 2013.

DU-10083	Sasing	Viol. of Sec. 11 (3), Art. II, RA 9165	Order dated Oct. 8, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Aug. 28, 2012 by Judge Yrastorza. It was promulgated on Sept. 19, 2012.
DU-10507	Juvy Mandaue	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Oct. 13, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Joint Memorandum (accused) filed on Nov. 26, 2008. Joint Order dated June 21, 2010 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on July 31, 2012 by Judge Yrastorza.
DU-10508	Juvy Mandaue	Viol. of Sec. 11, Art. II, RA 9165. Amended information filed on Nov. 7, 2003	Joint Order dated Oct. 13, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order.

			Joint Memorandum (Accused) filed on Nov. 26, 2008. Joint Order dated June 21, 2010 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on July 31, 2012 by Judge Yrastorza.
DU-11913	Romero	Murder	Order dated Oct. 14, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 21, 2010 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on June 25, 2012 by Judge Yrastorza. It was promulgated the following day.
DU-13400	Calinawan	Slight Physical Injuries	Order dated Oct. 22, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 10, 2010 (Judge Yap), case was submitted for decision. Judgment was rendered on Aug. 13, 2012 by Judge Yrastorza. It was promulgated on Aug. 28, 2012.

DU-10909	Maglasang, *et al.*	Viol. of Sec. 11, Art. II, RA 9165	Order dated Nov. 10, 2008, the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 21, 2012 by Judge Yrastorza. There is apparent typographical error in the year the decision was rendered. It should be Jan. 21, 2013 and not Jan. 21, 2012.
DU-10910	Maglasang, *et al.*	Viol. of Sec. 12, Art. II, RA 9165	Order dated Nov. 10, 2008, the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 21, 2012 by Judge Yrastorza. There is apparent typographical error in the year the decision was rendered. It should be Jan. 21, 2013 and not Jan. 21, 2012.
DU-10911	Maglasang	Viol. of Sec. 15, Art. II, RA 9165	Order dated Nov. 10, 2008, the parties were required to simultaneously submit their respective Memorandum

			within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 21, 2012 by Judge Yrastorza. There is apparent typographical error in the year the decision was rendered. It should be Jan. 21, 2013 and not Jan. 21, 2012.
DU-10912	Maglasang	Viol. of Sec. 12, Art. II, RA 9165	Order dated Nov. 10, 2008, the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 21, 2012 by Judge Yrastorza. There is apparent typographical error in the year the decision was rendered. It should be Jan. 21, 2013 and not Jan. 21, 2012.
DU-11037	Mansueto, *et al.*	Viol. of Sec. 5, Art. II, RA 9165	Order dated Nov. 11, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of this Order. No Memorandum filed.

			Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Jan. 29, 2013 by Judge Yrastorza.
DU-10789	Valiente	Murder	Order dated Dec. 3, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Decision was rendered on June 25, 2012 by Judge Yrastorza. It was promulgated on June 26, 2012.
DU-10790	Valiente	Murder	Order dated Dec. 3, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Decision was rendered on June 25, 2012 by Judge Yrastorza. It was promulgated on June 26, 2012.
DU-11129	Abe	Rape	Order dated Jan. 14, 2009 (Judge Yap), the parties were required to simultaneously

			submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on July 23, 2012 by Judge Yrastorza.
DU-13573	Heyrosa	Viol. of Sec. 5, Art. II, RA 9165	Order dated Jan. 22, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No Memorandum filed. Order dated June 22, 2010 (Judge Yap), case was submitted for decision.
DU-6574	Boctor, *et al.*	Viol. of Sec. 8, Art. II, RA 6425	Order dated Feb. 9, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. Memorandum (Accused Hibionada) filed on March 20, 2000. Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 14, 2013 by Judge Yrastorza.

DU-6575	Boctor, *et al.*	Viol. of Sec. 16, Art. III, RA 6425	Order dated Feb. 9, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. Memorandum (Accused Hibionada) filed on March 20, 2000. *(sic)* Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Jan. 14, 2013 by Judge Yrastorza.
DU-9498	Pareja	Viol. of Sec. 16, Art. III, RA 6425	Order dated Feb. 18, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Aug. 7, 2012 by Judge Yrastorza.
DU-10493	Magallon	Viol. of Sec. 5, Art. II, RA 9165	Order dated Jan. 20, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. Memorandum (Accused) filed on Feb. 20, 2009.

			Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Judgment was rendered on Nov. 26, 2012 by Judge Yrastorza.
DU-10776	Flores	Viol. of Sec. 5, Art. II, RA 9165	Joint Order dated Feb. 24, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No memorandum filed. Joint Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 13, 2012 by Judge Yrastorza.
DU-10777	Flores	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Feb. 24, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No memorandum filed. Joint Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Aug. 13, 2012 by Judge Yrastorza.

DU-9254	Ampaso	Viol. of Sec. 16, Art. III, RA 6425	Order dated Mar. 11, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Jan. 21, 2013 (Judge Yrastorza).
DU-10962	Piamonte, *et al.*	Viol. of Sec. 5, Art. II, RA 9165	Order dated Mar. 19, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Order dated May 21, 2012 (Judge Yrastorza), case against accused Piamonte is hereby dismissed (Death).
DU-14309	Cortes	Estafa	Order dated Mar. 31, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Motion for resolution (accused) Sept. 27, 2010.

			Order dated Jan. 5, 2011, (Judge Yap), case was submitted for decision. Reiterated motion for resolution Mar. 27, 2012.
DU-12468	Colina, *et al.*	Viol. of RA 6539	Order dated Mar. 16, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days upon receipt of the Order. Memorandum for accused filed Apr. 17, 2009. Order dated June 22, 2010 (Judge Yap), case was submitted for decision. Judgment was rendered on Sept. 10, 2012 by Judge Yrastorza. It was promulgated on Sept. 19, 2012.
DU-7843	Tolo, *et al.*	Viol. of Sec. 16, Art. III, RA 6425	Order dated July 6, 2009 (Judge Yap), case was submitted for decision. Judgment was rendered on Aug. 6, 2012 by Judge Yrastorza. It was promulgated on Aug. 7, 2012.
DU-9206	Verallo, *et al.*	Murder	Order dated July 8, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 21, 2011 (Judge Yap), case was submitted for decision.

			Decision was rendered on July 9, 2012 by Judge Yrastorza.
DU-7960	Abellanosa	Viol. of Sec. 15, Art. III, RA 6425	Order dated Aug. 26, 2009 (Judge Yap), case was submitted for decision. Judgment was rendered on Oct. 8, 2012 by Judge Yrastorza. Decision was amended on the same date Oct. 8, 2012.
DU-9493	Atay	Viol. of Sec. 5, Art. II, RA 9165	Order dated March 10, 2008 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Defense) filed [on] May 5, 2009. Expanded Memorandum (defense) filed on Sept. 1, 2009. Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Jan. 22, 2013 by Judge Yrastorza.
DU-10728	Burdadora	Carnapping	Order dated Sept. 22, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision.

			Judgment rendered on Dec. 17, 2012 by Judge Yrastorza.
DU-13481	Sampan	Viol. of Sec. 5, Art. II, RA 9165	Order dated Oct. 5, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-10551	Pepito, *et al.*	Viol. of Sec. 15, Art. II, RA 9165	Joint Order dated Oct. 13, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision.
DU-10554	Pepito, *et al.*	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Oct. 13, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.

			Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision.
DU-14146	Daligdig, Sr.	Murder	Order dated Oct. 22, 2009 (Judge Yap), case was submitted for decision. Judgment was rendered on July 9, 2012 by Judge Yrastorza.
DU-12473	Licaroz	Viol. of Sec. 11, Art. II, RA 9165	Order dated Oct. 7, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on Nov. 18, 2009. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment rendered on Aug. 28, 2012 by Judge Yrastorza.
DU-17443A	Barazan	Viol. of Art. 179, RPC (Appeal)	Memorandum (Accused) filed on Nov. 18, 2009.
DU-8357	Mahinay	Murder	Order dated Dec. 2, 2009 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Mar. 2, 2011 (Judge Yap), case was submitted for decision.

			Judgment was rendered on July 24, 2012 by Judge Yrastorza.
DU-17438-A	Ruiz	Estafa (Appeal)	Order dated October 29, 2009 (Judge Yap), accused given an additional period of 30 days from Nov. 8, 2009 to December 9, 2009 to submit memorandum. Memorandum (accused) filed on Dec. 12, 2009.
DU-17336A	Ymbong, *et al.*	Estafa (Appeal)	Appeal Memorandum (Private Complainant) filed on Nov. 17, 2009. Appeal Memorandum (Accused-Appellant) filed on April 28, 2010.
DU-17957A	Antonio Siao In Hok	BP 22 (Appeal)	Memorandum (Appellant) filed on May 17, 2010. Resolution dated Sept. 19, 2012, appeal is dismissed by Judge Yrastorza.
DU-10994	Pilar	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Oct. 27, 2009 (Judge Yap), the case as to Petitioner who had already waived the right to present evidence was deemed submitted for decision. Joint Order dated Feb. 22, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.

			Joint Order dated Feb. 27, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Feb. 11, 2013 by Judge Yrastorza.
DU-11034	Demape	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Oct. 27, 2009 (Judge Yap), the case as to Petitioner who had already waived the right to present evidence was deemed submitted for decision. Joint Order dated Feb. 22, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Feb. 27, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Feb. 11, 2013 by Judge Yrastorza.
DU-10766	Antolijao	Viol. of Sec. 5, Art. II, RA 9165	Joint Order dated Feb. 24, 2010 (Judge Yap), parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision.

			Joint Judgment was rendered on Dec. 4, 2012 by Judge Yrastorza. The Decision was promulgated on Dec. 17, 2012.
DU-10767	Antolijao	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Feb. 24[,] 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Dec. 4, 2012 by Judge Yrastorza. The Decision was promulgated on Dec. 17, 2012.
DU-12447	Camsali	Viol. of Sec. 5, Art. II, RA 9165	Order dated Jan. 20, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Mar. 1, 2013 by Judge Paderanga. It was promulgated on March 12, 2013.
DU-10964	Ouano	Viol. of Sec. 5, Art. II, RA 9165	Order dated Feb. 4, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order.

			No Memorandum filed. Judgment was rendered on Jan. 28, 2013 by Judge Yrastorza.
DU-11008	Barrientos, *et al.*	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Feb. 25, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint Decision was rendered on Mar. 22, 2013 by Judge Paderanga.
DU-11009	Barrientos	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Feb. 25, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Mar. 22, 2013 by Judge Paderanga.
DU-11038	Zulieta	Viol. of Sec. 11, Art. II, RA 9165	Order dated Mar. 2, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order.

			No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Mar. 18, 2013 by Judge Yrastorza.
DU-13579	Tayong	Murder	Order dated Mar. 11, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No Memorandum filed. Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on July 17, 2012 by Judge Yrastorza.
DU-13953	Macalipay, Jr.	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Mar. 25, 2010 (Judge Yap), the court found that accused had waived his right to present evidence to prove his innocence; case was submitted for decision. Joint decision was rendered on Aug. 28, 2012 by Judge Yrastorza. There was a typographical error on the date of decision.
DU-13954	Macalipay, Jr.	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Mar. 25, 2010 (Judge Yap), the court found that accused had waived his right to present evidence to prove his innocence; case was submitted for decision.

			Joint decision was rendered on Aug. 28, 2012 by Judge Yrastorza. There was a typographical error on the date of decision.
DU-13454	Dacuyan	Viol. of Sec. 5, Art. II, RA 9165	Order dated April 12, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Jan. 10, 2013 by Judge Paderanga.
DU-11144	Cabido	Viol. of Sec. 5, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-11145	Cabido	Viol. of Sec. 6, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order.

			No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint Decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-11146	Cabido	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-11147	Cabido	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge

			Paderanga. It was promulgated on Jan. 24, 2013.
DU-11148	Cabido	Viol. of Sec. 7, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-11149	Cabido	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-12224	Cabido	Viol. of Sec. 15, Art. II, RA 9165	Joint Order dated Apr. 26, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum

			within 30 days from receipt of the Order. No Memorandum filed. Joint Order dated Jan. 10, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Jan. 10, 2013 by Judge Paderanga. It was promulgated on Jan. 24, 2013.
DU-10942	Inoc	Violation of Sec. 11, Art. II, RA 9165	Order dated May 5, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 27, 2011 (Judge Yap), case was submitted for decision. Order March 1, 2013, case was dismissed provisionally by Judge Paderanga.
DU-10940	Lauron	Viol. of Sec. 12, Art. II, RA 9165	Order dated May 5, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 27, 2011 (Judge Yap), case was submitted for decision. Joint decision was rendered on Feb. 1, 2013 by Judge

			Paderanga. It was promulgated on February 15, 2013.
DU-10941	Lauron	Viol. of Sec. 12, Art. II, RA 9165	Order dated May 5, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 27, 2011 (Judge Yap), case was submitted for decision. Joint Decision was rendered on Feb. 1, 2013 by Judge Paderanga. It was promulgated on February 15, 2013.
DU-15312	Daan, *et al.*	Theft	Order dated June 8, 2010 (Judge Yap), case was submitted for decision.
DU-13927	Maloloy-on	Viol. of Sec. 5, Art. II, RA 9165	Joint Order dated June 28, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Aug. 14, 2012 by Judge Yrastorza.
DU-13928	Maloloy-on	Viol. of Sec. 11, Art. II, RA 9165	Joint Order dated June 28, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order.

			No Memorandum filed. Joint Judgment was rendered on Aug. 14, 2012 by Judge Yrastorza.
DU-13929	Maloloy-on	Viol. of Sec. 12, Art. II, RA 9165	Joint Order dated June 28, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Aug. 14, 2012 by Judge Yrastorza.
DU-14694	Carolasan	Viol. [of] Sec. 5, Art. II, RA 9165	Order dated June 28, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Jan. 7, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Dec. 28, 2012 by Judge Paderanga.
DU-10273	Tumabini	Viol. of Sec. 11, Art. II, RA 9165	Order dated July 14, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.

			Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Oct. 15, 2012 by Judge Yrastorza.
DU-10274	Tumabini	Viol. of Sec. 12, Art. II, RA 9165	Order dated July 14, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Joint Judgment was rendered on Oct. 15, 2012 by Judge Yrastorza.
DU-16802-A DU-16803-A	Quisumbing, *et al.*	BP 22 (Appeal)	Notice dated Jan. 30, 2009, requiring the parties to submit memorandum within 15 days from receipt. Memorandum (Accused) filed on April 2, 2009. Supplemental Memorandum filed on July 21, 2010.
DU-13696	Bito, *et al.*	Robbery	Order dated Aug. 2, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.

DU-8232	Tumayao, *et al.*	Murder	Order dated Aug. 11, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Order dated June 27, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on July 23, 2012 by Judge Yrastorza.
DU-13595	Gulfan	Theft	Order dated Aug. 17, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on April 29, 2013, 2012 *(sic)* by Judge Yrastorza.
DU-14675	Escalona	Sec. 11, Art. II, RA 9165	Order dated Sept. 2, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on Oct. 4, 2010. Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision.
DU-14900	Avila	Acts of Lasciviousness in relation to RA 7610	Order dated Oct. 21, 2010 (Judge Yap), case was submitted for decision.

DU-12320	Pilapil	Viol. of Sec. 11, Art. II, RA 9165	Order dated Oct. 27, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on Feb. 25, 2013 by Judge Yrastorza.
DU-14317	Bacusmo	Murder	Order dated October 11, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on Nov. 8, 2010. Judgment was rendered on Apr. 30, 2013 by Judge Paderanga and promulgated on May 2, 2013.
DU-12463	Trangia	Viol. of Sec. 11, Art. II, RA 9165	Order dated Nov. 24, 2010 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on Mar. 4, 2013 by Judge Yrastorza.
DU-10908	Tabotabo	Viol. of Sec. 11, Art. II, RA 9165	Order dated Jan. 13, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order.

			No Memorandum filed. Decision was rendered on Mar. 18, 2013 by Judge Yrastorza.
DU-13202	Tolo	Viol. of Sec. 5, Art. II, RA 9165	Order dated Jan. 26, 2011 (Judge Yap), the parties were x x x required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on Mar. 4, 2013 by Judge Yrastorza.
DU-13986	Pescador	Attempted Murder	Order dated Feb. 10, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.
DU-13821	Lapaceros	Estafa	Order dated Feb. 10, 2011 (Judge Yap), case was submitted for decision. Judgment was rendered on Aug. 28, 2012 by Judge Yrastorza. It was promulgated on September 4[,] 2012.
DU-11170	Oliverio	Viol. of Sec. 11, Art. II, RA 9165	Order dated Feb. 24, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on Feb. 7, 2013 by Judge Paderanga. It was promulgated on Feb. 21, 2013
DU-12232	Mendoza	Viol[.] of RA 6539	Order dated Mar. 7, 2011 (Judge Yap), the parties were

			required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint decision was rendered on Feb. 7, 2013 by Judge Paderanga.
DU-12294	Mendoza	Viol. of Sec. 11, Art. II, RA 9165	Order dated Mar. 7, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint decision was rendered on Feb. 7, 2013 by Judge Paderanga.
DU-12295	Mendoza	Viol. of Sec. 12, Art. II, RA 9165	Order dated Mar. 7, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint decision was rendered on Feb. 7, 2013 by Judge Paderanga.
DU-15497	Regencia, *et al.*	RA 8294(Paltik)	Order dated Mar. 14, 2011 (Judge Yap), case was considered submitted for decision. Judgment was rendered on Sept. 19, 2012 by Judge Yrastorza.

DU-13425	Alutaya, *et al.*	Viol. of Sec. 5, Art. II, RA 9165	Order dated Mar. 15, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint decision was rendered on Feb. 7, 2013 by Judge Paderanga.
DU-13426	Alutaya, *et al.*	Viol. of Sec. 5, Art. II, RA 9165	Order dated Mar. 15, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint decision was rendered on Feb. 7, 2013 by Judge Paderanga.
DU-15358	Marababol	Sec. 11, Art. II, RA 9165	Order dated Mar. 15, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.
DU-9742	Mondares, *et al.*	Viol. of Sec. 6, Art. II, RA 9165	Order dated Apr. 18, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed.
DU-10539	Obrero	Viol. of Sec. 11, Art. II, RA 9165	Order dated Apr. 28, 2011 (Judge Yap), the parties were required to simultaneously

			submit their respective Memorandum within 30 days from receipt of this Order. No Memorandum filed. Joint Judgment was rendered on Nov. 27, 2012 by Judge Yrastorza.
DU-10540	Obrero	Viol. of Sec. 5, Art. II, RA 9165	Order dated Apr. 28, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Nov. 27, 2012 by Judge Yrastorza.
DU-10541	Obrero	Viol. of Sec. 11, Art. II, RA 9165	Order dated Apr. 28, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Nov. 27, 2012 by Judge Yrastorza.
DU-12489	Polinar	Viol. of Sec. 5, Art. II, RA 9165	Order dated Mar. 30, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on May 2, 2011.

			Judgment was rendered on Mar. 1, 2013 (promulgated on March 14, 2013) by Judge Paderanga.
DU-13126	Jordan, *et al.*	Slight Physical Injuries	Order dated July 4, 2011 (Judge Yap), Prosecutor Pascua said he had no rebuttal evidence to present. There was no other document attached except for the Notice dated Jan. 15, 2013 setting the promulgation of judgment on January 17, 2012. Judgment was rendered on Dec. 28, 2012 by Judge Paderanga.
DU-15174	Bohol	Sec. 11, Art. II, RA 9165	Order dated July 13, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from date of Order. No Memorandum filed. Judgment was rendered on Mar. 22, 2013 by Judge Paderanga and promulgated on Apr. 5, 2013.
DU-6506	Enriquez	Rape	Joint Order dated July 27, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Nov. 19, 2012 (should be November 12, 2012) by Judge Yrastorza as it was promulgated on November 12, 2012.

DU-6507	Enriquez	Rape	Joint Order dated July 27, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Nov. 19, 2012 (should be November 12, 2012) by Judge Yrastorza as it was promulgated on November 12, 2012.
DU-13930	Pilapil	Estafa	Order dated July 4, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on Aug. 4, 2011. Judgment was rendered on Nov. 26, 2012 by Judge Yrastorza.
DU-9456	Hortilano	Murder	Order dated Oct. 10, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on June 25, 2012 by Judge Yrastorza and promulgated on June 25, 2012.
DU-9669	Bacalla, *et al.*	Murder	Joint Order dated Oct. 12, 2011 (Judge Yap), the parties were required to simultaneously submit their

			respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Apr. 15, 2013 by Judge Yrastorza.
DU-10166	Bacalla	Murder	Joint Order dated Oct. 12, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Joint Judgment was rendered on Apr. 15, 2013 by Judge Yrastorza.
DU-14119	Campos	Robbery with force upon things	Order dated Nov. 3, 2011 (Judge Yap), the case was deemed submitted for decision as accused did not appear to prove his defense.
DU-10285	Bacusmo, *et al.*	Murder	Order dated Nov. 14, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Judgment was rendered on Apr. 18, 2013 by Judge Paderanga.
DU-14352	Duhaylungsod	Viol. of Sec. 11, Art. II, RA 9165	Order dated Oct. 12, 2011 (Judge Yap), the parties were required to simultaneously submit their respective

			Memorandum within 30 days from receipt of the Order. Memorandum (Accused) filed on Nov. 18, 2011. Judgment was rendered on Nov. 26, 2012 by Judge Yrastorza. It was promulgated on Nov. 27, 2012.
DU-11877	Manatad	Murder	Order dated Nov. 22, 2011 (Judge Yap), the parties were required to simultaneously submit their respective Memorandum within 30 days from receipt of the Order. No Memorandum filed. Decision was rendered on Dec. 28, 2012 by Judge Paderanga and promulgated on January 17, 2013.
DU-14607	Silva, *et al.*	Frustrated Homicide	Order dated Jan. 9, 2012 (Judge Yap), case was submitted for decision. Judgment was rendered on Apr. 18, 2013 by Judge Paderanga.
DU-14011	Rivas, Jr., *et al.*	Sec. 4 (e) in relation to Sec. 6 (a) of RA 9208	Order dated Jan. 10, 2012 (Judge Yap), the Defense was deemed to have waived the right to present further evidence and considers it to have rested. The court will set the proper date for the promulgation of Judgment.

CRIMINAL CASE
WITH PENDING MOTION

CASE NO.	ACCUSED	NATURE	LATEST COURT ACTION
DU-15819	Oliveros	Homicide	Demurrer to Evidence Jan. 10[,] 2012. Case was dismissed on Nov. 19, 2012 by Judge Yrastorza.

CIVIL CASES
SUBMITTED FOR DECISION

CASE NO.	PARTIES	NATURE	LATEST COURT ACTION
LRC N-704	Aboitiz & Co.	Registration	Order dated Jan. 22, 2010 (Judge Yap), Applicant was deemed to have rested. Decision was rendered on Nov. 26, 2012 by Judge Yrastorza.
Man-6259-A	Sps. Lagahit vs. Pepito	Ejectment (Appeal)	Memorandum (Appellants) filed on Jan. 22, 2010. Memorandum (Appellees) filed on Feb[.] 18, 2010.
Man-5907	Lim vs. Macasero	Declaration of Nullity of Marriage	Order dated July 6, 2010 (Judge Yap), case was submitted for decision. Decision was rendered on July 17, 2012 by Judge Yrastorza x x x
LRC N-692	Sps. Aboitiz	Registration and Confirmation of Title	Order dated July 15, 2010 (Judge Yap), case was submitted for decision. (Notice of Order dated July 16, 2010 appears to be that cases LRC N-692 and LRC N-693 are being tried jointly)

LRC N-693	Sps. Aboitiz	Registration and Confirmation of Title	Order dated July 15, 2010 (Judge Yap), case was submitted for decision. (Notice of Order dated July 16, 2010 appears to be that cases LRC N-692 and LRC N-693 [are] being tried jointly).
Man-6079	Villa vs. Villa	Declaration of Nullity of Marriage	Memorandum of Exhibits and Formal Offer of Exhibits filed on July 16, 2010. Order dated Aug. 5, 2010 (Judge Yap), Exhibits were admitted. Order dated Aug. 19, 2010 (Judge Yap), case was submitted for decision.
LRC N-714	Aboitiz & Co.	Registration	Order dated Sept. 16, 2010 (Judge Yap), case was submitted for decision. Decision was rendered on Oct. 1, 2012 by Judge Yrastorza.
Man-5574	Pilapil vs. Llorag	Rescission of Contract, etc.	Order dated Sept. 3, 2010 (Judge Yap), Atty. Reviral given a period of 15 days from receipt of this Order to file his memorandum for the Plaintiff. After the period provided has lapsed or after his submission of the memorandum, this case shall be submitted for decision. Order dated Oct. 4, 2010 (Judge Yap), Plaintiff given an extension of 10 days or until Oct. 11, 2010 to file memorandum. Memorandum (Plaintiff) filed [on] Oct. 20, 2010.

Man-5886	Roble vs. Roble	Declaration of Nullity of Marriage	Order dated Oct. 20, 2010 (Judge Yap), Petition was deemed submitted for decision.
LRC N-705	Mission of the Immaculate, Inc.	Registration	Order dated Jan. 20, 2011 (Judge Yap), the case was submitted for decision.
Man-5940	Sison vs. Sison	Declaration of Nullity of Marriage	Order dated Feb. 3, 2011 (Judge Yap), Petition was submitted for decision. Decision was rendered on Aug. 13, 2012 by Judge Yrastorza and promulgated on August 27, 2012.
Man-6188	Ornopia vs. Enriquez	Declaration of Nullity of Marriage	Order dated Dec. 21, 2010 (Judge Yap), Exhibits are admitted. Order dated Feb. 22, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on May 28, 2012 by Judge Yrastorza.
Man-6206	Agbay vs. Yuson	Declaration of Nullity of Marriage	Order dated December 7, 2010 (Judge Yap), with the admission of the formal offer, the petitioner was deemed to have rested. Order dated Feb. 22, 2011 (Judge Yap), the petition was deemed submitted for decision. Order dated May 2, 2013 (Judge Paderanga), case was dismissed for lack of jurisdiction over the defendant.

Man-5299	Cortes vs. Cortes	Declaration of Nullity of Marriage	Order dated Oct. 29, 2010 (Judge Yap), parties were given 30 days from receipt to submit simultaneous their respective memorandum. Memorandum (Defendant) filed on Dec. 28, 2010. Memorandum (Plaintiff) filed on Jan. 3, 2011. Order dated Feb. 25, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on Aug. 28, 2012 by Judge Yrastorza.
Man-5875	Sanchez, *et al.* vs. Mun. of Consolacion, Cebu, *et al.*	Revocation of Deed of Conditional Donation	Order dated Sept. 3, 2010 (Judge Yap), Atty. Piasidad was directed to submit memorandum within 15 days from receipt of the Order. Order dated Oct. 7, 2010 (Judge Yap), Plaintiff was given 15 days from Oct. 4 or until Oct. 19, 2010 to file memorandum. Memorandum (Plaintiff) filed on Oct. 26, 2010. Order dated Feb. 17, 2011 (Judge Yap), case was deemed submitted for decision.
Man-5804	Sinogbuhan vs. Lim	Nullity of Marriage	Order dated Mar. 7, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on Aug. 28, 2012 by Judge Yrastorza.

Man-5619	Fat, *et al.* vs. Alesna, *et al.*	Annulment of REM, Injunction, WPI, Damages	Order dated May 10, 2011 (Judge Yap), case was submitted for decision.
Man-5957	Seno vs. Seno	Declaration of Nullity of Marriage	Order dated Mar. 7, 2011 (Judge Yap), Exhibits are admitted. Order dated May 5, 2011 (Judge Yap), Petition was deemed submitted for decision. Decision was rendered on Feb. 5, 2013 by Judge Yrastorza.
Man-5996	Bolingit vs. Salatan	Declaration of Nullity of Marriage	Order dated July 4, 2011 (Judge Yap), case was submitted for decision. Decision was rendered on Mar. 14, 2013 by Judge Paderanga and promulgated on Mar. 21, 2013.
Man-5674	Maxima Equipment Co., Inc. vs. CNL Multicraft	Recovery of Possession, Replevin, Damages w/ Application for WR	Order dated July 8, 2011 (Judge Yap), Atty. Ysores was directed to submit within 30 days a memorandum which will aid the court in deciding the case.
Man-6165	Valencia vs. Valencia	Declaration of Nullity of Marriage	Order dated June 21, 2011, FOE of Plaintiff, admitted. Order dated July 8, 2011 (Judge Yap), the petition for Nullity of Marriage was submitted for decision. Decision was rendered on Sept. 3, 2012 by Judge Yrastorza.
Man-1963	Ordiway, Jr. vs. Udtohan, *et al.*	Habeas Corpus in rel. to Custody of	Order dated June 24, 2011 (Judge Yap), granting Atty. Triya until July 15, 2011 to

		Minor Charles U. Ordiway	submit memorandum for petitioner. Memorandum (Petitioner) filed on July 25, 2011 Decision was rendered on Sept. 24, 2012 by Judge Yrastorza and was promulgated on October 9, 2012.
Man-6139	Esquivel vs. Esquivel III	Declaration of Nullity of Marriage	Order dated July 28, 2011 (Judge Yap), Petition was submitted for decision.
Man-6267	Tigmo vs. Tigmo, Jr.	Declaration of Nullity of Marriage	Order dated Aug. 22, 2011 (Judge Yap), Petition was submitted for decision. Decision was rendered on Oct. 1, 2012 by Judge Yrastorza.
Man-6002	Lacbay an vs. Mirabueno	Declaration of Nullity of Marriage	Order dated Aug. 31, 2011 (Judge Yap), Exhibits admitted, petitioner was deemed to have rested her case. Order dated Sept. 1, 2011 (Judge Yap), Petition for Nullity of Marriage was submitted for decision.
Man-5855	Andrin vs. Andrin	Annulment of Marriage	Order dated Sept. 21, 2011 (Judge Yap), the petition was submitted for decision. Motion for early resolution filed on Apr. 3, 2012. Memorandum (Plaintiff) filed on Apr. 3, 2012. Decision was rendered on July 2, 2012 by Judge Yrastorza.

Man-6215	Buenaventura vs. Buenaventura	Declaration of Nullity of Marriage	Order dated Aug. 25, 2011 (Judge Yap), Formal offer of exhibits were admitted[.] Order dated Oct. 13, 2011 (Judge Yap), Petition for Declaration of Nullity of Marriage was submitted for decision.
LRC N-735	Aboitiz & Co., Inc.	Registration	Formal offer of exhibits Nov. 8, 2011. No Order attached resolving the FOE. Decision was rendered on Jan. 14, 2013 by Judge Yrastorza.
Man-6014	Cortes vs. Cortes	Declaration of Nullity of Marriage	FOE filed on Jan. 27, 2011 was admitted on Feb. 24, 2011 Order dated Nov. 10, 2011 (Judge Yap), the petition was deemed submitted for decision. Decision was rendered on Jan. 24, 2013 by Judge Paderanga and promulgated on February 7, 2013.
Man-6149	Montefolka vs. Montefolka	Declaration of Absolute Nullity of Void Marriage	Formal Offer of Exhibits Nov. 10, 2011 was admitted on Nov. 17, 2011 (Judge Yap). Order dated Nov. 21, 2011 (Judge Yap), Petition was submitted for decision. Decision was rendered on Aug. 7, 2012 by Judge Yrastorza.
Man-6208	Ybañez vs. Ybañez	Declaration of Nullity of Marriage	Order dated Nov. 24, 2011 (Judge Yap), Petition for Declaration of Nullity of

			Marriage was submitted for decision.
Man-6029	Celerio vs. Celerio	Declaration of Nullity of Marriage	Order dated Dec. 7, 2011 (Judge Yap), Exhibits of Petitioner were admitted. Petitioner was deemed to have rested her case. Order dated Dec. 5, 2011 (should be Dec. 9, 2011) (Judge Yap), Petition for Declaration of Nullity of Marriage was submitted for decision.
LRC N-739	Aboitiz & Co., Inc.	Registration	Formal Offer of Exhibits Dec. 20, 2011. Decision was rendered on Mar. 28, 2012 by Judge Yrastorza.
Man-6164	Pepito, *et al.* vs. Sps. Cagalawas, *et al.*	Nullification of Extra-Judicial Settlement of Estate, etc.	Order dated Dec. 12, 2011 (Judge Yap), Atty. Dungog was given 30 days from date of Order to file Memorandum. Memorandum filed on February 8, 2012. Decision was rendered on August 13, 2012 by Judge Yrastorza.
MDE-155	Heirs of Delfin Sanchez, *et al.* vs. Lucmayon, *et al.*	*Certiorari*, PI, TRO	Order dated Sept. 5, 2006 (Judge Yap), petition was submitted for decision. Order January 26, 2008, resolution was deferred pending the *certiorari* proceedings raised to the Court of Appeals. CA-G.R. SP No. 02112 dated March 5, 2012, affirmed the Order dated July 3, 2006 which

			denied that petition for TRO and Order dated August 25, 2006, denying the Motion for reconsideration.

CIVIL CASES WITH PENDING MOTIONS

CASE NO.	PARTIES	NATURE	LATEST COURT ACTION
LRC N-656	Duros Dent Corp.	Registration	Formal Offer of Exhibits Sept. 6, 2011.
Man-5857	Heirs of Marcelino Maglasang, *et al.* vs. Dane Tan Lim, *et al.*	Annulment of Tax Dec. No. 47358	Motion to Dismiss July 22, 2011. Order dated Sept. 16, 2011 (Judge Yap), Atty. Canete was given 15 days from date of Order to submit his opposition, thereafter Motion to Dismiss shall be resolved.
Man-6336	Eleuterio P. Villamor vs. Alvin Rey Cortes, in his capacity as Pres. of Sr. San Roque Santa Cruz Chapel, *et al.*	Recovery of Possession	Motion for Summary Judgment Sept. 27, 2011 with Opposition. Order dated Dec. 2, 2011 (Judge Yap), Motion for Summary Judgment was submitted for resolution. Order dated Nov. 12, 2012 (Judge Yrastorza), Motion for Summary Judgment was denied by Judge Yrastorza.
Man-6255	First Malayan Leasing and Finance Corp. vs. Sps. Tumampos	Replevin, SOM, Damages and attorney's fees	Motion to Hold in Abeyance Public Auction Dec. 8, 2011. Opposition Dec. 9, 2011.

Man-5517	Bascon, *et al.* vs. Ouano, *et al.*	Annulment of Decision w/Prayer for Permanent Injunction with Damages	Order dated Aug. 2, 2011 (Judge Yap), Atty. Violoces shall formally offer his exhibits within 15 days upon receipt of this Order. Atty. Reales is given same period to comment/oppose. Order dated Dec. 8, 2011 (Judge Yap), four months have lapsed and defendants have not formally offered their evidence. Defendants are given a non-extendable period of 5 days to formally offer. After the lapse of said period, this case shall be deemed submitted for decision. Formal Offer of Exhibits for Respondent Jan. 12, 2012.[8]

In summary, the OCA reported that the actual number of cases left undecided by Hon. Lagura-Yap in Branch 28, RTC, Mandaue City, Cebu is one hundred thirty-three (133) criminal cases and thirty-five (35) civil cases. She likewise left unresolved pending incidents in one (1) criminal case and five (5) civil cases.[9]

Furthermore, in relation as to whether Hon. Lagura-Yap failed to indicate in her application for the position of Associate Justice of the Court of Appeals her caseload and/or cases submitted for decision that were pending before her court in Branch 28, RTC, Mandaue City, Cebu, Atty. Annaliza S. Ty-Capacite, JBC Executive Officer, in Memorandum JBC-OEO No. 48-2013[10] dated June 7, 2013, stated that the Personal Data Sheet which Hon. Lagura-Yap submitted did not contain a disclosure on her caseload or number of cases submitted for decision. However, based on the information provided by

[8] *Id.* at 115-146.

[9] *Id.* at 57.

[10] *Id.* at 70-71.

the Statistical Reports Division, Court Management Office, OCA, a performance report as of August 2011 stated, among others, the following:

Pending Cases	:	933
Submitted for Decision	:	5 (within the period)
		3 (beyond the period)
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		8 (Cases Submitted for Decision)[11]

Atty. Capacite also mentioned that the above report was reflected in Hon. Lagura-Yap's profile matrix, which was used by the JBC on November 14, 2011 when she was nominated for the post of Associate Justice of the Court of Appeals.

In a Letter[12] dated May 18, 2018, Atty. Socorro D' Marie T. Inting, Chief of Office, Office of Recruitment, Selection and Nomination, JBC, confirmed that the only certification issued and submitted to them by Hon. Lagura-Yap regarding her caseload and cases submitted for decision was the Certification[13] dated August 28, 2007 which stated the following:

1) My case load as of July 2007 is 764 cases;

2) My average monthly output of all actions and proceedings during the immediately preceding 2-year period is 22 cases per month or a total of 269 cases;

3) From October 2005 to July 2007, there are now 118 cases deemed submitted for decision;

4) There are only 8 cases which I have decided during the immediately preceding 2-year period that are now on appeal with the Court of Appeals.

In a Memorandum dated July 2, 2018,[14] the OCA concluded that there were one hundred thirty (130) criminal cases and

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[11] *Id.* at 115.

[12] *Id.* at 72.

[13] *Id.* at 73.

[14] *Id.* at 108-151.

thirty (30) civil cases, or a total of one hundred sixty (160) cases submitted for decision which were already beyond the reglementary period to decide at the time of Hon. Lagura-Yap's appointment to the Court of Appeals on February 24, 2012. In particular, there were one hundred forty (140) cases submitted for decision that were beyond the reglementary period to decide even prior to the filing of her application before the JBC on September 20, 2011, but which she failed to disclose in her application submitted to the JBC.

Thus, upon the recommendation of the OCA, in a Resolution[15] dated February 13, 2019, the Court resolved to (1) TREAT the instant memorandum as an administrative complaint against Hon. Lagura-Yap, Associate Justice of the Court of Appeals, in her capacity as then Presiding Judge, Branch 28, RTC, Mandaue City, Cebu; (2) FURNISH Hon. Lagura-Yap with a copy of the OCA Memorandum dated July 2, 2018; and (3) DIRECT her to file her COMMENT thereon within twenty (20) days from notice, explaining why she should not be administratively held liable for gross inefficiency and incompetence for failing to decide one hundred sixty (160) cases within the reglementary period to decide, and for dishonesty for her failure to indicate in her application for the position of Associate Justice of the Court of Appeals her caseload and/or cases submitted for decision, and for failing to accurately and truthfully reflect the actual number of cases submitted for decision in the Monthly Report of Cases submitted to the OCA.

In her Comment[16] dated June 20, 2019, Hon. Lagura-Yap alleged that the ninety (90)-day period to decide cannot be reckoned with in some cases because there was no memorandum filed and/or that there was no order issued submitting the case for decision. She further asserted that if there were such orders, the ninety (90)-day period could not have expired during her time because she had transferred to the Court of Appeals on February 24, 2012. She claimed that if the Court will consider

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[15] *Id.* at 168-173.

[16] *Id.* at 177-201.

her justifications, the reported one hundred sixty (160) cases can be reduced to only one hundred eighteen (118) cases.

She further alleged that Branch 28, RTC, Mandaue City, Cebu, is not a special drugs court. Hon. Lagura-Yap implores the indulgence of the Court not to consider the period of fifteen (15) days to decide drug cases, as mandated by Section 90 of Republic Act No. 9165, against her. She alleged that Branch 28, RTC, Mandaue City, Cebu, where she presided then, was not a special drugs court. It was a regular court which also became a special court to hear, try and decide cases involving the (1) killings of political activists and a member of the media; (2) election contests of elective municipal officials; and (3) environmental cases.

Hon. Lagura-Yap also seeks the indulgence of the Court in that she gave preference in deciding the *shabu* laboratory drugs cases assigned to her and left the others pending as she moved to the Court of Appeals. She claimed that the high-profile drugs cases spanned a period of seven (7) years, from 2005 to 2012. However, on February 1, 2012, in DU-12549 and DU-12780, she promulgated a Joint Judgment convicting the accused. She also claimed that she prioritized two environmental cases, MDE-182 and MAN-646, due to the urgent nature of the applications for environmental protection orders and/or injunctive reliefs.[17]

She further alleged that on top of her numerous responsibilities, she was also the Executive Judge of the RTC, Mandaue City, from February 28, 2007 to February 24, 2012. She also averred that in May 2010, Atty. Grace V. Fernandez, who was the branch clerk of court of Branch 28, transferred to Branch 18, and it was only in July 2011 that another branch clerk of court was appointed to the position. For these reasons, Hon. Lagura-Yap claimed that the number of cases in her previous court that were not decided on time rose significantly from 2010 to 2011 when there was no branch clerk of court.[18]

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[17] *Id.* at 186-188.

[18] *Id.* at 188-189.

Hon. Lagura-Yap seeks the kind understanding of the Court as during her stint as presiding judge of Branch 28, RTC, Mandaue City, Cebu, she also lost her husband and her mother on August 9, 2008 and September 26, 2010, respectively. She lamented that as she was grieving over their loss, her docket continued to rise and it eventually took a toll on her ability to dispose cases on time.

As to her alleged failure to file the true and accurate reports of the status of pending cases and cases submitted for decision prior to and at the time of her application for the position of Associate Justice of the Court of Appeals, Hon. Lagura-Yap explained that when she applied for the position of Associate Justice of the Court of Appeals, Atty. Ma. Theresa B. Magturo, JBC Chief of Office, Office of Recruitment, Selection and Nomination, wrote her a letter on July 19, 2007 and August 14, 2007, requiring her to submit certain documents, among which was a verified statement of her caseload and average monthly output of actions during the preceding two (2)-year period. As proof of compliance, she gave a certification dated August 28, 2007. However, she was not considered for the position.

Three years later, when she applied for the second time on September 22, 2010, Atty. Capacite required her to submit the following documents only, to wit:

1. IBP Certificate of Good Standing
2. Sworn Medical Certificate with findings or impressions on the results of the medical examination
3. Transcript of School Records
4. Certification of Admission to the Bar with Bar rating
5. Income Tax Return
6. Clearances from NBI, Ombudsman, Office of the Bar Confidant
7. Police Clearance
8. Sworn Statement that applicant was not a candidate for any elective office in the immediately preceding election
9. Two sample decisions[19]

Hon. Lagura-Yap was under the impression that the tenor of the September 22, 2010 letter was to the effect that the JBC no

[19] *Id.* at 191-192.

longer required her to submit another certification of her current caseload, thus, in good faith, she did not anymore execute another certification of her current caseload. She claimed that she believed in good faith that the only requirements needed were only the ones stated in Atty. Capacite's letter.

Hon. Lagura-Yap emphasized that while it is true that she submitted a certification dated August 28, 2007 in her application in 2006, she denied that she used the same certification in her application on September 20, 2011. She reiterated that it was Atty. Capacite who wrote her on September 22, 2010, requiring her to submit certain documents and it did not include the certification of current caseload. Thus, in compliance, she submitted only the required documents as stated in Atty. Capacite's letter, and without the certification of caseload. Hon. Lagura-Yap lamented that it was unfair to insinuate that she used the same 2007 Certification of Caseload to support her 2011 application or that she omitted to submit it.

She further bewailed the fact that the audit team used the August 2011 and January 2012 Monthly Report of Cases as bases to prove that she did not file the true and accurate reports with respect to the status of pending cases and cases submitted for decision, prior to and at the time of her application as Associate Justice. She asserted that the monthly reports in August 2011 and January 2012 relate to two specific months that do not constitute as bases to reckon the average monthly output of actions during the two (2)-year period that preceded the 2011 application.

As to her failure to comply with A.M. No. 04-5-19-SC,[20] Hon. Lagura-Yap resented that she failed to comply with the requirement of Section 8. She, however, asserted that it was by mere inadvertence as she really thought that she had already complied with all her requirements since she was not notified anymore to submit another certification of her caseload prior to her transfer. She claimed that she eventually became busy

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[20] Guidelines in the Inventory and Adjudication of Cases Assigned to Judges Who are Promoted or Transferred to Other Branches in the Same Court Level of the Judicial Hierarchy.

as she transitioned to her new job and station that she failed to recall to submit another certification.

Finally, Hon. Lagura-Yap admitted that (1) she was not able to decide one hundred eighteen (118) cases in Branch 28, RTC, Mandaue City, Cebu, within the ninety (90)-day period when she took her oath as Associate Justice of the Court of Appeals on February 24, 2012; (2) she failed to comply with Section 8 of A.M. No. 04-5-19-SC regarding the submission of another certification that she had disposed all cases assigned to her in Branch 28, upon her promotion to the Court of Appeals; (3) she had no certification of the status of pending cases and cases submitted for decision at the time of her application in September 2011 as she was not required by the JBC; but (4) she had filed a verified statement of her caseload and average output of actions during the preceding two (2)-year period when she first applied as Associate Justice of the Court of Appeals in 2006. She, thus, implored the Court's exercise of its benevolence and prayed that the recommended amount of fine be reduced after consideration of her justifications.

RULING

After a perusal of the records, the Court concurs with the findings and recommendations of the OCA.

The Constitution expressly provides that all lower courts should decide or resolve cases or matters within three (3) months from the date of submission.[21] Section 5, Canon 6 of the New Code of Judicial Conduct[22] likewise provides:

> Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Accordingly, this Court has laid down certain guidelines to ensure compliance with this mandate. More particularly, Supreme Court Administrative Circular No. 13-87[23] provides:

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[21] Constitution, Section 15, Article VIII.

[22] A.M. No. 03-05-01-SC, June 1, 2004.

[23] Dated July 1, 1987.

3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts.

Thus, all cases or matters must be decided or resolved within twelve (12) months from date of submission by all lower collegiate courts while all other lower courts are given a period of three (3) months to do so.

Supreme Court Administrative Circular No. 1-88[24] further states:

6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

Given the foregoing rules, the Court cannot overstress its policy on prompt disposition or resolution of cases. Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay. Thus, judges have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three (3) months from the filing of the last pleading, brief or memorandum for lower courts. To further impress upon judges such mandate, the Court has issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would ensure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution.[25]

In the present case and by her admissions alone, Hon. Lagura-Yap's guilt is undisputed. She admitted her (1) failure to decide one hundred eighteen (118) pending cases within the ninety (90)-day period; (2) failure to comply with Section 8 of A.M. No. 04-5-19-SC regarding the submission of a certification that she had disposed all cases assigned to her in Branch 28, RTC, Mandaue City, Cebu, upon her promotion to the Court of Appeals; and (3) failure to submit a certification of the status of pending

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[24] Dated January 28, 1988.

[25] *Bancil v. Judge Reyes*, 791 Phil. 401, 407-408 (2016).

cases and cases submitted for decision at the time of her application in September 2011.[26]

We have considered the justifications and explanations proffered by Hon. Lagura-Yap — heavy caseload, voluminous records, death of family members, and being understaffed — which, while may be recognized as true and reasonable, are not sufficient to exonerate her from liability. To be sure, the mandatory nature of the period to decide cases provided under the Constitution cannot be considered as beyond the limits of acceptability or fairness.

We are also aware of the heavy caseload of trial courts, as well as the different circumstances or situations that judges may encounter during trial, such as those averred by Hon. Lagura-Yap. Thus, the Court has allowed reasonable extensions of time needed to decide cases, but such extensions must first be requested from the Court. Whenever a judge cannot decide a case promptly, all he has to do is to ask the Court for a reasonable extension of time to resolve it.[27] Unfortunately for Hon. Lagura-Yap, she did not avail of such remedy. A judge cannot by herself choose to prolong the period for deciding cases beyond that authorized by law.[28]

In *Office of the Court Administrator v. Lopez, et al.*,[29] the Court reminded "judges to decide cases with dispatch" and "that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge."

Furthermore, we likewise cannot countenance Hon. Lagura-Yap's failure to submit before the JBC the certification stating

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[26] *Rollo*, pp. 199-200.

[27] See *Fajardo v. Natino*, A.M. No. RTJ-16-2479, December 13, 2017, 848 SCRA 338, 348.

[28] *Re: Cases Submitted for Decision before Judge Baluma*, 717 Phil. 11, 17 (2013).

[29] 723 Phil. 256, 268 (2013).

the status of pending cases and cases submitted for decision at the time of her application in September 2011 as former Presiding Judge of Branch 28, RTC, Mandaue City, Cebu.

However, we cannot simply impute upon Hon. Lagura-Yap that she was dishonest by the mere fact that she has failed to submit the certification. Other than her failure to submit the certification, there was no evidence at all that would show that she intentionally did not submit the certification in order to give herself an advantage and secure the promotion. While, we do not tolerate the acts of Hon. Lagura-Yap in failing to disclose in her application her caseload which could be material and relevant in assessing her eligibility for promotion, we, however, find it harsh to punish Hon. Lagura-Yap severely for her erroneous judgment. Suffice it to say that while her defense of good faith may be difficult to prove as clearly it is a question of intention, a state of mind, erroneous judgment on the part of Hon. Lagura-Yap does not, however, necessarily connote the existence of bad faith or malice, or an intention to defraud. Be that as it may, we must emphasize that while an erroneous judgment does not equate to bad faith or dishonesty, Hon. Lagura-Yap should likewise know that prudence demands that she should disclose such information no matter how irrelevant it may appear to her.[30]

It must be likewise pointed out that we do not find anything on record to show that the JBC-ORSN reminded Hon. Lagura-Yap of her lacking certification during her application and before her promotion. It was only after Hon. Lagura-Yap requested for clearance that this issue of non-submission of certification cropped up. The JBC-ORSN is the one tasked to determine the completeness of the applicant's documentary requirements. Thus, as a matter of procedure, they should have made the proper inquiry and verification with regard to the lacking requirements of Hon. Lagura-Yap, moreso, since said informations are easily verifiable considering that the latter is actually an official of the Court.

Indeed, in administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. We define

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[30] See *Re: Anonymous Complaint Against Ms. Bayani for Dishonesty*, 656 Phil. 222, 229 (2011).

substantial evidence *as relevant evidence as a* ***reasonable mind*** *might accept as adequate to support a conclusion*. Thus, after much consideration of the facts and circumstances, while the Court has not shied away in imposing the strictest penalty to erring employees, neither can we think and rule unreasonably in determining whether an employee deserves disciplinary sanction.[31]

PENALTY

The administration of justice demands that those who don judicial robes be able to comply fully and faithfully with the task set before them. As frontline officials of the judiciary, judges should, at all times, act with efficiency and with probity. They are duty-bound not only to be faithful to the law, but likewise to maintain professional competence. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed on them and the institution they represent.[32]

Thus, in *Office of the Court Administrator v. Ret. Judge Tandinco, et al.*,[33] the Court imposed a fine of One Hundred Thousand Pesos (₱100,000.00) on retired Judge Filemon A. Tandinco, Jr. for gross inefficiency due to his failure to decide one hundred sixty-three (163) cases and pending incidents before he retired. All cases and incidents had been submitted for decision or resolution, and the reglementary period to decide or resolve the cases or incidents had already lapsed on the date of his retirement.

In *OCA v. Judge Quilatan*,[34] the Court imposed a fine of Fifty Thousand Pesos (₱50,000.00) on retired Judge Leodegario C. Quilatan for having been found guilty of gross inefficiency for his failure to decide within the reglementary period thirty-four (34) cases submitted for decision prior to his date of retirement.

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[31] *Id.*

[32] *Office of the Court Administrator v. Former Judge Leonida*, 654 Phil. 668, 678 (2011).

[33] 773 Phil. 141 (2015).

[34] 646 Phil. 45 (2010).

Again, in *Office of the Court Administrator v. Judge Chavez, et al.*,[35] the Court imposed on retired Judge Pablo R. Chavez a fine equivalent to three (3) months of his last salary for gross neglect of duty and undue delay of rendering decisions.

In the present case, considering the number of cases left undecided, *i.e.*, a total of one hundred sixty (160) cases, and the lack of any plausible explanation for such failure to decide within the reglementary period, and Hon. Lagura-Yap's failure to submit the certification of pending cases before the JBC, the recommended imposition of a fine equivalent to one (1) year of her current salary is proper.

WHEREFORE, the Court finds respondent Hon. Marilyn B. Lagura-Yap, then Presiding Judge[36] of Branch 28, Regional Trial Court, Mandaue City, Cebu, **GUILTY** of Gross Inefficiency for failing to decide one hundred sixty (160) cases within the reglementary period and to submit the required certification of caseload before the Judicial and Bar Council. She is thus **FINED** in the amount equivalent to one (1) year of her current salary, payable within thirty (30) days from receipt of notice. She is further **ADMONISHED** to be more diligent in the performance of her sworn duty as a dispenser of justice, especially that she is now an Associate Justice of the Court of Appeals, an appellate court likewise covered by the mandatory period for deciding cases prescribed by the Constitution.[37]

This Decision is immediately executory.

SO ORDERED.

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

Gaerlan, J., on leave.

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[35] 806 Phil. 932 (2017).

[36] Now Associate Justice of the Court of Appeals.

[37] Constitution, Article VIII, Section 15 (1); and *Re: Report on Judicial Audit*, 391 Phil. 222, 231 (2000).

FIRST DIVISION

[G.R. No. 203566. June 23, 2020]

TOTAL PETROLEUM PHILIPPINES CORPORATION, *petitioner*, *vs.* **EDGARDO LIM and TYREPLUS INDUSTRIAL SALES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; AS A RULE, FACTUAL FINDINGS OF THE COURT OF APPEALS ARE BINDING ON THE COURT; EXCEPTIONS. — As a rule, the factual findings of the Court of Appeals are binding on the Court, except in the following cases: **(1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible**; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; **(7) when the findings are contrary to that of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; **(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record**; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ELUCIDATED. — Estoppel arises when one, by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. The doctrine of estoppel is based upon the grounds of public

policy, fair dealing, and good faith, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.

3. MERCANTILE LAW; CORPORATIONS; CORPORATION'S DIRECTORS, OFFICERS, OR EMPLOYEES ARE GENERALLY NOT PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE CORPORATION; REQUISITES WHEN TO HOLD A DIRECTOR OR OFFICER PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS. — In ***Bank of Commerce v. Nite,*** the general rule is that a corporation is invested by law with a personality separate and distinct from the persons composing it. The obligations of a corporation, acting through its directors, officers, and employees, are its own sole liabilities. Therefore, the corporation's directors, officers, or employees are generally not personally liable for the obligations of the corporation. To hold a director or officer personally liable for corporate obligations, **two requisites** must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. To hold a director or officer personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director or officer must be **established clearly and convincingly**.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; ONE IS ENTITLED THERETO FOR SUCH PECUNIARY LOSS SUFFERED AS DULY PROVED; CASE AT BAR. — Article 2199 of the *Civil Code* provides that one is entitled to actual damages for such pecuniary loss suffered as duly proved. Here, Total was able to prove the advertising and promotional materials it delivered to Tyreplus in the amount of ₱401,308.64 as evidenced by the bill of lading from Solid Shipping Lines Corporation. Hence, the award of actual damages in the amount of ₱401,308.64 is retained.

5. ID.; ID.; LIQUIDATED DAMAGES; TO BE PAID IF THERE IS A BREACH OF THE CONTRACT, AS AGREED UPON BY THE PARTIES; CASE AT BAR. — As for liquidated damages, Article 2226 of the *Civil Code* states "liquidated

damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof." In this case, the Distributorship Agreement between Tyreplus and Total shows no stipulation on liquidated damages to be paid in case of breach thereof. In the absence of stipulation, the award of ₱25,000.00 as liquidated damages should be deleted.

6. ID.; ID.; EXEMPLARY DAMAGES; EXEMPLARY OR CORRECTIVE DAMAGES MAY BE IMPOSED, BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD, IN ADDITION TO EITHER MORAL, TEMPERATE, LIQUIDATED, OR COMPENSATORY DAMAGES; CASE AT BAR. — On exemplary damages, Article 2229 of the *Civil Code* provides that exemplary or corrective damages may be imposed, by way of example or correction for the public good, in addition to either moral, temperate, liquidated, or compensatory damages. Here, since Tyreplus failed to honor its contract with Total, and considering further the award of actual or compensatory damages to Total, a grant of exemplary damages in the amount of ₱50,000.00 is proper.

7. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF IS PROPER WHEN A PARTY IS CONSTRAINED TO LITIGATE TO PROTECT ITS INTERESTS; CASE AT BAR. — As for attorney's fees, suffice it to state that because Total was constrained to litigate to protect its interests, the award of attorney's fees in the amount of ₱94,585.26 is retained pursuant to Article 2208 of the *Civil Code*.

APPEARANCES OF COUNSEL

Abel C. Coloma for petitioner.

Into Pantojan Feliciano Braceros & Lumbatan Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 00819-

MIN entitled "*Edgardo Lim and Tyreplus Industrial Sales, Incorporated v. Total Petroleum Philippines Corporation*":

1. Decision[1] dated February 29, 2012 reversing the Decision[2] dated November 15, 2005 of the Regional Trial Court (RTC) — Branch 10, Davao City in Civil Case No. 28102-2000 finding herein respondents Edgardo Lim and Tyreplus Industrial Sales, Inc. liable for damages in favor of petitioner Total Petroleum Philippines Corporation; and
2. Resolution[3] dated September 27, 2012 denying petitioner's motion for reconsideration.

Antecedents

On September 14, 2000, respondents Edgardo Lim and Tyreplus Industrial Sales, Inc. a corporation engaged in the marketing of automotive parts, oil, and lubricants,[4] filed a complaint for damages and attorney's fees against petitioner Total Petroleum Philippines Corporation, a corporation engaged in the manufacture, importation, and wholesale of automotive products and industrial lubricants.[5] The case was raffled to the RTC-Branch 10, Davao City.[6]

Respondents essentially averred that on December 1, 1999, Tyreplus, through its President Edgardo Lim, entered into a Commercial Distributorship Agreement[7] with Total. The Agreement was enforceable for twelve (12) months subject to renewal. Under Article 2 of the Agreement, Tyreplus was granted

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[1] Penned by Associate Justice Romulo Borja and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida Galapate Laguilles; *rollo*, pp. 33-61.

[2] Penned by Judge Jaime V. Quitain, *id.* at 77-88.

[3] *Id.* at 8-10.

[4] TSN, December 5, 2001, p. 5.

[5] *Rollo*, p. 34.

[6] *Id.* at 77.

[7] *Id.* at 34.

a *"non-exclusive and non-transferable"* authority to distribute and sell Total petroleum products,[8] *viz.*:

Article 2 – RIGHTS GRANTED BY TPPC TO THE DISTRIBUTOR
TPPC hereby grants the **non-exclusive, non-transferable authority to the DISTRIBUTOR ---**

2.1 **To market and distribute the Products under the Trade Marks in the Territory**;

2.2 During the continuance of this Agreement, the DISTRIBUTOR, neither by itself nor by its stockholders, officers, directors, staff, or agents, or any of them shall without the consent in writing of TPPC, be interested whether directly or indirectly, in the sale, supply or promotion in the Territory of, or in any other manner deal with, any other oil or allied products similar or competing with the products. To this end, the DISTRIBUTOR shall, cease manufacturing, selling, or in any other manner deal with, directly or indirectly, any product in similar or competition with the Products. (Emphasis supplied)

Article 4[9] of the Agreement enumerates Tyreplus' obligations on the distribution and sale of Total products, thus:

Article 4 – DISTRIBUTION OF THE PRODUCTS

4.1 The DISTRIBUTOR shall, at all time during the duration of this AGREEMENT, and under the guidance of TPPC, arrange for and organize the efficient marketing and distribution of the Products within the Territory, and shall use its best endeavors to vigorously promote the sale thereof. x x x

4.2 The DISTRIBUTOR shall, distribute the Products in the same quality and under the same packaging in which they have been received from TPPC.

4.3 The DISTRIBUTOR shall, at all time, conduct its distribution activities with due regard and consideration, and without prejudice,

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[8] *Id.* at 34; Record, p. 490.
Article 2 of the Commercial Distributorship Agreement between Total and Tyreplus states: – Rights Granted by TPPC to the Distributor:

TPPC hereby grants the non-exclusive, non-transferable authority to the distributor.

x x x x x x x x x

[9] Record, pp. 490-493.

to their impact on the other products of TPPC and the latter's relationship with its other distributors.

4.4 The DISTRIBUTOR shall not, without the consent in writing of TPPC, sell or dispose of the Products to any person, firm, or company outside the Territory; nor shall the DISTRIBUTOR knowingly sell or dispose the Product to any person, firm or company residing or carrying on business in the Territory, with a view to the same being sent or exported to any place or country outside the Territory. x x x

4.5 The DISTRIBUTOR shall maintain at all time, an accurate, detailed and complete account of sales and inventories of the Products and other records concerning its dealership of the Products. x x x

4.6 The DISTRIBUTOR shall also promptly provide TPPC with reports and such other necessary market research assistance as may be required by TPPC, from time to time, detailing the activities of competitors in the Territory. x x x

4.7 The DISTRIBUTOR shall provide TPPC an annual sale forecast x x x and upon request of TPPC, the DISTRIBUTOR shall likewise promptly provide TPPC with a quarterly update of the sales forecast before the start of each quarter.

4.8 The DISTRIBUTOR shall promptly provide TPPC with a monthly inventory report, in units and value upon TPPC's request.

4.9 The DISTRIBUTOR's minimum purchases of the Products during the term of this agreement shall be those set forth in Appendix 2. x x x

4.10 The DISTRIBUTOR may carry out an advertising programs for the Products for the purpose of meeting the marketing objectives as shall have been agreed with TPPC x x x.

4.11 TPPC shall, at its discretion, assist the DISTRIBUTOR in any public relations exercise, and provide assistance in the development of promotional materials. x x x

4.12 Title and risk to the products shall automatically pass to the DISTRIBUTOR upon the actual receipt of the Products by the latter as materialized by the signature of the DISTRIBUTOR or any of his designates. x x x

4.13 The DISTRIBUTOR shall permit and/or its duly authorized representatives:

a) To enter any plant premises where the Products shall be sold or kept x x x, and to inspect and take inventories of all stocks of the Products held therein and of all processes for marketing carried on therein;

b) To have access to the customer lists of salesmen and sub-distributors of the DISTRIBUTOR, and other accounts of the DISTRIBUTOR relating to the marketing and sale of the Products, take and keep copies thereof, and immediately upon the written request of TPPC, furnish TPPC copies of such list.

4.14 TPPC shall provide all relevant product data sheets for the customer's knowledge of automotive and industrial lubricants, and, at its discretion, provide assistance to develop customers by way of conferences, seminars and on-site demonstrations or conduct trial tests.

4.15 TPPC will assist in the professional development of the DISTRIBUTOR's personnel tasked with the promotion and sale of the Products.

4.16 The Distributor warrants that x x x it shall have the necessary knowledge, facilities, manpower and capability x x x to carry on distribution activities and to sell and distribute the Products.

Pursuant thereto, Total delivered its various products to Tyreplus for distribution and sale. Lim, thereafter, purchased six (6) vehicles to facilitate the distribution and sale of these products.[10] He offered in evidence the vehicles' certificates of registration and official registration fee receipts.[11] He admitted, though, that some of these vehicles were not exclusively used for distribution and sale of Total products while some were just parked at his residence.[12]

On December 31, 1999, Tyreplus' General Manager Brigido Tan resigned, prompting Lim to take over the company operations.[13] Lim discovered that Tan used the name of Tyreplus

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[10] TSN, December 5, 2001, p. 12.

[11] Record, pp. 505-510.

[12] TSN, December 5, 2001, p. 42.

[13] *Rollo*, p. 78.

to pursue Tan's personal interest. Thus, in order to remove the bad image Tan had created, Tyreplus had purportedly changed its name to Superpro Industrial Sales Corporation.[14]

On January 31, 2000, using the letterhead "Superpro Ind. Sales Corp." Lim wrote Total that "Superpro Industrial Sales Corporation" will be the new trade name of Tyreplus Sales Corporation.[15] On February 4, 2000, Lim had a meeting with Total's Marketing Manager Beau Santos and Sales Executive Gigi Gonzales.[16] There, Lim reiterated to these Total executives that Tyreplus had purportedly changed its name to Superpro. In another meeting on February 10, 2000, Lim handed to Total's Marketing Manager Beau Santos a copy of Superpro's Articles of Incorporation.[17] Article 2 of Superpro's Articles of Incorporation indicated its primary purpose *i.e.*, buying, selling, importing, exporting or dealing of automotive parts and lubricants, including the repair and service of these automotive parts, thus:

> Article II — x x x purpose for which said corporation is formed:
> Primary Purpose
>
> To **engage in the business of buying, selling, importing and exporting or dealing in any and all kinds** of goods, wares, commodities and merchandise of every class and description such as but not limited to **tires, batteries, lubricants**, industrial and agricultural machineries, heavy and light equipment, engines, implements, construction materials, fixtures and all its **parts or accessories**, including the repair and service thereof. (emphasis supplied)
>
> x x x x x x x x x

Total was also furnished copy with Superpro's Certificate of Incorporation,[18] *viz.*:

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[14] TSN, December 5, 2001, p. 6.

[15] Exhibit "6".

[16] TSN, December 5, 2001, p. 22.

[17] *Id.* at 48-49.

[18] Superpro's Certificate of Incorporation was dated February 8, 2000, record, p. 542.

This is to certify that the **Articles and By-Laws of Superpro Industrial Sales Corporation are duly registered by the Commission on this date upon issuance of this Certificate of Incorporation** in accordance with the Corporation Code of the Philippines (Batas Pambansa Blg. 68), approved on May 1, 1980 x x x (Emphasis supplied).

Notably, the Articles of Incorporation did not mention anything about Tyreplus being Superpro's supposed predecessor.

On even date, Total signed a new Commercial Distributorship Agreement[19] with Superpro. It was similar to what Total and Tyreplus had previously entered into. Articles 2 and 4 of the Agreement provided, thus:[20]

Article 2 – RIGHTS GRANTED BY TPPC TO THE DISTRIBUTOR
TPPC **hereby grants the non-exclusive, non-transferable authority to the DISTRIBUTOR ---**

2.1 **To market and distribute the Products under the Trade Marks in the Territory**;

2.2 During the continuance of this Agreement, the DISTRIBUTOR, neither by itself nor by its stockholders, officers, directors, staff, or agents, or any of them shall without the consent in writing of TPPC, be interested whether directly or indirectly, in the sale, supply or promotion in the Territory of, or in any other manner deal with, any other oil or allied products similar or competing with the products. To this end, the DISTRIBUTOR shall, cease manufacturing, selling, or in any other manner deal with, directly or indirectly, any product in similar or competition with the Products.

x x x x x x x x x

Article 4 – DISTRIBUTION OF THE PRODUCTS
4.1 The DISTRIBUTOR shall, at all time during the duration of this AGREEMENT, and under the guidance of TPPC, arrange for and organize the efficient marketing and distribution of the Products within the Territory, and shall use its best endeavors to vigorously promote the sale thereof. x x x

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[19] *Id.* at 517-527.

[20] *Id.*

4.2 The DISTRIBUTOR shall, distribute the Products in the same quality and under the same packaging in which they have been received from TPPC.

4.3 The DISTRIBUTOR shall, at all time, conduct its distribution activities with due regard and consideration, and without prejudice, to their impact on the other products of TPPC and the latter's relationship with its other distributors.

4.4 The DISTRIBUTOR shall not, without the consent in writing of TPPC, sell or dispose of the Products to any person, firm, or company outside the Territory; nor shall the DISTRIBUTOR knowingly sell or dispose the Product to any person, firm or company residing or carrying on business in the Territory, with a view to the same being sent or exported to any place or country outside the Territory. x x x

4.5 The DISTRIBUTOR shall maintain at all time, an accurate, detailed and complete account of sales and inventories of the Products and other records concerning its dealership of the Products. x x x

4.6 The DISTRIBUTOR shall also promptly provide TPPC with reports and such other necessary market research assistance as may be required by TPPC, from time to time, detailing the activities of competitors in the Territory. x x x

4.7 The DISTRIBUTOR shall provide TPPC an annual sale forecast x x x and upon request of TPPC, the DISTRIBUTOR shall likewise promptly provide TPPC with a quarterly update of the sales forecast before the start of each quarter.

4.8 The DISTRIBUTOR shall promptly provide TPPC with a monthly inventory report, in units and value upon TPPC's request.

4.9 The DISTRIBUTOR's minimum purchases of the Products during the term of this agreement shall be those set forth in Appendix 2. x x x

4.10 The DISTRIBUTOR may carry out an advertising programs for the Products for the purpose of meeting the marketing objectives as shall have been agreed with TPPC x x x.

4.11 TPPC shall, at its discretion, assist the DISTRIBUTOR in any public relations exercise, and provide assistance in the development of promotional materials. x x x

4.12 Title and risk to the products shall automatically pass to the DISTRIBUTOR upon the actual receipt of the Products by the latter

as materialized by the signature of the DISTRIBUTOR or any of his designates. x x x

4.13 The DISTRIBUTOR shall permit and/or its duly authorized representatives:

a) To enter any plant premises where the Products shall be sold or kept x x x, and to inspect and take inventories of all stocks of the Products held therein and of all processes for marketing carried on therein;

b) To have access to the customer lists of salesmen and sub-distributors of the DISTRIBUTOR, and other accounts of the DISTRIBUTOR relating to the marketing and sale of the Products, take and keep copies thereof, and immediately upon the written request of TPPC, furnish TPPC copies of such list.

4.14 TPPC shall provide all relevant product data sheets for the customer's knowledge of automotive and industrial lubricants, and, at its discretion, provide assistance to develop customers by way of conferences, seminars and on-site demonstrations or conduct trial tests.

4.15 TPPC will assist in the professional development of the DISTRIBUTOR's personnel tasked with the promotion and sale of the Products.

4.16 The Distributor warrants that x x x it shall have the necessary knowledge, facilities, manpower and capability x x x to carry on distribution activities and to sell and distribute the Products.

Lim signed on behalf of Superpro in his capacity as the company President.[21] Following the execution of this new Agreement, Total products that were supposedly intended for Tyreplus were stored inside a warehouse owned by Superpro. It was Superpro which eventually distributed these products for sale to the public.[22]

On February 11, 2000, PSBank sent a Letter of Undertaking to Total informing the latter that Lim had assigned a bank guaranty to Total in the amount of ₱500,000.00 "***to answer***

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[21] *Id.* at 525.

[22] Respondents' Complaint, *rollo*, p. 144.

for the obligations of Superpro, and its predecessor Tyreplus,"[23] *viz.*:

This is to certify that Mr. EDGARDO LIM x x x has an approved credit line with the bank in the amount of FIVE HUNDRED THOUSAND PESOS ONLY (₱500,000.00) which he is voluntarily assigning in favor of TOTAL PETROLEUM PHILIPPINES CORPORATION, **to answer for the obligation of Superpro Industrial Sales Corporation and its predecessor Tyreplus Sales Corporation**.

You may present this undertaking together with the conformity of Mr. Edgardo M. Lim, in case of their failure to satisfy their contact with your company.

This undertaking is valid until December 31, 2000 unless the credit agreement between Superpro Industrial Sales Corporation is sooner termination. (Emphasis and underscoring supplied)[24]

By letter dated February 26, 2000, Lim again using the letterhead "Superpro Ind. Sales Corp." assured Total:[25] ***"all billings to Tyreplus will be guaranteed payment by Superpro."***[26] On February 26, 2000, still under Superpro's letterhead, Lim manifested to Total, this time, that Superpro is *"**fresh from its creation . . . after dissolving Tyreplus after the resignation of Mr. Tan**."* Lim also enclosed therein five (5) postdated PSBank checks payable to Total in the total amount of ₱447,117.66 under Superpro's account name and account number.[27]

Meantime, on March 9, 2000, Total served on Tyreplus a notice of pre-termination of Distributorship Agreement and demanded payment of ₱472,926.30 for deliveries under purchase orders dated January 4 and 7, 2000.[28] Subsequently, Total also served on Superpro a similar notice of termination of its

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[23] *Id.* at 78.

[24] Record, p. 535.

[25] *Id.* at 539-540.

[26] *Id.* at 541.

[27] *Id.* at 539-540.

[28] *Id.* at 515.

Distributorship Agreement with the latter.[29] As a result of Total's unexpected termination of these Agreements, Tyreplus allegedly suffered heavy business losses.[30]

By letter dated March 17, 2000, Lim reminded Total that the latter was in fact informed of Tyreplus' change of name to Superpro, and Superpro's assumption of all the deliverables and indebtedness of Tyreplus to Total.[31]

On April 10, 2000, Lim ordered a stop-payment of the PSBank checks he issued to Total supposedly in payment of Tyreplus' obligations to Total.[32]

Tyreplus prayed for damages and attorney's fees against Total, *viz.*: ₱800,000.00 as moral damages; ₱100,000.00 as exemplary damages; ₱1,500,000.00 as actual damages to cover the ₱150,000.00 promotional expenses of Total products plus ₱1.4 million as total purchase price of the vehicles earmarked for the distribution of these products; ₱150,000.00 as attorney's fees, plus ₱1,500.00 per court hearing, and costs of the suit.

In its answer with counterclaim, Total essentially countered:

Tyreplus committed a contractual breach when it assigned its distributorship rights and obligations to Superpro, a separate and distinct corporation, without Total's knowledge and consent.[33] Such unauthorized assignment violated Article 9 of the Agreement, *viz.*:

Article 9 — ASSIGNMENT

This Agreement is personal to the DISTRIBUTOR and shall not be assigned, transferred, sub-contracted or otherwise dealt in by it, directly or indirectly, and in whole or in part, without the prior written approval of TPPC.[34]

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[29] *Rollo*, p. 39.

[30] *Id.* at 38.

[31] Record, p. 149.

[32] *Id.* at 541A.

[33] *Rollo*, p. 41.

[34] Record, p. 496.

Total was led to initially believe that what took place between Tyreplus and Superpro was only a change of corporate name.[35] But it later realized that in truth these two (2) were distinct entities. This realization dawned on Total only on February 25, 2000 when Lim confirmed in writing the creation of Superpro as a separate and independent corporate entity.[36] Further, Superpro's Certificate of Incorporation, SEC Certificate of Registration, and Business Permit were enclosed in Lim's letter dated February 25, 2000 *viz.*:[37]

> This [is] to give light about the events that surrounds TYREPLUS SALES CORPORATION that eventually caused its closure in name and the **creation of SUPERPRO INDUSTRIAL SALES CORPORATION**.
>
> x x x x x x x x x
>
> Due to the unpleasant events that happened to Tyreplus, decision was reach[ed] to change its business name to SUPERPRO INDUSTRIAL SALES CORPORATION, was organized and approved by the Securities and Exchange Commission on February 8, 2000. **Attached are xerox copies of SEC and BIR registration and business permit**.
>
> x x x x x x x x x
>
> **We further assure you that all billings to TYREPLUS will be guaranteed payment by SUPERPRO.**
>
> x x x x x x x x x
>
> (Emphasis supplied).

On March 9, 2000, Total clarified with respondents that before a new Distributorship Agreement with Superpro may be effected, the previous Agreement with Tyreplus had to be terminated. Consequently, all outstanding purchase orders of Tyreplus were considered immediately due and demandable.[38]

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[35] *Rollo*, p. 15.

[36] Record, p. 293.

[37] *Id.* at 641.

[38] *Id.* at 515.

In his Letter dated March 17, 2000, however, Lim firmly asserted that Tyreplus merely changed its name to Superpro which had assumed all the indebtedness of Tyreplus,[39] thus:

> The dissolution was purely on my own prerogative as being the owner, as you were duly informed of his resignation and the change in business name last January and absorbing all deliveries to TYREPLUS and its indebtedness by SUPERPRO.

Total sent respondents another Letter[40] dated March 30, 2000, emphasizing its belated discovery that Superpro was a separate entity and not merely the new trade name of Tyreplus. It reiterated that there ought to be only one distributor in any given marketing territory. Hence, the Distributorship Agreement with Tyreplus had to be pre-terminated before a new one may be forged with Superpro, *viz.*:

> x x x **TPPC found out that SUPERPRO is an entirely new organization** – a new corporation based on SEC. Reg. No. D2000-00129, with the following as stockholders Edgardo M. LIM; x x x. Furthermore, **the Articles of Incorporation, By-Laws, and the rest of the registration documents made no reference or relationship to the "former" TYREPLUS**.
>
> **In view of the foregoing, TPPC is constrained to treat SUPERPRO as distinct from and unique to TYREPLUS**, the lubricants distributor of TPPC in Southern Mindanao.
>
> Under TPPC's policy on the distributorships, TPPC prefers to have only one distributor in a given marketing territory. **Thus, the distributorship for TYREPLUS had to be pre-terminated before a new distributorship in the territory with a different entity such as SUPERPRO may be effected**.
>
> In any case, the right of TPPC to pre-terminate its distributorship agreement with TYREPLUS is justified by TYREPLUS' breach of certain provisions on said agreements such as Article 9 thereof, which stated, thus:
>
> x x x x x x x x x

[39] *Id.* at 149.

[40] *Id.* at 48.

Therefore, TYREPLUS cannot assign the distributorship agreement unilaterally to a distinct entity, SUPERPRO. Said unilateral assignments, however, was clearly the intent when TPPC was [made] to believe that SUPERPRO is merely the new trade name of TYREPLUS. (emphasis supplied)

When it subsequently learned that Lim issued stop-payment-order on the PSBank checks, it asked PSBank to pay the amounts in question pursuant to a bank guaranty which Lim obtained from PSBank precisely to pay off Tyreplus' indebtedness to Total. But PSBank informed Total that it cannot release payment because Lim as President of Tyreplus did not signify his conformity to pay Total's claim against Tyreplus.[41] PSBank further clarified, thus:

x x x x x x x x x

For purposes of clarification, we wish to emphasize the in every LOU issued by PS Bank, and as a standard procedure, conformity of the requesting client is always reflected in the LOU, signifying the client's express assent to the contents of the LOU.

x x x x x x x x x

Moreover, it goes without saying that the undertaking submitted by PSBank will only arise once the conditions set forth in the LOUs are fully established – that Tyreplus failed to satisfy its obligation to TPPC **and** that Mr. Lim expressly signified his conformity that Tyreplus indeed failed to settle the amount claimed. **These two are conditions *sine qua non*, and cannot be separated from each other**. (Emphasis supplied)

Lim kept making false representations that Tyreplus merely changed its name to Superpro. Lim also caused the transfer of Tyreplus' rights and obligations to another entity, Superpro, without Total's consent in violation of Article 9 of the Agreement. Worse, Lim did not signify his conformity to PSBank's payment of Tyreplus' obligations to Total, notwithstanding that he himself had obtained this credit line supposedly for the purpose of paying off Tyreplus' obligations to Total.

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[41] *Id.* at 654-656.

By way of counterclaim, Total prayed that Tyreplus and Lim be held jointly and severally liable for: a) ₱472,926.30 representing Tyreplus' unpaid obligation; b) liquidated damages equivalent to 20% of the principal claim; c) actual damages of ₱300,000.00; d) exemplary damages of ₱50,000.00; and e) attorney's fees.[42]

The Trial Court's Ruling

In its Decision[43] dated November 15, 2005, the trial court ruled that Total validly pre-terminated its Distributorship Agreement with Tyreplus.[44]

The trial court found that Total agreed to enter into a new Distributorship Agreement with Superpro because Lim led it to believe that Tyreplus got dissolved and changed its name to Superpro.[45]

Tyreplus, therefore, was ordered to pay Total ₱472,926.30 representing its unpaid obligations, ₱25,000.00 as liquidated damages, ₱94,585.26 as attorney's fees,[46] plus ₱5,000.00 per hearing, and ₱60,000.00 as actual damages, *viz.*:[47]

WHEREFORE, premises considered, this Court rules in favor of Defendant TOTAL PETROLEUM PHILIPPINES CORPORATION. Let the amount of Four Hundred Seventy-Two Thousand Nine Hundred Twenty-Six and 30/100 (₱472,926.30) covered by a writ of attachment,

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[42] Record, p. 302.

[43] Penned by Judge Jaime V. Quitain, *id.* at 77-88.

[44] *Id.* at 85.

[45] *Id.* at 87.

[46] Record, p. 498; The Commercial Distributorship Agreement states:

Article 18 – Judicial Proceedings

In the event of judicial proceeding to be instituted by TPPC to enforce any of the terms or conditions of this Agreement, the DISTRIBUTOR shall pay TPPC a reasonable compensation for its expenses and charges, including attorney's fees, which shall in no event be less than twenty percent (20%) of the indebtedness then outstanding and unpaid x x x.

[47] *Rollo*, p. 88.

be released to Defendant TOTAL PETROLEUM PHILIPPINES CORPORATION.

Furthermore, Plaintiffs are ordered to indemnify Defendant the following, to wit:

a. Liquidated Damages in the amount of ₱25,000.00;
b. ₱94,585.26 the sum equivalent of 20% of Defendant's principal claim as attorney's fees, plus ₱5,000.00 per hearing;
c. Actual damages in the amount of ₱60,000.00.

Let attachment bond be released in favor of Defendant.

SO ORDERED.

Under Order dated May 9, 2006, the trial court granted Total's subsequent motion for partial reconsideration, increasing the award of actual damages from ₱60,000.00 to ₱401,308.00 for the advertising and promotional materials delivered to Tyreplus.[48]

The Court of Appeals' Ruling

Both parties appealed. By Decision dated February 29, 2012, the Court of Appeals reversed. It found that Tyreplus did not cease to exist as a corporate entity. For it did not undergo voluntary or involuntary dissolution; nor change its name. There was no amendment in its Articles of Incorporation to that effect. On the other hand, Superpro is an entirely new entity[49] pursuant to its Certificate of Incorporation duly issued by the SEC on February 8, 2000.[50]

The Court of Appeals held that Total was estopped from pre-terminating its Distributorship Agreement with Tyreplus. This is because Tyreplus was actually duly apprised of the creation of Superpro as a new corporation and even furnished copy of Superpro's Certificate of Incorporation. Total therefore

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[48] ₱401,308.00 as actual damages was based on the total amount of the advertising and promotional materials received by Tyreplus evidenced by the Bill of Lading from Solid Shipping Lines Corp., *id.* at 43; Record, p. 652.

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

[50] *Id.* at 38.

knew there was no change of name to speak of but the creation of a distinct corporate entity that was Superpro.[51] But still, Total voluntarily entered into a new Commercial Distributorship Agreement with Superpro, albeit its contract with Tyreplus was still effective.[52]

The Court of Appeals awarded respondents ₱400,000.00 as actual damages,[53] ₱150,000.00 as moral damages, ₱50,000.00 as exemplary damages, and ₱178,000.00 as attorney's fees.[54] On the other hand, it ordered Lim and Tyreplus to pay Total jointly and severally ₱472,962.30, pertaining to its unpaid obligation, thus:

> WHEREFORE, the appeal of plaintiffs is GRANTED and that of defendant is DENIED. Edgardo Lim is hereby granted actual damages in the amount of ₱400,000.00; moral damages in the amount of ₱150,000.00; exemplary damages in the amount of ₱50,000.00; attorney's fees in the amount of ₱178,000.00. Edgardo Lim/Tyreplus is ordered to pay defendants ₱472,962.30.
>
> SO ORDERED.[55]

Under Resolutions[56] dated September 27, 2012, the Court of Appeals denied Total's motion for reconsideration.

The Present Petition

Total now seeks affirmative relief from the Court and repleads its arguments before the trial court and the Court of Appeals.

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[51] *Id.* at 55.

[52] *Id.* at 54.

[53] *Id.* at 58-59.
The Court of Appeals granted actual damages in the total amount of ₱400,000.00 based on ₱150,000.00 as promotional expenses, ₱150,000.00 as temperate damages for the use of vehicles, and ₱100,000.00 for the injury caused to Lim's business standing.

[54] *Id.* at 80.
Included in the CA's grant of ₱178,000.00 attorney's fees were the appearance fees valued at ₱28,000.00.

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

[56] *Id.* at 8-10.

Total further asserts that Lim should also be held personally liable for transacting in bad faith by misleading it into believing that Tyreplus got dissolved and changed its name to Superpro.[57]

For their part, Lim and Tyreplus aver that Total had no basis in pre-terminating its Distributorship Agreement with Tyreplus. For Total knew full well that Superpro is distinct from Tyreplus, and yet, Total still entered into a new Commercial Distributorship Agreement with Superpro independently of its then existing Agreement with Tyreplus.[58]

Issue

Did the Court of Appeals err when it ruled that Total had no basis in pre-terminating its Distributorship Agreement with Tyreplus?

Ruling

As a rule, the factual findings of the Court of Appeals are binding on the Court, except in the following cases:

(1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; **(7) when the findings are contrary to that of the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; **(10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record**; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[59]

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

[58] *Id.* at 173.

[59] See *Republic v. Barcelon*, G.R. No. 226021, July 24, 2019.

The exceptions under (1), (2), (4), (5), (7), and (10) apply here. We are thus compelled to re-examine the evidence and re-validate the contradictory factual findings of the trial court and the Court of Appeals.

Foremost, Article 9 of the Commercial Distributorship Agreement between Total and Tyreplus stated that the contract was personal to the distributor, which in this case was Tyreplus, and shall not be assigned, transferred, sub-contracted or otherwise dealt in, directly or indirectly, and in whole or in part, without the prior written approval of Total.[60]

Total claims that Tyreplus transferred its rights and obligations to Superpro, without Total's consent, in violation of Article 9 of the Agreement, thus, the pre-termination of its Agreement with Tyreplus was called for.

Tyreplus and Lim, on the other hand, argue that Total cannot feign ignorance of Superpro's distinct personality at the time it entered into a new Agreement with Superpro independent of its then subsisting Agreement with Tyreplus.

We find for petitioner Total.

Estoppel does not apply to Total

The Court of Appeals held that Total was estopped from pre-terminating its Distributorship Agreement with Tyreplus.[61] Total cannot allegedly claim to have been blindsided by Lim's representations because it was actually apprised of the creation of Superpro as a new corporation and even furnished copy of Superpro's Certificate of Incorporation.[62]

We disagree.

Estoppel arises when one, by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another

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[60] Record, p. 496.

[61] CA Decision dated February 29, 2012, *rollo*, p. 21.

[62] *Id.*

to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[63] The doctrine of estoppel is based upon the grounds of public policy, fair dealing, and good faith, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[64]

Total cannot be deemed in estoppel for initially believing in good faith the following representations of Lim as President of both Tyreplus and Superpro, which later turned out to be false. Consider:

a) On January 31, 2000 or barely two (2) months after the execution of the Distributorship Agreement between Total and Tyreplus on December 1, 1999, Lim, using the letterhead of "Superpro Ind. Sales Corp." wrote Total that "Superpro Industrial Sales Corporation" will be the new trade name of Tyreplus Sales Corporation;[65]

b) On February 4, 2000, Lim had a meeting with Total's Marketing Manager Beau Santos, and Total's Sales Executive Gigi Gonzales[66] where Lim reiterated that Tyreplus had changed its name to Superpro;

c) On February 10, 2000, or the day when the new Agreement with Superpro was executed, Lim never retracted his previous assertions that Tyreplus had been dissolved and had a new corporate name Superpro;

d) After the execution of the new Agreement between Total and Superpro, Total products supposedly intended for Tyreplus were stored inside a warehouse owned by Superpro. It was

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[63] See *Philippine National Bank v. Intermediate Appellate Court*, 267 Phil. 720, 727 (1990).

[64] See *Megan Sugar Corp. v. RTC, Br. 68, Dumangas, Iloilo, et al.*, 665 Phil. 245, 255 (2011).

[65] Exhibit "6".

[66] TSN, December 5, 2001, p. 22.

Superpro which eventually distributed these products for sale to the public;[67]

e) On February 11, 2000, PSBank sent a Letter of Undertaking to Total informing the latter that Lim had secured a bank guaranty in the amount of ₱500,000.00 in favor of Total ***"to answer for the obligations of Superpro, and its predecessor Tyreplus;"***[68]

f) By letter dated February 25, 2000, Lim, again using the letterhead "Superpro Ind. Sales Corp." assured Total that ***"all billings to Tyreplus will be guaranteed payment by Superpro."***[69]

It was these false representations which led Total to enter into a new Agreement with Superpro in lieu of the one it already had with Tyreplus which per Lim's letters and verbal statements had just changed its name to Superpro. But it turned out that Superpro and Tyreplus are, in reality, not one but two (2) separate entities; Lim, acting as President of both companies himself has later confirmed the separate existence of these entities. Before the trial court, the Court of Appeals and this Court, Lim has stood by this confirmation. Notably, Lim's turn around had started only after he had already forged a new Agreement with Total on Superpro's behalf. Obviously, Lim's end goal was to be able to secure from Total two (2) Agreements for each of his two (2) companies in circumvention of Total's "one distributor, one area" business policy. Fortunately for Total, however, it promptly discovered Lim's scheme and wasted no time in effecting the cancellation of both Agreements. Surely, estoppel is a principle of equity to protect an innocent party against a double talking or double acting individual or entity. It is not the other way around.

Surely, when Tyreplus assigned its financial obligations and the distribution and sale of Total products to Superpro, Tyreplus clearly violated the non-transferability clause under Article 2 and Article 9 of the Distributorship Agreement. Again, this

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[67] Respondents' Complaint, *rollo*, p. 144.

[68] *Id.* at 78.

[69] Record, p. 541.

clause is material to the business policy of Total not to allow more than one (1) distributor in the same marketing territory.[70] This contractual breach warranted the revocation or pre-termination of the Agreement.

Liability of Tyreplus' President Edgardo Lim

We now resolve whether Lim should be held personally liable for Tyreplus' obligations in his capacity as its President.

In ***Bank of Commerce v. Nite***,[71] the general rule is that a corporation is invested by law with a personality separate and distinct from the persons composing it. The obligations of a corporation, acting through its directors, officers, and employees, are its own sole liabilities. Therefore, the corporation's directors, officers, or employees are generally not personally liable for the obligations of the corporation.

To hold a director or officer personally liable for corporate obligations, **two requisites** must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[72] To hold a director or officer personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director or officer must be **established clearly and convincingly**.[73]

Here, Lim had been the **frontrunner in the transactions** between Total and Tyreplus, and subsequently, Total with Superpro. Lim **categorically identified himself** as the President of Tyreplus and Superpro. Lim **admitted and declared his active participation** in the management and operation of

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[70] *Rollo*, p. 39.

[71] See 764 Phil. 655, 663 (2015).

[72] See *Francisco v. Mallen, Jr.*, 645 Phil. 369 (2010).

[73] *Id.*

Tyreplus and Superpro, as the President of both companies, *viz.*:

> Q: Now, Mr. Witness, when did you cause the change in the corporate name of Tyreplus to Superpro Industrial Corporation?
> A: As I have mentioned in the early statement that after the resignation of Mr. Brigido Tan, after I made personal investigation, **I decided to change the name of Tyreplus to Superpro** and we did it on the early part of January 2000.
>
> x x x x x x x x x
>
> Q: Now, Mr. Witness, when did the Total Petroleum Philippines Corporation know that you change the corporate name of Tyreplus Industrial Sales to Superpro Industrial Sales Corporation?
> A: I sent them a letter last January 31, 2000 x x x then we personally discussed x x x that **I am changing the name of Tyreplus to Superpro.** (Emphasis supplied)[74]

Meanwhile, Lim's letter dated March 17, 2000 addressed to Total emphasized that Tyreplus' ***"dissolution was purely on his own prerogative."***[75] Ultimately, Lim as the President of Tyreplus is the **controlling mind** of this company, as Tyreplus had no mind of its own.

In many instances, Lim's oral and written communications to Total led the latter to believe that Tyreplus merely changed its name to Superpro. It turned out to be a mistaken belief but it was entirely sourced from Lim's false representations. The same caused Total to execute a new Agreement with Superpro in lieu of the Agreement earlier forged with Tyreplus which was believed to have already changed its name to Superpro. Days *after* the contract with Superpro was executed, Lim started changing this tone, this time, he claimed that Superpro had actually emerged as a new entity. Not only that. For no valid reason, Lim, on behalf of Tyreplus, ordered a stop-payment on the checks he issued as payment for the obligations of Tyreplus

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[74] TSN, December 5, 2001, pp. 21-22.

[75] Record, p. 149.

to Total. And after Total demanded payment of the obligations of Tyreplus, Lim, on behalf of Tyreplus, instituted the case for damages against Total.

Clearly, Lim dealt in bad faith when he knowingly misled Total into executing the new Agreement with Superpro. Lim falsely declared to Total that Tyreplus' name was merely changed to Superpro, albeit he subsequently asserted that in fact the companies are two (2) distinct and separate. Lim's misuse of Tyreplus as a corporation to perpetuate breach of contractual obligations renders Lim personally liable.

International Academy of Management and Economics v. Litton and Co., Inc.[76] is in point, thus:

> [t]he doctrine of alter ego is based upon the **misuse of a corporation by an individual** for wrongful or inequitable purposes, and in such case the court merely disregards the corporate entity and holds the individual responsible for acts knowingly and intentionally done in the name of the corporation." (Emphasis supplied)

Lim, therefore, should be made liable jointly and severally liable[77] with Tyreplus in the payment of the latter's obligations due to Total.

Monetary awards due to Total

In ***Talampas, Jr. v. Moldex Realty, Inc.***,[78] the Court held that a contracting party's failure, without valid reason, to comply with contractual stipulations constitutes a breach of obligation for which it becomes liable for damages. So must it be.

Article 2199[79] of the *Civil Code* provides that one is entitled to actual damages for such pecuniary loss suffered as duly proved.

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[76] See 822 Phil. 610, 623 (2017).

[77] See *Dutch Movers, Inc., et al. v. Lequin, et al.*, 809 Phil. 438-452 (2017).

[78] See 760 Phil. 632, 646 (2015).

[79] CIVIL CODE, Article 2199 of the Civil Code.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.

Here, Total was able to prove the advertising and promotional materials it delivered to Tyreplus in the amount of ₱401,308.64[80] as evidenced by the bill of lading from Solid Shipping Lines Corporation.[81] Hence, the award of actual damages in the amount of ₱401,308.64 is retained.

As for liquidated damages, Article 2226 of the *Civil Code* states "liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof." In this case, the Distributorship Agreement between Tyreplus and Total shows no stipulation on liquidated damages to be paid in case of breach thereof. In the absence of stipulation, the award of ₱25,000.00 as liquidated damages should be deleted.

On exemplary damages, Article 2229[82] of the *Civil Code* provides that exemplary or corrective damages may be imposed, by way of example or correction for the public good, in addition to either moral, temperate, liquidated, or compensatory damages. Here, since Tyreplus failed to honor its contract with Total, and considering further the award of actual or compensatory damages to Total, a grant of exemplary damages in the amount of ₱50,000.00 is proper.[83]

As for attorney's fees, suffice it to state that because Total was constrained to litigate to protect its interests,[84] the award

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[80] *Rollo*, p. 58.

[81] *Id.*; Record, p. 652.

[82] CIVIL CODE, Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[83] See *Games and Garments Developers, Inc. v. Allied Banking Corporation*, G.R. No. 181426, July 13, 2015.

[84] See *Jaime Adriano and Legaspi Towers 300, Inc. v. Alberto Lasala and Lourdes Lasala*, G.R. No. 197842, October 9, 2013.

of attorney's fees in the amount of ₱94,585.26[85] is retained pursuant to Article 2208 of the *Civil Code*.[86]

Finally, records show that Tyreplus indeed failed to pay for the petroleum products it ordered and received from Total. The amount of ₱472,962.30 should therefore be paid to Total as actual damages.[87]

On the application of interest, ***Nacar v. Gallery Frames***[88] decrees that in the absence of express stipulation regarding the interest rate, the twelve percent (12%) interest rate *per annum* stated in ***Eastern Shipping Lines v. Hon. Court of Appeals and Mercantile Insurance Company, Inc.***[89] applies until June 30, 2013. From July 1, 2013, the new interest rate of six percent (6%) *per annum* shall apply, pursuant to BSP-MB Circular No. 799. Thus:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions

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[85] Record, p. 498. Attorney's fees were based on twenty percent (20%) of ₱472,926.30 pursuant to Article 18 of the Commercial Distributorship Agreement between Total and Tyreplus, *viz.*:

Article 18 – Judicial Proceedings

In the event of judicial proceeding to be instituted by TPPC to enforce any of the terms or conditions of this Agreement, the DISTRIBUTOR shall pay TPPC a reasonable compensation for its expenses and charges, including attorney's fee, which shall in no event be less than twenty percent (20%) of the indebtedness then outstanding and unpaid x x x.

[86] CIVIL CODE, Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except: (1) When exemplary damages are awarded.

[87] In *Filinvest Land, Inc., et al. v. Backy, et al.*, (697 Phil. 403, 412 [2012]) the Court held that unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.

[88] See 716 Phil. 267, 281 (2013).

[89] See 304 Phil. 236, 252-254 (1994).

under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Applying ***Nacar***, the amount of ₱472,962.30 representing Tyreplus' unpaid obligations to shall earn legal interest of twelve

percent (12%) *per annum* from March 9, 2000[90] to June 30, 2013; and thereafter, at six percent (6%) *per annum* from July 1, 2013 until finality[91] of the Court's ruling. Further, the total monetary award due to Total shall earn legal interest at six percent (6%) *per annum* from finality of this Decision until fully paid.

ACCORDINGLY, the Decision dated February 29, 2012 of the Court of Appeals in CA-G.R. CV No. 00819-MIN is **REVERSED** and **SET ASIDE**, and a new one rendered, reinstating with modification the Decision dated November 15, 2005 of the Regional Trial Court in Civil Case No. 28102-2000. Tyreplus Industrial Sales, Inc. and Edgardo Lim are **ORDERED** to jointly and severally pay Total Petroleum Philippines Corporation the following:

1) ₱472,962.30 representing the unpaid obligations of Tyreplus plus legal interest of twelve percent (12%) *per annum* from March 9, 2000 until June 30, 2013 and, thereafter, six percent (6%) *per annum* from July 1, 2013 until finality of this Decision;[92]

2) Actual damages of ₱401,308.64;

3) Exemplary damages of ₱50,000.00; and

4) Attorney's fees in the amount of ₱94,585.26.

Respondents Tyreplus Industrial Sales, Inc. and Edgardo Lim shall further pay jointly and severally legal interest on the total monetary award at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.

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

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[90] Date when Total extra-judicially demanded payment from Tyreplus per letter dated March 9, 2000; See *Isla v. Estorga*, G.R. No. 233974, July 2, 2018.

[91] See *Isla v. Estorga*, G.R. No. 233974, July 2, 2018.

[92] See *Hun Hyung Park v. Eung Won Choi*, G.R. No. 220826, March 27, 2019, See *Rep. of the Phils. v. Judge Mupas*, 769 Phil. 21 (2015), citing *Eastern Shipping Lines v. Court of Appeals*, 304 Phil. 236 (1994).

EN BANC

[G.R. No. 205835. June 23, 2020]

NATIONAL FEDERATION OF HOG FARMERS, INC., represented by MR. DANIEL P. JAVELLANA, ABONO PARTY-LIST, INC., represented by ROSENDO SO, ALYANSA NG MGA GRUPONG HALIGI NG AGHAM AT TEKNOLOHIYA PARA SA MAMAMAYAN, INC., represented by CONG. ANGELO B. PALMONES, JR., AGRICULTURAL SECTOR ALLIANCE OF THE PHILS., INC., represented by CONG. NICANOR BRIONES, PORK PRODUCERS FEDERATION OF THE PHILIPPINES, INC., represented by MR. RICO GERON, SOROSORO IBABA DEVELOPMENT COOPERATIVE, represented by DR. ANGELITO D. BAGUI, ASSOCIATION OF PHIL. AQUA FEEDS MILLERS, INC., represented by MR. NAPOLEON G. CO, *petitioners*, *vs.* **BOARD OF INVESTMENTS, LUCITA P. REYES, FELICITAS AGONCILLO-REYES, EFREN V. LEAÑO, and RAUL V. ANGELES, in their capacity as Executive Directors of the Board of Investments, THE BOARD OF TRUSTEES OF BOI, and CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION AND DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; DISTINGUISHED. — The doctrine of primary administrative jurisdiction is often interchanged with the doctrine of exhaustion of administrative remedies, as both doctrines capitalize on an administrative agency's acknowledged expertise over its field of specialization. However, the doctrine of exhaustion of administrative remedies is a form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case. This doctrine assumes that the matter is within the court's jurisdiction, or the court

exercises concurrent jurisdiction with the administrative agency; however, in its discretion, the court deems the case not justiciable or declines to exercise jurisdiction. Meanwhile, under the doctrine of primary administrative jurisdiction, jurisdiction lies exclusively with the administrative agency to act on a quasi-judicial matter. Hence, the court has no alternative but to dismiss a case for lack of jurisdiction.

2. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES. — The justiciability of an issue also determines whether a court can take cognizance of a case. A controversy is deemed justiciable if the following requisites are present: (1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*.

3. ID.; ADMINISTRATIVE LAW; BOARD OF INVESTMENTS; THE POWER TO ASSESS AND APPROVE APPLICATIONS FOR REGISTRATION BESTOWED EXCLUSIVELY ON THE BOARD OF GOVERNORS OWING TO ITS EXPERTISE AND IN-DEPTH KNOWLEDGE ON THE REQUIREMENTS FOR REGISTRATION. — Executive Order No. 226 empowers the Board of Governors of the Board of Investments to, among others, process and approve applications for registration[.] x x x The quasi-judicial power to assess and approve applications for registration was bestowed exclusively on the Board of Governors, owing to its expertise over which industries need the added boost of investments and its in-depth knowledge on the requirements for registration. After all, it drafted the rules and regulations implementing Executive Order No. 226. Thus, under the doctrine of primary administrative jurisdiction, jurisdiction over the approval of applications for registration lies exclusively with the Board of Investments, subject to appeal to the Office of the President. Hence, this Court is precluded from taking cognizance of the present Petition.

4. ID.; *LOCUS STANDI*; DOCTRINE. — This case is also not justiciable as petitioners failed to prove their legal standing to file the suit. Standing to sue or *locus standi* is defined as: x x x a personal and substantial interest in the case such that the party

has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

5. ID.; ID.; ID.; CONCEPT OF THIRD PARTY STANDING; NOT APPLICABLE TO THE CASE AT BAR. — For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties: [F]irst, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third Party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests." Organizations may possess standing to sue on behalf of their members if they sufficiently show that "the results of the case will affect their vital interests" and that their members have suffered or will stand to suffer from the application of the assailed governmental acts. The petition must likewise show that a hindrance exists, preventing the members from personally filing the complaint. In *White Light Corporation v. City of Manila*, hotel and motel operators protested the implementation of the City of Manila's Ordinance No. 7774, which prohibited short-time admission, or the admittance of guests for less than 12 hours in motels, inns, hotels, and similar establishments within the city. The petitioners argued, among others, that the Ordinance violated their clients' right to privacy, freedom of movement, and equal protection of the laws. In *White Light*, the petitioners were allowed to represent their clients based on third-party standing. This Court noted the close relationship between hotel and motel operators and their clients, as the former "rely on the patronage of their customers for their continued viability." On the requirement of hindrance, this Court stated that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for

customers to bring suit." Here, petitioners-organizations failed to show that they suffered or stood to suffer from private respondent's registration as a new producer. They likewise failed to show that their members were hindered from personally asserting their own interests. Thus, petitioners have no third-party standing to rightfully represent their members in a suit.

6. MERCANTILE LAW; COMPETITION LAW; CLAIM OF UNFAIR COMPETITION IS PRIMARILY FACTUAL IN NATURE. — Petitioners further argue that private respondent's presence in the market as a new producer would drive them "out of the market due to cut-throat competition." This claim, however, requires a definition of the relevant market involved. Goods or services are said to be in the same relevant market if both factors are present: (1) a reasonable interchangeability of the offerings to consumers; and (2) a significant cross-elasticity of demand, such that a price change in one party's goods or services will lead to a price change in the other party's goods or services. Thus, petitioners' alleged injury, purportedly caused by the entry of new players in the relevant market, still requires a factual finding. The Petition, therefore, is ultimately premature. The claim of unfair competition is primarily factual in nature. In a separate opinion concurring with the well-expounded *ponencia* of Justice Alexander Gesmundo in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, it was explained: x x x Thus, complainants bear the burden of objectively proving that the deception or fraud has actually or has probably taken place, or that the defendant had the actual or probable intent to deceive the public. This will require, in a future case, measurable standards to show that: (1) the goods or services belong to the same market; and (2) the likelihood of confusion or doubt is adequately and empirically demonstrated, not merely left to the subjective judgment of an administrative body or this Court.

7. ID.; ID.; CLAIMS OF MONOPOLIZATION AND ABUSE OF DOMINANT POSITION NOT TREATED AS FACT AND MUST BE SUBSTANTIATED. — Then, in *Gios-Samar, Inc. v. Department of Transportation*, even claims of monopolization or abuse of dominant positions in competition law were not treated as fact, and had to be substantiated. In a separate opinion: Indeed, the claims made by petitioner GIOS-SAMAR, Inc. require a more contextual appreciation of the evidence that it

may present to support its claims. The nature of its various allegations requires the presentation of evidence and inferences, which should, at first instance, be done by a trial court. Monopolization should not be lightly inferred especially since efficient business organizations are rewarded by the market with growth. Due to the high barriers to economic entry and long gestation periods, it is reasonable for the government to bundle infrastructure project. There is, indeed, a difference between abuse of dominant position in a relevant market and combinations in restraint of trade. The Petition seems to have confused these two (2) competition law concepts and it has not made clear which concept it wished to apply. Further, broad allegations amounting to a generalization that certain corporations allow themselves to serve as dummies for cartels or foreigners cannot hold ground in this Court. These constitute criminal acts. The Constitution requires that judicial action proceed carefully and always from a presumption of innocence. Tall tales of conspiratorial actions – though they may be salacious, make for interesting fiction, and are fodder for social media – do not deserve any judicial action. Broad generalizations of facts without corresponding evidence border on the contemptuous. To reiterate, petitioners' alleged injury, which was purportedly caused by unfair competition and the entry of new players in the market, still requires a factual finding. This makes the Petition ultimately premature.

8. ID.; OMNIBUS INVESTMENTS CODE (E.O. 226); APPEALS UNDER ARTICLE 36 AND ARTICLE 7(4) OF E.O. 226; DISTINGUISHED. — Under Article 36 of the Omnibus Investments Code, an order or decision of the Board of Governors over applications for registration under the investment priorities plan can be appealed to the Office of the President within 30 days from its promulgation. Unlike an appeal to the Office of the President under Article 7(4), which may only be availed by the investor or registered enterprise, an appeal under Article 36 does not contain a similar limitation. It may be availed even by one not a party to a case, so long as legal interest may be proven.

9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* IS NOT THE CORRECT REMEDY IF THERE IS ANOTHER "PLAIN, SPEEDY, AND ADEQUATE REMEDY" AVAILABLE. — Further,

filing a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure was not the correct remedy, as petitioners could have availed of a "plain, speedy, and adequate remedy" – that is, an appeal to the Office of the President.

10. ID.; ID.; ID.; A PETITION FOR *CERTIORARI* SHOULD BE FILED WITHIN 60 DAYS OF NOTICE OF THE ASSAILED ORDER OR RESOLUTION. — Even if a petition for *certiorari* were the correct remedy, the Petition still fails. Under Rule 65, Section 4 of the Rules of Court, a petition for *certiorari* should be filed within 60 days of notice of the assailed order or resolution[.]x x x Here, the records show that on November 28, 2012, petitioner Palmones filed House Resolution No. 2921, calling for an investigation of public respondent's grant of income tax holiday and exemption on taxes and duties to private respondent. On the same day, Representative Guanlao delivered a privileged speech in support of House Resolution No. 2921, directly adverting to the grant of incentives to private respondent. A few days after, on December 4, 2012, public respondent informed the Joint Congressional Hearing, which petitioner Palmones attended, when the assailed Board Resolutions were promulgated. Evidently, petitioners had been notified of the assailed Board Resolutions by November 28, 2012 and had learned of their exact dates of promulgation by December 4, 2012. Yet, they only filed their Petition for *Certiorari* on March 7, 2013, 99 days after they first had notice of the assailed Board Resolutions. As it was filed well beyond the 60-day reglementary period, this Petition must be dismissed.

11. POLITICAL LAW; CONSTITUTIONAL LAW; DECLARATION OF PRINCIPLES AND STATE POLICIES; POLICY OF THE STATE TO IMPOSE CERTAIN CONDITIONS OR RESTRICTIONS ON FOREIGN INVESTMENTS OPERATING WITHIN THE PHILIPPINE JURISDICTION. — [T]he State imposes certain conditions and restrictions on foreign investments operating within the Philippine jurisdiction. For instance, no foreign enterprise is allowed to venture into the mass media industry. This absolute restriction also extends to the use of natural resources found in the archipelagic waters, territorial sea, and exclusive economic zone of the Philippines. Further, the practice of all professions in the Philippines is reserved for Filipino citizens, save for statutory exceptions.

12. ID.; ID.; ID.; ID.; WHILE FOREIGN PARTICIPATION IS ABSOLUTELY PROHIBITED IN SOME INDUSTRIES, THE CONSTITUTION ALLOWS FOREIGN PARTICIPATION IN CERTAIN INDUSTRIES. — While foreign participation is absolutely prohibited in some industries, the Constitution allows foreign participation in certain industries, such as advertising, public utilities, educational institutions, ownership of private lands, and the exploration, development, and utilization of natural resources. Despite these constitutional restrictions, it is not far-fetched to consider that the Philippines adopts a liberal approach in allowing foreign investments to enter the country. What the Constitution only restricted from foreign investors were enterprises imbued with public interest, such as public utilities, mass media, and use of natural resources. These restrictions are necessary to protect the welfare of Filipino citizens by removing the possibility of exploitation by foreign investors, who are not fully within the jurisdiction of Philippine laws.

13. ID.; FOREIGN INVESTMENT ACT OF 1991 (R.A. 7042); AS MUCH AS 100% FOREIGN OWNERSHIP IN DOMESTIC ENTERPRISES MAY BE ALLOWED EXCEPT FOR AREAS OR INDUSTRIES INCLUDED IN THE NEGATIVE LIST. — Republic Act No. 7042, or the Foreign Investments Act of 1991, declares that as much as 100% foreign ownership in domestic enterprises may be allowed, except for areas or industries included in the negative list. *Espina v. Zamora, Jr.* expounds that the Constitution does not bar foreign investors from setting up shop in the Philippines, though neither does it encourage their unbridled entry. Thus, the Constitution has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors: [T]he 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services. More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national

interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.

14. ID.; ID.; ID.; AGRICULTURE AND AGRIBUSINESS ARE NOT INCLUDED IN THE FOREIGN INVESTMENT NEGATIVE LIST; AGRICULTURE AND AGRIBUSINESS NOT A NATIONALIZED OR PARTLY NATIONALIZED INDUSTRY. — Notably, "agriculture/agribusiness and fishery" was included in the Board of Investments' 2010 Investment Priorities Plan. The Department of Agriculture likewise recommended its continued inclusion in the 2011 Investment Priorities Plan and lobbied for the retention of feeds in the lists[.] x x x Likewise, the 2011 Investment Priorities Plan listed agriculture/agribusiness and fishery as one of the 13 "priority investment areas that were identified to support the current priority programs of the government[.]" x x x Agriculture/ agribusiness and fishery was also included in the 2012 Investment Priorities Plan. Moreover, agriculture and agribusiness were not included in the Eighth Regular Foreign Investment Negative List issued on February 5, 2010, or even in the Ninth Regular Foreign Investment Negative List issued on October 29, 2012. Incidentally, they are still not included in the Eleventh Regular Foreign Investment Negative List, the latest list issued on October 29, 2018. Clearly, agribusiness was, and still is, not a nationalized or partly nationalized industry. Hence, in this case, private respondent's status as a 100% foreign-owned corporation would not cause the denial of its applications for registration with public respondent.

15. REMEDIAL LAW; EVIDENCE; AN ADMINISTRATIVE AGENCY'S FINDINGS OF FACT ARE ENTITLED TO RESPECT AND DEFERENCE AS THE RECOGNIZED SPECIALIST IN THE FIELD ASSIGNED TO IT. — Further, private respondent's applications for registration went through the required process listed down in Executive Order No. 226. Public respondent, in turn, evaluated the applications based on the following criteria: "compliance with the provisions of

> the IPP, Net Value-added (NVA), Job generation, Multiplies Effect, and Measured Capacity." It considered the data on the discrepancy between local production and local demand, which it factored into its decision to approve private respondent's applications for registration[.] x x x It is well established that an administrative agency's findings of fact are entitled to respect and deference. As the recognized specialist in the field assigned to it, the administrative agency can resolve issues in its field "with more expertise and dispatch than can be expected from the legislature or the courts of justice." With that in mind, this Court has consistently deferred to their factual findings. Here, considering that the issuance of the assailed Board Resolutions was amply supported by substantial evidence, there is no weight to petitioners' claim that they were issued with grave abuse of discretion.

APPEARANCES OF COUNSEL

Sed Lex Professional Partnership Co. for petitioners.
Lagman Lagman and Mones Law Firm for private respondent.
The Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

Nationalism is not a mindless ideal. It should not unreasonably exclude people of a different citizenship from participating in our economy. If it were so, nationalism will not foster social justice; rather, it will sponsor a kind of racism quite like what our ancestors had suffered from in our colonial past.

While the Constitution does not bar foreign investors from setting up shop in the Philippines, neither does it encourage their unbridled entry. Thus, it has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors.

The constitutional line demarcating privileges for our citizens over foreigners is a delicate one. We must adjudicate where such line is drawn only with a grounded consciousness of the facts of an actual case rather than through fiery passions of

general advocacy. We will not evade the responsibility to adjudicate when that case comes. Sadly, this is not the case.

This Petition should be dismissed. Not only is it not justiciable, but this Court also does not have original jurisdiction over it. The grounds raised reveal that the invocation of grave abuse of discretion is mere subterfuge to a claimed "irregular or illegal" grant of an application for registration under Book I, Chapter III of Executive Order No. 226, or the Omnibus Investments Code of 1987.

This Court resolves the Petition for *Certiorari*[1] filed by members of the agribusiness industry, assailing the February 28, 2012, April 24, 2012, and November 6, 2012 Resolutions[2] issued by the Board of Governors of the Board of Investments, which granted the applications for registration filed by Charoen Pokphand Foods Philippines Corporation (Charoen).

On May 24, 2007, Charoen, a 100% foreign-owned company from Thailand, was registered with the Securities and Exchange Commission.[3]

On three (3) different occasions, Charoen submitted to the Board of Investments its applications for registration as a new producer of different products and services. These all went through a two-step process before they could be published in a newspaper of general circulation and officially filed with the Board of Investments. First, they underwent check-listing; and second, the Resource-Based Industries Department of the Board of Investments assessed if they complied with Executive Order No. 226.[4]

Charoen's first application was submitted on October 6, 2011.[5] It sought registration as a new producer of aqua feeds on a

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[1] *Rollo*, pp. 3-66.

[2] *Id.* at 509-511.

[3] *Id.* at 343, BOI Comment.

[4] *Id.* at 1033-1034.

[5] *Id.* at 1039.

pioneer status with the Board of Investments for check-listing, assessment, and publication.

On December 28, 2011,[6] the Philippine Star, a daily broadsheet of general circulation, published a notice of Charoen's application for registration as a "New Producer of Aqua Feeds with an annual capacity of 84,000 MT — Fish Feeds and 30,000 MT — Shrimp Feeds on a Pioneer Status"[7] with the Board of Investments. The notice stated that any person questioning Charoen's application should file an objection under oath with the Board of Investments within three (3) days of the notice's publication.

On February 2, 2012,[8] Charoen officially filed its application for registration with the Board of Investments by paying the requisite application fees.

On February 28, 2012,[9] the Board of Investments' Board of Governors approved Charoen's application under Board Resolution No. 8-3 S'2012:

> **RESOLVED FURTHER**, That the firm's application for registration under Book I of E.O. 226 of *(sic)* as New Producer of aqua feeds at an annual production capacity of 114,000 MT per year (84,000 MT per year of fish feeds and 30,000 MT per year of shrimp feeds) on a **Pioneer** status (based on magnitude of investments) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "C1"**.[10] (Emphasis in the original)

On October 14, 2011,[11] Charoen submitted its second application for registration as a new producer of hog parent stocks and slaughter hogs.

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[6] *Id.* at 509.

[7] *Id.*

[8] *Id.* at 1040.

[9] *Id.* at 321.

[10] *Id.* at 321.

[11] *Id.* at 1040.

On January 5, 2012,[12] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Hogs . . . on a Pioneer Status[.]"[13] It contained a similar instruction for people with objections to file a statement under oath with the Board of Investments within three (3) days of the notice's publication.

On March 28, 2012,[14] Charoen paid the application fees. Later, on April 24, 2012, the Board of Governors approved Charoen's second application under Board Resolution No. 13-6 S'2012:

RESOLVED, That the application for registration under Book I of E.O. 226 of **CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION** as New Producer of the following hog products:

	Annual Capacities
Breeder Hogs	25,453 heads
Slaughter Hogs	3,647 MT

be **APPROVED**, as it is hereby **APPROVED** on a **Pioneer** (with non-pioneer incentives), subject to the specific terms and conditions attached as **Annex "E1"**.[15] (Emphasis in the original)

On October 11, 2012,[16] Charoen submitted its third application for registration for its Integrated Broiler Project with the Board of Investments. On October 23, 2012,[17] it filed the corresponding application fees.

On October 24, 2012,[18] the Philippine Star published a notice of Charoen's application for registration as a "New Producer of Live Chickens at a capacity of 21,847 MT/year on a Pioneer

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[12] *Id.* at 510.

[13] *Id.*

[14] *Id.* at 1040.

[15] *Id.* at 322.

[16] *Id.* at 1040.

[17] *Id.*

[18] *Id.* at 511.

Status."[19] Again, the notice contained a directive for oppositors to file their objection under oath with the Board of Investments.

On November 6, 2012, the Board of Governors approved Charoen's application for registration under Board Resolution No. 35-10 S'2012:

> **RESOLVED**, That the application for registration of **CHAROEN POKPHAND FOODS PHILIPPINES CORPORATION** as New Producer of Chickens (Integrated Broiler Project) at a capacity of 21,847 MT per year on a Pioneer status (based on magnitude of investment) be **APPROVED**, as it is hereby **APPROVED**, subject to the specific terms and conditions attached as **Annex "II"** and to the usual general terms and conditions.[20] (Emphasis in the original)

On November 20, 2012,[21] the counsel for some "members of the local swine, poultry and aquaculture industries"[22] wrote the Board of Investments to ask for copies of the documents Charoen submitted in support of its three (3) applications for registration.

On December 17, 2012,[23] the Board of Investments denied the request for the documents, noting that these were confidential.

Thus, on March 7, 2013, the National Federation of Hog Farmers, Abono Party-list, Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya Para sa Mamamayan, Inc., Agricultural Sector Alliance of the Philippines, Inc., Pork Producers Federation of the Philippines, Inc., Sorosoro Ibaba Development Cooperative, and Association of Philippine Aqua Feeds Millers, Inc., jointly filed before this Court a Petition for *Certiorari*[24] with prayer for a temporary restraining order. They mainly claim that the three (3) Board Resolutions of public respondent Board

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[19] *Id.*

[20] *Id.* at 323.

[21] *Id.* at 67.

[22] *Id.*

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

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

of Investments, which granted private respondent Charoen's applications for registration, were issued with grave abuse of discretion.

Petitioners allege that the assailed Board Resolutions violated their constitutional right to be protected against unfair foreign competition and trade practices.[25] They accuse public respondent of deliberately depriving them of the chance to appeal by refusing to provide them with copies of the pertinent resolutions.[26]

Petitioners maintain that the assailed Board Resolutions were issued without prior consultation with the Department of Agriculture, as required by Executive Order No. 226,[27] and were contrary to public policy.[28]

Petitioners also assert that public respondent wrongly classified private respondent as a new producer when it had been operating in the Philippines as early as 2009, raising shrimps and hogs.[29]

Finally, petitioners stress that they will sustain injury as they do not enjoy incentives similar to what the issued Board Resolutions have provided. Private respondent was allegedly given preferential treatment and incentives, which gave it undue advantage to significantly lower its prices.[30]

On April 10, 2013,[31] this Court directed respondents to comment on the Petition. Additionally, petitioners were instructed to provide copies of the assailed Board Resolutions.

In its Comment,[32] public respondent argues that the Petition is dismissible for petitioners' failure to exhaust all administrative

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[25] *Id.* at 14.

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

[27] *Id.* at 26-32.

[28] *Id.* at 36-41.

[29] *Id.* at 35-36.

[30] *Id.* at 43-50.

[31] *Id.* at 299.

[32] *Id.* at 339-406.

remedies before going to this Court. It points out that they should have first appealed to the Office of the President, which is the available remedy from its decisions on applications for registration under Article 36 of Executive Order No. 226.[33] It further faults petitioners for filing the Petition directly before this Court, instead of the Court of Appeals, as required under Rules 43 and 65 of the Rules of Civil Procedure.[34]

Public respondent also claims that petitioners were not properly authorized to file the Petition, as the special powers of attorney issued to them did not include filing an original action before this Court.[35] Additionally, it contends that its Executive Directors Lucita P. Reyes, Felicitas Agoncilio-Reyes, Efren V. Leaño, and Raul V. Angeles are not proper parties in interest as they were not members of the Board of Governors who signed the assailed Board Resolutions.[36]

Public respondent then denies petitioners' claim that it withheld copies of the assailed Board Resolutions. It avers that petitioners only asked for copies of the supporting documents of private respondent's applications and not the copies of the resolutions.[37]

Public respondent emphasizes that it issued the assailed Board Resolutions within its powers under Executive Order No. 226 and the Investment Priorities Plan then in effect,[38] which was formulated through a series of consultations with the Department of Agriculture and other stakeholders.[39] It stresses that private respondent's applications for registration were approved to bridge the gap between local production and local demand for aqua feeds, pork, and poultry.[40]

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[33] *Id.* at 348-351.

[34] *Id.* at 351-354.

[35] *Id.* at 359-362.

[36] *Id.* at 362-363.

[37] *Id.* at 350-351.

[38] *Id.* at 369-377.

[39] *Id.* at 378-381.

[40] *Id.* at 375-376.

Public respondent then belies petitioners' claim that private respondent was mistakenly classified as a "New Project" under the Investment Priorities Plan. It explains that registration is made per project; thus, even if a company is already existing, its new projects can qualify for registration if its activity is included in the current Investment Priorities Plan. Hence, the projects of private respondent, which had only begun its commercial operations in aqua feeds, breeder and slaughter hogs, and integrated broiler chickens, qualified as New Projects.[41]

Public respondent underscores that the Constitution does not bestow "an automatic mantle of protection"[42] against foreign competition. It asserts that agribusiness is not one of the areas of investments that require at least a 60% Filipino capitalization. It points out that 100% foreign equity participation is allowed in agribusiness.[43]

Finally, public respondent asserts that petitioners failed to show a clear and unmistakable right, or that they would suffer undue injury, that would merit an injunctive writ against the assailed Board Resolutions.[44]

In its Comment,[45] private respondent asserts that while the Constitution is guided by economic nationalism, "Filipino monopoly of the economy is proscribed"[46] and foreign investments are encouraged to boost the Philippine economy,[47] as evidenced by the numerous laws[48] enacted to attract foreign investments. Private respondent likewise points out that this Court has repeatedly declared as constitutional the various statutes that liberalized entry of foreign investors.[49]

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[41] *Id.* at 381-383.

[42] *Id.* at 387.

[43] *Id.* at 387-388.

[44] *Id.* at 391-400.

[45] *Id.* at 558-608.

[46] *Id.* at 559.

[47] *Id.*

[48] *Id.* at 560-564.

[49] *Id.* at 564-569.

Similar to public respondent, private respondent also adverts to petitioners' procedural mistakes in, among others, filing an original petition before this Court instead of an appeal to the Office of the President[50] and failing to exhaust the available administrative remedies.[51] It also maintains that the assailed Board Resolutions have long attained finality.[52]

Private respondent posits that public respondent did not gravely abuse its discretion in approving the applications for registration. It maintains that public respondent carefully assessed that these applications adhered to existing rules and regulations.[53]

Finally, private respondent avers that the findings of fact of public respondent, as a "specialized government agency tasked with the preparation and formulation of the annual Investment Priorities Plan as well as the registration of pioneer new products[,]"[54] should be respected.[55]

In their Reply,[56] petitioners reiterate that public respondent thwarted their chance at an appeal before the Office of the President when it failed to provide copies of the Board Resolutions despite their request for "Letters/Orders informing [private respondent] of [public respondent]'s action on its application."[57] Furthermore, petitioners point out that public respondent's delay in responding to their request made a timely appeal to the Office of the President impossible.[58]

Nonetheless, petitioners insist that this Petition for *Certiorari* is the appropriate remedy to void the assailed Board Resolutions,

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[50] *Id.* at 577-582.

[51] *Id.* at 582-585.

[52] *Id.* at 589-594.

[53] *Id.* at 596-600.

[54] *Id.* at 601.

[55] *Id.* at 601-603.

[56] *Id.* at 626-672.

[57] *Id.* at 631.

[58] *Id.* at 631-635.

which were allegedly issued by public respondent with grave abuse of discretion.[59]

Petitioners claim that public respondent gravely abused its discretion in granting private respondent's applications for registration despite the latter's violation of law. According to them, private respondent went against Rule III, Section 4 of Executive Order No. 226's Implementing Rules and Regulations because the date of publication preceded public respondent's official acceptance of private respondent's application.[60]

Petitioners likewise point out that private respondent committed misrepresentations in its applications. They point out how the company alleged that it spent ₱2,330,892,000.00 for construction works in its three (3) new projects for 2011, yet its financial statement that year showed that the value of its property and equipment only amounted to ₱334,014,644.00. They argue that public respondent turned a blind eye to these glaring misrepresentations and approved the applications for registration.[61]

Further, petitioners maintain that private respondent's swine and chicken projects were not new projects, as its audited financial statements reveal that it had been selling such products even before it applied for registration.[62]

Moreover, contrary to public respondent's stand that inter-agency consultation is only needed in formulating the Investment Priorities Plan, petitioners insist that it must be made for every application for registration.[63] They then assert that public respondent had no technical knowledge or expertise over the agricultural industry; hence, it should have consulted with the Department of Agriculture before granting the applications.[64]

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[59] *Id.* at 639-640.

[60] *Id.* at 641-642.

[61] *Id.* at 642-645.

[62] *Id.* at 646-649.

[63] *Id.* at 649-651.

[64] *Id.* at 655-657.

On this point, petitioners stress that the Department of Agriculture opined that private respondent's entry will have a negative impact on the agribusiness industry, as echoed by academic experts.[65]

Finally, petitioners contend that because public respondent gravely abused its discretion, the assailed Board Resolutions are void, making this case an exception to the general rule of immutability of judgment.[66]

On October 1, 2013,[67] this Court gave due course to the Petition and directed the parties to file their respective memoranda.

In their Memorandum,[68] petitioners reiterate their right to be protected against unfair competition and trade practices.[69] They emphasize that the local players in the agricultural industry already satisfy local demand; thus, there is no need for private respondent's entry. Additionally, they warn that private respondent, a Thai company, had already killed the local poultry industry in Vietnam.[70]

In its Memorandum,[71] public respondent repeats that petitioners never requested copies of the assailed Board Resolutions.[72] Additionally, it stresses that petitioners have known of the resolutions as early as December 4, 2012, and could have appealed by then. It discusses that during the Joint Congressional Hearings attended by petitioners Angelo Palmones (Palmones) and Nicanor Briones, as members of the House of Representatives, public respondent Lucita P. Reyes informed the House Committee about the assailed Board Resolutions and their dates of issuance.[73]

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[65] *Id.* at 653-654.

[66] *Id.* at 659-662.

[67] *Id.* at 889-890.

[68] *Id.* at 926-1002.

[69] *Id.* at 927-928.

[70] *Id.* at 929-930.

[71] *Id.* at 1010-1101.

[72] *Id.* at 1012-1013.

[73] *Id.* at 1067-1068.

In the alternative, public respondent posits that the Petition was belatedly filed. It claims that the 60-day period for filing a petition for *certiorari* should be counted from December 4, 2012, which meant petitioners only had until February 2, 2013 to do so.[74]

Public respondent likewise repeats that there is no "automatic mantle of protection"[75] afforded to local businesses or industries against foreign competition. It maintains that the Constitution recognizes the contribution of the private sector and private enterprises to economic growth, hence the grant of incentives to drive investments towards sectors that need them.[76]

Public respondent asserts that the applications for registration underwent the usual process,[77] and that it used "an array of criteria"[78] to evaluate the applications. It likewise denies that it did not have the expertise over the agricultural industry, noting that it had a pool of experts from both public and private sectors which it could readily consult.[79]

Public respondent points out the benefits that private respondent will bring to the economy on several areas: technology acquisition, employment generation, lesser importation of feeds, increase in chicken meat supply that will lead to a price decrease, and the potential to import chicken meat.[80]

Finally, public respondent emphasizes that private respondent's entry into the local market will not threaten the local industry; rather, it will stir competition, create efficiency, and stabilize market prices for chicken, pork, and feeds.[81]

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[74] *Id.* at 1069.

[75] *Id.* at 1022.

[76] *Id.* at 1023.

[77] *Id.* at 1033-1042.

[78] *Id.* at 1041.

[79] *Id.* at 1045.

[80] *Id.* at 1090-1092.

[81] *Id.* at 1094.

In its Memorandum,[82] private respondent notes how the government has historically neglected the swine, poultry, and aqua feeds industries, giving little support to the industry players since most of its attention was focused on the rice industry.[83]

Private respondent then refutes petitioners' dire prediction that its entry into the local market will doom the local players. It cites statistics showing an overall improvement in the poultry subsector during the first semester of 2013.[84]

Finally, private respondent echoes public respondent's claim that petitioners only had themselves to blame for failing to timely appeal to the Office of the President. It adds that on November 28, 2012, petitioner Palmones filed House Resolution No. 2921[85] which called for an investigation of the fiscal incentives public respondent granted to private respondent. Moreover, Representative Agapito Guanlao (Representative Guanlao), in his privilege speech delivered on the same date, urged for an inquiry into the grant of incentives. These events, private respondent stresses, show that petitioners had known of the assailed Board Resolutions, and should have moved for their reconsideration or appealed them to the Office of the President, exhausting the administrative remedies instead of directly filing the Petition before this Court.[86]

The two (2) issues for this Court's resolution are:

First, whether or not the Petition for *Certiorari* filed directly before this Court is the correct remedy; and

Second, whether or not public respondent Board of Investments committed grave abuse of discretion when it

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[82] *Id.* at 1286-1344.

[83] *Id.* at 1286-1289.

[84] *Id.* at 1290-1291.

[85] *Id.* at 609-610. A Resolution Requesting the Committee on Food Security of the House of Representatives to Conduct an Investigation on the Reported Grant of Incentives to a Foreign Corporation, How This Affects Local Agricultural Producers, and its Impact to Domestic Food Production.

[86.] *Id.* at 1292-1299.

approved the applications for registration of private respondent Charoen Pokphand Foods Philippines Corporation.

I

This Court's power of judicial review finds basis in Article VIII, Section 1 of the Constitution:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

On the other hand, jurisdiction over a subject matter, or the power to hear and determine cases, is conferred by law, which may either be the Constitution or by statute.[87] This Court's original and appellate jurisdiction, as part of its constitutionally mandated powers, is provided in Article VIII, Section 5 (1) and (2):

> SECTION 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

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[87] *Magno v. People*, 662 Phil. 726, 735 (2011) [Per J. Brion, Third Division] citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per J. Brion, Second Division].

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.

(e) All cases in which only an error or question of law is involved.

Meanwhile, the lower courts derive their jurisdiction from Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, and other statutes.

Also deriving jurisdiction from statutes are the administrative agencies, which were created in recognition of the need for special technical expertise, in light of "the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws[.]"[88]

Though executive in nature, administrative agencies can exercise either quasi-legislative or quasi-judicial powers, or both, depending on the express and implied powers provided in their granting statute.[89]

Quasi-legislative power is a delegated power that enables the administrative agency to promulgate rules and regulations germane and consistent with its granting statute. Meanwhile, quasi-judicial power is the authority to hear and decide factual issues in accordance with the standards imposed by the law being administered.[90] *Smart Communications, Inc. v. National Telecommunications Commission*[91] explains further:

The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive

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[88] *Pangasinan Transportation v. Public Service Commission*, 70 Phil. 221, 229 (1940) [Per *J.* Laurel, First Division].

[89] *Makati Stock Exchange, Inc. v. Securities and Exchange Commission*, 121 Phil. 1412 (1965) [Per *J.* Bengzon, *En Banc*].

[90] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155-156 (2003) [Per *J.* Ynares-Santiago, First Division].

[91] 456 Phil. 145 (2003) [Per *J.* Ynares-Santiago, First Division].

or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[92] (Citation omitted)

It is necessary to identify whether the type of administrative action under review is quasi-legislative or quasi-judicial. This is to determine "when judicial remedies may be properly availed of."[93]

As part of its judicial power, a court may take cognizance of the rules issued in the exercise of an administrative agency's quasi-legislative power. The court then possesses jurisdiction to determine "whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution[.]"[94]

However, in cases involving an administrative agency's quasi-judicial power, Congress may empower certain administrative agencies that have the relevant technical expertise to first take cognizance of the case before judicial remedies are resorted to.[95] This is known as the doctrine of primary administrative jurisdiction, which is anchored on Article VIII, Section 1 of the Constitution.

Katon v. Palanca[96] explains that when a court is faced with a case that should have been under an administrative agency's

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[92] *Id.* at 156-157.

[93] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 87 [Per *J.* Leonen, *En Banc*].

[94] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 158-159 (2003) [Per *J.* Ynares-Santiago, First Division].

[95] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per *J.* Leonen, *En Banc*].

[96] 481 Phil. 168 (2004) [Per *J.* Panganiban, Third Division].

exclusive jurisdiction, the court is behooved to dismiss it for lack of jurisdiction.[97] Otherwise, any action it renders on a subject matter over which it has no jurisdiction will be void.[98]

The doctrine of primary administrative jurisdiction is often interchanged with the doctrine of exhaustion of administrative remedies, as both doctrines capitalize on an administrative agency's acknowledged expertise over its field of specialization.

However, the doctrine of exhaustion of administrative remedies is a form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case.[99] This doctrine assumes that the matter is within the court's jurisdiction, or the court exercises concurrent jurisdiction with the administrative agency; however, in its discretion, the court deems the case not justiciable or declines to exercise jurisdiction.

Meanwhile, under the doctrine of primary administrative jurisdiction, jurisdiction lies exclusively with the administrative agency to act on a quasi-judicial matter. Hence, the court has no alternative but to dismiss a case for lack of jurisdiction.

The justiciability of an issue also determines whether a court can take cognizance of a case. A controversy is deemed justiciable if the following requisites are present: (1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*.[100]

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[97] *Id.* at 183.

[98] *Villagracia v. Fifth Shari'a District Court*, 734 Phil. 239 (2014) [Per *J.* Leonen, Third Division].

[99] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per *J.* Leonen. *En Banc*].

[100] *Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*].

A conflict must be justiciable for this Court to take cognizance of it. Otherwise, our decision will be nothing more than an advisory opinion on a legislative or executive action, which "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."[101]

II

Executive Order No. 226, or the Omnibus Investments Code of 1987, took effect on July 16, 1987, when President Corazon C. Aquino exercised legislative powers under the Freedom Constitution. It established the powers and duties of the Board of Investments in its dual role as a policymaking body and a regulatory agency tasked with encouraging investments in the country and facilitating their growth.[102]

Executive Order No. 226 provides various remedies from an action or decision of the Board of Investments, in response to the different issues that may arise from its implementation:

Preliminary Title

x x x x x x x x x

Chapter II
Board of Investments

x x x x x x x x x

ARTICLE 7. Powers and Duties of the Board. The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

x x x x x x x x x

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[101] *J.* Leonen, Concurring Opinion in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[102] *Phillips Seafood (Philippines) Corp. v. The Board of Investments*, 597 Phil. 650 (2009) [Per *J.* Tinga, Second Division].

(4) After due hearing, decide controversies concerning the implementation of the relevant books of this Code that may arise between registered enterprises or investors therein and government agencies, within thirty (30) days after the controversy has been submitted for decision: Provided, *That the investor or the registered enterprise may appeal the decision of the Board within thirty (30) days from receipt thereof to the President*;[103]

x x x x x x x x x

Book I
Investments with Incentives

Title I — Preferred Areas of Investment

x x x x x x x x x

Chapter III — Registration of Enterprises

x x x x x x x x x

ARTICLE 36. Appeal from Board's Decision. Any order or decision of the Board shall be final and executory after thirty (30) days from its promulgation. Within the said period of thirty (30) days, *said order or decision may be appealed to the Office of the President*. Where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.[104]

x x x x x x x x x

Book II[105]
Foreign Investments Without Incentives

Title I

x x x x x x x x x

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[103] Executive Order No. 226 (1987), Art. 7 (4).

[104] Executive Order No. 226 (1987), Art. 36.

[105] The entire Book II of Executive Order No. 226, comprising Articles 44 to 56, was repealed by Section 16 of Republic Act No. 7042 or the Foreign Investments Act of 1991. Section 16 provides:

SECTION 16. Repealing Clause. — Articles forty-four (44) to fifty-six (56) of Book II of Executive Order No. 226 are hereby repealed.

All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Chapter III
License to Do Business

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ARTICLE 50. Cause for Cancellation of Certificate of Authority or Payment of Fine. A violation of any of the requirements set forth in Article 49 or of the terms and conditions which the Board may impose shall be sufficient cause to cancel the certificate of authority issued pursuant to this Book and/or subject firms to the payment of fines in accordance with the rules and regulations issued by the Board: Provided, however, That aliens or foreign firms, associations, partnerships, corporations or other forms of business organization not organized or existing under the laws of the Philippines which may have been lawfully licensed to do business in the Philippines prior to the effectivity of R.A. 5455, shall, with respect to the activities for which they were licensed and actually engaged in prior to the effectivity of said Act, not be subject to the provisions of Article 48 and 49 but shall be subject to the reporting requirements prescribed by the Board: Provided, further, That *where the issuance of said license has been irregular or contrary to law, any person adversely affected thereby may file an action with the Regional Trial Court where said alien or foreign business organization resides or has its principal office to cancel the said license*. In such cases, no injunction shall issue without notice and hearing; and appeals and other proceedings for review shall be filed directly with the Supreme Court.[106]

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Final Provisions

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ARTICLE 82. Judicial Relief. All orders or decisions of the Board in cases involving the provisions of this Code shall immediately be executory. No appeal from the order or decision of the Board by the party adversely affected shall stay such order or decision: Provided, *That all appeals shall be filed directly with the Supreme Court within thirty (30) days from receipt of the order or decision*.[107] (Emphasis supplied)

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[106] Executive Order No. 226 (1987), Art. 50. Article 50 was repealed by Section 16 of Republic Act No. 7042.

[107] Executive Order No. 226 (1987), Art. 82.

Phillips Seafood (Philippines) Corporation v. The Board of Investments[108] summarizes the remedies under Executive Order No. 226:

> E.O. No. 226 apparently allows two avenues of appeal from an action or decision of the BOI, depending on the nature of the controversy. One mode is to elevate an appeal to the Office of the President when the action or decision pertains to either of these two instances: first, in the decisions of the BOI over controversies concerning the implementation of the relevant provisions of E.O. No. 226 that may arise between registered enterprises or investors and government agencies under Article 7; and second, in an action of the BOI over applications for registration under the investment priorities plan under Article 36.
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> Another mode of review is to elevate the matter directly to judicial tribunals. For instance, under Article 50, E.O. No. 226, a party adversely affected by the issuance of a license to do business in favor of an alien or a foreign firm may file with the proper Regional Trial Court an action to cancel said license. Then, there is Article 82, E.O. No. 226, which, in its broad phraseology, authorizes the direct appeal to the Supreme Court from any order or decision of respondent BOI "involving the provisions of E.O. No. 226."[109] (Citations omitted)

Thus, under Article 36 of Executive Order No. 226, actions made by the Board of Investments over applications for registration under the Investment Priorities Plan are appealable to the Office of the President.

Executive Order No. 226 empowers the Board of Governors of the Board of Investments to, among others, process and approve applications for registration, as seen in Article 7 (3):

> ARTICLE 7. Powers and Duties of the Board. The Board shall be responsible for the regulation and promotion of investments in the Philippines. It shall meet as often as may be necessary generally once a week on such day as it may fix. Notice of regular and special meetings shall be given all members of the Board. The presence of four (4) governors shall constitute a quorum and the affirmative vote

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[108] 597 Phil. 650 (2009) [Per *J.* Tinga, Second Division].

[109] *Id.* at 659-660.

of four (4) governors in a meeting validly held shall be necessary to exercise its powers and perform its duties, which shall be as follows:

x x x x x x x x x

(3) Process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code, including refund of incentives when appropriate, restricting availment of certain incentives not needed by the project in the determination of the Board, requiring performance bonds and other guarantees, and payment of application, registration, publication and other necessary fees and when warranted may limit the availment of the tax holiday incentive to the extent that the investor's country law or treaties with the Philippines allows a credit for taxes paid in the Philippines[.]

The quasi-judicial power to assess and approve applications for registration was bestowed exclusively on the Board of Governors, owing to its expertise over which industries need the added boost of investments[110] and its in-depth knowledge on the requirements for registration. After all, it drafted[111] the rules and regulations implementing Executive Order No. 226.

Thus, under the doctrine of primary administrative jurisdiction, jurisdiction over the approval of applications for registration lies exclusively with the Board of Investments, subject to appeal to the Office of the President. Hence, this Court is precluded from taking cognizance of the present Petition.

III

This case is also not justiciable as petitioners failed to prove their legal standing to file the suit. Standing to sue or *locus standi* is defined as:

. . . a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere

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[110] Executive Order No. 226 (1987), Art. 7 (1).

[111] Executive Order No. 226 (1987), Art. 7 (2).

incidental interest. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[112] (Citations omitted)

Petitioners claim that their standing arises from their personalities as stakeholders in the agriculture industry who would be competing with private respondent.

Petitioners are mistaken.

For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties:

> [F]irst, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."[113]

Organizations may possess standing to sue on behalf of their members if they sufficiently show that "the results of the case will affect their vital interests"[114] and that their members have suffered or will stand to suffer from the application of the assailed governmental acts. The petition must likewise show that a hindrance exists, preventing the members from personally filing the complaint.

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[112] *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618, 632-633 (2000) [Per *J.* Kapunan, *En Banc*].

[113] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J.* Leonen, *En Banc*] citing *White Light Corp. v. City of Manila*, 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[114] *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*, 561 Phil. 386, 396 (2007) [Per *J.* Austria-Martinez, *En Banc*].

In *White Light Corporation v. City of Manila*,[115] hotel and motel operators protested the implementation of the City of Manila's Ordinance No. 7774, which prohibited short-time admission, or the admittance of guests for less than 12 hours in motels, inns, hotels, and similar establishments within the city.[116] The petitioners argued, among others, that the Ordinance violated their clients' right to privacy,[117] freedom of movement,[118] and equal protection of the laws.[119]

In *White Light*, the petitioners were allowed to represent their clients based on third-party standing. This Court noted the close relationship between hotel and motel operators and their clients, as the former "rely on the patronage of their customers for their continued viability."[120] On the requirement of hindrance, this Court stated that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[121]

Here, petitioners-organizations failed to show that they suffered or stood to suffer from private respondent's registration as a new producer. They likewise failed to show that their members were hindered from personally asserting their own interests. Thus, petitioners have no third-party standing to rightfully represent their members in a suit.

IV

Petitioners further argue that private respondent's presence in the market as a new producer would drive them "out of the

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[115] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[116] *White Light Corp. v. City of Manila*, 596 Phil. 444, 451 (2009) [Per *J.* Tinga, *En Banc*].

[117] *Id.* at 454.

[118] *Id.*

[119] *Id.* at 455.

[120] *Id.* at 456.

[121] *Id.* at 456-467 citing Kelsey McCowan Heilman, THE RIGHTS OF

market due to cut-throat competition."[122] This claim, however, requires a definition of the relevant market involved.

Goods or services are said to be in the same relevant market if both factors are present: (1) a reasonable interchangeability of the offerings to consumers; and (2) a significant cross-elasticity of demand, such that a price change in one party's goods or services will lead to a price change in the other party's goods or services.[123] Thus, petitioners' alleged injury, purportedly caused by the entry of new players in the relevant market, still requires a factual finding. The Petition, therefore, is ultimately premature.

The claim of unfair competition is primarily factual in nature. In a separate opinion concurring with the well-expounded *ponencia* of Justice Alexander Gesmundo in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*,[124] it was explained:

> There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion. In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes, where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level of satisfaction" is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which superficially appear unrelated, may

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OTHERS: PROTECTION AND ADVOCACY ORGANIZATIONS ASSOCIATIONAL STANDING TO SUE, 157 U. PA. L. REV. 237.

[122] *Rollo*, p. 14.

[123] *J.* Leonen, Concurring Opinion in *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per *J.* Gesmundo, Third Division] citing David Besanko and Ronald Braeutigam, MICRECONOMICS, 92-93 (4th ed., 2010).

[124] *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per *J.* Gesmundo, Third Division].

be proved related if evidence is presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services. Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different.

While not binding on this Court, jurisprudence from the United States of America on the determination of related goods or services provide clues to this approach. In *Worthington Foods, Inc. v. Kellogg Co.*, both "reasonable interchangeability" of goods and consumer response through cross-elasticity were factors in the court's assessment on whether the goods were in the same relevant market:

> One analogous body of law sheds light on the issue of direct competition between goods, namely market definition under section 2 of the Sherman Anti-Trust Act, 15 U.S.C. § 2 (1982). Professor McCarthy, in his seminal trademark treatise, states that products which are "competitive" for purposes of trademark analysis are "goods which are reasonably interchangeable by buyers for the same purposes." Determining whether products are "reasonably interchangeable" is the analysis which the Court must undertake when defining the relevant product market in an action under section 2 of the Sherman Act. The Court holds that the same analysis is helpful for determining whether the parties' goods are "directly competing" for purposes of assessing palming off liability.
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> A relevant product market includes all products that are either identical or available substitutes for each other. To determine whether products are "available substitutes" or "reasonably interchangeable," the Court must first scrutinize the uses of the product. It must assess whether the products can perform the same function. The second factor to weigh is consumer response, or more specifically, cross-elasticity. That is, the Court must assess to what extent consumers will choose substitutes for the parties' goods in response to price increases.
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> The second market factor to be considered is consumer response or cross-elasticity. Unfortunately, the parties did not present evidence concerning any tendency or lack of tendency of consumers to switch from the plaintiff's products to the

> defendant's if Worthington were to raise its prices or vice versa. Therefore, the Court cannot conclude that the plaintiff has demonstrated cross-elasticity of the parties' products indicating that their goods are in the same relevant market.
>
> In short, on an examination of the current record, the Court, finds that Worthington's goods are not in the same relevant market as Kellogg's cereal. The parties' products have different uses or functions. Also, the Court has no evidence of any degree of cross-elasticity between the plaintiff's foods and the defendant's cereal. . . .

The lack of evidence that the parties directly competed in the same marketplace led to a finding that no likelihood of confusion would ensue in *Exxon Corporation v. Exxene Corporation*. In *Amstar Corp. v. Domino's Pizza, Inc.*, among the factors used to determine that the parties' goods were unrelated were: (1) the distribution channels by which their goods were sold; and (2) the demographics of the predominant purchasers of the goods. In *AMF, Inc. v. Sleekcraft Boats*, competition between the parties' lines of boats was found negligible despite the potential market overlap, since the respective lines catered to different kinds of activities. Similarly, in *Thompson Tank Mfg. Co., Inc. v. Thompson*, the contested goods represented only one percent (1%) of complainant's business, while ninety percent (90%) of the defendant's business were in fields that complainant did not engage in. This also disproves the claim of likelihood of confusion.

We can build on past jurisprudence of this Court. In *Shell Co. of the Philippines, Ltd. v. In[s]. Petroleum Refining Co., Ltd. and CA*, this Court did not give credence to a complainant's claim that the entry into the market of the defendant's products, which were allegedly sold in complainant's drums, caused a decrease in complainant's sales. Thus, no unfair competition could be imputed to the defendant:

> Petitioner contends that there had been a marked decrease in the volume of sales of low-grade oil of the company, for which reason it argues that the sale of respondent's low-grade oil in Shell containers was the cause. We are reluctant to share the logic of the argument. We are more inclined to believe that several factors contributed to the decrease of such sales. But let us assume, for purposes of argument, that the presence of respondent's low-grade oil in the market contributed to such decrease. May such eventuality make respondent liable for unfair competition? There is no prohibition for respondent to sell its

> goods, even in places where the goods of petitioner had long been sold or extensively advertised. Respondent should not be blamed if some of petitioner's dealers buy Insoil oil, as long as respondent does not deceive said dealers. If petitioner's dealers pass off Insoil oil as Shell oil, that is their responsibility. If there was any such effort to deceive the public, the dealers to whom the defendant (respondent) sold its products and not the latter, were legally responsible for such deception. The passing of said oil, therefore, as product of Shell was not performed by the respondent or its agent, but petitioner's dealers, which act respondent had no control whatsoever.

These cases illustrate the many ways by which specialized agencies and courts may objectively evaluate the relatedness of allegedly competing goods and services. An analysis that ends in a mere finding of confusing similarity in the general appearance of the goods should not suffice.

After determining the relevant market, the purpose of prosecuting unfair competition is to prohibit and restrict deception of the consuming public whenever persons or firms attempt to pass off their goods or services for another's. Underlying the prohibition against unfair competition is that business competitors cannot do acts which deceive, or which are designed to deceive the public into buying their goods or availing their services instead.

Even if products are found to be in the same market, in all cases of unfair competition, competition should be presumed. Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. In *Alhambra Cigar, etc., Co. v. Mojica*:

> Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.

Thus, complainants bear the burden of objectively proving that the deception or fraud has actually or has probably taken place, or that the defendant had the actual or probable intent to deceive the public. This will require, in a future case, measurable standards to show that: (1) the goods or services belong to the same market; and (2) the likelihood of confusion or doubt is adequately and empirically demonstrated, not merely left to the subjective judgment of an administrative body or this Court.[125] (Citations omitted)

Then, in *Gios-Samar, Inc. v. Department of Transportation*,[126] even claims of monopolization or abuse of dominant positions in competition law were not treated as fact, and had to be substantiated. In a separate opinion:

Indeed, the claims made by petitioner GIOS-SAMAR, Inc. require a more contextual appreciation of the evidence that it may present to support its claims. The nature of its various allegations requires the presentation of evidence and inferences, which should, at first instance, be done by a trial court.

Monopolization should not be lightly inferred especially since efficient business organizations are rewarded by the market with growth. Due to the high barriers to economic entry and long gestation periods, it is reasonable for the government to bundle infrastructure projects. There is, indeed, a difference between abuse of dominant position in a relevant market and combinations in restraint of trade. The Petition seems to have confused these two (2) competition law concepts and it has not made clear which concept it wished to apply.

Further, broad allegations amounting to a generalization that certain corporations allow themselves to serve as dummies for cartels or foreigners cannot hold ground in this Court. These constitute criminal acts. The Constitution requires that judicial action proceed carefully and always from a presumption of innocence. Tall tales of conspiratorial actions — though they may be salacious, make for interesting fiction, and are fodder for social media — do not deserve any judicial action.

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[125] *J.* Leonen, Separate Concurring Opinion, *Asia Pacific Resources International Holdings, Ltd. v. Paperone, Inc.*, G.R. Nos. 213365-66, December 10, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64829> [Per *J.* Gesmundo, Third Division].

[126] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

Broad generalizations of facts without corresponding evidence border on the contemptuous.[127] (Citations omitted)

To reiterate, petitioners' alleged injury, which was purportedly caused by unfair competition and the entry of new players in the market, still requires a factual finding. This makes the Petition ultimately premature.

V

Under Article 36 of the Omnibus Investments Code, an order or decision of the Board of Governors over applications for registration under the investment priorities plan can be appealed to the Office of the President within 30 days from its promulgation.

Unlike an appeal to the Office of the President under Article 7 (4), which may only be availed by the investor or registered enterprise, an appeal under Article 36 does not contain a similar limitation. It may be availed even by one not a party to a case, so long as legal interest may be proven.[128]

Here, petitioners bemoan that they were unable to appeal to the Office of the President because public respondent refused to provide them with copies of the assailed Board Resolutions.

This Court is not convinced.

Prior to the promulgation of the assailed Board Resolutions, notices of the applications for registration had been published in the Philippine Star on December 28, 2011,[129] January 5, 2012,[130] and October 24, 2012,[131] respectively. The notices served

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[127] *J.* Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

[128] *Garcia v. Board of Investments*, 258 Phil. 157 (1989) [Per *J.* Griño-Aquino, *En Banc*].

[129] *Rollo*, p. 509.

[130] *Id.* at 510.

[131] *Id.* at 511.

as warning to the public and directed that anyone opposed to the applications should file an objection under oath with the Board of Investments within three (3) days of the notice's publication.

Right at this juncture, petitioners could have already objected to private respondent's applications. Registering their opposition would have entitled them to a copy of the assailed Board Resolutions upon their promulgation, and they could have timely appealed them to the Office of the President under Article 36. Yet, not only did petitioners fail to do so, but they even failed to explain their inaction.

The assailed Board Resolutions were issued on February 28, 2012,[132] April 24, 2012,[133] and November 6, 2012,[134] respectively. Meanwhile, petitioners only requested the supporting documents private respondent submitted and the "Letters/Orders informing [private respondent] of [public respondent]'s action on its application"[135] on November 20, 2012. Clearly, the 30-day period of appeal to the Office of the President had already lapsed for the first two (2) Board Resolutions, while petitioners only had until December 6, 2012 to appeal the November 6, 2012 Board Resolution.

Further, filing a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure was not the correct remedy, as petitioners could have availed of a "plain, speedy, and adequate remedy"[136]—that is, an appeal to the Office of the President.

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[132] *Id.* at 321.

[133] *Id.* at 322.

[134] *Id.* at 323.

[135] *Id.* at 67.

[136] RULES OF COURT, Rule 65, Sec. 1 provides:

SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts

Even if a petition for *certiorari* were the correct remedy, the Petition still fails. Under Rule 65, Section 4 of the Rules of Court, a petition for *certiorari* should be filed within 60 days of notice of the assailed order or resolution:

> SECTION 4. *When and where petition filed*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in 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 whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
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> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

Here, the records show that on November 28, 2012, petitioner Palmones filed House Resolution No. 2921,[137] calling for an investigation of public respondent's grant of income tax holiday and exemption on taxes and duties to private respondent. On the same day, Representative Guanlao delivered a privileged speech[138] in support of House Resolution No. 2921, directly adverting to the grant of incentives to private respondent. A few days after, on December 4, 2012, public respondent informed the Joint Congressional Hearing, which petitioner

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with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[137] *Rollo*, pp. 609-610.

[138] *Id.* at 611-617.

Palmones attended, when the assailed Board Resolutions were promulgated.[139]

Evidently, petitioners had been notified of the assailed Board Resolutions by November 28, 2012 and had learned of their exact dates of promulgation by December 4, 2012. Yet, they only filed their Petition for *Certiorari* on March 7, 2013, 99 days after they first had notice of the assailed Board Resolutions.

As it was filed well beyond the 60-day reglementary period, this Petition must be dismissed.

VI

On the substantive issue, this Court likewise sees no reason to grant the Petition.

While the Constitution mandates that the State should develop a self-reliant economy,[140] it does not proscribe the entry of foreign investments in the local market. In fact, it recognizes the need to develop Filipino labor, domestic materials, and locally produced goods to become competitive.[141]

Article II, Section 20 of the 1987 Constitution acknowledges the private sector's importance in our society:

> SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise and provides incentives to needed investments.

In relation, Article XII, Section 13 tasks the State to implement a trade policy that employs all forms and arrangements of exchange:

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[139] *Id.* at 1067-1069.

[140] CONST., Art. II, Sec. 19 provides:
SECTION 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

[141] CONST., Art. XII, Sec. 12 provides:
SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

SECTION 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

In view of these, Article XII, Section 1 implies that foreign investments may participate in the local market. However, it also tasks the State to shield domestic ventures from unfair foreign competition:

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. *However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.*[142] (Emphasis supplied)

A reading of these constitutional provisions shows that the fundamental law allows the participation of foreign enterprises in the Philippine market. Such latitude is not without restrictions, however, as the Constitution likewise limits the extent of their participation.

The third paragraph of Article XII, Section 10 of the Constitution mandates the State to oversee matters regarding foreign investments within its jurisdiction:

SECTION 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State *shall regulate and exercise authority over foreign investments within its national jurisdiction* and in accordance with its national goals and priorities. (Emphasis supplied)

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[142] CONST., Art. XII, Sec. 1, par. 2.

As such, the State imposes certain conditions and restrictions on foreign investments operating within the Philippine jurisdiction. For instance, no foreign enterprise is allowed to venture into the mass media industry.[143] This absolute restriction also extends to the use of natural resources found in the archipelagic waters, territorial sea, and exclusive economic zone of the Philippines.[144] Further, the practice of all professions in the Philippines is reserved for Filipino citizens, save for statutory exceptions.[145]

While foreign participation is absolutely prohibited in some industries, the Constitution allows foreign participation in certain industries, such as advertising,[146] public utilities,[147] educational

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[143] CONST., Art. XVI, Sec. 11 (1) provides:

SECTION 11. The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

[144] CONST., Art. XII, Sec. 2 (2) provides:

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The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

[145] CONST., Art. XII, Sec. 14 provides:

SECTION 14. The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

[146] CONST., Art. XVI, Sec. 11 provides:

SECTION 11. (1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

(2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

institutions,[148] ownership of private lands,[149] and the exploration, development, and utilization of natural resources.[150]

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.
The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

[147] CONST., Art. XII, Sec. 11 provides:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[148] CONST., Art. XIV, Sec. 4 provides:

SECTION 4. (1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.
(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.
The control and administration of educational institutions shall be vested in citizens of the Philippines.
No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.
(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

Despite these constitutional restrictions, it is not far-fetched to consider that the Philippines adopts a liberal approach in allowing foreign investments to enter the country. What the

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Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment. (4) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax.

[149] CONST., Art. XII, Sec. 7 provides:

SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

[150] CONST., Art. XII, Sec. 2 provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Constitution only restricted from foreign investors were enterprises imbued with public interest, such as public utilities, mass media, and use of natural resources. These restrictions are necessary to protect the welfare of Filipino citizens by removing the possibility of exploitation by foreign investors, who are not fully within the jurisdiction of Philippine laws.

In *Tañada v. Angara*,[151] the petitioners assailed the validity of the World Trade Organization Agreement ratified by then President Fidel V. Ramos and concurred in by the Senate. They claimed that it ran counter to the constitutional mandate of developing "a self-reliant and independent national economy effectively controlled by Filipinos . . . (to) give preference to qualified Filipinos (and to) promote the preferential use of Filipino labor, domestic materials and locally produced goods."[152]

Tañada sustained the validity of the World Trade Organization Agreement. Addressing the petitioners' argument, this Court ruled that Article II, Section 19 of the Constitution, which embodied the policy of economic independence, is not a self-executing provision. Thus, noncompliance with Article II, Section 19 does not give rise to a cause of action and is not judicially enforceable.[153]

Further, this Court rejected the petitioners' contention that the World Trade Organization Agreement violated Article XII, Section 10 of the Constitution, which mandated the State to give preference to qualified Filipinos with regard to the grant of rights, privileges, and concessions covering the national economy and patrimony; and Article XII, Section 12, which tasked the State to promote the preferential use of Filipino labor, domestic materials, and locally produced goods.[154]

Rather, this Court declared that Sections 10 and 12 of Article XII should be read in connection with other provisions of Article

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[151] 338 Phil. 546 (1997) [Per *J.* Panganiban, *En Banc*].

[152] *Id.* at 561.

[153] *Id.* at 580-582.

[154] *Id.* at 583-585.

XII, such as Section 13, which provided that "[t]he State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity."[155] This Court ruled:

> All told, while the Constitution indeed mandates a bias in favor of Filipino goods, services, labor and enterprises, at the same time, it recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair. In other words, the Constitution did not intend to pursue an isolationist policy. It did not shut out foreign investments, goods and services in the development of the Philippine economy. While the Constitution does not encourage the unlimited entry of foreign goods, services and investments into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair.[156] (Citation omitted)

This Court also ruled that foreign competition was not proscribed under the Constitution:

> [T]he constitutional policy of a "self-reliant and independent national economy" does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community."[157] (Citation omitted)

Ultimately, this Court dismissed the petition in *Tañada*, finding that the Senate did not gravely abuse its discretion by concurring in the ratification of the World Trade Organization Agreement.[158]

Nonetheless, it must be highlighted that the statements in *Tañada*, regarding the hortatory nature of provisions regarding Filipino First policies, were abstractly made, without the participation of real parties in interest and without showing how foreign investments affect Filipino enterprises. *Tañada*

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[155] *Id.* at 583.

[156] *Id.* at 585.

[157] *Id.* at 588.

[158] *Id.* at 604-606.

should thus be revisited in a proper case, where a justiciable controversy exists for this Court's resolution.

VII

Created[159] by Republic Act No. 5186, or the Investment Incentives Act, the Board of Investments is the administrative agency tasked to carry out the State's policy of encouraging both local and foreign investments in the agriculture, mining, and manufacturing industries and promote greater economic stability by increasing national income and exports.[160] It is also

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[159] Republic Act No. 5186 (1967), Sec. 13 provides:

SECTION 13. *Board of Investments.* To carry out the purposes of this Act, there is hereby created a Board of Investments which shall be organized within sixty days after the approval of this Act, composed of five full-time members to be appointed by the President of the Philippines with the consent of the Commission on Appointments, from a list of nominees submitted by the Chamber of Commerce of the Philippines, the Chamber of Industries, Base Metals Producers Association, Gold Producers Association, Chamber of Agriculture and Natural Resources of the Philippines, the Bankers Association of the Philippines and other similar business organizations as well as from duly organized and existing labor confederations, federations and other organizations of national standing in the Philippines from which the President may request nominees: Provided, That each association shall submit a list of not less than three (3) but not more than five (5) nominees and that no association shall have more than one member in the Board at any particular time: And Provided, further, That the President may appoint as members of the Board qualified persons who have not been so nominated. The Board shall elect a Chairman from among themselves. The tenure of office of each member shall be six (6) years: Provided, however, That the members of the Board first appointed shall hold office for two (2) years, three (3) years, four (4) years, five (5) years and six (6) years as fixed in their respective appointments: Provided, further, That upon the expiration of his term, a member shall serve as such until his successor shall have been appointed and qualified: Provided, finally, That no vacancy shall be filled except for the unexpired portion of any term, and that no one may be designated to be a member of the Board in an acting capacity, but all appointments shall be *ad interim* or permanent.

For administrative purposes, the Board shall be under the Office of the President of the Philippines.

[160] Republic Act No. 5186 (1967), Sec. 2 provides:

SECTION 2. *Declaration of Policy*. To accelerate the sound development of the national economy in consonance with the principles and objectives of

mandated with implementing the provisions of Executive Order No. 226.[161]

The Board of Investments exercises both quasi-legislative (or rule-making) powers and quasi-judicial (or administrative adjudicatory) functions. Its quasi-legislative functions include, among others, preparing an annual investment priorities plan that lists the activities that can qualify for incentives,[162] and promulgating rules and regulations[163] to give life to the provisions of Executive Order No. 226. On the other hand, its quasi-judicial functions include, among others, processing and approving applications for registration,[164] deciding controversies arising from the implementation of Executive Order No. 226,[165] and canceling registrations or suspending entitlement to incentives of registered enterprises.[166]

Republic Act No. 7042, or the Foreign Investments Act of 1991, declares that as much as 100% foreign ownership in domestic enterprises may be allowed, except for areas or industries included in the negative list.[167] *Espina v. Zamora,*

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economic nationalism, and in pursuance of a planned, economically feasible and practicable dispersal of industries, under conditions which will encourage competition and discourage monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people, and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

[161] Executive Order No. 226 (1987), Art. 3.

[162] Executive Order No. 226 (1987), Art. 7 (1).

[163] Executive Order No. 226 (1987), Art. 7 (2).

[164] Executive Order No. 226 (1987), Art. 7 (3).

[165] Executive Order No. 226 (1987), Art. 7 (4).

[166] Executive Order No. 226 (1987), Art. 7 (8).

[167] Republic Act No. 7042 (1991), Sec. 2 provides:

Jr.[168] expounds that the Constitution does not bar foreign investors from setting up shop in the Philippines, though neither does it encourage their unbridled entry. Thus, the Constitution has empowered Congress to determine which areas of investment to reserve to Filipinos and which areas may be opened to foreign investors:

> [T]he 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.
>
> More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the

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SECTION 2. *Declaration of Policy*. — It is the policy of the State to attract, promote and welcome productive investments from foreign individuals, partnerships, corporations, and governments, including their political subdivisions, in activities which significantly contribute to national industrialization and socioeconomic development to the extent that foreign investment is allowed in such activity by the Constitution and relevant laws. Foreign investments shall be encouraged in enterprises that significantly expand livelihood and employment opportunities for Filipinos; enhance economic value of farm products; promote the welfare of Filipino consumers; expand the scope, quality and volume of exports and their access to foreign markets; and/or transfer relevant technologies in agriculture, industry and support services. Foreign investments shall be welcome as a supplement to Filipino capital and technology in those enterprises serving mainly the domestic market.

As a general rule, there are no restrictions on extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the negative list. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Filipino participation in their businesses by taking in Filipino partners, electing Filipinos to the board of directors, implementing transfer of technology to Filipinos, generating more employment for the economy and enhancing skills of Filipino workers.

[168] 645 Phil. 269 (2010) [Per *J.* Abad, *En Banc*].

national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.[169] (Citation omitted)

Notably, "agriculture/agribusiness and fishery" was included in the Board of Investments' 2010[170] Investment Priorities Plan. The Department of Agriculture[171] likewise recommended its continued inclusion in the 2011 Investment Priorities Plan and lobbied for the retention of feeds in the list:

On Feeds

The DA deems that the absence of firms registering to BOI for feeds investments is not a sufficient reason for dropping it from the list. Feeds remains to be expensive and has been a major cost driver in the livestock and fisheries production. For instance, feeds for aquaculture constitutes 60% of the production costs. Hence[,] the DA recommends the retention of feeds in the IPP list to promote the development of the feeds industry.[172]

Likewise, the 2011 Investment Priorities Plan[173] listed agriculture/agribusiness and fishery as one of the 13 "priority investment areas that were identified to support the current priority programs of the government[.]"[174] Agriculture/agribusiness and fishery covered:

[C]ommercial production and commercial processing of agricultural and fishery products (including their by-products and wastes). This

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[169] *Id.* at 280.

[170] *Rollo*, p. 529.

[171] *Id.* at 528-533.

[172] *Id.* at 529.

[173] Board of Investments' 2011 Investment Priorities Plan, <https://www.tesda.gov.ph/uploads/File/LMIR2011/dec/The%202011%20Investment%20Priorities%20Plan.pdf> (last accessed on June 7, 2019).

[174] *Id.* at 2.

also covers agriculture- and fishery-related activities such as irrigation, post harvest, cold storage, blast freezing, and production of fertilizers.[175]

Agriculture/agribusiness and fishery was also included in the 2012 Investment Priorities Plan.[176]

Moreover, agriculture and agribusiness were not included in the Eighth Regular Foreign Investment Negative List[177] issued on February 5, 2010, or even in the Ninth Regular Foreign Investment Negative List[178] issued on October 29, 2012. Incidentally, they are still not included in the Eleventh Regular Foreign Investment Negative List,[179] the latest list issued on October 29, 2018.

Clearly, agribusiness was, and still is, not a nationalized or partly nationalized industry. Hence, in this case, private respondent's status as a 100% foreign-owned corporation would not cause the denial of its applications for registration with public respondent.

Further, private respondent's applications for registration went through the required process listed down in Executive Order No. 226.[180] Public respondent, in turn, evaluated the applications based on the following criteria: "compliance with the provisions of the IPP, Net Value-added (NVA), Job generation, Multiplier Effect, and Measured Capacity."[181] It considered the data on the discrepancy between local production and local demand,

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[175] *Id.* at 3.

[176] Board of Investments' 2012 Investment Priorities Plan, <https://www.officialgazette.gov.ph/2012/06/13/investment-priorities-plan-2012/> (last accessed on June 7, 2019).

[177] Executive Order No. 858, Eighth Regular Foreign Investment Negative List, <http://www.officialgazette.gov.ph/downloads/2010/02feb/20100205-EO-0858-GMA.PDF> (last accessed on June 7, 2019).

[178] Ninth Regular Foreign Investment Negative List, <http://www.officialgazette.gov.ph/downloads/2012/10oct/20121029-EO-0098-ANNEX-BSA.pdf> (last accessed on June 7, 2019).

[179] Executive Order No. 65, Eleventh Regular Foreign Investment Negative List, <http://www.officialgazette.gov.ph/downloads/2018/10oct/20181029-EO-65-RRD.pdf> (last accessed on June 7, 2019).

[180] *Rollo*, pp. 1033-1046.

[181] *Id.* at 1042.

which it factored into its decision to approve private respondent's applications for registration:

Project	Measured Capacity
Aqua Feeds	The local production of aqua feeds is not sufficient to meet local demand. Actual Production — 340,000 MT Demand — 801,000 MT Collectively, the aqua feed demand in 2009 as estimated by BAS [Bureau of Agricultural Statistics] and the proponent's projections showed that there is [a] demand of about 869,000 MT while the supply is only about 358,000 MT. The resulting deficit of 511,000 MT was supplied mostly by importations.
New Producer of Hog Parent Stocks and Slaughter Hogs Project	The local production of pork is estimated to be about 1.92 million MT in 2010 while the demand is about 2.106 million MT. The resulting deficit of about 164,000 MT is supplied by importation. 2. As shown in Exhibit 2a, the proposed project will have [an] annual share of about 10% to the country's pork production in 2013 onward. (Source: Bureau of Agricultural Statistics and proponent's projections)
Integrated Broiler Project	The country has been a net importer of poultry meat. In 2009, the local production of dressed chicken reached 826,677 MT while the apparent demand [i]s about 883,573 MT. The resulting deficit of 56.896 MT was supplied by imports[.] The gap between the demand and the local production can be addressed by new investments in the poultry industry. This proposed project is estimated to increase the country's total broiler chicken (live) production by 250,000 heads per year. This is roughly equivalent to only around 250 MT of dressed chicken, which is less tha[n] 1% of the volume production deficit in 2009.[182]

[182] *Id.* at 1037-1038, public respondent's Memorandum.

It is well established that an administrative agency's findings of fact are entitled to respect and deference. As the recognized specialist in the field assigned to it, the administrative agency can resolve issues in its field "with more expertise and dispatch than can be expected from the legislature or the courts of justice."[183] With that in mind, this Court has consistently deferred to their factual findings.[184]

Here, considering that the issuance of the assailed Board Resolutions was amply supported by substantial evidence, there is no weight to petitioners' claim that they were issued with grave abuse of discretion.

Finally, this Court repeats a statement made in *Gios-Samar*:

> Critically, the nuances of the cases we find justiciable signal our philosophy of adjudication. Even as we try to filter out and dispose of the cases pending in our docket, this Court's role is not simply to settle disputes. This Court also performs the important public function of clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities.
>
> As this Court finds ways to dispose of its cases, it should be sensitive to the quality of the doctrines it emphasizes and the choice of cases on which it decides. Both of these will facilitate the vibrant democracy and achievement of social justice envisioned by our Constitution.
>
> Every case filed before this Court has the potential of undoing the act of a majority in one (1) of the political and co-equal departments of our government. Our Constitution allows that its congealed and just values be used by a reasonable minority to convince this Court to undo the majority's action. In doing so, this Court is required to make its reasons precise, transparent, and responsive to the arguments pleaded by the parties. The trend, therefore, should be to clarify broad doctrines laid down in the past. The concept of a case with transcendental importance is one (1) of them.

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[183] *Solid Homes v. Payawal*, 257 Phil. 914, 921 (1989) [Per *J.* Cruz, First Division].

[184] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per *J.* Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per *J.* Quisumbing, Second Division]; and *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per *J.* Chico-Nazario, First Division].

Our democracy, after all, is a reasoned democracy: one with a commitment not only to the majority's rule, but also to fundamental and social rights.

Even as we recall the canonical doctrines that inform the structure of our Constitution, we should never lose sight of the innovations that our fundamental law has introduced. We have envisioned a more engaged citizenry and political forums that welcome formerly marginalized communities and identities. Hence, we have encoded the concepts of social justice, acknowledged social and human rights, and expanded the provisions in our Bill of Rights.

We should always be careful that in our desire to achieve judicial efficiency, we do not filter cases that bring out these values.

This Court, therefore, has a duty to realize this vision. The more guarded but active part of judicial review pertains to situations where there may have been a deficit in democratic participation, especially where the hegemony or patriarchy ensures the inability of discrete and insular minorities to participate fully. While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities.[185]

Sadly, this case, with its fiery but empty rhetoric, fell short of these noble expectations.

WHEREFORE, the Petition is **DISMISSED.** The assailed February 28, 2012, April 24, 2012, and November 6, 2012 Board Resolutions issued by the Board of Governors of public respondent Board of Investments, which approved private respondent Charoen Pokphand Foods Philippines Corporation's applications for registration, are **AFFIRMED**.

SO ORDERED.

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

Gaerlan, J., on leave.

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[185] *J.* Leonen, Concurring Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

FIRST DIVISION

[G.R. No. 215234. June 23, 2020]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES JUANCHO and MYRNA NASSER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; REFERS TO THE FULL AND FAIR EQUIVALENT OF THE PROPERTY TAKEN FROM ITS OWNER BY THE EXPROPRIATOR, AND THE DETERMINATION THEREOF IS PRINCIPALLY A JUDICIAL FUNCTION. — Just compensation in expropriation cases is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. The determination of just compensation is principally a judicial function.

2. ID.; ID.; ID.; ID.; ID.; SHALL EARN LEGAL INTEREST COMPUTED FROM THE TIME OF TAKING. — As aptly ruled by the RTC-SAC and the CA, the appropriate formulae are LV = (CNI x 0.90) + (MV x 0.10) **in addition to** LV = (CNI x 0.90) + (MV x 0.10), in the absence of Comparable Sales. This is in line with DAR A.O. No. 5 (1998) which outlines the basic formula in determining just compensation. x x x [T]he just compensation as determined by the RTC-SAC and CA shall earn legal interest computed from the time of taking at the rate of 12% per annum until June 30, 2013 and 6% per annum until full payment in accordance with *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc., citing Nacar v. Gallery Frames*.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Pejo Aquino & Associates for respondents.

R E S O L U T I O N

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

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 27, 2014 and Resolution[3] dated October 20, 2014 of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. SP No. 03800-MIN.

Relevant Antecedents

Spouses Juancho and Myrna Nasser (respondents) were the owners of a parcel of land located in San Jose, Lupon, Davao Oriental covered by Original Certificate of Title (OCT) No. P-7096 (subject property) with an area of 3.8885 hectares, which was planted with coconut trees and 7-year old mahogany trees as confirmed by the Field Investigation Report.[4]

On May 10, 1999, respondents' property was placed under the coverage of the Comprehensive Agrarian Reform Program (CARP). Accordingly, respondents voluntarily offered to sell their parcel of land.[5]

Vested with the authority to determine valuation and compensation of all lands placed under CARP coverage under Executive Order (E.O.) No. 405, Republic Act (R.A.) No. 6657, and Department of Agrarian Reform Administrative Order (A.O.) No. 5, series of 1998 (DAR A.O. No. 5) (1998), petitioner valued the subject property in the amount of ₱181,177.04, using the formula **LV = (MV x 0.1) + (CNI x 0.9) + CDC**, broken down as follows:

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[1] *Rollo*, pp. 12-40.

[2] Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Marie Christine Azcarraga-Jacob, concurring; *id.* at 47-56.

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

[4] *Id.* at 48.

[5] *Id.*

LV= (₱28,000/has x 0.9) + (₱21,526.85 x 0.1) + ₱19,240.36

Unit Land Value = ₱46,593.04/hectare
= ₱46,593.04 x 3.8885 hectares

Total Land Value = ₱181,177.04[6]

Unsatisfied, respondents rejected the valuation of petitioner. Consequently, summary proceedings for the valuation of the subject property were conducted before the Department of Agrarian Reform Adjudication Board (DARAB) Office of the Provincial Adjudicator in Davao City.[7]

Pursuant to a letter-request from Myrna Nasser, Tree Markers of the Department of Environment and Natural Resources (DENR) Region XI of Lupon, Davao Oriental, issued a Memorandum to the Officer-in-Charge of the Community Environment and Natural Resources Office (CENRO), Region XI-2D, Lupon, Davao Oriental, stating that the subject property is planted with about 4,000 standing mahogany trees of varying diameter classes that can generate an aggregate volume of 57.544 cubic meters of sawn lumber.[8]

In a Decision[9] dated August 26, 2000, the Regional Adjudicator of the DARAB adopted petitioner's valuation, citing compliance with existing guidelines as the sole reason therefor. Thus:

WHEREFORE, premises considered, the Land Bank of the Philippines' computation/valuation for payment of just compensation in the amount of One Hundred Eighty One Thousand One Hundred Seventy Seven Pesos and 4/100 (₱181,177.04) as the total amount due to the landowner is sustain (sic) as appropriate JUST COMPENSATION for the land.

SO ORDERED.[10]

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[6] Claims Valuation and Processing Form No. LEP-XI-V5-79-13073; *id.* at 177.

[7] *Id.*

[8] *Id.* at 49.

[9] Penned by Regional Adjudicator Norberto P. Sinsona; *id.* at 212-213.

[10] *Id.* at 213.

Said ruling was reinforced in an Order[11] dated October 30, 2000 following respondents' Motion for Reconsideration.

However, the valuation of just compensation of the subject property was later on adjusted in a Decision[12] dated October 15, 2001. In determining the amount of just compensation as to both the coconut land and mahogany trees, the Regional Adjudicator used the formula LV = (CNI x 0.9) + (MV x 0.1) for *each*, in the absence of Comparable Sales based on DAR A.O. No. 5 (1998). Thus: LV = (CNI x 0.9) + (MV x 0.1) for coconut land *and* LV = (CNI x 0.9) + (MV x 0.1) for mahogany land. Clearly, the sum for both in the amount of ₱1,645,586.89 was determined as just compensation. The *fallo* thereof reads:

> WHEREFORE, judgment is hereby rendered fixing the total value or just compensation of petitioners land (sic) at the aggregate amount of One Million Six Hundred Forty Five Thousand Five Hundred Eighty Six Pesos and Eighty Nine Centavos (₱1,645,586.89).
>
> SO ORDERED.[13]

The matter was subsequently referred to the Regional Trial Court of Mati City, Davao Oriental, Branch 5 sitting as Special Agrarian Court (RTC-SAC) for judicial determination of just compensation. In a Decision[14] dated March 25, 2010, the RTC-SAC upheld the formulae adopted by the Regional Adjudicator and consequently affirmed his valuation. Clearly, the RTC-SAC failed to give credence to petitioner's valuation for lack of legal basis. Thus:

> WHEREFORE, in view of all the foregoing, this Court hereby adopts the DARAB's valuation of the subject land at the aggregate amount of ONE MILLION SIX HUNDRED FORTY FIVE THOUSAND FIVE HUNDRED EIGHTY SIX PESOS AND EIGHTY NINE CENTAVOS (₱1,645,586.89) which is hereby declared as the JUST COMPENSATION.

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[11] *Id.* at 214.

[12] *Id.* at 215-219.

[13] *Id.* at 219.

[14] *Id.* at 139-147.

No pronouncement as to cost.

IT IS DECIDED.[15]

Petitioner filed a Motion for Reconsideration while respondents filed a motion for the issuance of an order directing petitioner to deposit the just compensation.[16]

Both motions were denied in a Resolution[17] dated August 12, 2010. In resolving both, the RTC-SAC upheld its earlier determination of just compensation; and maintained that petitioner cannot be ordered to deposit the amount of just compensation in view of its deposit of the initial valuation of the subject property.

On appeal, petitioner reiterated the erroneous valuation of the RTC-SAC of just compensation by using the Capitalized Net Income (CNI) variable instead of the Cumulative Development Cost (CDC) variable.[18]

In a Decision[19] dated March 27, 2014, the CA affirmed the ruling of the RTC-SAC. As to the applicable variable between CNI and CDC, the CA affirmed the proper usage of the former in this case considering that mahogany trees were intercropped with coconut trees; and that the CDC factor may only be used when what is involved is a permanent or fruit-bearing crop as stated in DAR A.O. No. 5 (1998). The dispositive portion thereof provides:

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.[20]

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[15] *Id.* at 146-147.

[16] *Id.* at 148.

[17] *Id.* at 148-150.

[18] *Id.* at 50.

[19] *Supra* note 2.

[20] *Id.* at 56.

Petitioner's motion for reconsideration was denied in a Resolution[21] dated October 20, 2014.

Hence, this instant petition.

Issue

Is the valuation of just compensation by the CA proper?

The Court's Ruling

Just compensation in expropriation cases is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.[22]

The determination of just compensation is principally a judicial function.[23] The parameters thereof are set by Section 17 of Republic Act No. 6657, *viz.*:

> SEC. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Embodied in formulae, DAR A.O. No. 5 (1998) provides for valuation of lands covered by voluntary offer to sell or compulsory acquisition:[24]

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[21] *Supra* note 3.

[22] *Republic v. Spouses Legaspi*, G.R. No. 221995, October 3, 2018.

[23] *Department of Agrarian Reform v. Spouses Sta. Romana*, 738 Phil. 590, 600 (2014).

[24] Administrative Order No. 05, Series of 1998, entitled "Revised Rules

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) +(CS x 0.3) + (MV x 0.1)

Where:

LV =Land Value

CNI =Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant, and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9)+ (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV= MVx 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claim folder.

A.4. When the land planted to permanent crops is not yet productive or not yet fruit-bearing at the time of Field Investigation (FI), the land value shall be equivalent to the value of the land plus the cumulative development cost (CDC) of the crop from land preparation up to the time of FI. In equation form:

LV = (MV x 2) + CDC

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and Regulations Governing the Valuation of Lands Voluntarily or Compulsory Acquired Pursuant to Republic Act No. 6657."

where:

1. MV to be used shall be the applicable UMV classification of idle land.

2. CDC shall be grossed-up from the date of FI up to the date of LBP Claim Folder (CF) receipt for processing but in no case shall the grossed-up CDC exceed the current CDC data based on industry.

In case the CDC data provided by the landowner could not be verified, DAR and LBP shall secure the said data from concerned agency/ies or, in the absence thereof, shall establish the same.

In no case, however, shall the resulting land value exceed the value of productive land similar in terms of crop and plant density within the estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of CF.

In case where CS is relevant or applicable, the land value shall be computed in accordance with Item II.A.2 where MV shall be based on the lowest productivity classification of the land.

A.5 When the land is planted to permanent crops introduced by the farmer-beneficiaries (FBs) which are not yet productive or not yet fruit-bearing, the land value shall be computed by using the applicable UMV classification of idle land. In equation form:

LV = MV x 2

In no case, however, shall the resulting land value exceed the value of productive land similar in terms of crop and plant density within the estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of CF.

In case where CS is relevant or applicable, the land value shall be computed in accordance with Item II.A.2 where MV shall be based on the applicable classification of idle land.

x x x x x x x x x

At bar, petitioner insists that the use of the LV = (CNI x 0.90) + (MV x 0.10) + CDC, the CDC variable referring to the valuation of mahogany trees, is more appropriate considering

the non-harvestability of the latter. On the other hand, respondents aver that the LV = (CNI x 0.90) + (MV x 0.10) for coconut land ***plus*** LV = (CNI x 0.90) + (MV x 0.10) for the property with standing mahogany trees is the proper formula because the CDC variable squarely applies only to permanent crops, which is not the case in mahogany trees.

Foremost, petitioner's valuation is not sanctioned by law as DAR A.O. No. 5 (1998), does not provide for such formula. Also, factoring in the CDC variable as representative of the valuation of mahogany trees is insufficient to determine just compensation. In doing so, the value of the land on which such mahogany trees were planted was totally disregarded, which is against the guidelines set forth by law. To recall, the valuation of lands necessarily considers not only the crops and trees therein planted, but also the value of the land.

Furthermore, petitioner's insistence of the application of Joint Memorandum Circular No. 11, series of 2003 (JMC No. 11) (2003) does not hold water.

The coverage of JMC No. 11 (2003), includes all land transfer claims involving lands planted to commercial trees whose Memorandum of Valuation have not yet been forwarded to DAR as of the date of effectivity thereof.

In this case, it is clear that a Memorandum of Valuation[25] was accomplished in 1999 and subsequently forwarded to the DAR as the DARAB ruling on August 26, 2000 upholding petitioner's valuation based on such Memorandum is evident from the records. As such, it is clear that it was forwarded prior to the effectivity of JMC No. 11 (2003); thus, the Circular is inapplicable.

As aptly ruled by the RTC-SAC and the CA, the appropriate formulae are LV = (CNI x 0.90) + (MV x 0.10) **in addition to** LV = (CNI x 0.90) + (MV x 0.10), in the absence of Comparable Sales. This is in line with DAR A.O. No. 5 (1998) which outlines the basic formula in determining just compensation.

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[25] *Rollo*, p. 174.

Lastly, the just compensation as determined by the RTC-SAC and CA shall earn legal interest computed from the time of taking at the rate of 12% per annum until June 30, 2013 and 6% per annum until full payment in accordance with *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[26] citing *Nacar v. Gallery Frames*.[27]

WHEREFORE, the petition is **DENIED.** The Decision dated March 27, 2014 and Resolution dated October 20, 2014 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 03800-MIN are **AFFIRMED**. The just compensation as determined by the Regional Trial Court of Mati City, Davao Oriental, Branch 5 sitting as Special Agrarian Court shall earn legal interest from the time of taking at the rate of 12% per annum until June 30, 2013 and 6% per annum until full payment.

SO ORDERED.

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

Caguioa, J. (Working Chairperson), maintains position in *Lara's Gifts v. Midtown* (GR # 225433) re: interest.

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[26] G.R. No. 225433, August 28, 2019.

[27] 716 Phil. 267 (2013).

FIRST DIVISION

[G.R. No. 222442. June 23, 2020]

NIEVES SELERIO and ALICIA SELERIO, *petitioners*, *vs.* **TREGIDIO B. BANCASAN,** *respondent*.

SYLLABUS

1. CIVIL LAW; SALES; CONTRACT OF SALE; REGARDED AS CONSENSUAL IN NATURE, AND IS PERFECTED UPON THE CONCURRENCE OF ITS ESSENTIAL REQUISITES. — It is elementary that a contract of sale is perfected by mere consent. In *Beltran v. Spouses Cangayda, Jr.,* the Court held: A contract of sale is consensual in nature, and is perfected upon the concurrence of its essential requisites, thus: The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.

2. REMEDIAL LAW; CIVIL PROCEDURE; AFFIRMATIVE DEFENSES; PRESCRIPTION; BY RAISING THE AFFIRMATIVE DEFENSE OF PRESCRIPTION, A DEFENDANT HYPOTHETICALLY ADMITS THE MATERIAL ALLEGATIONS IN THE COMPLAINT, BUT THE HYPOTHETICAL ADMISSION AND ANY RULING ON THE BASIS THEREOF, EXTENDS ONLY TO THE SPECIFIC AFFIRMATIVE DEFENSE RAISED. — It is settled that "[t]he purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer for relief." While it is true that by raising the affirmative defense of prescription, a defendant hypothetically admits the material allegations in the complaint, said hypothetical admission, and any ruling on the basis thereof, extends only to the specific affirmative defense raised. In other words, the procedural tool does not dispense with plaintiff's burden of **actually** proving his cause of action, should the affirmative defenses raised prove unmeritorious. In other words, allegations as to the validity of the sale, the transfer of ownership, and the nature of petitioners' possession were deemed hypothetically admitted **only** for the

purpose of determining whether the action had prescribed. To extend the effect of such hypothetical admission for the purpose of determining who between the parties has the real right of possession, the very issue to be proved during trial with actual evidence, amounts to a prejudgment of the main case without trial on the merits and to a violation of petitioners' due process rights.

3. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; ACTIONS BASED ON WRITTEN CONTRACTS; AN ACTION BASED ON A WRITTEN CONTRACT MUST BE BROUGHT WITHIN TEN YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES. — Article 1144 of the Civil Code provides that an action based on a written contract must be brought within 10 years from the time the right of action accrues. x x x [A] cause of action based on a written contract accrues when the right of the plaintiff is violated. In this regard, the Court agrees with the RTC that respondent's cause of action to obtain possession or to enforce the sale accrued on May 1, 1994, when petitioners breached the Deed by failing or refusing to vacate the subject property on the date agreed upon, *i.e.,* April 30, 1994. The allegations in the Complaint unequivocally show that respondent anchors his purported right to own and to possess the property on the Deed. Indeed, even the supposed constructive delivery of the subject property emanates from the said Deed. Pursuant to Article 1144 of the Civil Code therefore, respondent had 10 years from May 1, 1994 to file the appropriate action.

4. ID.; ID.; ID.; ID.; ID.; AN INTERRUPTION OF THE PRESCRIPTIVE PERIOD WIPES OUT THE PERIOD THAT HAS ELAPSED, SETS THE SAME RUNNING ANEW, AND CREATES A FRESH PERIOD FOR THE FILING OF AN ACTION. — Article 1144 x x x must be read in conjunction with Article 1155 of the Civil Code. Article 1155 states that "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor." Jurisprudence holds that an interruption of the prescriptive period wipes out the period that has elapsed, sets the same running anew, and creates a fresh period for the filing of an action. x x x Applying the foregoing rules, the 10-year period that commenced to run

> on May 1, 1994 was interrupted when the parties executed the Compromise Agreement dated September 2, 1997. Undoubtedly, the Compromise Agreement is a written acknowledgment of petitioner Nieves' obligation to deliver ownership and/or possession of the subject property and of respondent's correlative obligation to pay the unpaid balance of the purchase price once said petitioner vacates the property. Precisely, the parties expressly agreed that the "sale of the house and lot to [defendant spouses Teddy and Emy [Bancasan] shall proceed as agreed and approved by the parties." In fine, the period to enforce the Deed has not prescribed. The 10-year period, which commenced on May 1, 1994, was interrupted when the parties executed the Compromise Agreement on September 2, 1997. This interruption wiped out the period that already elapsed and started a fresh prescriptive period from September 2, 1997 to September 2, 2007. Thus, the written extrajudicial demand sent by respondent on February 2, 2007 was made within the prescriptive period. In fact, said written demand likewise interrupted the prescriptive period, which commenced anew when petitioners received said demand. **Undoubtedly therefore, the Complaint filed on February 28, 2007 was made within the prescriptive period.**

APPEARANCES OF COUNSEL

Pantojan & Associates for petitioners.
Silvanio T. Liza for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated March 6, 2015 (Assailed Decision) and Resolution[3] dated

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[1] *Rollo*, pp. 13-32.

[2] *Id.* at 34-45. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Edgardo A. Camello and Pablito A. Perez.

[3] *Id.* at 47-49.

November 25, 2015 (Assailed Resolution) of the Court of Appeals, Twenty-Second Division (CA), in CA-G.R. CV No. 03014-MIN. The CA reversed the March 17, 2009[4] and March 22, 2010[5] Orders of the Regional Trial Court, Branch 11, Davao City (RTC) and held that respondent's action has not prescribed.

The Facts and Antecedent Proceedings

The sole issue for resolution in the instant case is whether or not respondent's action for recovery of possession has prescribed. The CA summarized the facts as follows:

> [Petitioner] Nieves Selerio (Nieves) is the claimant, occupant, and possessor of a parcel of land identified as Lot 2, Block 14 located at Garcia Heights, Bajada, Davao City with an area of Six Hundred Square Meters (600 sq. m.). On September 18, 1993, Nieves executed a Deed of Transfer and Waiver of Rights, Interests and Improvements [(Deed)] over the subject land in favor of [respondent] Tregidio [Bancasan] (Tregidio) conveying, ceding, and selling the property including all improvements found thereon.
>
> Nieves [supposedly] sold the subject property to Tregidio for Two Hundred Thousand Pesos ([₱]200,000.00); and the former acknowledged to have received fifty percent (50%) of the amount from the latter. In the Deed, the parties agreed that the fifty percent 50% balance of the total consideration shall be paid only when Nieves and her family shall have vacated the subject premises which shall not go beyond April 30, 1994[, *viz.*:
>
> x x x x x x x x x
>
> That for and in consideration of the sum of TWO HUNDRED THOUSAND PESOS ([₱]200,000.00), Philippine Currency[,] (50%) PERCENT of which amount is [hereby] acknowledged and confessed received by, and to the full satisfaction of, TRANSFEROR from, and in hand paid by, TRANSFEREE, TRANSFEROR hereby cede[s], sell[s], transfer[s] and convey[s], and by these presents, has ceded, sold, transferred and conveyed to TRANSFEREE, his heirs, assigns and successors, the entirety of said Lot 2, Block 14, together with all the improvements

[4] CA *rollo*, pp. 33-36. Penned by Presiding Judge Virginia Hofileña-Europa.

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

found and existing, whether constructed or erected, and sown or planted therein;

That to allow sufficient time for TRANSFEROR for an orderly transfer of residence out of the lot, TRANSFEROR may reside in her former house which is included in this conveyance up to and until APRIL 30, 1994;

That the fifty (50%) percent balance in the herein consideration shall be given and paid to [the] TRANSFEROR only when she and her family shall have vacated the premises;

x x x x x x x x x.][6]

After the [supposed] conveyance, however, Jose Selerio, and Cecilia Ababo filed a case docketed as Civil Case No. 22,601-94 for Partition, Accounting of Property Income and Attorney's Fees against Nieves, Tregidio and others. Jose Selerio and Cecilia Selerio Ababa claimed to be the illegitimate children of Nieves' husband. In that case, the parties executed a Compromise Agreement on September 2, 1997 duly approved by the RTC wherein the parties agreed to proceed with the sale over the subject property[, *viz.*:

x x x x x x x x x

5. That plaintiffs expressly waived and relinquish all their rights and interest in the house and lot (600 sq. m.) at Garcia Heights, Bajada, Davao City, and the sale of the house and lot to Defendants spouses Teddy and Mrs. Emy [Bancasan] [herein respondents] shall proceed as agreed and approved by the parties.

x x x x x x x x x][7]

On February 2, 2007, Tregidio, through counsel, sent a letter to [petitioners] demanding the latter to vacate the subject property. The demand remained unheeded.

Consequently, on February 28, 2007, Tregidio filed a Complaint for Recovery of Possession, Damages and Attorney's Fees [(Complaint)] against [petitioners] Nieves and Alicia Selerio (Alicia) [, Nieves' daughter-in-law,] alleging that he is entitled to the possession

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[6] Records, p. 8.

[7] *Id.* at 17.

of the property by virtue of the Deed executed in his favor. On May 17, 2007, [petitioners] filed their Answer to the Complaint. They countered that Nieves was forced to affix her signature on the document upon which she readily acceded as she was in dire need of money at th[at] time; that she did not appear before the notary public indicated in the Deed as during those years, she was incapable of engaging any travel to any far place, much less to Compostela, Davao del Norte which was very far from Davao City; that Nieves did not know that the document she signed is a transfer of rights, interests and improvements [as she was purportedly suffering from a very serious eye illness and she could neither see nor read];[8] and that although the total consideration of the land is [₱]200,000.00, which is in fact very low, what she actually received was only [₱]50,000.00 and small amounts of money she spent for Civil Case No. 22,601-94.

On February 14, 2008, Nieves and Alicia filed their Amended Answer. This time, they alleged, as an affirmative defense, that based on the Deed itself, there was no absolute transfer of rights considering that there are conditions set therein; and that the Deed must be appreciated as similar to a contract to sell rather than a contract of sale due to the conditions set therein. They furthermore argued that Tregid[i]o's cause of action had already prescribed; that in effect, he is enforcing a written contract which prescribes in 10 years from the time the right of action accrued; that as stipulated in the contract, Nieves and Alicia had to vacate the property not later than April 30, 1994; and that since he filed his Complaint only on March 14, 2007, he had slept on his rights for more than 12 years.

The [RTC] *a quo*[, in its March 12, 2008 Order,][9] ordered the parties to submit their respective position papers on the affirmative defense of prescription.[10]

The Ruling of the RTC

After the submission of the parties' position papers on the issue of prescription, the RTC dismissed respondent's Complaint and held that his cause of action had prescribed.[11]

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[8] *Id.* at 28.

[9] *Id.* at 93.

[10] *Rollo*, pp. 34-36. Underscoring supplied.

[11] CA *rollo*, p. 36.

The RTC agreed with petitioners that although respondent filed a case for recovery of possession, he actually sought to enforce the Deed in order to gain possession over the property.[12] As such, the action was actually one for specific performance based on a written contract,[13] which prescribes in 10 years pursuant to Article 1144 of the Civil Code.[14] As the case was filed only on March 14, 2007 or after almost 13 years from the time petitioners were obliged to vacate the property on April 30, 1994, the action was already barred by prescription.[15]

In fact, the RTC went so far as to hold that no sale was perfected as petitioner Nieves never delivered the property[16] and respondent never fully paid the price.[17]

Respondent filed a motion for reconsideration, which the RTC subsequently denied.[18] Thus, respondent filed his appeal before the CA.

The Ruling of the CA

In the Assailed Decision, the CA reversed the order of the RTC and held that the action was filed within the prescriptive period.[19] The dispositive portion of the Assailed Decision stated:

> WHEREFORE, the appeal is hereby GRANTED. The Orders dated March 17, 2009 and March 22, 2010 of the Regional Trial Court, Branch 11, Davao City in Civil Case No. 31772-01 are REVERSED and SET ASIDE. Let this case be REMANDED to the trial court which is DIRECTED to proceed and hear [respondent's] Complaint.
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> SO ORDERED.[20]

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[12] *Id.* at 35.

[13] *Supra* note 11.

[14] *Id.*

[15] *Id.*

[16] *Supra* note 12.

[17] *Supra* note 11.

[18] *Id.* at 37.

[19] *Rollo*, p. 39.

[20] *Id.* at 44.

Contrary to the conclusions of the RTC, the CA held that the parties entered into a contract of sale.[21] Further, the CA held that based on the express terms of the Deed, *i.e.*, that the "x x x TRANSFEROR hereby cede[s], sell[s], transfer[s] and convey[s], and by these presents, has ceded, sold, transferred and conveyed, to TRANSFEREE, his heirs, assigns and successors, the entirety of said Lot 2, Block 14, x x x,"[22] petitioners already "transferred ownership of the subject property [to respondent] in exchange for the amount of [₱]200,000.00."[23]

As respondent was already the owner of the subject property, the CA held that the prescriptive period for the latter's action to recover the property did not commence to run until February 2, 2007, *i.e.*, when petitioners refused to vacate the property despite demand, respondent's cause of action accrued.[24] It was of no moment that petitioners stayed well beyond the April 30, 1994 deadline prescribed under the Deed as their possession of the property was by mere tolerance of respondent.[25] Since the instant complaint was filed on February 28, 2007, the CA held that respondent's cause of action for recovery of possession was filed well-within the prescriptive period.[26]

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[21] *Id.* at 42.

[22] *Supra* note 6.

[23] *Rollo*, p. 41.

[24] *Id.*

[25] *Id.* at 43.

[26] Art. 555, CIVIL CODE, provides:

> Art. 555. A possessor may lose his possession:
> (1) By the abandonment of the thing;
> (2) By an assignment made to another either by onerous or gratuitous title;
> (3) By the destruction or total loss of the thing, or because it goes out of commerce;
> (4) By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years. (460a)

In the Assailed Resolution, the CA denied petitioners' motion for reconsideration.[27]

Hence, this Petition.

Issues

Whether or not respondent's cause of action has prescribed.

The Court's Ruling

The Court agrees with the CA that the action has **not prescribed**, albeit for a different reason.

At this juncture, the Court finds it proper to first stress that the RTC grossly erred in holding that no sale was perfected as petitioner Nieves never delivered the property[28] and respondent never fully paid the price.[29] It is elementary that a contract of sale is perfected by mere consent. In *Beltran v. Spouses Cangayda, Jr.*,[30] the Court held:

> A contract of sale is consensual in nature, and is perfected upon the concurrence of its essential requisites, thus:
>
> > The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. Thus, contracts, other than real contracts are perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Once perfected, they bind other contracting parties and the obligations arising therefrom have the force of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.

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[27] *Rollo*, p. 47.

[28] *Supra* note 18.

[29] *Supra* note 11.

[30] G.R. No. 225033, August 15, 2018, 877 SCRA 252.

> Being a consensual contract, sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. A perfected contract of sale imposes reciprocal obligations on the parties whereby the vendor obligates himself to transfer the ownership of and to deliver a determinate thing to the buyer who, in turn, is obligated to pay a price certain in money or its equivalent. Failure of either party to comply with his obligation entitles the other to rescission as the power to rescind is implied in reciprocal obligations.[31]

As a contract of sale is consensual in nature, the Court, in *Buenaventura v. Court of Appeals*,[32] explained:

> It is not the *[sic]* payment of [the] price that determines the validity of a contract of sale. Payment of the price has nothing to do with the perfection of the contract. Payment of the price goes into the performance of the contract. Failure to pay the consideration is different from lack of consideration. The former results in a right to demand the fulfillment or cancellation of the obligation under an existing valid contract while the latter prevents the existence of a valid contract.[33]

Similarly, noted legal expert Dean Cesar L. Villanueva likewise explained:

> Under Article 1475 of the Civil Code, from the moment of perfection of the sale, the parties may reciprocally demand performance, even when the parties have not affixed their signatures to the written form of such sale, but subject to the provisions of the law governing the form of contracts. Consequently, the actual delivery of the subject matter or payment of the price agreed upon are not necessary components to establish the existence of a valid sale; and their non-performance do not also invalidate or render "void" a sale that has beg[u]n to exist as a valid contract at perfection; non-performance,

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[31] *Id.* at 594-595. Emphasis omitted.

[32] G.R. No. 126376, November 20, 2003, 416 SCRA 263.

[33] *Id.* at 271.

merely becomes the legal basis for the remedies of either specific performance or rescission, with damages in either case.[34]

Nevertheless, although the terms of the Deed suggest that a contract of sale was perfected, the validity of said agreement has **not** been duly proven.

To reiterate, the RTC dismissed respondent's Complaint **solely on the ground of prescription after petitioners filed their answer but before trial on the merits and without ruling on petitioners' alternative defenses**.[35] These alternative defenses appear to include allegations of fraud, undue influence, and/or mistake.[36]

As such, the Court finds it proper to clarify that the CA's unqualified statements: 1) that the parties *validly* entered into a contract of sale;[37] 2) that upon the execution of the Deed in question, the ownership of the subject property was constructively delivered to respondent;[38] and 3) that petitioners thereafter possessed the property only by mere tolerance,[39] were all **premature**.

It is settled that "[t]he purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer

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[34] Cesar L. Villanueva, *LAW ON SALES*, 2016 ed., p. 7. Underscoring supplied.

[35] Rule 16, Sec. 6, RULES OF COURT, provides:

SEC. 6. *Pleading grounds as affirmative defenses.* — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. (5a)

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (n) (Underscoring supplied)

[36] See *supra* note 8.

[37] *Supra* note 23.

[38] *Id.*

[39] *Supra* note 25.

for relief."[40] While it is true that by raising the affirmative defense of prescription, a defendant hypothetically admits the material allegations in the complaint,[41] said hypothetical admission, and any ruling on the basis thereof, extends only to the specific affirmative defense raised. In other words, the procedural tool does not dispense with plaintiff's burden of **actually** proving his cause of action, should the affirmative defenses raised prove unmeritorious.

In other words, allegations as to the validity of the sale, the transfer of ownership, and the nature of petitioners' possession were deemed hypothetically admitted **only** for the purpose of determining whether the action had prescribed. To extend the effect of such hypothetical admission for the purpose of determining who between the parties has the real right of possession, the very issue to be proved during trial with actual evidence, amounts to a prejudgment of the main case without trial on the merits and to a violation of petitioners' due process rights.

In *Samartino v. Raon*,[42] the Court explained that "[t]he essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of his defense."[43] Although petitioners have been given an

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[40] See *Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba*, G.R. No. 138945, August 19, 2003, 409 SCRA 306, 307; *Rone v. Claro*, 91 Phil. 250, 252-253 (1952).

[41] Rule 6, Sec. 5, RULES OF COURT, provides:

SEC. 5. *Defenses*. — Defenses may either be negative or affirmative.

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance. (5a)

[42] G.R. No. 131482, July 3, 2002, 383 SCRA 664.

[43] *Id.* at 672.

opportunity to answer the claims against them, **they have not been given the opportunity to present evidence to substantiate their alternative defenses**. As such, the CA's pronouncements should not extend to a disposition on the merits as this prematurely accepts as proven disputed facts that have not been established in the crucible of trial. The CA recognized as much when it correctly remanded the case and directed the RTC to proceed to hear respondent's Complaint.

Notwithstanding the foregoing, the Court agrees with the CA that the action has **not prescribed**. The Complaint alleged the following facts:

1. In the Deed executed by herein petitioner Nieves and respondent on September 18, 1993, the former agreed to vacate the property on April 30, 1994.[44]

2. On January 14, 1994, the illegitimate children of petitioner Nieves' husband filed an action for partition, accounting, and attorney's fees against her and respondent.[45] In said case, the court rendered judgment based on a Compromise Agreement[46] dated September 5, 1997 (where the parties agreed to proceed with the sale), as follows:

> That plaintiffs expressly waived and relinquish all their rights and interest in the house and lot (600 sq. m.) at Garcia Heights, Bahada, Davao City and the sale of the house and lot to defendant spouses Teddy and Emy Bangcasan [herein respondents] shall proceed as agreed and approved by the parties.[47]

3. On February 2, 2007, or within 10 years from the execution of the Compromise Agreement, respondent

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[44] Records, p. 4; *supra* note 23.

[45] *Supra* note 12.

[46] *Id.* at 17-18; *supra* note 12.

[47] *Supra* note 7.

sent a letter requesting that petitioners vacate the subject property.[48]

4. On February 28, 2007, respondent filed a Complaint for recovery of possession, damages, and attorney's fees.[49]

Article 1144[50] of the Civil Code provides that an action based on a written contract must be brought within 10 years from the time the right of action accrues. In *Nabus v. Court of Appeals*,[51] the Court explained:

> A cause of action has three elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and, (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen. Translated in terms of a hypothetical situation regarding a written contract, no cause of action arises until there is a breach or violation thereof by either party. Conversely, upon the occurrence of a breach, a cause of action exists and the concomitant right of action may then be enforced.[52]

Stated simply, a cause of action based on a written contract accrues when the right of the plaintiff is violated. In this regard, the Court agrees with the RTC that respondent's cause of action to obtain possession or to enforce the sale accrued on May 1, 1994, when petitioners breached the Deed by failing or refusing

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[48] *Supra* note 44; *rollo*, p. 45.

[49] *Id.* at 2; *supra* note 12.

[50] Art. 1144, CIVIL CODE, provides:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment. (n)

[51] G.R. No. 91670, February 7, 1991, 193 SCRA 732.

[52] *Id.* at 747.

to vacate the subject property on the date agreed upon, *i.e.*, April 30, 1994.[53] The allegations in the Complaint unequivocally show that respondent anchors his purported right to own and to possess the property on the Deed. Indeed, even the supposed constructive delivery[54] of the subject property emanates from the said Deed. Pursuant to Article 1144 of the Civil Code therefore, respondent had 10 years from May 1, 1994 to file the appropriate action.

Article 1144, however, must be read in conjunction with Article 1155 of the Civil Code. Article 1155 states that "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Jurisprudence holds that an interruption of the prescriptive period wipes out the period that has elapsed, sets the same running anew, and creates a fresh period for the filing of an action.[55] Thus, in *Republic v. Bañez*,[56] the Court held that a written acknowledgment of a debt by the debtor effectively restarts the prescriptive period, *viz.*:

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[53] *Rollo*, pp. 36-37.

[54] *Supra* note 6: "That for and in consideration of the sum of TWO HUNDRED THOUSAND PESOS ([₱]200,000.00), Philippine currency, (50%) PERCENT of which amount is hereby acknowledged and confessed received by and to the full satisfaction of, TRANSFEROR from, and in hand paid by, TRANSFEREE, TRANSFEROR hereby cede[s], sell[s], transfer[s] and convey[s], and by these presents, has ceded, sold, transferred and conveyed, to TRANSFEREE, his heirs, assigns and successors, the entirety of said Lot 2, Block 14, together with all the improvements found and existing, whether constructed or erected and sown or planted therein; x x x"

[55] See *Overseas Bank of Manila v. Geraldez*, No. L-46541, December 28, 1979, 94 SCRA 937; *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, September 23, 2004, 439 SCRA 1; *Domestic Petroleum Retailer Corp. v. Manila International Airport Authority*, G.R. No. 210641, March 27, 2019; *Solid Homes, Inc. v. Spouses Jurado*, G.R. No. 219673, September 2, 2019; *Ledesma v. Court of Appeals*, G.R. No. 106646, June 30, 1993, 224 SCRA 175.

[56] G.R. No. 169442, October 14, 2015, 772 SCRA 297.

x x x [A] written acknowledgment of [a] debt or obligation effectively interrupts the running of the prescriptive period and sets the same running anew. Hence, because Hojilla's letter dated 15 August 1984 served as a written acknowledgement of the respondents' debt or obligation, it interrupted the running of the prescriptive period and set the same running anew with a new expiry period of 15 August 1994.[57]

Applying the foregoing rules, the 10-year period that commenced to run on May 1, 1994 was interrupted when the parties executed the Compromise Agreement dated September 2, 1997. Undoubtedly, the Compromise Agreement is a written acknowledgment of petitioner Nieves' obligation to deliver ownership and/or possession of the subject property and of respondent's correlative obligation to pay the unpaid balance of the purchase price once said petitioner vacates the property.[58] Precisely, the parties expressly agreed that the "sale of the house and lot to [d]efendant spouses Teddy and Emy [Bancasan] shall proceed as agreed and approved by the parties."[59]

In fine, the period to enforce the Deed has not prescribed. The 10-year period, which commenced on May 1, 1994, was interrupted when the parties executed the Compromise Agreement on September 2, 1997. This interruption wiped out the period that already elapsed and started a fresh prescriptive period from September 2, 1997 to September 2, 2007. Thus, the written extrajudicial demand sent by respondent on February 2, 2007 was made within the prescriptive period. In fact, said written demand likewise interrupted the prescriptive period, which commenced anew when petitioners received said demand.[60] **Undoubtedly therefore, the Complaint filed on February 28, 2007 was made within the prescriptive period.**

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[57] *Id.* at 310; citing *Philippine National Railways v. NLRC*, G.R. No. 81231, September 19, 1989, 177 SCRA 740.

[58] *Supra* note 10.

[59] *Supra* note 7.

[60] *Domestic Petroleum Retailer Corp. v. Manila International Airport Authority*, *supra* note 55.

In sum, the RTC grossly erred in dismissing the Complaint on the ground of prescription. Further, the ground for dismissal not being indubitable, the RTC should have deferred determination of the issue of prescription until after trial of the case on the merits.[61] Had it done so, the CA and the Court could have reviewed the merits of the case and finally disposed of the same.

WHEREFORE, the Petition is **DENIED.** The case is accordingly **REMANDED** to the Regional Trial Court, Branch 11, Davao City for trial on the merits. The Regional Trial Court, Branch 11, Davao City is hereby **DIRECTED** to resolve the dispute with immediate dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 227447. June 23, 2020]

MAGSAYSAY MARITIME CORPORATION, MASTERBULK PTE. LTD., and/or MARLON P. TRINIDAD, *petitioners, vs.* **HEIRS OF FRITZ D. BUENAFLOR represented by HONORATA G. BUENAFLOR,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DEEMED

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[61] See *Philippine National Bank v. Hipolito*, G.R. No. L-16463, January 30, 1965, 13 SCRA 20; *Sison v. McQuaid*, 94 Phil. 201 (1953).

INTEGRATED INTO THE EMPLOYMENT CONTRACT. — "The terms and conditions of a seafarer's employment, including claims for death and disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein." The POEA Memorandum Circular No. 10, Series of 2010, entitled 'Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships,' which provides the minimum requirements acceptable to the POEA for the employment of Filipino seafarers on board ocean-going vessels, is deemed integrated into the employment contract that Buenaflor entered into with petitioners.

2. ID.; ID.; IN CASE OF INSUFFICIENCY IN THE TERMS AND CONDITIONS OF THE EMPLOYMENT CONTRACT THE POEA-SEC OPERATES TO FILL THE GAPS IN ORDER TO RAISE THE SEAFARERS' BENEFITS TO THE MINIMUM. — Employment contracts or CBAs may enlarge the minimum requirements of the POEA-SEC to make them more favorable and beneficial to the employees. However, in case of insufficiency in the terms and conditions of the employment contract or CBA, which renders the seafarer unqualified or unable to claim benefits therein, the POEA-SEC operates to fill the gaps in order to raise the seafarers' benefits to the minimum.

3. ID.; ID.; ENTITLEMENT OF THE SEAFARER'S BENEFICIARIES TO DEATH BENEFITS GOVERNED BY SECTION 20 OF THE POEA-SEC; REQUISITES. — Sec. 20 (B)(1)(4) of the POEA-SEC provides for compensation for work-related illnesses and deaths which may not occur under the circumstances specified, but existed during the term of the seafarer's contract. x x x [I]n order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract.

4. ID.; ID.; WORK-RELATED ILLNESS PERTAINS TO SICKNESS AS A RESULT OF AN OCCUPATIONAL DISEASE LISTED UNDER SECTION 32-A OF THE POEA-SEC; DISPUTABLE PRESUMPTION THAT ILLNESSES NOT LISTED UNDER SECTION 32-A ARE WORK-RELATED. — A work-related illness, on the other hand, pertains

to any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the POEA-SEC, which are compensable if the conditions stated therein are satisfied. This, however, does not mean that only those listed in Section 32-A are compensable. Under Section 20(A)(4) of the POEA-SEC, those illnesses not listed in Section 32-A are disputably presumed as work-related.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Emmanuel B. Bigornia for respondents.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court, seeking the reversal of the Decision[2] dated December 18, 2015 and Resolution[3] dated September 29, 2016 of the Court of Appeals (CA) in CA G.R. SP. No. 137820. In the assailed issuances, the CA annulled the Decision dated July 30, 2014 and Resolution dated August 29, 2014 of the National Labor Relations Commission (NLRC), which reversed the decision of the Labor Arbiter.

The Facts

Fritz D. Buenaflor (Buenaflor) was employed as Second Mate by Petitioner Magsaysay Maritime Corporation (Magsaysay), a manning agency organized under Philippine laws, for and on behalf of its foreign principal, Petitioner Masterbulk Pte. Ltd. (Masterbulk), under a Philippine Overseas Employment Administration (POEA)-approved employment contract dated

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[1] *Rollo*, pp. 3-47.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Manuel M. Barrios and Henri Jean Paul B. Inting (now a Member of the Court), concurring; *id.* at 48-57.

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

February 6, 2012, for a duration of nine months. Buenaflor's employment commenced upon his embarkation aboard the vessel INVENTANA on May 9, 2012.

In March 2013, Buenaflor experienced persistent pain on the right side of his abdomen. On March 13, 2013, Buenaflor was referred to Meyer Hospital in the Port of Santos, Sao Paolo, Brazil for diagnostic procedures. After the initial test and examination, Buenaflor was diagnosed with "intra liver nodules and Retroperitoneal lymphadenopathy." On March 18, 2013, Buenaflor was admitted at the said hospital where he underwent a liver biopsy. The result of the biopsy showed that Buenaflor was suffering from "infiltrated adenocarcinoma in the liver parenchyma." Thus, the attending physician recommended that Buenaflor be considered unfit for duty and repatriated for further medical treatment.

On March 25, 2013, Buenaflor was repatriated to the Philippines. Upon his arrival in the country, Magsaysay referred him to Manila Doctors Hospital (MDH) for medical examination under the care of Dr. Benigno A. Agbayani, Jr. (Dr. Agbayani), the company-designated physician. After undergoing CT scan procedure and guided biopsy, and being evaluated by an oncologist, Buenaflor was diagnosed with "primary liver cancer vs. metastatic liver disease." Hence, Buenaflor underwent chemoemobilization of the liver mass, and subsequently, chemotherapy. Buenaflor, however, did not respond well to these procedures.

Dr. Agbayani reported that Buenaflor was suffering from "Adenocarcinoma of the Liver with Peripancreatic Metastases, Retroperitoneal Metastases, Lung Metastases, Malignant Ascites, S/P Chemoemobilization, Stage IV." He further opined that Buenaflor's ailment is work-related only if he was exposed to chemicals.

Due to difficulty in getting blood donors in Manila, Dr. Agbayani recommended that Buenaflor's radiotherapy and chemotherapy procedures be transferred to his home province, Iloilo. Thus, on July 26, 2013, Buenaflor was discharge from MDH and transferred to Iloilo Doctors Hospital. Unfortunately,

Buenaflor passed away on August 2, 2013 due to "Cardiopulmonary Arrest Secondary to Hepatocellular CA Stage IV."

On November 12, 2013, the heirs of Buenaflor, represented by his wife, Honorata G. Buenaflor (respondents), initiated a complaint for death benefits, attorney's fees and damages against petitioners Magsaysay, Masterbulk and Marlon P. Trinidad (Trinidad), the Fleet Director of Magsaysay, before the Labor Arbiter.

On February 27, 2014, the Labor Arbiter dismissed the complaint as there was no evidence that Buenaflor's liver cancer was caused or aggravated by, or related to, his work. The Labor Arbiter further ruled that the ship where Buenaflor worked as Second Mate was a general cargo/container, and as such, the goods shipped were enclosed in large metal containers. For humanitarian reasons, however, the Labor Arbiter awarded the sum of US$5,000.00, and attorney's fees, equivalent to 10% of the monetary award, to respondents.

Not satisfied with the decision of the Labor Arbiter, respondents appealed the case to the NLRC. On July 30, 2014, the NLRC granted the appeal and reversed the decision of the Labor Arbiter. The NLRC ruled that the Collective Bargaining Agreement (CBA), of which Buenaflor is covered, clearly intended to compensate any injury or death suffered by an officer regardless of its nature or circumstance. The NLRC further held that when Buenaflor died four months after his repatriation, he was still under Magsaysay. The dispositive portion of said decision reads:

> WHEREFORE, upon the premises, the Decision dated 27 February 2014 of Labor Arbiter Edgar M. Madriaga is REVERSED and SET ASIDE. In lieu thereof, judgment is hereby rendered ordering respondents Magsaysay Maritime Corporation and Masterbulk Pte. Ltd. To PAY complainants, jointly and severally, at the rate of exchange at the time of payment, the following amounts:
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> (a) US $180,000.00 as death benefits;
> (b) US $14,000.00 as allowance to minor children Kyrie Guzman Buenaflor and Yhancy Guzman Buenaflor; and

(c) Ten (10%) percent of the total judgment award or US $18,700.00 as attorney's fees.

SO ORDERED.

Petitioners sought the reconsideration of the NLRC's decision, but the NLRC denied their motion in its Resolution dated August 29, 2014.

Petitioners then turned to the CA, through a Petition for *Certiorari*, ascribing grave abuse of discretion on the part of the NLRC for finding that Buenaflor's death was compensable under the Masterbulk Agreement, and for awarding additional allowance to Buenaflor's minor children, and attorney's fees.

On December 18, 2015, the CA, not finding grave abuse of discretion on the part of the NLRC in issuing the Decision dated July 30, 2014 and Resolution dated August 29, 2014, dismissed their Petition for *Certiorari*. The CA ruled that petitioners erred in claiming that at the time Buenaflor experienced the symptoms of his illness, his contract had already been terminated. The CA pointed out that in the certification issued by Magsaysay, Buenaflor signed off on March 25, 2013, the day of his repatriation. According to the CA, petitioners failed to explain why Buenaflor was still aboard its vessel on March 13, 2013 when his contract already ended in February 2013. The CA concluded that Buenaflor's employment contract transcended beyond the nine-month period and his employment was extended. Thus, the CA ruled that the NLRC was correct in ruling that Buenaflor was still under petitioners' employ at the time he experienced the symptoms of his illness.

On September 29, 2016, the CA likewise denied petitioners' Motion for Reconsideration for failing to raise any new matter that would merit the modification or reversal of its decision.

On October 21, 2016, petitioners filed their Petition for Review on *Certiorari* where they asserted that the CA erred in finding respondents entitled to death benefits, additional allowance and attorney's fees.

Petitioners maintain that under the Masterbulk CBA and even under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), a seafarer's death is compensable if it occurred during the term of his employment. They argued that Buenaflor's death is not compensable as it happened after the expiration of his employment contract. According to petitioners, since Buenaflor signed a nine-month long contract, such contract already terminated in February 2013, the ninth month following his embarkation on May 9, 2012. Thus, petitioners assert that when Buenaflor's illness manifested in March 2013 and when he died few months thereafter, his contract already ended and he was no longer under their employ.

Petitioners further argue that Buenaflor's cause of death is not work-related, rendering him not entitled to disability benefits under the POEA-SEC. Petitioners posit that cancer is not necessarily work-related and may be caused by factors outside of one's work. Thus, petitioners insist that the correlation between Buenaflor's nature of work and the illness which caused his death should have been proven.

Petitioners also reiterate that since Buenaflor did not die as a result of a work-related illness and his death did not occur during the term of his employment, his minor children are not entitled to allowance under the POEA-SEC. They further maintain that respondents are also not entitled to attorney's fees since they failed to show that petitioners willfully caused loss or injury to them.

The Ruling of the Court

Procedural Considerations

The NLRC decisions brought before the CA are final and executory in nature[4] and can only be reversed on a finding of grave abuse of discretion.[5] In reviewing the NLRC cases brought before it through a Rule 65 Petition, the CA merely corrects errors of jurisdiction or acts committed without jurisdiction or

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[4] 2011 NLRC RULES OF PROCEDURE, as Amended, Rule VII, Sec. 14.

[5] RULES OF COURT, Rule 65, Sec. 1.

in excess of jurisdiction, or grave abuse of discretion amounting to lack or excess of jurisdiction.[6] It does not address mere errors of judgment, unless such errors overstep the bounds of the NLRC's jurisdiction.[7]

This Court, in reviewing the present Rule 45 Petition, is bound by the intrinsic limitations of the Rule 65 proceedings.[8]

In resolving a Rule 45 review of the CA's decision in labor cases rendered under Rule 65 of the Revised Rules of Court, the Court merely looks into the legal errors that the CA may have committed in determining the presence or the absence of grave abuse of discretion in the NLRC decision that it reviewed.[9]

The question to ask is: did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[10]

It also settled that in a Rule 45 review, only questions of law may be raised before the Court.[11] In *Jebsen Maritime, Inc. v. Ravena*,[12] however, this Court ruled that "(I)n situations where insufficient or insubstantial evidence have been adduced to support the findings under review, or when conclusions go beyond bare and incomplete facts submitted by the claimant, grave abuse of discretion may result and the Court is permitted to address factual issues." In such instance, the Court's factual review power is only to the extent necessary to determine whether the CA correctly found no grave abuse of discretion on the part of the NLRC in finding that respondents are entitled to death benefits.[13]

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[6] *Id.*

[7] See *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 74 (2016).

[8] *Id.* at 73.

[9] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 384 (2014).

[10] *Id.* at 384-385.

[11] *Covita v. SSM Maritime Services, Inc.*, 802 Phil. 598, 607 (2016).

[12] *Supra* note 9.

[13] *Id.* at 384-385.

Thus, guided by the foregoing, the Court now proceeds to determine whether or not the CA erred in ruling that the NLRC did not act with grave abuse of discretion in finding petitioners liable for death benefits, allowance for minor children of Buenaflor, and attorney's fees.

Compensability of Buenaflor's Death

"The terms and conditions of a seafarer's employment, including claims for death and disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein."[14] The POEA Memorandum Circular No. 10, Series of 2010, entitled 'Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships,' which provides the minimum requirements acceptable to the POEA for the employment of Filipino seafarers on board ocean-going vessels, is deemed integrated into the employment contract that Buenaflor entered into with petitioners. In addition, Buenaflor's employment contract is covered by the Masterbulk Vessels Maritime Officers' Agreement 2011, which was valid from January 1, 2011 until December 31, 2012, and by the Masterbulk Vessels Maritime Officers' Agreement 2013, which was valid from January 1, 2013 until December 31, 2014 ("Masterbulk Agreement").

The CA, in deciding in favor of respondents, applied the Masterbulk Agreement, as according to it, they are most favorable to the seafarers and are not contrary to law, morals, public order or public policy. According to the CA, the NLRC correctly held that the coverage of the compensation for injury or death benefits under Section 28 of the Masterbulk Agreement is too encompassing in that it does not require that the cause of injury or death be work-related. Section 28 of the Masterbulk Agreement pertinently states:

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[14] *Yap v. Rover Maritime Services Corp.*, 741 Phil. 212, 231 (2016). See also *Sy v. Philippine Transmarine Carriers, Inc.*, 703 Phil. 190, 197 (2013); *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 315 (2009).

28. COMPENSATION FOR INJURY OR DEATH

(1) x x x

(2) Compensation shall be paid as stipulated in sub-clause (1) of this clause for **all injuries howsoever caused, regardless of whether or not an officer comes within the scope of the Work Injury Compensation Act** and includes accidents arising or not arising out of the course of his employment and accidents arising outside the working hours of the injured or dead officer.

x x x x x x x x x

(6) If an officer dies during service onboard **through any case including death from natural causes** or death occurring whilst travelling to and from the vessel, or as a result of marine or other similar peril, the Company shall pay the maximum amount of compensation for the affected officer as shown in Appendix IV to this Agreement. (Emphasis and underscoring supplied)

We, however, find that the CA proceeded from an incorrect framework in deciding the case. It is incorrect to state that the Masterbulk Agreement is most favorable to Buenaflor without first determining whether his illness and resulting death are covered by the terms and conditions thereof. The determination of which is more favorable between the Masterbulk Agreement and POEA-SEC is proper only when it has been established that Buenaflor's death is compensable under both.

A review of the Masterbulk Agreement shows that Buenaflor's death is not within its coverage. The terms and conditions under Section 28 of the Masterbulk Agreement which the NLRC applied in assessing the compensability of Buenaflor's death is limited to 1) injuries, and 2) death during service on board, occurring while travelling to and from the vessel, or death caused by marine or other similar peril. The term "injury" has a technical meaning under the Labor Code. It pertains to any harmful change in the human organism from any accident arising out of and in the course of the employment.[15] This technical definition brings Buenaflor's liver cancer out of the coverage of Section 28 of the Masterbulk Agreement.

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[15] LABOR CODE OF THE PHILIPPINES, Book 4, Title II, Chapter I, Art. 173(k).

While the CA and the NLRC are correct in saying that death under the Masterbulk Agreement is compensable regardless of its cause, the Masterbulk Agreement, however, limited this compensability to deaths during service on board, occurring while travelling to and from the vessel, or to deaths caused by marine or other similar peril. Thus, Buenaflor's death which occurred in the Philippines few months after his repatriation also does not fall under the coverage of Section 28 of the Masterbulk Agreement.

Employment contracts or CBAs may enlarge the minimum requirements of the POEA-SEC to make them more favorable and beneficial to the employees. However, in case of insufficiency in the terms and conditions of the employment contract or CBA, which renders the seafarer unqualified or unable to claim benefits therein, the POEA-SEC operates to fill the gaps in order to raise the seafarers' benefits to the minimum.

Sec. 20 (B)(1)(4) of the POEA-SEC provides for compensation for work-related illnesses and deaths which may not occur under the circumstances specified, but existed during the term of the seafarer's contract. This Section pertinently reads:

SECTION 20. COMPENSATION AND BENEFITS. —

B. COMPENSATION AND BENEFITS FOR DEATH

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

x x x x x x x x x

4. The other liabilities of the employer when the seafarer dies **as a result of work-related injury or illness during the term of employment** are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

> b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.
>
> c. The employer shall pay the beneficiaries of the seafarer the Philippines currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment. (Emphasis supplied)

Applying the above rule, the Court established that in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract.[16]

A. Buenaflor's Illness and Resulting Death are Work-Related

Work-related death refers to death which results from a work-related injury or illness.[17] A work-related illness, on the other hand, pertains to any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the POEA-SEC, which are compensable if the conditions stated therein are satisfied.[18]

This, however, does not mean that only those listed in Section 32-A are compensable. Under Section 20(A)(4) of the POEA-SEC, those illnesses not listed in Section 32-A are disputably presumed as work-related.

A disputable presumption has been defined as a specie of evidence that may be accepted and acted on when there is no

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[16] *Racelis v. United Philippine Lines, Inc.*, 746 Phil. 758, 767 (2014), *Jebsen Maritime, Inc. v. Babol*, 722 Phil. 828, 838 (2013), *Canuel v. Magsaysay Maritime Corporation*, 745 Phil. 252, 261 (2014).

[17] *Supra* note 11 at 609. See also *Canuel v. Magsaysay Maritime Corporation*, *supra*, at 263.

[18] POEA-SEC, Definition of Terms, No. 16.

other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence.[19] Moreover, Section 3, Rule 131, of the Rules of Court states that a disputable presumption is satisfactory if uncontradicted and not overcome by other evidence. In the case of *Spouses Surtida v. Rural Bank of Malinao (Albay), Inc.*,[20] we explained the effects of disputable presumption as follows:

> A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting of evidence unless rebutted.
>
> To state it simply, unless overcome by contrary evidence, the disputable presumption stands.

In the case of *Racelis v. United Philippines Lines, Inc.*,[21] this Court held that:

> While it is true that Brainstem (pontine) Cavernous Malformation is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC, Section 20 (B) (4) of the same explicitly provides that "[t]he liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows: (t)hose illnesses not listed in Section 32 of this Contract are disputably presumed as work related." In other words, the 2000 POEA-SEC "has created a disputable presumption in favor of compensability[,] saying that those illnesses not listed in Section 32 are disputably presumed as work-related. This means that even if the illness is not listed under Section 32-A of the POEA-SEC as an occupational disease or illness, it will still be presumed as work-related, and it becomes incumbent on the employer to overcome the presumption." **This presumption should be overturned only when the employer's refutation is found to be supported by substantial evidence, which, as traditionally defined is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."** (Emphasis supplied; citations omitted)

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[19] *People v. de Guzman*, 299 Phil. 849, 853 (1994).

[20] 540 Phil. 502 (2006).

[21] *Racelis v. United Philippine Lines, Inc.*, *supra* note 16, at 768-769.

Similarly, in *Phil-Man Marine Agency, Inc. v. Dedace, Jr.*,[22] this Court ruled that the disputable presumption under Section 20(A)(4) operates in favor of the employee and the burden rests upon his or her employer to overcome the statutory presumption. As this Court found that petitioners in the said case failed to present sufficient controverting evidence to overthrow the disputable presumption that the seafarer's illness is work-related, the benefits prayed for by the claimant was awarded.[23]

Buenaflor, in this case, died of liver cancer, a disease which is not listed under Section 32-A of the POEA-SEC. Under Section 20(A)(4), Buenaflor's illness and his resulting death are work-related. Magsaysay and Masterbulk have the burden to present contrary evidence to overcome this presumption, but failed to do so. The company-designated physician reported that Buenaflor was suffering from liver cancer and opined that this illness is work-related only if he was exposed to chemicals. It bears pointing out that with this opinion, the company-designated physician did not totally cancel out the possibility that Buenaflor's illness is work-related. However, by simply stating his opinion in such manner, and by failing to justify why he made such assessment, this opinion is a bare claim which we must reject. The opinion of the company-designated physician is insufficient to overthrow the presumption that Buenaflor's illness and resulting death are work-related.

We are not unmindful of previous pronouncements made by this Court to effect that claimants must still prove by substantial evidence that his work condition caused, or increased the risk of contracting his/her illness. However, in *Phil-Man Marine Agency, Inc*,[24] this Court clarified that when the company-designated physician was not able to give a full, complete, and categorical medical assessment on the illness of the seafarer, the disputable presumption under Section 20(A)(4) stands. In the said case, this Court emphasized that

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[22] G.R. No. 199162, July 4, 2018.

[23] *Id.*

[24] *Supra* note 22.

to rule otherwise would render the statutory presumption under this Section nugatory.[25]

Thus, Buenaflor's illness and his resulting death are work-related.

B. Buenaflor's Death Occurred During the Term of his Contract

The present case falls under the exception to the general rule that death in order to be compensable must occur during the term of his contract, as pronounced in the case of *Canuel v. Magsaysay Maritime Corporation*:[26] In *Canuel*, this Court ruled that:

> With respect to the second requirement for death compensability, the Court takes this opportunity to clarify that while the general rule is that the seafarer's death should occur during the term of his employment, the seafarer's death occurring after the termination of his employment due to his medical repatriation on account of a work-related injury or illness constitutes an exception thereto. This is based on a liberal construction of the 2000 POEA-SEC as impelled by the plight of the bereaved heirs who stand to be deprived of a just and reasonable compensation for the seafarer's death, notwithstanding its evident work-connection.
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> x x x x x x x x x
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> Thus, considering the constitutional mandate on labor as well as relative jurisprudential context, the rule, restated for a final time, should be as follows: **if the seafarer's work-related injury or illness (that eventually causes his medical repatriation and, thereafter, his death, as in this case) occurs during the term of his employment, then the employer becomes liable for death compensation benefits under Section 20 (A) of the 2000 POEA-SEC**. The provision cannot be construed otherwise for to do so would not only transgress prevailing constitutional policy and deride the bearings of relevant case law but also result in a travesty of fairness and an indifference to social justice. (Emphasis supplied)

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[25] *Id.*

[26] *Supra* note 16, at 266, 275.

Buenaflor experienced the symptoms of his illness in March 2013, while he was still on board the vessel. In the certification issued by Magsaysay, Buenaflor signed off on March 25, 2013, the day of his repatriation. While Magsaysay claims that Buenaflor's contract expired in February 2013, it did not explain why Buenaflor was still on board its vessel in March 2013. Thus, we agree with the CA's conclusion that Buenaflor's employment contract transcended beyond the nine-month period and his employment was extended.

This conclusion conforms with Section 18(A) of the POEA-SEC, which states that the employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the ship, signs off from the ship and arrives at the point of hire. Under this Section, Buenaflor's employment ceased only upon his sign off and arrival at the point of hire on March 25, 2013. When he experienced the symptom of his illness, and when he was subsequently medically repatriated, he was still under the employ of Magsaysay. Buenaflor's case, thus, falls under the exception established in Canuel.

All told, this Court denies the Petition and affirms the Decision and Resolution of the CA with modification in that petitioners are ordered to pay the heirs of Buenaflor the following: 1) the Philippine currency equivalent to the amount of US$50,000; 2) an additional amount of US$14,000 to the two minor children of Buenaflor, at the exchange rate prevailing during the time of payment; and 3) the Philippine currency equivalent to the amount of US$1,000 for burial expenses at the exchange rate prevailing during the time of payment.

The award of attorney's fees at 10% of the total monetary awards is also proper 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."[27]

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[27] *Cariño v. Maine Marine Phils., Inc.*, G.R. No. 231111, October 17, 2018.

Finally, petitioners are likewise liable for legal interest at the rate of 6% per annum from the finality of this Decision until full satisfaction.[28]

WHEREFORE, the Petition is **DENIED.** The Decision dated December 18, 2015 and the Resolution dated September 29, 2016 of the Court of Appeals in CA G.R. SP. No. 137820 are **AFFIRMED WITH MODIFICATIONS** in that Magsaysay Maritime Corporation and Masterbulk Pte. Ltd. are **ORDERED** to **PAY** the heirs of Fritz D. Buenaflor, jointly and severally, at the rate of exchange at the time of payment, the Philippine currency equivalent of the following amount:

1. Fifty Thousand US dollars (US$50,000);
2. Fourteen Thousand US dollars (US$14,000) to the two minor children of Buenaflor;
3. One Thousand US dollars (US$1,000) for burial expenses; and
4. Attorney's fees at 10% of the total monetary awards.

Petitioners are likewise liable for the legal interest of 6% per annum of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.

SO ORDERED.

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

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[28] *Id.*

EN BANC

[G.R. Nos. 233155-63. June 23, 2020]

JOSE TAPALES VILLAROSA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIRED TO WARRANT CONVICTION IN CRIMINAL ACTIONS. — The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Indeed, the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.

2. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E) THEREOF; ELEMENTS. — In order to hold a person liable under [Section 3(e) of RA 3019], the following elements must concur, to wit:(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.

3. ID.; ID.; ID.; THREE MODES OF COMMITTING A VIOLATION THEREOF: MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR GROSS INEXCUSABLE NEGLIGENCE; ELUCIDATED. — Under the third element, the crime may be committed through "manifest partiality," "evident bad faith,"

or "gross inexcusable negligence." As already held by this Court, Section 3(e) of RA 3019 may be committed either by *dolo*,as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to 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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

4. ID.; ID.; ID.; ACTS CONSTITUTING THE OFFENSE; TWO MODES; FOR ONE TO BE FOUND GUILTY UNDER THE SECOND MODE, IT SUFFICES THAT THE ACCUSED HAS GIVEN UNJUSTIFIED FAVOR OR BENEFIT TO ANOTHER IN THE EXERCISE OF HIS OFFICIAL, ADMINISTRATIVE OR JUDICIAL FUNCTIONS. — Anent the last element, in order to hold a person liable for violation of Section 3 (e), RA 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions. Petitioner is charged under the second mode.For one to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action."Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE BURDEN IS ON THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT THE ACCUSED IS GUILTY OF EVIDENT BAD FAITH; THERE IS NO PRESUMPTION OF BAD FAITH, AS THE LAW PRESUMES THE ACCUSED INNOCENT UNTIL PROVEN GUILTY; CASE AT BAR. — Justice Marvic Mario Victor F. Leonen, in his Dissenting Opinion, posits that petitioner's alleged "brazen act of granting permits without any basis in law gives rise to a presumption of bad faith" on the part of respondent.*First*,petitioner's issuance of the questioned permits proceeds from his belief, erroneous as it is, that he is authorized under Section 444(b)(3)(iv) of the Local Government Code to issue the same. A cursory reading of this provision would readily show that there is, in fact, basis to conclude that respondent, as municipal mayor, has authority to issue permits and licenses, although such power is not applicable in the present case. Hence, it would be inaccurate to say that petitioner's act of granting permits has no basis, whatsoever, in law as to make petitioner guilty of evident bad faith. *Second*, petitioner's supposed brash act of granting permits without legal basis could not have given rise to a presumption of bad faith. There is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act. On the contrary, as in all cases, the law presumes the accused innocent until proven guilty.Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be absolved of the crime charged. Thus, in the instant case, good faith on the part of petitioner need not even be proved. It is for the prosecution to show beyond reasonable doubt that he is guilty of evident bad faith. However, the prosecution has fallen short of discharging its burden of proving petitioner's guilt beyond reasonable doubt.

6. POLITICAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; TO CONVICT AN ACCUSED OF AN OFFENSE OTHER

THAN THAT CHARGED IN THE COMPLAINT OR INFORMATION WOULD BE VIOLATIVE THEREOF; CASE AT BAR. — Contrary to the dissent's view, it would be highly improper, *nay* unconstitutional, to convict petitioner on the basis of gross inexcusable negligence. It must be emphasized that the Informations filed against petitioner all accuse the latter of violating Section 3 (e) of RA 3019 through the modality of evident bad faith *only*.Not one Information accused petitioner of violating the same provision through gross inexcusable negligence. As can be derived from our earlier discussions, *evident bad faith* and *gross inexcusable negligence* are two of the three modalities of committing violations of Section 3(e) of RA 3019. Also, by our previous discussion, we were able to establish that each modality of violating Section 3(e) of RA 3019 is actually distinct from the others. Hence, while all three modalities may be alleged simultaneously in a single information for violation of Section 3(e) of RA 3019, **an allegation of only one modality without mention of the others necessarily means the exclusion of those not mentioned**. Verily, an accusation for a violation of Section 3(e) of RA 3019 committed through evident bad faith *only*, cannot be considered as synonymous to, or includes an accusation of violation of Section 3(e) of RA 3019 committed through gross inexcusable negligence.To adopt the dissent's view, therefore, would inevitably sanction a violation of petitioner's due process rights, particularly of his right to be informed of the nature and cause of the accusation against him. Convicting petitioner of violation of Section 3(e) of RA 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the violation by means of evident bad faith only, would be highly unfair as it effectively deprives the petitioner of the opportunity to defend himself against a novel accusation. This outcome simply cannot be countenanced. In *People v. Manalili*, we were taught as much:The hornbook doctrine in our jurisdiction is that **an accused cannot be convicted of an offense, unless it is *clearly* charged in the complaint or information**. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. **To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right**.

CAGUIOA, *J., concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3(E) THEREOF; ELEMENTS. — To be found guilty of violating Section 3(e), RA 3019, the following elements must concur:(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.

2. ID.; ID.; ID.; ELEMENT OF EVIDENT BAD FAITH; REQUIRES THAT THE ACCUSED ACTED WITH A MALICIOUS MOTIVE OR INTENT, OR ILL WILL; THAT THE ACCUSED VIOLATED A PROVISION OF LAW OR THAT A PROVISION OF LAW IS CLEAR, UNMISTAKABLE AND ELEMENTARY IS NOT ENOUGH; CASE AT BAR. — It is settled by a plethora of cases that evident bad faith "does not simply connote bad judgment or negligence" but of having a "palpably and patently **fraudulent** and **dishonest** purpose to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will**. It contemplates a state of mind affirmatively operating with **furtive design or with some motive or self-interest or ill will or for ulterior purposes**." Simply put, it partakes of the nature of fraud. The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of law. It is not enough that the provision of law is "clear, unmistakable and elementary." *To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent***. As explained by the Court in *Sistoza v. Desierto (Sistoza)*, "mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*." x x x Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive[.]" **Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing**

that they were motivated by malice or gross negligence amounting to bad faith." x x x Here, as pointed out by the *ponencia*,the records are **replete** with facts negating the existence of bad faith on the part of Villarosa. Specifically, in doing the acts in question, Villarosa was relying — albeit mistakenly — that he had the power to do so under Section 444 of the LGC.

3. ID.; ID.; ID.; ELEMENT OF GROSS INEXCUSABLE NEGLIGENCE; MUST BE ALLEGED WITH PARTICULARITY IN THE INFORMATION SUFFICIENTLY TO INFORM THE ACCUSED OF THE CHARGE AGAINST HIM; SEPARATE AND DISTINCT FROM MODALITY OF EVIDENT BAD FAITH; ALLEGING ONE IN AN INFORMATION SHOULD NOT, AND DOES NOT, MEAN THAT THE OTHER IS LIKEWISE ALLEGED; CASE AT BAR. — I x x x disagree that Villarosa can be convicted through the modality of "gross inexcusable negligence" when the same was not alleged in the Informations. To recall, the Informations only accused Villarosa of doing certain acts "with evident bad faith." It will be utterly unfair, and will be offensive to his right to due process for him to suddenly be convicted under "gross inexcusable negligence" when it was not even part of the Informations, nor was he given any opportunity to be heard on the same. To emphasize, "Section 3(e) of RA 3019 may be committed either by *dolo*,as when the accused acted with evident bad faith or manifest partiality, or by *culpa*,as when the accused committed gross inexcusable negligence." In simple terms, "evident bad faith" entails willfulness to do something wrong, whereas "gross inexcusable negligence" entails *failure to exercise the required diligence* that either results in a wrong or in the failure to prevent the occurrence of a wrongdoing. Thus, "gross inexcusable negligence" and "evident bad faith" are separate and distinct from each other. Alleging one in an Information should not, and does not, mean that the other is likewise alleged. x x x Here, the Informations charged Villarosa only with "evident bad faith." Again, he was **not** charged with "gross inexcusable negligence." Following the ultimate purpose laid down above — that is, to enable the accused to properly prepare his defense — it cannot be said here that Villarosa was given the proper opportunity to prepare his defense as regards the element of "gross inexcusable negligence." As *Dela Chica v. Sandiganbayan* reminds,

"manifest partiality, evident bad faith or gross inexcusable negligence **must be alleged with particularity in the information sufficiently to inform the accused of the charge against him and to enable the court properly to render a decision.**" It will thus be grossly unfair for the Court to now rule that he is guilty of a charge that he has not been even given the opportunity to defend himself against.

4. ID.; ID.; ID.; AN ACCUSED'S VIOLATION OF THE LAW THAT IS NOT PENAL IN NATURE DOES NOT AUTOMATICALLY TRANSLATE INTO EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE THAT MAKES ONE GUILTY OF A VIOLATION THEREOF; PROSECUTION MUST PROVE THE EXISTENCE OF FACTUAL CIRCUMSTANCES THAT POINT TO FRAUDULENT INTENT. — I reiterate that Villarosa's violation of a law that is **not** penal in nature does not, as it should not, ***automatically*** translate into evident bad faith or gross inexcusable negligence that makes one guilty of a violation of Section 3(e) of RA 3019. For it to amount to a violation of Section 3(e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that ***the prosecution must prove the existence of factual circumstances that point to fraudulent intent***.

5. ID.; ID.; ID.; ELEMENT OF GROSS INEXCUSABLE NEGLIGENCE; CANNOT BE APPRECIATED WHEN ALL THE QUESTIONED ACTS IN A CASE ARE WILLFUL IN NATURE; IN CRIMINAL NEGLIGENCE, THE INJURY CAUSED TO ANOTHER SHOULD BE UNINTENTIONAL, IT BEING THE INCIDENT OF ANOTHER ACT PERFORMED WITHOUT MALICE; CASE AT BAR. — [T]here is x x x no gross inexcusable negligence that can be appreciated because it was not alleged in the Information. Moreover, Villarosa's act of granting permits is one of *dolo*, not *culpa*. The entire case was litigated on the charge that Villarosa *willfully and purposefully* did the acts under the impression that he had authority to do so. That he even replied to the cease and desist order from the provincial government in order to assert his authority is a fact that has been harped on numerous times to support his conviction. In *Yapyuco v. Sandiganbayan,* the Court stated that "[i]n criminal negligence, the injury caused to another **should be unintentional, it being**

the incident of another act performed without malice," and "that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence" which is a form of negligence. In Villarosa's case, all the questioned acts were willful in nature. Hence, there is no gross inexcusable negligence or *culpa*, as there could not have been any. Again, to convict him for violating Section 3(e), RA 3019 under the modality of gross inexcusable negligence — simply because he violated a "clear," "unmistakable," and "elementary" provision of law — would be to set a dangerous precedent that would send a chilling effect to all public servants, particularly members of the judiciary, that working in the government would more likely lead to their imprisonment.

6. ID.; ID.; ID.; ELEMENT OF GIVING UNWARRANTED BENEFITS, ADVANTAGE, OR PREFERENCE; QUESTIONED BENEFITS MUST HAVE BEEN GIVEN BY THE PUBLIC OFFICER TO THE PRIVATE PARTY WITH CORRUPT INTENT, A DISHONEST DESIGN, OR SOME UNETHICAL INTEREST. — As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under RA 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in *dishonest* ways. Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations. Such benefits must have been given by the public officer to the private party with *corrupt intent, a dishonest design, or some unethical interest*. This is in alignment with the spirit of RA 3019, which centers on the concept of graft. I recognize that this is not the understanding under the current state of jurisprudence. Jurisprudence has defined the term "*unwarranted*" as simply lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "*Advantage*" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "*Preference*" signifies priority or higher evaluation or desirability; choice or estimation above another. The term "private party" may be used to refer

to persons other than those holding public office, which may either be a private person or a public officer acting in a private capacity to protect his personal interest. Thus, under current jurisprudence, in order to be found guilty for giving any unwarranted benefit, advantage, or preference, it is enough that the public officer has given an unauthorized or unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. x x x The [current] understanding of "unwarranted benefit, advantage, or preference" is too broad that every single misstep committed by public officers that result in benefits to private parties falls under the definition and would thus possibly be criminally punishable. Every little error — no matter how minor — would satisfy the fourth element as the threshold is simply that the benefit be "unjustified," "unauthorized," or "without justification."

PERLAS-BERNABE, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E) THEREOF; GROSS INEXCUSABLE NEGLIGENCE; COMMITTED BY A MUNICIPAL MAYOR WHO EFFECTIVELY USURPS THE FUNCTION OF A PROVINCIAL GOVERNOR BASED ON THE FLIMSY AND CONVENIENT EXCUSE THAT HE MISTAKENLY UNDERSTOOD THE APPLICABLE PROVISIONS OF THE LOCAL GOVERNMENT CODE. — A municipal mayor who effectively usurps the functions of a provincial governor based on the flimsy and convenient excuse that he mistakenly understood the applicable provisions of the Local Government Code (LGC)despite their clear and straightforward nature commits "**gross inexcusable negligence**" and hence, should be held criminally liable for violation of Section 3 (e) of Republic Act No. (RA) 3019.

2. ID.; ID.; ID.; THREE (3) MODES OF COMMITTING A VIOLATION THEREOF; GROSS INEXCUSABLE NEGLIGENCE DOES NOT REQUIRE PROOF OF SOME FRAUDULENT MOTIVE, SELF-INTEREST, OR ILL WILL. — To be sure, "gross inexcusable negligence" is one of the three (3) recognized modes of committing a violation of Section 3(e) of RA 3019. The other two (2) modes are "manifest partiality" and "evident bad faith." In *Sison v. People*, the Court

stated that:The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*,through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict. Explaining what these terms mean, the Court has held:"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." Based on the foregoing, it is clear that "gross inexcusable negligence," unlike "manifest partiality" or "evident bad faith," does not require proof of some fraudulent motive, self-interest, or ill will. However, it must be shown that the negligence committed by the public official is characterized "by the want of even slight care[;] acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally[,] with a conscious indifference to consequences in so far as other persons may be affected."

3. ID.; ID.; ID.; ID.; VIOLATION THEREOF MAY BE COMMITTED EITHER THROUGH *DOLO* OR *CULPA* AND ALTHOUGH THE INFORMATION MAY HAVE ALLEGED ONLY ONE (1) OF THE MODALITIES OF COMMITTING THE OFFENSE, THE OTHER MODE IS DEEMED INCLUDED IN THE ACCUSATION TO ALLOW PROOF THEREOF. — [T]he fact that the Information contains the words "with evident bad faith" does not preclude a conviction for violation of Section 3(e) through the modality of gross inexcusable negligence. In *Sistoza v. Desierto*, the Court held:We note that the Information against petitioner Sistoza, while specifying manifest partiality and evident bad faith, does not allege gross inexcusable negligence as a modality in the commission of the

offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the Information, it was evidently the intention of the Ombudsman to take petitioner to task for gross inexcusable negligence in addition to the two (2) other modalities mentioned therein. **At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by *dolo* or *culpa* and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof**.

4. ID.; ID.; ID.; ID.; A CONVICTION FOR A CRIMINAL NEGLIGENT ACT CAN BE HAD UNDER AN INFORMATION EXCLUSIVELY CHARGING THE COMMISSION OF A WILLFUL OFFENSE UPON THE THEORY THAT THE GREATER INCLUDES THE LESSER OFFENSE. — [T]he Court, in *Albert v. Sandiganbayan*, explained that "a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense," *viz.*:In *Sistoza v. Desierto* [see *supra* note 8], the Information charged the accused with violation of Section 3(e) of RA 3019, but specified only "manifest partiality" and "evident bad faith" as the modalities in the commission of the offense charged. "Gross inexcusable negligence" was not mentioned in the Information. Nonetheless, this Court held that the said section is committed by *dolo* or *culpa*,and although the Information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. In so ruling, this Court applied by analogy the pronouncement in *Cabello v. Sandiganbayan* [274 Phil. 369 (1991)] where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of perpetrating the offense.

5. ID.; ID.; ID.; GROSS INEXCUSABLE NEGLIGENCE; ESTABLISHED WHEN A PUBLIC OFFICER FAILS TO

EQUIP HIMSELF WITH THE BASIC KNOWLEDGE OF HIS FUNDAMENTAL DUTIES, AS WELL AS THE CLEAR LIMITS OF HIS AUTHORITY UNDER THE LAW. — When a person assumes a particular public office, he has the responsibility to equip himself with the basic knowledge of his fundamental duties, as well as the clear limits of his authority under the law. To fail in this regard is, to my mind, tantamount to gross inexcusable negligence, for which he or she may be rendered culpable. Case law exhorts that "[u]pon appointment to a public office, an officer or employee is required to take his oath of office whereby **he solemnly swears to** support and defend the Constitution, bear true faith and allegiance to the same; **obey the laws**,legal orders and decrees promulgated by the duly constituted authorities; and **faithfully discharge to the best of his ability the duties of the position he will hold**." Thus, unless a mistake is founded upon a doubtful or difficult question of law, or upon an honest mistake of fact, or there exists compelling circumstances that would justify otherwise, a public official's ignorance of the **essential aspects of his office** should not be countenanced. Otherwise, the constitutional provision, which states that "[p]ublic office is a public trust" and that all government officials and employees "must at all times be accountable to the people x x x," would easily lose its fortitude and fervor.

6. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); PROVINCIAL GOVERNOR; EXCLUSIVELY VESTED WITH THE POWER TO ISSUE EXTRACTION PERMITS. — RA 7160 or the LGC,is the primary statute that delineates the essential functions of local officials, such as a municipal mayor and a provincial governor. Under the LGC,the power to issue extraction permits is not given to the municipal mayor but is **exclusively vested upon the provincial governor**. Section 138 of the LGC unequivocally reads: Section 138. *Tax on Sand, Gravel and Other Quarry Resources*. — The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction. The permit to extract sand, gravel and other quarry resources shall be

issued **exclusively by the provincial governor**, pursuant to the ordinance of the *sangguniang panlalawigan*.

7. ID.; ID.; REPUBLIC ACT NO. 7942 (PHILIPPINE MINING ACT OF 1995); APPLICATION FOR PERMIT TO EXTRACT QUARRY RESOURCES IS MADE BEFORE THE PROVINCIAL/CITY MINING REGULATORY BOARD AND AFTER THE APPLICANT HAS COMPLIED WITH ALL THE PRESCRIBED REQUIREMENTS, THE PROVINCIAL GOVERNOR GRANTS THE PERMIT. — RA 7942, otherwise known as the "Philippine Mining Act of 1995," provides the procedure by which any qualified person may be granted a permit to extract quarry resources, *i.e.*,building and construction materials, from the ground. Under Section 43 thereof, the application is made before the "provincial/city mining regulatory board" and that the "**provincial governor**" grants the permit after the applicant has complied with all the prescribed requirements.

8. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); MUNICIPAL MAYOR; GENERAL AUTHORITY THEREOF TO ISSUE LICENSES AND PERMITS UNDER SECTION 444(3)(IV) OF RA 7160 CANNOT PREVAIL OVER THE EXPRESS AND SPECIFIC AUTHORITY CONFERRED UPON THE PROVINCIAL GOVERNOR TO ISSUE EXTRACTION PERMITS. — Notably, the municipal mayor's general authority to issue licenses and permits under Section 444 (3) (iv) of RA 7160 cannot prevail over the express and specific authority conferred upon the provincial governor to issue extraction permits. Equally basic is the rule that special provisions of law prevail over its general provisions. Neither should petitioner's gross inexcusable negligence be condoned by the Municipal Environment and Natural Resources Office's recommendation that he could approve the questioned permits nor the fact that the shares in the fees for these permits were received by the provincial government. To me, these proffered excuses do not sufficiently justify why petitioner failed to instead consult the clear and unequivocal provisions of the law which point to one singular reasonable conclusion — that is, that a municipal mayor has no power to issue extraction permits as that power exclusively belongs to the provincial governor plain and simple.

LEONEN, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E); ELEMENTS FOR A VIOLATION THEREOF. — To sustain convictions for violation of Republic Act No. 3019, Section 3(e), the prosecution must prove the following elements:1) The accused must be a public officer discharging administrative, judicial or official functions;2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

2. ID.; ID.; ID.; THREE (3) MODES OF COMMITTING A VIOLATION THEREOF, DIFFERENTIATED. — *Albert v. Sandiganbayan* differentiates the three (3) modes of committing a violation under this provision:There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. *"Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.* "Gross inexcusable negligence" refers to 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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

3. TAXATION; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); SECTION 138 THEREOF; THE PROVINCIAL GOVERNOR HAS THE EXCLUSIVE AUTHORITY TO ISSUE PERMITS TO EXTRACT SAND, GRAVEL AND OTHER QUARRY RESOURCES; CASE AT BAR. — Petitioner, as then Municipal Mayor of San Jose, Occidental Mindoro, had absolutely no authority to issue extraction permits. Republic Act No. 7160, Section 138 is clear: x x x ***The permit to extract sand, gravel and other quarry resources shall be issued exclusively by the provincial governor***,pursuant to the ordinance of the sangguniang panlalawigan. x x x The provision is categorical, unambiguous, and makes no room for

interpretation. The Provincial Governor has the *exclusive* authority to issue permits to extract sand, gravel, and other quarry resources. Nothing in the provision is susceptible to an interpretation that a Mayor may issue extraction permits.

4. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; BASIC IS THE RULE THAT IGNORANCE OF THE LAW EXCUSES NO ONE FROM COMPLIANCE. — [B]asic is the rule that ignorance of the law excuses no one from compliance. We cannot exculpate an individual from liability for an illicit act when he or she pleads ignorance of the law. We have all the more reason not to condone a local chief executive's illegal and unauthorized exercise of power, especially when it is because of some patently erroneous personal view that he has the authority. It must be underscored that as a local chief executive, petitioner implements the law in his municipality's territorial jurisdiction.

5. TAXATION; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); SECTION 444(3)(IV) THEREOF; A GENERAL AUTHORITY CONFERRED UPON THE MUNICIPAL MAYOR TO ISSUE LICENSES AND PERMITS CANNOT PREVAIL OVER THE SPECIFIC AND EXCLUSIVE AUTHORITY GRANTED UPON THE PROVINCIAL GOVERNOR TO ISSUE EXTRACTION PERMITS. — [T]he majority excused petitioner's blatant disregard of the law "in his [mistaken] reliance on the provisions of the Local Government Code." It does not mention which particular provision of the Local Government Code was vague that warrants petitioner's acquittal. Records revealed that petitioner relied on Section 444 (3) (iv) of the Code. x x x *There is no difficult question of law here*. As the Sandiganbayan pointed out, this general authority — conferred upon the municipal mayor to issue licenses and permits — cannot prevail over the "specific and exclusive authority granted upon the provincial governor to issue extraction permits[.]"

6. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); A *MALUM PROHIBITUM*, AND NOT *MALUM IN SE*; MERE ISSUANCE OF INVALID PERMITS CONSTITUTES A SERIOUS TRANSGRESSION, CONSIDERING SHEER LACK OF LEGAL BASIS OR ANY COLOR OF LAW. — [I]n my view, a public officer's brazen act of granting permits without any basis in law gives

rise to a presumption of bad faith. Petitioner's mere issuance of invalid permits constitutes a serious transgression, considering sheer lack of legal basis or any color of law. *Luciano v. Estrella* declared that Republic Act No. 3019 is *malum prohibitum*, and not *malum in se*:In other words, the act treated thereunder partakes of the nature of a *malum prohibitum*; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain *acts* of Republic officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that the law does not merely contemplate repression of acts that are unlawful or corrupt *per se*,but even of those that may *lead to or result* in graft and corruption. Thus, to require for conviction under the Anti-Graft and Corrupt Practices Act that the validity of the contract or transaction be first proved would be to enervate, if not defeat, the intention of the Act. For what would prevent the officials from entering into those kinds of transactions against which Republic Act 3019 is directed, and then deliberately omit the observance of certain formalities just to provide a convenient leeway to avoid the clutches of the law in the event of discovery and consequent prosecution?

7. ID.; ID.; SECTION (3)(E); PERSONAL GAIN IS NOT AN ELEMENT FOR A VIOLATION THEREOF. — The majority's contemplation that "there is no showing that petitioner personally gained anything by his issuance of the questioned extraction permits" is immaterial. This is not an element of the crime that must be proven.

8. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; OMBUDSMAN'S POWER TO DETERMINE PROBABLE CAUSE IS EXECUTIVE IN NATURE; WITH ITS POWER TO INVESTIGATE, IT IS IN BETTER POSITION THAN THE SUPREME COURT TO ASSESS THE EVIDENCE ON HAND TO SUBSTANTIATE ITS FINDING OF PROBABLE CAUSE OR LACK OF IT. — The majority stresses that Soledad filed the complaint for violation of laws which did not include Republic Act No. 3019, but that "the

Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3 (e) of Republic Act No. 3019." It must be reiterated that "the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it." The Ombudsman acted well-within its jurisdiction and competence in resolving to file informations for violation of Republic Act No. 3019, instead of the other laws Soledad claimed petitioner violated.

9. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E); TO SUSTAIN A CONVICTION UNDER THE LAW, THERE NEED NOT BE ACTUAL PROOF OF HOW THE GRANTEES PREYED UPON THE MUNICIPALITY'S RESOURCES TO ILLUSTRATE THAT THEY RECEIVED UNWARRANTED BENEFIT; ACQUITTAL OF THE PETITIONER, NOT PROPER IN CASE AT BAR. — I disagree with the majority that there is "no sufficient evidence to prove that the persons in whose favor herein petitioner issued the subject extraction permits received unwarranted benefits, advantage, or preference." As it pointed out, "unwarranted means lacking adequate or official support; unjustified, unauthorized, or without justification or adequate reason." To sustain petitioner's conviction, there need not be actual proof of how the grantees preyed upon the municipality's resources to illustrate that they received unwarranted benefit. It is manifest that the grantees benefited from being issued extraction permits, despite having no source of right. Plainly, obtaining the permits from an unauthorized public officer enabled the grantees to extract sand and gravel resources without any legal authority, proper justification, and under no regulation from the concerned government agencies. This Court must not close its eyes when the unwarranted benefit extended to several persons is patent. All told, in issuing extraction permits when he had no power to do so, and in blatant disregard of the proper authority's orders, petitioner gave unwarranted benefits to his permits' grantees. With no legitimate justification of his unlawful act, petitioner should not be acquitted from the charges.Thus, I find no error in the Sandiganbayan's finding that petitioner was guilty beyond reasonable doubt of violating Section 3 (e) of the Anti-Graft and Corrupt Practices Act.

10. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; PUBLIC OFFICERS MUST PERFORM THEIR DUTIES WITH UTMOST RESPONSIBILITY, INTEGRITY, LOYALTY, AND EFFICIENCY. — "Public office is a public trust." Public officers must perform their duties with "utmost responsibility, integrity, loyalty, and efficiency." This Court must endeavor to exact accountability from our public officers, lest we unwittingly coddle erring leaders.

LAZARO-JAVIER, *J., dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PUBLIC PROSECUTOR HAS THE QUASI-JUDICIAL PREROGATIVE TO DETERMINE WHAT CRIME SHOULD BE FILED IN COURT AND WHO SHOULD BE CHARGED THEREFOR AND ALWAYS ASSUMES AND RETAINS FULL DISCRETION AND CONTROL OF THE PROSECUTION OF ALL CRIMINAL ACTIONS. — [T]he truth is that complainant's opinion in this regard does not bind the Office of the Ombudsman. It is the latter, not the complainant who determines what offense to charge an accused with.The doctrine has remained unchanged through several decades now — the public prosecutor has the quasi-judicial prerogative to determine what crime should be filed in court and who should be charged therefor; he or she always assumes and retains full discretion and control of the prosecution of all criminal actions.

2. ID.; ID.; ID.; REAL NATURE OF THE CRIMINAL CHARGE IS DETERMINED NOT FROM THE CAPTION OR PREAMBLE OF THE INFORMATION, OR FROM THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED, BUT BY THE FACTS RECITED IN THE INFORMATION BECAUSE THESE FACTS DETERMINE THE DEFENSE THAT AN ACCUSED WOULD HAVE TO RAISE AND THE OFFENSE THAT AN ACCUSED MAY BE CONVICTED OF. — [P]etitioner was not and could not have been prejudiced at all by the divergence of opinion between the complainant and the Office of the Ombudsman as to the nature and designation of the offense with which to charge petitioner. What matters are the facts recited in the Information because these facts

determine the defense that an accused would have to raise and the offense that an accused may be convicted of. As we held in ***Consigna v. People***: Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.

3. CRIMINAL LAW; USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS AND VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); THERE IS NO INCOMPATIBILITY BETWEEN THE ELEMENTS THEREOF, AND DEPENDING ON THE FACTS PROVED BEYOND REASONABLE DOUBT, AN ACCUSED MAY BE FOUND GUILTY OF THESE TWO (2) CRIMES. — The *ponencia*'s second statement that petitioner could be held guilty only of the lesser offense of Usurpation of Authority or Official Functions under Article 177 of *The Revised Penal Code*, is, with due respect, erroneous.It is not out of the ordinary for one who usurped the functions of another in the context of the elements of Article 177 to be also charged with and found guilty of violation of Section 3 (e) of RA 3019 if the usurpation was done with manifest partiality, evident bad faith or gross inexcusable negligence and resulted in undue injury to any private or public party or unwarranted benefit, advantage or preference to any private party.This was the situation in ***Tiongco v. People*** where the accused was charged with these two (2) offenses. Tiongco signed disbursement vouchers and checks pertaining to the retirement gratuity of an employee of the Philippine Crop Insurance Corporation despite her lack of authority to do so. Like herein appellant, Tiongco argued she was of belief that she had authority to sign the documents and her actions were indicative of good faith. Despite Tiongco's defense of good faith, the Court nevertheless found her guilty as charged. ***Tiongco*** held that there is no incompatibility between the elements of Usurpation of Authority or Official Functions and those of violation of Section 3 (e) of RA 3019, and depending on the facts proved beyond reasonable doubt, an accused may be found guilty of these two (2) crimes.

4. TAXATION; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); SECTION 138 THEREOF ON TAX ON SAND,

GRAVEL AND OTHER QUARRY RESOURCES; ISSUANCE OF EXTRACTION PERMITS IS EXCLUSIVELY VESTED IN THE PROVINCIAL GOVERNOR PURSUANT TO A PROMULGATED ORDINANCE. — Section 138 of the *Local Government Code* provides that the issuance of extraction permits is **exclusively** vested in the provincial governor pursuant to a promulgated Sangguniang Panlalawigan ordinance. x x x Section 43 of RA 7942, the *Philippine Mining Act*, embodies in substance a similar provision. x x x Relevantly, the Sangguniang Panlalawigan of Occidental Mindoro promulgated Provincial Ordinance No. 2005-004, stating: Section 65. Administrative Provisions. — a. Permit to extract and dispose of materials applied. No person, partnership or corporation or government entity or private owner shall be allowed to take, extract, or dispose of any resources from public or private land or from the beds of public waters within the territorial jurisdiction of the province, unless authorized by a permit exclusively issued by the Provincial Governor, upon recommendation of the Environment and Natural Resources Office. A plain reading of these provisions clearly shows that the only way for quarrying operators to legally extract quarrying resources was upon securing an extraction permit **exclusively** from the Provincial Governor, and in this case, the Governor of Occidental Mindoro. There was and still is no room for the interpretation of these laws. The Municipality of San Jose, through petitioner as then Mayor, did not have the authority to issue extraction permits. Petitioner effectively bypassed the provincial government. He arrogated to himself the exclusive authority of the Provincial Governor to grant extraction permits, in clear contravention of the express provisions of the *Local Government Code*, the *Philippine Mining Act*, and Occidental Mindoro's Provincial Ordinance No. 2005-004.

5. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6713 (CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES); ENJOINS PUBLIC OFFICERS TO REFRAIN FROM DOING ACTS CONTRARY TO LAW AT ALL TIMES; CASE AT BAR. — To emphasize, petitioner cannot feign ignorance of the law as he was San Jose's chief executive. He assumed *not just* an ordinary post but one that *imposes greater responsibility in the knowledge of the law, being the person who actually executes and enforces it*. As provided under

Section 4 of RA 6713, a public officer shall at all times refrain from doing acts contrary to law. Petitioner as public officer is expected to uphold the law, not act against it, and to do so, he *could not have but known* the law he is to execute, most especially the *Local Government Code* which he is presumed not only to know but in fact to master as his principal rule book.

6. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3(E) THEREOF; A PUBLIC OFFICER'S FAILURE TO APPRECIATE THE EXTENT OF HIS OR HER BASIC POWERS IS GROSS NEGLIGENCE AMOUNTING TO GROSS BAD FAITH AND MANIFEST PARTIALITY. — We held in ***Sanchez v. People*** that **a public officer's failure to appreciate the extent of his or her basic powers is gross negligence amounting to gross bad faith** and manifest partiality. x x x The Court in ***Ambil v. Sandiganbayan*** was as emphatic in ruling that ***a local chief executive's disregard of the extent of his power*** *to act on a particular matter* that **resulted in a benefit or advantage to a third party** "**betray[s] his unmistakable bias and the evident bad faith** that attended his actions."

7. ID.; ID.; ID.; THERE CAN BE NO GOOD FAITH WHERE THE CIRCUMSTANCES POINT TO THE NECESSARY MENTAL ELEMENT OF THE OFFENSE CHARGED – MANIFEST PARTIALITY, EVIDENT BAD FAITH OR INEXCUSABLE NEGLIGENCE; CASE AT BAR. — There can be no good faith where the circumstances point to the necessary mental element of the offense charged — manifest partiality, evident bad faith or inexcusable negligence. As noted, our case law has already settled the legal impact of petitioner's *feigned* ignorance of the utter lack of power to issue extraction permits. Petitioner gave out extraction permits repeatedly, albeit he had no authority to do so under the clear and unequivocal provision of Section 138 of the *Local Government Code*, Section 43 of the *Philippine Mining Act*, and Provincial Ordinance No. 2005-004. As a result, petitioner's unlawful act benefited and gave advantage to private parties that used the unduly permits to illegally extract resources. Despite petitioner's actual or at least strongly presumed knowledge of his lack of power to do so, he disputed, nay, breaded the plain

and categorical language of the *Local Government Code*, the *Philippine Mining Act*, and the Provincial Ordinance No. 2005-004. His actions manifest partiality, evident bad faith or inexcusable negligence.

8. ID.; ID.; ID.; IF THE FACTUAL ANTECEDENTS OF THE COMPLAINED ACTION OR INACTION SATISFY THE ELEMENTS THEREOF, THEN THE ADMINISTRATIVE DECISION DOES NOT PRECLUDE A CRIMINAL PROSECUTION. — As regards Justice Caguioa's **first** point, let me stress that just as the **infringement** of a **non-criminal** rule, regulation, protocol or directive does **not** automatically translate into a finding of *evident bad faith*, **it** also does **not** erase **per se** the existence of evident bad faith. **As we have seen in our established case law**, many of the rules, regulations, protocols or directives violated were **non-criminal but administrative** in character, yet ultimately, the violations were found to prove manifest partiality, eviden[t] bad faith or gross inexcusable negligence. Thus, the **criminal** or **non-criminal nature** of the infringed rule, regulation, protocol or directive has nothing to do *really* with whether the assailed violation translates to evident bad faith. The **controlling** aspect would still be the **attendant circumstances** which of course must be proved beyond a reasonable doubt. The reference to judges being merely administratively penalized is I believe beside the point. **If the factual antecedents of the complained action or inaction satisfy the elements of violation of Section 3 (e) of RA 3019, then the administrative decision does not preclude a criminal prosecution.** Again, it really adds nothing to the discussion to say ***if warranted*** because **that** is the pre-condition of all legally binding events.

9. ID.; RETROACTIVE EFFECT OF PENAL STATUTES; APPLIES IF THE PENAL STATUTES ARE BENEFICIAL TO THE ACCUSED, EVEN IF THE ACCUSED IS ALREADY SERVING HIS OR HER FINAL SENTENCE; CASE AT BAR. — As regards the **second** point, I do not know what the impact of this change in the doctrine would have on the fight against graft and corruption. Public respondents were **not heard** on this issue. All along, the criminal cases were prosecuted on the basis of the doctrinal understanding of the elements of the offense charged. I am **amenable to change** the doctrine and go along with how Justice Caguioa has interpreted it. I **humbly posit** though that since **this change**

in the doctrine benefits an accused and it **has been applied retroactively** to petitioner, it **should also be made to apply retroactively to all those who have been prosecuted and convicted** of violation of Section 3(e) of RA 3019. With all due respect to Justice Caguioa, this is not a "misguided" apprehension but a legitimate concern. Pursuant to Article 8 of the New Civil Code, judicial decisions applying or interpreting the laws or the Constitution, including the one at bar, form part of the law of the land. Corollarily, Article 22 of the Revised Penal Code calls for the retroactivity of penal statutes so long as they are beneficial to the accused, even if the accused is already serving his or her final sentence.

10. ID.; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(E) THEREOF; MAY BE COMMITTED THROUGH GROSS INEXCUSABLE NEGLIGENCE; ALLEGATION OF BAD FAITH INCLUDES AN ALLEGATION OF GROSS NEGLIGENCE; CASE AT BAR. — A violation of Section 3(e) of RA 3019 may also be committed through gross inexcusable negligence. So it may not be accurate to dispense with any discussion on gross inexcusable negligence though the Informations only alleged evidence bad faith. This omission in the Informations' averments is **not** significant because: x x x [I]t bears stressing that Sec. 3, par. (e), RA 3019, is committed either by *dolo* or *culpa* and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. Further, the allegation of "bad faith **includes** an allegation of **gross negligence**." This is because, applying *mutatis mutandis*," [m]alice or bad faith implies moral obliquity or a conscious and intentional design to do a wrongful act for a dishonest purpose. However, a conscious or intentional design need not always be present since negligence may occasionally be so gross as to amount to malice or bad faith. Bad faith, in the context of Art. 2220 of the Civil Code, includes gross negligence." Hence, assuming without admitting that no evidence of evident bad faith has been shown, it **cannot be denied** that petitioner had been grossly inexcusably negligent in violating Section 138 of the *Local Government Code* as his attention to this violation has been called several times. Whether we agree with this definition of **gross inexcusable negligence** is beside the point. It is either we abide by the definition, or jettison it for

another perhaps more humane and practical explanation, and apply it not *pro hac vice* but retroactively to all accused and convicts similarly situated.

11. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SECTION 14, ARTICLE VIII THEREOF; REQUIRES COURTS TO STATE IN THEIR DECISION THE FACTS AND THE LAW ON WHICH THE DECISION IS BASED; FAILURE OF ANY COURT, THE SUPREME COURT INCLUDED, TO ADHERE THERETO WOULD DEPRIVE PARTY-LITIGANTS OF THEIR FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW; CASE AT BAR. — Despite the telltale signs of petitioner's open defiance and flagrant violation of the law and the ordinance, the *ponencia*,with due respect, has belabored its own fact-finding. But instead of giving a holistic view of the case, it presents its own conclusions without bothering to present, let alone, distill the arguments raised by the prosecutor either during the trial or on appeal, the *ponencia* seemingly adopts the arguments of petition without weighing them against the counter-arguments of the prosecution. It applies the constitutional presumption of innocence and readily concludes that this presumption was not overcome; but conveniently omits to mention the endeavors of the prosecution to overthrow this presumption. I daresay, this manner and style of presentation translates to serious constitutional violations. Section 14, Article VIII of the Constitution requires: SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.. . . The failure of any court, the Court included, to adhere to this constitutional mandate would deprive party-litigants of their fundamental right to due process of law. Indeed, the Sandiganbayan here would be at a loss on why its verdict of conviction was reversed; the prosecution would have no clue at all where it went wrong in presenting its case; and respondent would be left wondering how petitioner was able to evade his criminal liability for violating the laws which he could **not** have possibly been **unaware** of.

APPEARANCES OF COUNSEL

Benjamin C. Santos and *Ray Montri C. Santos* for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Sandiganbayan (*SB*), promulgated on November 17, 2016, which found petitioner guilty beyond reasonable doubt of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019 (*RA 3019*), otherwise known as the *Anti-Graft and Corrupt Practices Act*, and sentenced him, for each count, to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory penalty of perpetual disqualification from holding public office. The petition also questions the SB Resolution[2] dated March 6, 2017 which denied petitioner's Motion for Reconsideration.[3]

The factual and procedural antecedents of the case are as follows:

Sometime in August to September 2010, the Designated Area Supervisor of the Provincial Environment and Natural Resources Office (*PENRO*) of the Province of Occidental Mindoro received several reports from their mining and quarry checkers that there are persons who are conducting quarry operations within the territorial jurisdiction of the Municipality of San Jose, in the same province, without the required Extraction Permits issued by the Provincial Government. Acting on these reports, the Designated Area Supervisor notified the quarry operators of their alleged violation, but upon being confronted by the former, the said quarry operators presented several documents, among which are Extraction Permits signed by herein petitioner who

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[1] Penned by Associate Justice Reynaldo P. Cruz, with Associate Justices Efren N. De La Cruz and Michael Frederick L. Musngi, concurring, *rollo*, pp. 43-61.

[2] *Id.* at 63-69.

[3] Records, Vol. II, pp. 406-434.

was then the Mayor of San Jose. Noting that the documents shown were not issued by the Provincial Governor's Office, Ruben P. Soledad (*Soledad*), the Provincial Environment and Natural Resources Officer of Occidental Mindoro issued Cease-and-Desist Orders (*CDOs*) against these quarry operators, notifying them that it is the Provincial Governor who has sole authority to issue extraction permits and reminding them of the penalties that may be imposed upon them under the applicable provisions of the governing Provincial Tax Ordinance.

After acquiring information of the issuance of the above CDOs, herein petitioner wrote a letter, dated May 23, 2011, addressed to Soledad explaining his position on the matter and stating that he [Soledad] is guilty of "mockery of the whole legislative process" in considering certain provisions of the existing and applicable Provincial Tax Ordinance as repealed, and in supposedly giving effect to a proposed amendment of the said Ordinance without the benefit of public hearing and publication as required by law. As such, petitioner manifested that the Municipality of San Jose "shall not recognize [the] cease-and-desist order until such time that a proper legal process is adhered to by the Provincial Government." Petitioner also asked Soledad to "properly respect the inherent powers vested upon the Local Government Unit which was unmistakably and distinctly defined in the Local Government Code (*LGC*) of 1991 as a political subdivision" which "has substantial control of local affairs."[4]

In a letter dated May 26, 2011, Soledad responded to petitioner by claiming that, pursuant to Provincial Tax Ordinance No. 2005-004 of Occidental Mindoro, as well as the Local Government Code of 1991, the authority to issue permits for the extraction of sand and gravel within the Province of Occidental Mindoro resides exclusively with the Provincial Governor. Soledad explained that the subject CDOs were issued for failure of the concerned quarry operators to present the legal permits because the ones they presented were issued by herein petitioner in his capacity as the Mayor of San Jose who is not authorized to do so. Soledad also insisted that the CDOs it issued

[4] See Exhibit "H", *id.* at 74.

were based on the strength of the provisions of the existing Provincial Tax Ordinance and not on the basis of any proposed amendments thereto.[5]

On August 23, 2011, petitioner wrote a letter addressed to the Members of the *Sangguniang Panlalawigan* of Occidental Mindoro insisting that, under the LGC, the Municipal government is authorized to organize its Municipal Environment and Natural Resources and to enforce its own regulatory powers. Petitioner also manifested that he is not in conformity with the alleged amendment of Provincial Tax Ordinance No. 2005-004, and that he will just honor the provisions of the original version of the said Ordinance which supposedly authorizes the Municipal Treasurer to receive payments from applicants of extraction permits.[6]

On October 4, 2011, Soledad filed, before the Office of the Ombudsman, a Complaint[7] against petitioner for Usurpation of Authority, Violation of Section 138 of Republic Act No. 7160 (*RA 7160*), otherwise known as the *Local Government Code of 1991*, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of Republic Act No. 6713 (*RA 6713*), otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*. In his Complaint, Soledad alleged that despite petitioner's knowledge that he lacks the requisite authority to issue extraction permits to quarry operators, petitioner, nonetheless, proceeded to issue several permits to several operators who were conducting quarry operations in San Jose.

In its Resolution[8] dated January 16, 2014, the Office of the Ombudsman for Luzon found probable cause to hold petitioner criminally liable for issuing the subject extraction permits and directed the filing of the corresponding Informations. Thus,

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[5] See Exhibit "J", *id.* at 76.

[6] Exhibit "I", *id.* at 75.

[7] Exhibit "E", *id.* at 17-27.

[8] Records, Vol. I, pp. 5-16.

on even date, separate Informations were filed with the SB against petitioner for ten (10) counts of violation of Section 3(e) of RA 3019, as amended. The Informations, which were similarly worded, except as to the dates of the commission of the offense and the recipients of the extraction permits, alleged as follows:

> That on or about (24 August 2010), in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally and **with evident bad faith**, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to (Gem CHB Maker), contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.[9]

The Informations were docketed as SB-14-CRIM. CASE Nos. 0347-0356.

On November 12, 2014, the prosecution filed a Manifestation with Motion to Withdraw Information[10] praying for the withdrawal of the Information in SB-14-CRIM. CASE No. 0347 on the ground that the document attached in the Complaint was not an Extraction Permit as alleged in the Information but a Mayor's Permit to conduct business which was not illegally issued.

On February 23, 2015, petitioner was arraigned, and he entered a plea of not guilty in all ten cases.[11]

However, in its Resolution[12] dated February 24, 2015, the SB granted the prosecution's Motion to Withdraw the Information in SB-14-CRIM. CASE No. 0347 and deemed the said case dismissed.

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[9] *Id.* at 1. (Emphasis ours)

[10] *Id.* at 181-183.

[11] See SB Order dated February 23, 2015, *id.* at 279.

[12] Records, Vol. I, p. 280.

Subsequently, trial ensued with respect to the nine (9) indictments against petitioner.

After trial, the SB rendered its November 17, 2016 questioned Decision finding petitioner, in all nine (9) cases (SB-14-CRIM. Case Nos. 0348-0356), guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019 and imposing upon him, in each of the nine cases, the indeterminate penalty of imprisonment of six (6) years and one (1) month to ten (10) years, with the accessory penalty of perpetual disqualification to hold public office.

The SB held that all the elements of violation of Section 3(e) of RA 3019 are present in the instant case.

Petitioner filed a Motion for Reconsideration, but the SB denied it in its Resolution dated March 6, 2017.

Petitioner, then, filed a petition for review on *certiorari* with this Court. However, his petition was denied via a minute Resolution[13] dated September 13, 2017 for failure to sufficiently show any reversible error in the assailed judgment of the SB to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Aggrieved by such denial, he filed a motion for reconsideration, but this Court denied the motion with finality in a Resolution[14] dated November 22, 2017, as no substantial argument was adduced to warrant the reconsideration sought.

Petitioner filed a second motion for reconsideration.

On July 17, 2018, this Court issued a Resolution[15] which reinstated the instant petition. In the said Resolution, this Court noted that if an accused in a case decided by the SB, which completely disposes of the case, whether in the exercise of its original or appellate jurisdiction, chooses to question such

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[13] Records, Vol. I, pp. 123-124.

[14] *Id.* at 149-150.

[15] *Id.* at 177-178.

decision of the SB, the legal recourse he/she has is to file a petition for review on *certiorari* with this Court under Rule 45 of the Rules of Court. However, this Court has observed that, in a number of cases, petitions for review of decisions of the SB were adjudicated via minute resolutions. While the disposition of cases through minute resolutions is an exercise of judicial discretion and constitutes sound and valid judicial practice under the Constitution,[16] settled jurisprudence[17] and the prevailing rules,[18] this Court found it a better policy to limit the issuance of minute resolutions denying due course to a Rule 45 petition, which assails a decision of the SB, to cases decided by the said court in the exercise of its appellate jurisdiction. Thus, with respect to cases resolved by the SB in the exercise of its original jurisdiction, the mode of deciding the case is either through a decision or unsigned resolution.[19] The reason behind this policy is because this Court is the first and last court which has the chance to review the factual findings and legal conclusions of the SB. Thus, by disposing of the case through a decision or unsigned resolution, this Court is required to take a "more than casual consideration" of the arguments raised by the appellant to support his cause as well as every circumstance which might prove his innocence.[20] Moreover, by virtue of the unique nature of an appeal in a criminal case, such appeal throws the whole case open for review in all its aspects. An examination of the entire records of the case may be made for the purpose of arriving at a correct conclusion. In doing so, the Court is always mindful

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[16] Constitution, Art. VIII, Sec. 14.

[17] *Agoy v. Araneta Center, Inc.*, G.R. No. 196358, March 21, 2012; *Borromeo v. Court of Appeals*, G.R. No. 82273, June 1, 1990.

[18] See A.M. No. 10-4-20-SC, Rule 13, Section 6(d).

[19] In conformity with the above-discussed policy, the 2018 Revised Internal Rules of the Sandiganbayan, which took effect on 16 November 2018, now provides that appeals to this Court, in criminal cases decided by the SB in the exercise of its original jurisdiction, shall be by notice of appeal, while appeals in cases decided by the SB, in the exercise of its appellate jurisdiction, is by petition for review on *certiorari* under Rule 45 of the Rules of Court.

[20] *Ruzol v. Sandiganbayan*, G.R. Nos. 186739-960, April 17, 2013.

of the precept that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

Hence, the present petition raising the following Issues:

I. Whether the mere issuance of the Extraction Permits by herein Petitioner Villarosa as Municipal Mayor amounts to evident bad faith and giving of unwarranted benefits, advantage or preference to the Quarry Operators considering that: (i) Accused issued the Extraction Permits only upon recommendation of both the Municipal Environment and Resources Office and the Municipal Administrator; (ii) Taxes were collected and remitted to the Province, Municipality of San Jose, and the Barangay, and that the share of the Province even formed part of its general fund which was duly appropriated by the Province in its 2011 and 2012 Budget Ordinance; (iii) not one of the Quarry Operators[,] alleged of having received unwarranted benefits, advantage or preference were prosecuted; (iv) The Extraction Permits were issued without knowledge of the Cease-and-Desist Orders; and [v] the Cease and Desist Orders were issued only to the Quarry Operators.

II. Whether Section 138 of the Local Government Code is not a self- executing provision such that Petitioner Villarosa cannot be held liable for violation of Section 3(e) of R.A. No. 3019, as amended, in the absence of proof of publication of both SP Resolution No. 11, adopting and approving Provincial Tax Ordinance No. 2005-004, and Provincial Tax Ordinance No. 2005-004.[21]

The petition is meritorious.

The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt.[22] This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused.[23] Indeed, the

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[21] *Rollo*, pp. 19-20.

[22] *Daayata, et al. v. People*, G.R. No. 205745, March 8, 2017.

[23] *Id.*

burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[24] Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved."[25] Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.

In the present case, petitioner is charged with violation of Section 3(e) of RA 3019 which provides:

> Section. 3. *Corrupt practices of public officers*. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> 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.

In order to hold a person liable under this provision, the following elements must concur, to wit:

> (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.[26]

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[24] *Id.*

[25] *Id.*

[26] *Valencerina v. People of the Philippines*, 749 Phil. 886, 906 (2014).

The presence of the first and second elements are not disputed in the present case. Petitioner was the Mayor of the Municipality of San Jose, Occidental Mindoro at the time of the commission of the alleged offense and the acts complained of were done in the discharge of his official functions.

As to the third element, petitioner argues that the prosecution failed to prove that there was evident bad faith on his part. *First*, petitioner contends that the applications for extraction permit went through a legitimate process as these were filed with the Municipal Environment and Natural Resources Office (*MENRO*), a body which was duly created by the *Sangguniang Bayan* of San Jose and approved by the *Sangguniang Panlalawigan* of Occidental Mindoro. Thereafter the applications were forwarded to the Municipal Administrator who, then, recommended its approval to the Mayor. Upon approval by the Mayor, the applicant paid the extraction fee to the Municipal Treasurer who issued Official Receipts. *Second*, petitioner argues that the taxes and fees paid by the applicants for extraction permit were duly collected by the Municipal Government of San Jose and were, in turn, remitted to the Provincial Government of Occidental Mindoro. The taxes which were remitted formed part of the Province's general fund and were duly appropriated by the *Sangguniang Panlalawigan*. Petitioner avers that if he indeed had no authority to issue the subject extraction permits, why did the Provincial Government continue to accept the taxes which were generated from the issuance of these permits, and which were remitted by the Municipal Government of San Jose and never bothered to question them?

Under the third element, the crime may be committed through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." As already held by this Court, Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence.[27] There is "manifest partiality" when

[27] *Garcia, et al. v. Sandiganbayan, et al.*, 730 Phil. 521, 535 (2014).

there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[28] "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[29] "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[30] "Gross inexcusable negligence" refers to 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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[31]

In the instant case, the prosecution alleges that petitioner is guilty of evident bad faith. However, the Court agrees with petitioner and finds that there is no sufficient evidence to prove that he is guilty of evident bad faith.

First, since he was not furnished copies of the CDOs nor was he previously notified of their issuance, petitioner was the one who took initiative in clarifying the validity of the said CDOs by writing a letter to Soledad and informing him of his position on the issue and the legal bases of such position.

Second, from the tenor of his letter to Soledad and the *Sangguniang Panlalawigan* of Occidental Mindoro, petitioner was very emphatic in his belief and reasoning, albeit mistakenly, that, under the Local Government Code, he wields authority, as Municipal Mayor, to issue the questioned permits. In fact, he even raised a legitimate question on the validity of the Provincial Tax Ordinance of Occidental Mindoro which governs, among others, the issuance of permits to extract and dispose of resources of the province. In other words, his claim and argument

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[28] *Id.*; *Fuentes v. People*, 808 Phil. 586, 594 (2017).

[29] *Id.*

[30] *Id.*

[31] *Id.* at 593.

are not without any legal basis. However, he was mistaken in his reliance on the provisions of the Local Government Code as to his authority to issue the subject extraction permits. Such mistake, nonetheless, is not tantamount to evident bad faith, manifest partiality or gross inexcusable negligence as contemplated under the law as to make him liable under Section 3(e) of RA 3019.

Third, there is no showing that petitioner personally gained anything by his issuance of the questioned extraction permits. In fact, it was not disputed that all the pertinent taxes and fees in the issuance of the said permits were collected and the respective shares of the Provincial Government and the *barangay* were properly remitted and appropriated by them.

Fourth, there could have been no furtive design to issue the questioned permits because it is likewise undisputed that the application, the processing and the approval of the said permits went through the regular process. The applications were filed with the MENRO, which were then forwarded to the Municipal Administrator who, then, recommended its approval to the Mayor. Upon approval by the Mayor, the applicant paid the extraction fee to the Municipal Treasurer who issued Official Receipts. There was no evidence to show that there were favored applicants whose permits were surreptitiously issued for any ulterior motive or purpose.

Hence, the foregoing instances cast doubt on the culpability of petitioner for the crime charged. The prosecution was unable to present sufficient evidence to prove that in issuing the questioned extraction permits, petitioner was moved by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another or of a palpably and patently fraudulent and dishonest purpose operating with furtive design to do moral obliquity or conscious wrongdoing.

Anent the last element, in order to hold a person liable for violation of Section 3(e), RA 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official,

administrative or judicial functions.[32] Petitioner is charged under the second mode.

For one to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions.[33] The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason.[34] "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.[35] "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[36]

In the instant case, the Court finds no sufficient evidence to prove that the persons in whose favor herein petitioner issued the subject extraction permits received unwarranted benefits, advantage or preference. At the time of issuing the subject permits, petitioner was justified by his honest belief that he is authorized by law to issue the said permits. Moreover, as mentioned above, there is no dispute that the recipients of the permits went through the regular process in applying for the said permits and that they paid the taxes and fees imposed by the Municipal Government of San Jose. Neither was there any showing that they were given preference over other applicants.

Moreover, it bears to reiterate that an accused has in his/her favor the presumption of innocence which the Bill of Rights guarantees. Unless his/her guilt is shown beyond reasonable doubt, he/she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution, which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the

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[32] *Ambil, Jr. v. Sandiganbayan, et al.*, 669 Phil. 32, 53 (2011).

[33] *Id.* at 55.

[34] *Id.*

[35] *Id.*

[36] *Id.*

prosecution, and unless it discharges that burden the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[37]

In this regard, Justice Marvic Mario Victor F. Leonen, in his Dissenting Opinion, posits that petitioner's alleged "brazen act of granting permits without any basis in law gives rise to a presumption of bad faith" on the part of respondent.

First, petitioner's issuance of the questioned permits proceeds from his belief, erroneous as it is, that he is authorized under Section 444(b)(3) (iv)[38] of the Local Government Code to issue the same. A cursory reading of this provision would readily show that there is, in fact, basis to conclude that respondent, as municipal mayor, has authority to issue permits and licenses, although such power is not applicable in the present case. Hence, it would be inaccurate to say that petitioner's act of granting permits has no basis, whatsoever, in law as to make petitioner guilty of evident bad faith.

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[37] *Daayata, et al. v. People, supra* note 22.

[38] SEC. 444. *The Chief Executive; Powers, Duties, Functions and Compensation.* –

(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

Second, petitioner's supposed brash act of granting permits without legal basis could not have given rise to a presumption of bad faith. There is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act. On the contrary, as in all cases, the law presumes the accused innocent until proven guilty.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[39]

Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be absolved of the crime charged. Thus, in the instant case, good faith on the part of petitioner need not even be proved. It is for the prosecution to show beyond reasonable doubt that he is guilty of evident bad faith. However, the prosecution has fallen short of discharging its burden of proving petitioner's guilt beyond reasonable doubt.

Yet, even as petitioner's actions were clearly not proven to be tinged with evident bad faith, there are still those that opine that an acquittal should not logically follow. The dissent advances the view that petitioner could still be convicted for violation of Section 3(e) of RA 3019 because the latter's actions may be considered to fall under the rubric of *gross inexcusable negligence* regardless.[40] The dissent further points out that such a conviction would be justified—even if the Informations against petitioner do not contain any allegation of gross inexcusable negligence—following the case of *Sistoza v. Desierto*.[41] This is plain error.

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;

x x x x x x x x x

[39] *Id.*

[40] See Reflections of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.

[41] 437 Phil. 117 (2002).

Contrary to the dissent's view, it would be highly improper, *nay* unconstitutional, to convict petitioner on the basis of gross inexcusable negligence. It must be emphasized that the Informations filed against petitioner all accuse the latter of violating Section 3(e) of RA 3019 through the modality of evident bad faith *only*. Not one Information accused petitioner of violating the same provision through gross inexcusable negligence. As can be derived from our earlier discussions, *evident bad faith* and *gross inexcusable negligence* are two of the three modalities of committing violations of Section 3(e) of RA 3019.[42] Also, by our previous discussion, we were able to establish that each modality of violating Section 3(e) of RA 3019 is actually distinct from the others.[43] Hence, while all three modalities may be alleged simultaneously in a single information for violation of Section 3(e) of RA 3019, **an allegation of only one modality without mention of the others necessarily means the exclusion of those not mentioned**. Verily, an accusation for a violation of Section 3(e) of RA 3019 committed through evident bad faith *only*, cannot be considered as synonymous to, or includes an accusation of violation of Section 3(e) of RA 3019 committed through gross inexcusable negligence.

To adopt the dissent's view, therefore, would inevitably sanction a violation of petitioner's due process rights, particularly of his right to be informed of the nature and cause of the accusation against him.[44] Convicting petitioner of violation of Section 3(e) of RA 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the violation by means of evident bad faith only, would be highly unfair as it effectively deprives the petitioner of the opportunity to defend himself against a novel accusation. This outcome simply cannot be countenanced. In *People v. Manalili*,[45] we were taught as much:

The hornbook doctrine in our jurisdiction is that **an accused cannot be convicted of an offense, unless it is *clearly* charged in the**

[42] *See* notes 29-31.

[43] *Id.*

[44] Constitution, Art. III, Sec. 14(2).

[45] 355 Phil. 652, 654 (1998).

complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. **To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right.**[46]

Neither would the case of *Sistoza* offer any refuge to the dissent's view. As astutely observed by Associate Justice Alfredo Benjamin S. Caguioa in his Concurring Opinion, the quotation in *Sistoza* that was relied upon by the dissent to justify their view is just an *obiter dictum*.[47] In other words, *Sistoza* never intended to definitively settle the question of whether an information for a violation of Section 3(e) of RA 3019 committed through evident bad faith only, can be sufficient to sustain a conviction for violation of the same provision albeit committed through the modality of gross inexcusable negligence. On this matter, we echo and adopt, as an integral part of this Decision, the following disquisition of Associate Justice Caguioa:[48]

The portion of *Sistoza* relied upon by Justice Perlas-Bernabe is as follows:

> We note that the *Information* against petitioner Sistoza, while specifying *manifest partiality* and *evident bad faith*, does not allege *gross inexcusable negligence* as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the *Information*, it was evidently the intention of the Ombudsman to take petitioner to task for *gross inexcusable negligence* in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), *RA 3019*, is committed either by *dolo* or *culpa* and although the *Information* may have alleged only one (1) of the

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[46] Emphasis supplied; citations omitted.

[47] Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 9.

[48] *Id.*

modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.

It is important to note, however, that Sistoza was a case where the accused questioned the Ombudsman's finding of probable cause against him. **The sufficiency of the Information filed against the accused therein was never the issue, as the main issue in the case was the propriety of the findings of the Ombudsman in the preliminary investigation. The absence of the phrase "gross inexcusable negligence" in the Information filed against him was not a material issue.** "Gross inexcusable negligence" was only brought up tin the discussion to drive home the point that the Ombudsman erred in finding probable cause for violation of Section 3(e), RA 3019, as the acts of the accused therein could not be considered to have been committed with evident bad faith or manifest partiality, or even gross inexcusable negligence.

Simply put, the paragraph in question is *obiter dictum*.[49]

Alas, even assuming for the sake of argument that petitioner may be held accountable for the issuance of the subject extraction permits, such is not for the offense charged in the present Informations, as the acts being complained of do not constitute the elements of the crime presently charged. **In fact, in his complaint filed with the Ombudsman, complainant Soledad accused petitioner not of violation of Section 3(e) of RA 3019 but of Usurpation of Authority, Violation of Section 138 of RA 7160, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of RA 6713; and Soledad presented evidence to support his accusations. However, the Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3(e) of RA 3019.** In this respect, it is true, as Justice Amy C. Lazaro-Javier has pointed out in her Dissenting Opinion that it is the prerogative of the Ombudsman to determine what charges it shall file against petitioner. Indeed, the public prosecutor assumes and retains full discretion and control of the prosecution of all criminal actions and that the public prosecutor has the prerogative to determine the charge to be filed in court and who shall be charged.

[49] Emphasis supplied; citations omitted.

However, I hasten to add that such prerogative or discretion must always be based on evidence presented by the parties. It bears to reiterate that to hold a person liable under Section 3(e) of RA 3019, among the elements that must be proven was that the act complained of was done through manifest partiality, evident bad faith, or gross inexcusable negligence and that the public officer charged gave unwarranted benefits, advantage or preference. In the present case, there appears no evidence submitted by the private complainants to engender a well-founded belief that petitioner indeed violated such provision of law.

In sum, the evidence proven by the prosecution in this case failed to pass the test of moral certainty necessary to warrant petitioner's conviction. The prosecution has failed to overcome the constitutional presumption of innocence enjoyed by petitioner. Hence, the failure of the prosecution's evidence to overcome such presumption of innocence entitles petitioner to an acquittal.

WHEREFORE, the instant petition is **GRANTED.** The assailed November 17, 2016 Decision and the March 6, 2017 Resolution of the Sandiganbayan in SB-14-CRIM. CASE Nos. 0348-0356, finding petitioner guilty beyond reasonable doubt of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019, are **REVERSED** and **SET ASIDE**. Consequently, petitioner is **ACQUITTED** of the crime charged.

SO ORDERED.

Reyes, Jr., Carandang, Inting, Zalameda, Lopez, and *Delos Santos, JJ.*, concur.

Caguioa, J., see separate concurring opinion.

Gesmundo and *Hernando, JJ.*, join *J. Caguioa's* separate concurring opinion.

Perlas-Bernabe, Leonen, and *Lazaro-Javier, JJ.,* see dissenting opinions.

Gaerlan, J., on leave.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the accused-petitioner should be acquitted. A violation of a law that is not penal in nature does not, as it cannot, automatically translate into a violation of Section 3(e) of Republic Act No. (RA) 3019.

Brief review of the facts

The accused-petitioner, Jose Tapales Villarosa (Villarosa), was the Mayor of the Municipality of San Jose, Occidental Mindoro. Believing, albeit erroneously, that he had the power to do so, Villarosa issued extraction permits to a number of quarry operators in the area. Before issuing a permit, however, the Office of the Municipal Environment and Natural Resources — created pursuant to Section 443(b) in relation to Section 484 of RA 7160 or the Local Government Code (LGC) — would accept and evaluate applications for extraction permits of gravel and sand. The Municipal Environment and Natural Resources Officer (MENRO) would evaluate individual applications for extraction permits, and if the application is qualified based on his evaluation, he would then endorse it to the Mayor for his approval after the payment of extraction fees.

The controversy in this case arose when the provincial government received reports that quarrying operations in the area were being conducted without the operators having secured the necessary permits. Some officers of the provincial government conducted an investigation, and the quarry operators showed them receipts issued by the Municipal Treasurer's Office (MTO) of San Jose and extraction permits signed by Villarosa. Because of this, Mr. Ruben P. Soledad (Soledad), the Provincial Environment and Natural Resources Officer (PENRO), issued Cease and Desist Orders (CDOs) against the quarry operators.

Villarosa sent a letter to Soledad objecting to the CDOs. Soledad, meanwhile, wrote back to insist that under Section 138 of the LGC, only the Provincial Governor may issue extraction permits for quarry resources. Section 138 of the LGC provides:

SECTION 138. *Tax on Sand, Gravel and Other Quarry Resources*. — The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.

The permit to extract sand, gravel and other quarry resources shall be issued exclusively by the provincial governor, pursuant to the ordinance of the sangguniang panlalawigan.

The proceeds of the tax on sand, gravel and other quarry resources shall be distributed as follows:

(1) Province — Thirty percent (30%);
(2) Component City or Municipality where the sand, gravel, and other quarry resources are extracted — Thirty percent (30%); and
(3) Barangay where the sand, gravel, and other quarry resources are extracted—Forty percent (40%). (Emphasis and underscoring supplied)

The provincial government averred that it passed an ordinance pursuant to the above provision of the LGC, namely Provincial Tax Ordinance No. 2005-004 (Tax Ordinance).

Villarosa, however, was of the belief that the Tax Ordinance was invalid and did not take effect because the said ordinance was not published as required by law. Thus, in the initial letter Villarosa wrote to the provincial government, he insisted that the municipal government "shall not recognize [the] cease-and-desist order until such time that a proper legal process is adhered to by the Provincial Government" and he also asked Soledad to "properly respect the inherent powers vested upon the Local Government Unit which was unmistakably and distinctly defined in the Local Government Code (LGC) of 1991 as a political subdivision" which "has substantial control of local affairs."[1]

In response to the second letter that Soledad sent him, Villarosa replied and insisted that the municipal government has the power

[1] *Ponencia*, p. 2, citing Exhibit "H", *rollo*, p. 74.

to organize its own environment and natural resources office and to enforce its own regulatory powers.[2]

As the CDOs went unheeded, Soledad then filed a complaint against Villarosa in the Office of the Ombudsman (Ombudsman) for Usurpation of Authority, violation of Section 138 of the LGC, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service, and Violation of RA 6713.[3]

The Ombudsman thereafter filed with the Sandiganbayan 10 Informations charging Villarosa with violations of Section 3(e), RA 3019. Except as to the dates of the commission of the offense and the recipients of the extraction permits, the accusatory portions of the Informations similarly read as follows:

> That on or about [*relevant date*], in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally and with evident bad faith, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to [*relevant grantee of extraction permit*], contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.[4]

The Sandiganbayan convicted Villarosa of nine counts[5] of violation of Section 3(e), RA 3019.

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[2] *Id.* at 3.

[3] Otherwise known as CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

[4] See *Rollo*, pp. 46-49.

[5] One of the Informations was withdrawn by the Ombudsman because what was attached was not an extraction permit but a business permit which was not illegally issued.

Upon appeal to the Court, Villarosa's convictions were initially affirmed by a minute resolution. However, upon due consideration,[6] the Court reinstated the case ratiocinating that it should not have dismissed the case by minute resolution only considering that the Court's review is merely the second — but already the last — level of review for the case.

The *ponencia* now rules that Villarosa should be acquitted of the charges.

As stated at the outset, I concur with the *ponencia*.

The prosecution was not able to prove beyond reasonable doubt the element of evident bad faith

To be found guilty of violating Section 3(e), RA 3019, the following elements must concur:

(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.[7]

The existence of the first two elements — that Villarosa was a public officer and the acts in question were done in the discharge of his official functions — are not disputed. The disagreement lies in the existence of the third and fourth elements, particularly whether his act of granting extraction permits was done in evident bad faith and resulted in giving any private party unwarranted benefits.

The Sandiganbayan answered in the affirmative and convicted Villarosa of the charges, holding that there was evident bad

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[6] After Villarosa filed a second motion for reconsideration.

[7] *Sison v. People*, 628 Phil. 573, 583 (2010).

faith because Section 138 of the LGC was clear and unambiguous and there was no room for interpretation.[8] Therefore, Villarosa's act of issuing extraction permits was a stubborn and outright defiance of the clear directive of the LGC. As regards the last element, the Sandiganbayan ruled that Villarosa's act resulted in unwarranted benefits on the part of the quarry operators since they were able to conduct operations without securing the proper authorization under the law.[9]

The *ponencia*, however, disagrees. According to the *ponencia*, there was no sufficient evidence to prove that he was guilty of evident bad faith. The *ponencia* took the following instances as evidence of good faith on the part of Villarosa:

> *First*, since he was not furnished copies of the CDOs nor was he previously notified of their issuance, petitioner was the one who took initiative in clarifying the validity of the said CDOs by writing a letter to Soledad and informing him of his position on the issue and the legal bases of such position.
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> *Second*, from the tenor of his letter to Soledad and the *Sangguniang Panlalawigan* of Occidental Mindoro, petitioner was very emphatic in his belief and reasoning, albeit mistakenly, that, under the Local Government Code, he wields authority, as Municipal Mayor, to issue the questioned permits. In fact, he even raised a legitimate question on the validity of the Provincial Tax Ordinance of Occidental Mindoro which governs, among others, the issuance of permits to extract and dispose of resources of the province. In other words, his claim and argument are not without any legal basis. However, he was mistaken in his reliance on the provisions of the Local Government Code as to his authority to issue the subject extraction permits. Such mistake, nonetheless, is not tantamount to evident bad faith, manifest partiality or gross inexcusable negligence as contemplated under the law as to make him liable under Section3(e) of RA 3019.
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> *Third*, there is no showing that petitioner personally gained anything by his issuance of the questioned extraction permits. In fact, it was not disputed that all the pertinent taxes and fees in the issuance of the said permits were collected and the respective shares of the

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[8] *Rollo*, p. 56.

[9] *Id.* at 59.

Provincial Government and the *barangay* were properly remitted and appropriated by them.

Fourth, there could have been no furtive design to issue the questioned permits because it is likewise undisputed that the application, the processing and the approval of the said permits went through the regular process. The applications were filed with the MENRO, which were then forwarded to the Municipal Administrator who then recommended its approval to the Mayor. Upon approval by the Mayor, the applicant paid the extraction fee to the Municipal Treasurer who issued Official Receipts. There was no evidence to show that there were favored applicants whose permits were surreptitiously issued for any ulterior motive or purpose.

Hence, the foregoing instances cast doubt on the culpability of petitioner for the crime charged. The prosecution was unable to present sufficient evidence to prove that in issuing the questioned extraction permits, petitioner was moved by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another or of a palpably and patently fraudulent and dishonest purpose operating with furtive design to do moral obliquity or conscious wrongdoing.[10]

Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen), on the other hand, is of the view similar to the Sandiganbayan that all the elements of the crime were proven by the prosecution. According to Justice Leonen, ignorance of the law excuses no one from compliance therewith, and Villarosa's acts were a blatant disregard of the letter of the law. Moreover, according to Justice Leonen, "a public officer's brazen act of granting permits without any basis in law gives rise to a presumption of bad faith."[11] and Villarosa's actions belie his claim of good faith.

Similarly, Associate Justice Amy C. Lazaro-Javier (Justice Lazaro-Javier) is of the position that Villarosa acted in bad faith because he violated "the clear, unmistakable and elementary rule in Section 138 of the *Local Government Code* vesting the power to issue extraction permits and allow private persons to extract quarry resources exclusively in the Provincial Governor"

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[10] *Ponencia*, pp. 9-10.

[11] Dissenting Opinion of Justice Leonen, p. 10.

and "subject[ed] State resources to illegal private gain of the private persons so allowed."[12]

My own review of the facts and the records of the case, however, leads me to the conclusion that not all the elements of the crime were proven by the prosecution.

The element of evident bad faith was not present

I do not disagree with the view that Section 138 is clear and unambiguous and that Villarosa violated the said provision of law. Nevertheless, it is my view that the said violation, on its own, does not automatically translate into the element of "evident bad faith" contemplated by Section 3(e) or RA 3019.

It is settled by a plethora of cases that evident bad faith "does not simply connote bad judgment or negligence"[13] but of having a "palpably and patently **fraudulent** and **dishonest** purpose to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will**. It contemplates a state of mind affirmatively operating with **furtive design or with some motive or self-interest or ill will or for ulterior purposes**."[14] Simply put, it partakes of the nature of fraud.[15]

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of law. It is not enough that the provision of law is "clear, unmistakable and elementary."** ***To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.***

As explained by the Court in *Sistoza v. Desierto*[16] (*Sistoza*), "mere bad faith or partiality and negligence *per se* are not enough

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[12] Dissenting Opinion of Justice Lazaro-Javier, p. 12.

[13] *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994). (Emphasis supplied)

[14] *Fuentes v. People*, 808 Phil. 586, 594 (2017).

[15] *Fonacier v. Sandiganbayan*, *supra* note 13.

[16] 437 Phil. 117 (2002).

for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*."[17]

To stress anew the jurisprudential pronouncements, evident bad faith "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes."[18] It connotes "a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will."[19]

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive[.]"[20] **Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."**[21]

In *Jacinto v. Sandiganbayan*,[22] evident bad faith was not appreciated by the Court because

> x x x the actions taken by the accused were not entirely without rhyme or reason; he refused to release the complainant's salary because the latter failed to submit her daily time record; he refused to approve her sick-leave application because he found out that she did not suffer any illness; and he removed her name from the plantilla because she was moonlighting during office hours. Such actions were measures taken by a superior against an erring employee who studiously ignored, if not defied, his authority.[23]

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[17] *Id.* at 130. (Italics in the original)

[18] *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

[19] *Reyes v. People*, 641 Phil. 91, 104 (2010).

[20] *Republic v. Desierto*, 641 Phil. 91, 104 (2010).

[21] *Collantes v. Marcelo*, 516 Phil. 509, 516 (2006).

[22] 258-A Phil. 20 (1989).

[23] *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 843-844 (1998).

In *Alejandro v. People*,[24] evident bad faith was ruled out "because the accused therein gave his approval to the questioned disbursement after relying on the certification of the bookkeeper on the availability of funds for such disbursement."[25]

Here, as pointed out by the *ponencia*, the records are **replete** with facts negating the existence of bad faith on the part of Villarosa. Specifically, in doing the acts in question, Villarosa was relying — albeit mistakenly — that he had the power to do so under Section 444 of the LGC, which states:

> SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* — (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.
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> (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, **the municipal mayor shall:**
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> x x x x x x x x x
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> (3) **Initiate and maximize the generation of resources and revenues**, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:
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> x x x x x x x x x
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> (iv) **Issue licenses and permits** and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance; (Emphasis and underscoring supplied)

In this connection, I agree with the *ponencia* that the circumstances it mentioned ***negate*** a finding of any dishonest purpose or perverse motive constituting evident bad faith on the part of Villarosa. In particular, (1) that Villarosa did not

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[24] 252 Phil. 413 (1989).

[25] *Llorente, Jr. v. Sandiganbayan*, *supra* note 23 at 844.

personally gain from anything as a result of the issuance of the extraction permits, (2) that the permits were awarded only to the applicants who went through the regular process, *i.e.*, applying with the MENRO, and (3) that the municipality religiously remitted to the provincial government the required portions of the fees paid by the quarry operators — all of these established facts negative any finding of Villarosa having been motivated by self-interest, ill will, or any ulterior purpose in the issuance of the extraction permits.

The clear language of Section 138 of the LGC notwithstanding, Villarosa's zeal in generating income for his municipal government on the basis of Section 444 cannot simply be brushed aside or labeled as a "brazen" act that gives rise to a presumption of bad faith. That this zeal was premised on a wrong understanding of Villarosa that Section 444 trumped Section 138 does not equate to evident bad faith especially where, as here, the evidence shows that all the monies and fees collected went to the coffers of the municipal and provincial governments. **In other words, there is no corruption here; there is no self-interest or ill will.**

Moreover, even as the Courts, steeped in the law, can now claim, with the benefit of 20-20 hindsight, that Section 138 is "clear," this is not necessarily so with an ordinary layman.

In fact, as acknowledged by Justice Lazaro-Javier herself in her Dissenting Opinion, Villarosa had "issued the extraction permits thinking that he was not subjected to Section 138, because it was his position that as Municipal Mayor he was exempt from Section 138 and that he was merely following the practice of precedents."[26] This precisely and only shows that Villarosa was ***not*** *motivated by any malicious intent and evil design* in issuing the extraction permits. While his belief was incorrect, he was nonetheless in good faith in believing that his actions were duly supported by law. To stress, when the accused is alleged to have acted with evident bad faith under Section 3(e) of RA 3019, which is the case here, the crime alleged is a crime

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[26] Dissenting Opinion of Justice Lazaro-Javier, p. 13.

of ***dolo***[27] — an offense committed with *wrongful or malicious intent*.[28] The admitted fact that Villarosa acted on the genuine, albeit erroneous, belief that his acts were based on law and past precedents negates *dolo* or wrongful or malicious intent.

Villarosa cannot be convicted under Section 3(e), RA 3019 for alleged "gross inexcusable negligence"

In this connection, Senior Associate Justice Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) argues in her own Dissenting Opinion that Villarosa should still be convicted for violating Section 3(e) of RA 3019, not because there was evident bad faith, but because there was gross inexcusable negligence. Relying primarily on *Sistoza*, Justice Perlas-Bernabe argues that even if the Informations filed against Villarosa only contain the words "with evident bad faith," it "does not preclude a conviction for violation of Section 3 (e) through the modality of gross inexcusable negligence."[29]

I strongly disagree.

The portion of *Sistoza* relied upon by Justice Perlas-Bernabe is as follows:

> We note that the *Information* against petitioner Sistoza, while specifying *manifest partiality* and *evident bad faith*, does not allege *gross inexcusable negligence* as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the *Information*, it was evidently the intention of the Ombudsman to take petitioner to

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[27] *Uriarte v. People*, 540 Phil. 477, 494 (2006).

[28] *Beradio v. Court of Appeals*, 191 Phil. 153, 163 (1981).

[29] Reflections of Justice Perlas-Bernabe, p. 2.

task for *gross inexcusable negligence* in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), *RA 3019*, is committed either by *dolo* or *culpa* and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.[30]

It is important to note, however, that *Sistoza* was a case where the accused therein questioned the Ombudsman's finding of probable cause against him. The sufficiency of the Information filed against the accused therein was never the issue, as the main issue in the case was the ***propriety of the findings of the Ombudsman in the preliminary investigation***. The absence of the phrase "gross inexcusable negligence" in the Information filed against him was not a material issue. "Gross inexcusable negligence" was only brought up in the discussion to drive home the point that the Ombudsman erred in finding probable cause for violation of Section 3(e), RA 3019, as the acts of the accused therein could not be considered to have been committed with evident bad faith or manifest partiality, *or even* gross inexcusable negligence.

Simply put, the paragraph in question is *obiter dictum*.

I thus disagree that Villarosa can be convicted through the modality of "gross inexcusable negligence" when the same was not alleged in the Informations. To recall, the Informations only accused Villarosa of doing certain acts "with evident bad faith." It will be utterly unfair, and will be offensive to his right to due process for him to suddenly be convicted under "gross inexcusable negligence" when it was not even part of the Informations, nor was he given any opportunity to be heard on the same. To emphasize, "Section 3 (e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence."[31] In simple terms, "evident bad faith" entails willfulness to do something wrong,

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[30] *Sistoza v. Desierto*, *supra* note 16 at 130-131.

[31] *Albert v. Sandiganbayan*, 599 Phil. 439, 450 (2009).

whereas "gross inexcusable negligence" entails *failure to exercise the required diligence* that either results in a wrong or in the failure to prevent the occurrence of a wrongdoing. Thus, "gross inexcusable negligence" and "evident bad faith" are separate and distinct from each other. Alleging one in an Information should not, and does not, mean that the other is likewise alleged.

In the recent landmark ruling of *People v. Solar*,[32] the Court *en banc* emphasized the importance of specificity in Informations:

> The Court stresses that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. Further to this, the courts, in arriving at their decisions, are instructed by no less than the Constitution to bear in mind that no person should be deprived of life or liberty without due process of law. An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed, *in writing*, of the cause of the accusation against him. x x x
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> It is thus **fundamental that every element of which the offense is composed must be alleged in the Information**. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. **To repeat, the purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.**

In addition, the Court remains mindful of the fact that the State possesses vast powers and has immense resources at its disposal. Indeed, as the Court held in *Secretary of Justice v. Lantion*, the individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government and his only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need.

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[32] G.R. No. 225595, August 6, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65742>.

In the particular context of criminal prosecutions, therefore, **it is the State which bears the burden of sufficiently informing the accused of the accusations against him so as to enable him to properly prepare his defense**. (Emphasis and underscoring supplied)

Here, the Informations charged Villarosa only with "evident bad faith." Again, he was **not** charged with "gross inexcusable negligence." Following the ultimate purpose laid down above — that is, to enable the accused to properly prepare his defense — it cannot be said here that Villarosa was given the proper opportunity to prepare his defense as regards the element of "gross inexcusable negligence." As *Dela Chica v. Sandiganbayan*[33] reminds, "manifest partiality, evident bad faith or gross inexcusable negligence **must be alleged with particularity in the information sufficiently to inform the accused of the charge against him and to enable the court properly to render a decision**."[34]

It will thus be grossly unfair for the Court to now rule that he is guilty of a charge that he has not been even given the opportunity to defend himself against.

Justice Perlas-Bernabe, however, in arguing for Villarosa's conviction for violation of Section 3(e) under the modality of gross inexcusable negligence, reasons that:

When a person assumes a particular public office, he has the responsibility to equip himself with the basic knowledge of his fundamental duties, as well as the clear limits of his authority under the law. To fail in this regard is, to my mind, tantamount to gross inexcusable negligence, for which he or she may be rendered culpable. Case law exhorts that "[u]pon appointment to a public office, an officer or employee is required to take his oath of office whereby **he solemnly swears to** support and defend the Constitution, bear true faith and allegiance to the same; **obey the laws**, legal orders and decrees promulgated by the duly constituted authorities; and **faithfully discharge to the best of his ability the duties of the position he will hold**." Thus, unless a mistake is founded upon a doubtful or

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[33] 462 Phil. 712 (2003).

[34] *Id.* at 722.

difficult question of law, or upon an honest mistake of fact, a public official should not be permitted to simply feign ignorance to the essential aspects of his office. Otherwise, the Constitutional provision, which states that "[p]ublic office is a public trust" and that all government officials and employees "must at all times be accountable to the people x x x," would easily lose its fortitude and fervor.

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As I see it, the government would do well if greater vigilance is expected from its public servants, especially those charged with the duty of granting privileges and licenses to private persons. In this regard, We ought to be circumspect in discerning legitimate defenses from convenient excuses, and mulling over the consequences of flagrant ineptitude to the faith of our people.[35]

While I am in full agreement with the call to hammer the point that "public office is a public trust," I cannot, in good conscience, agree to punishing with **imprisonment** any and all violations of non-penal laws. It is true that public servants have a duty to know the limits of the authority granted to them. Yet, I cannot subscribe to the thinking that to do an act outside of those limits already constitutes "gross inexcusable negligence" that is criminally punishable. If that is the case, then we might as well dispense with administrative proceedings — whether in the Civil Service Commission or in the Ombudsman — against public officials, for what is the sense of having a distinction between administrative and criminal cases when every single misstep merits a criminal sanction.

It is also true that every person is presumed to know the law, and that ignorance of the law excuses no one from compliance therewith.[36] However, it is likewise true that it is unjust to automatically punish someone with a **criminal sentence** by virtue of his non-compliance with a **non-penal rule**.

The absurdity of it all becomes all the more apparent once the call for Villarosa's head for his non-compliance in this case

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[35] Dissenting Opinion of Justice Perlas-Bernabe, pp. 3, 6.

[36] CIVIL CODE, Art. 3.

is compared with the Court's attitude towards members of the judiciary who do the exact same thing.

To be sure, the Court, in the exercise of its disciplinary power over *members of the judiciary* — persons who are expected to have a much deeper knowledge and understanding of the law and the rules — normally punishes "gross ignorance of the law" with only a fine accompanied by a warning, admonition, or reprimand.[37] Acts committed by judges that the Court deemed as "gross ignorance of the law" such as (1) granting bail without a standing warrant of arrest against the accused, and in a case pending in another court without ascertaining the unavailability of the judge therein;[38] or (2) incorrect application of the Indeterminate Sentence Law,[39] were simply punished by a comparatively small fine accompanied by a warning or admonition.

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[37] See the rulings in the following cases: *Boston Finance and Investment Corp. v. Gonzalez*, A.M. No. RTJ-18-2520, October 9, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64627>; *Carbajosa v. Patricio*, 718 Phil. 534 (2013); *Perfecto v. Desales-Esidera*, 682 Phil. 397 (2012); *Medina v. Canoy*, 682 Phil. 397 (2012); *Bautista v. Causapin, Jr.*, 667 Phil. 574 (2011); *Ricablanca v. Barillo*, 658 Phil. 135 (2011); *Tan v. Usman*, 658 Phil. 145 (2011); *Office of the Court Administrator v. Estrada*, 654 Phil. 638 (2011); *Heirs of Piedad v. Estrera*, 623 Phil. 178 (2009); *Untalan v. Sison*, 567 Phil. 420 (2008); *Enriquez v. Caminade*, 519 Phil. 781 (2006); *Abbariao v. Beltran*, 505 Phil. 510 (2005); *Ruiz v. Beldia, Jr.*, 491 Phil. 581 (2005); *Mina v. Vianzon*, 469 Phil. 896 (2004); *Victory Liner, Inc. v. Bellosillo*, 469 Phil. 15 (2004); *Baldado v. Bugtas*, 460 Phil. 516 (2003); *Abella v. Calingin*, 457 Phil. 488 (2003); *Adriano v. Villanueva*, 445 Phil. 675 (2003); *Guyud v. Pine*, 443 Phil. 33 (2003); *Martinez, Sr. v. Paguio*, 442 Phil. 516 (2002); *Jaucian v. Espinas*, 431 Phil. 597 (2002); *Guillen v. Cañon*, 424 Phil. 81 (2002); *Tabao v. Lilagan*, 416 Phil. 710 (2001); *Pascual v. Dumlao*, 414 Phil. 1 (2001); *Vercide v. Hernandez*, 386 Phil. 245 (2000); *Spouses Dumo v. Perez*, 379 Phil. 588 (2000); *Enojas, Jr. v. Gacott, Jr.*, 379 Phil. 277 (2000); *Garcia v. Pasia*, 375 Phil. 571 (1999); *Spouses Almeron v. Sardido*, 346 Phil. 424 (1997); *Spouses Bacar v. De Guzman, Jr.*, 338 Phil. 41 (1997); *Del Rosario, Jr. v. Bartolome*, 337 Phil. 330 (1997); *Carpio v. De Guzman*, 331 Phil. 115 (1996); *Mamolo, Sr. v. Narisma*, 322 Phil. 670 (1996); *Tucay v. Domagas*, 312 Phil. 135 (1995).

[38] See *Tejano v. Marigomen*, 818 Phil. 781 (2017).

[39] See *Spouses Bacar v. De Guzman, Jr.*, 338 Phil. 41 (1997).

In *Vercide v. Hernandez*,[40] for instance, the judge dismissed a civil case on the ground that the case was immediately filed without having been previously referred to the *Lupong Tagapamayapa* in accordance with the *Katarungang Pambarangay Law*. Despite the plaintiff raising the law's "clear," "unmistakable" and "elementary" language, along with Court decisions on the matter, supporting the argument that prior conciliation is not needed when the parties are residents of *barangays* situated in different cities or municipalities, the judge still insisted on her own interpretation that prior conciliation proceedings were needed and then dismissed the case. Because of this, an administrative complaint was filed against the judge by the aggrieved party — the plaintiff whose case was dismissed. The Court, in ruling on the administrative case, made the following observations against the judge:

> The ruling in *Tavora v. Veloso*, reiterated in other cases, should be familiar to the bench and the bar. As we have held in *Espiritu v. Jovellanos*, the phrase "Ignorance of the law excuses no one" has a special application to judges who, under the injunction of Canon 1.01 of the Code of Judicial Conduct, "should be the embodiment of competence, integrity, and independence." In *Bacar v. De Guzman*, it was held that when the law violated is basic, the failure to observe it constitutes gross ignorance. Reiterating this ruling, it was emphasized in *Almeron v. Sardido* that the disregard of an established rule of law amounts to gross ignorance of the law and makes the judge subject to disciplinary action.
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> In the case at bar, respondent showed **patent ignorance** — if not **disregard** — of this Court's rulings on the jurisdiction of the Lupong Tagapamayapa by her **erroneous quotations of the provisions** of the Katarungang Pambarangay Rules implementing R.A. No. 7160. While a judge may not be held administratively accountable for every erroneous order or decision he renders, his error may be so gross or patent that he should be administratively disciplined for gross ignorance of the law and incompetence.
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> In this case, respondent at first cited P.D. No. 1508, §3 as basis of her action. When her attention was called to the fact that this had

[40] 386 Phil. 245 (2000).

been repealed by §409(c) of R.A. No. 7160, respondent, who obviously was more intent in justifying her previous order than correcting her error, **quoted out of context the provisions** of the Katarungang Pambarangay Rules implementing the Katarungang Pambarangay provisions of R.A. No. 7160. She thus violated Canon 3 of the Code of Judicial Conduct which provides that "In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interest, public opinion or fear of criticism."[41]

Despite finding the judge's actions to be contrary to the "clear", "unmistakable" and "elementary" letter of the law and the jurisprudence on the matter — **along with findings of the judge even misquoting the law** — the Court only imposed a "FINE of TWO THOUSAND (₱2,000.00) PESOS with a WARNING that repetition of the same or similar acts will be dealt with more severely."[42]

If one were to make a deeper analysis, however, all the elements of Section 3(e), *as currently formulated*, are present. The judge was a public officer, and the act committed was done in the discharge of official judicial functions, thereby satisfying the first two elements. The third element would also be present as there was arguably evident bad faith or gross inexcusable negligence, given that the judge stubbornly stuck with her interpretation of the *Katarungang Pambarangay Law* despite having been confronted with the express letter of the law and jurisprudence that both say otherwise. The fourth element was likewise present, as the judge also caused undue injury to the party whose case was dismissed and/or gave the opposing party unwarranted benefits by dismissing the case filed against them. **In spite of these, the judge was not even dismissed from the service. A mere fine with a warning sufficed.**

This happens to a lot of cases of gross ignorance of the law[43] despite the Court's recognition in another case that judges "are not common individuals" and that their errors have a far larger

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[41] *Vercide v. Hernandez*, 386 Phil. 245, 253-254.

[42] *Id.* at 256.

[43] See footnote 37.

implication on the public's confidence in the judiciary as a whole:

> Respondent judge fell short of these standards when he failed in his duties to follow elementary law and to keep abreast with prevailing jurisprudence. Service in the judiciary involves continuous study and research from beginning to end.
>
> Exacting as these standards may be, judges are expected to be personifications of justice and rule of the law and, as such, to have more than just a modicum acquaintance with statutes and procedural rules. Essential to every one of them is faithfulness to the laws and maintenance of professional competence.
>
> **Judges are not common individuals whose gross errors "men forgive and time forgets." For when they display an utter lack of familiarity with the rules, they erode the confidence of the public in the competence of our courts. Such lack is gross ignorance of the law. Verily, failure to follow basic legal commands and rules constitutes gross ignorance of the law, of which no one is excused, and surely not a judge.**[44] (Emphasis and underscoring supplied)

I raise this to make two points.

First, if the Court can impose only light administrative sanctions on erring judges who are "expected to exhibit more than just cursory acquaintance with statutes and procedural laws,"[45] I do not see any reason why the Court cannot afford the same, if not more, understanding to other public servants who are not learned in the law.

Second, punishing Villarosa criminally would create a dangerous atmosphere for public servants, particularly judges, because, as demonstrated, all the elements of Section 3(e) are present in most cases of gross negligence committed by judges. If the Court were to convict someone of violating Section 3(e), RA 3019 simply because "elementary" rules were not followed, it is only a matter of time before judges are saddled with criminal

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[44] *Enriquez v. Caminade*, 519 Phil. 781, 788 (2006).

[45] *QBE Insurance Phils. v. Laviña*, 562 Phil. 355, 371 (2007).

cases filed against them for simple violations of "elementary" rules. I thus invite the Court to steer away from this path as it is fraught with unwarranted peril.

In this light, I reiterate that Villarosa's violation of a law that is **not** penal in nature does not, as it should not, ***automatically*** translate into evident bad faith or gross inexcusable negligence that makes one guilty of a violation of Section 3(e) of RA 3019. For it to amount to a violation of Section 3(e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that ***the prosecution must prove the existence of factual circumstances that point to fraudulent intent***.

Here, the prosecution was unable to adduce evidence proving such fraudulent intent. On the contrary, there is an abundance of evidence on record negating the presence of evident bad faith.

Similarly, as already discussed, there is also no gross inexcusable negligence that can be appreciated because it was not alleged in the Information. Moreover, Villarosa's act of granting permits is one of *dolo*, not *culpa*. The entire case was litigated on the charge that Villarosa *willfully and purposefully* did the acts under the impression that he had authority to do so. That he even replied to the cease and desist order from the provincial government in order to assert his authority is a fact that has been harped on numerous times to support his conviction. In *Yapyuco v. Sandiganbayan*,[46] the Court stated that "[i]n criminal negligence, the injury caused to another **should be unintentional, it being the incident of another act performed without malice**," and "that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence"[47] which is a form of negligence.

In Villarosa's case, all the questioned acts were willful in nature. Hence, there is no gross inexcusable negligence or *culpa*, as there could not have been any. Again, to convict him for

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[46] 689 Phil. 75 (2012).

[47] *Id.* at 123.

violating Section 3(e), RA 3019 under the modality of gross inexcusable negligence — simply because he violated a "clear," "unmistakable," and "elementary" provision of law — would be to set a dangerous precedent that would send a chilling effect to all public servants, particularly members of the judiciary, that working in the government would more likely lead to their imprisonment. Because of the all - encompassing nature of the argument, *i.e.*, that failure to follow an "elementary" rule constitutes gross inexcusable negligence, then mistakes, no matter how small, as long as the rule violated is *later on* considered to be "elementary," would automatically merit a criminal punishment under RA 3019. I once again implore the Court to avoid this path so as not to unduly punish public servants, and thereby discourage even the good people from joining the public service.

Having established that there is no evident bad faith or gross inexcusable negligence in this case, it is now clear that one of the elements of the crime was not proven. Hence, Villarosa should perforce be acquitted.

The prosecution was also not able to prove beyond reasonable doubt the element of giving unwarranted benefits, advantage, or preference

The element of evident bad faith is not the only element absent in the present case. Regarding the last element, the *ponencia* held that there was likewise no sufficient evidence that the quarry operators received unwarranted benefits. Similar to its ratiocination on the third element, the *ponencia* took into consideration Villarosa's honest belief that he had power to issue the extraction permits, along with the fact that the quarry operators went through the regular process of applying for the issuance of the permits, including the payment of extraction fees.

In this regard, I fully concur with the *ponencia*.

As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-

graft and corruption measure. At the heart of the acts punishable under RA 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized."[48] Graft entails the acquisition of gain in *dishonest* ways.[49]

Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations. Such benefits must have been given by the public officer to the private party with *corrupt intent, a dishonest design, or some unethical interest*. This is in alignment with the spirit of RA 3019, which centers on the concept of graft.

I recognize that this is not the understanding under the current state of jurisprudence. Jurisprudence has defined the term "*unwarranted*" as simply lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "*Advantage*" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "*Preference*" signifies priority or higher evaluation or desirability; choice or estimation above another.[50] The term "private party" may be used to refer to persons other than those holding public office,[51] which may either be a private person or a public officer acting in a private capacity to protect his personal interest.[52]

Thus, under current jurisprudence, in order to be found guilty for giving any unwarranted benefit, advantage, or preference, it is enough that the public officer has given an unauthorized or unjustified favor or benefit to another, in the exercise of his

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[48] Senate Deliberations of RA 3019 dated July 1960.

[49] *BLACK'S LAW DICTIONARY* 794 (9th ed. 2009).

[50] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 364 (2004).

[51] *Bautista v. Sandiganbayan*, 387 Phil. 872, 884 (2000).

[52] *Ambit, Jr. v. Sandiganbayan*, 669 Phil. 32 (2011).

official, administrative or judicial functions.[53] By giving any private party unwarranted benefit, advantage, or preference, *damage is not required*. It suffices that the public officer has given unjustified favor or benefit to another in the exercise of his official functions.[54] Proof of the extent or quantum of damage is not even essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.[55]

I respectfully submit, and evidently the majority agrees, that it is high time for the Court to revisit this line of reasoning.

The foregoing understanding of "unwarranted benefit, advantage, or preference" is too broad that every single misstep committed by public officers that result in benefits to private parties falls under the definition and would thus possibly be criminally punishable. Every little error — no matter how minor — would satisfy the fourth element as the threshold is simply that the benefit be "unjustified," "unauthorized," or "without justification." For instance, a contract awarded in good faith based on an interpretation of the law that would later on be judicially declared incorrect would be sufficient basis for affirming the existence of the fourth element, which may lead to the incarceration of a public officer simply because a private party received a benefit "without justification," yet was revealed to be so only in hindsight.

While it is true that public office is a public trust, the Court is called upon to likewise play its part in not interpreting the laws to effectively be a disincentive to individuals in joining the public service. It is simply absurd to criminally punish every minute mistake that incidentally caused a benefit to private parties even when these acts were **not** done with ***corrupt intent***.

In the instant case, for example, Villarosa's act of issuing the extraction permits was motivated, not by any corrupt intent

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[53] *Gallego v. Sandiganbayan*, 201 Phil. 379, 384 (1982).

[54] *Sison v. People*, 628 Phil. 573, 585 (2010).

[55] *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 718 (2005).

to favor one operator over another or to unduly receive any pecuniary benefit. Based on the evidence, his actuations were simply based on his honest belief that he had the authority to issue the permits. To be sure, the evidence in fact shows that all the pertinent taxes and fees in the issuance of the said permits were collected, creating revenue for the provincial government, the municipality, and the barangay. No pecuniary benefit went to the wrong person or entity — **in other words, the evidence clearly showed that no graft and corruption actually transpired**.

This view that "unwarranted benefits" should likewise be viewed from the lens of corruption is not novel, although it has been rarely applied in the past. One such case was *Posadas v. Sandiganbayan*[56] (*Posadas*), where the Chancellor and Vice-Chancellor for Administrative Affairs (Vice-Chancellor) of University of the Philippines-Diliman (UP Diliman) were charged with violating Section 3(e) of RA 3019. The case stemmed from the creation of the Technology Management Center (TMC) within the UP system. The Chancellor then had a proposal to have a project "aimed to design and develop ten new graduate courses in technology management for the diploma, master's and doctoral programs to be offered by TMC,"[57] (the TMC Project) which would be funded by the Canadian International Development Agency. The proposal was approved and a memorandum of agreement was entered into between the relevant parties.

Sometime after, the Chancellor, along with some other high-ranking officers of UP Diliman, were invited to a conference in China. The Chancellor then designated the Vice-Chancellor as the Officer-In-Charge (OIC) of UP Diliman for the duration of his time in China. During the period that the Vice-Chancellor was UP Diliman's OIC, he appointed the Chancellor as the Project Director of the TMC. He also signed a "contract for consultancy services" wherein the Chancellor was also hired as Consultant for the TMC Project. The Chancellor then received

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[56] 722 Phil. 118 (2013).

[57] *Id.* at 258.

"honoraria" (₱30,000.00 per month) and consultancy fees (totaling ₱100,000.00) as Project Director and Consultant of the TMC Project until a few months after when the Commission on Audit (COA) raised questions on the legality of the said fees.[58]

The COA initially disallowed the amounts paid to the Chancellor, but it reversed its ruling upon the sufficient explanation provided by UP's Chief Legal Officer. However, because of the initial disallowance (and other supervening events), an investigation was ordered which eventually led to the filing of Informations for violation of Section 3(e), RA 3019 against the Chancellor and Vice-Chancellor.

The Sandiganbayan convicted both the Chancellor and Vice-Chancellor. Upon appeal to the Court, the convictions were affirmed. However, upon the filing of a motion for reconsideration, the Court reversed its ruling and acquitted both of them. In the Resolution ruling on the motion for reconsideration, the Court reasoned:

> The bad faith that Section 3 (e) of Republic 3019 requires, said this Court, does not simply connote bad judgment or negligence. It imputes a dishonest purpose, some moral obliquity, and a conscious doing of a wrong. Indeed, it partakes of the nature of fraud.
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> Here, admittedly, Dr. Dayco appears to have taken advantage of his brief designation as OIC Chancellor to appoint the absent Chancellor, Dr. Posadas, as Director and consultant of the TMC Project. But it cannot be said that Dr. Dayco made those appointments and Dr. Posadas accepted them, fraudulently, knowing fully well that Dr. Dayco did not have that authority as OIC Chancellor.
>
> All indications are that they acted in good faith. **They were scientists, not lawyers**, hence unfamiliar with Civil Service rules and regulations. The world of the academe is usually preoccupied with studies, researches, and lectures. Thus, those appointments appear to have been taken for granted at UP. It did not invite any immediate protest from those who could have had an interest in the positions. It was only after about a year that the COA Resident Auditor issued

[58] *Id.* at 259.

a notice of suspension covering payments out of the Project to all UP personnel involved, including Dr. Posadas.

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If the Court does not grant petitioners' motions for reconsideration, the common disallowances of benefits pai[d] to government personnel will heretofore be considered equivalent to criminal giving of **"unwarranted advantage to a private party," an element of graft and corruption**. This is too sweeping, unfair, and unwise, making the denial of most benefits that government employees deserve the safer and better option.

x x x x x x x x x

Section 3 (e) of Republic Act 3019 requires the prosecution to prove that the appointments of Dr. Posadas caused "undue injury" to the government or gave him "unwarranted benefits."

This Court has always interpreted "undue injury" as "actual damage." What is more, such "actual damage" must not only be capable of proof; it must be actually proved with a reasonable degree of certainty. A finding of "undue injury" cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork. The Court held in *Llorente v. Sandiganbayan* that the element of undue injury cannot be presumed even after the supposed wrong has been established. It must be proved as one of the elements of the crime.

Here, the majority assumed that the payment to Dr. Posadas of ₱30,000.00 monthly as TMC Project Director caused actual injury to the Government. The record shows, however, that the ₱247,500.00 payment to him that the COA Resident Auditor disallowed was deducted from his terminal leave benefits.

The prosecution also failed to prove that Dr. Dayco gave Dr. Posadas "unwarranted advantage" as a result of the appointments in question. The *honoraria* he received cannot be considered "unwarranted" since there is no evidence that he did not discharge the additional responsibilities that such appointments entailed.[59] (emphasis and underscoring supplied)

The Court in *Posadas* correctly viewed the element of giving "unwarranted benefits" from the perspective of graft and

[59] *Id.* at 123-128.

corruption. The Court took into account good faith, the fact that the accused therein were not learned in the law, and the fact that they truly rendered service, to rule that the element of "unwarranted benefit" was not present despite the missteps that both accused admittedly took.

It must be emphasized, however, that *Posadas* is not the rule. Under the general understanding of "unwarranted benefits" in most jurisprudence, the Chancellor's receipt of the *honoraria* would be considered as an unwarranted benefit because the one who appointed him to the position did not have authority to do so. Yet, because the Chancellor indeed rendered service in reality, the Court in *Posadas* correctly did not consider the receipt of the *honoraria* to be an "unwarranted benefit."

In the present case, it is important to reiterate for emphasis that (1) the accused believed in good faith — because of a general provision of the LGC — that he had the authority to issue the permits; (2) the quarry operators went through the regular process of securing the permits; and (3) the mandated shares of the other local government units from the revenues of the quarry operations were properly distributed to each. Similar to *Posadas*, therefore, the incidental benefit that these quarry operators received could not thus be considered "unwarranted" given that they were awarded the permits in the regular course of business, and they had paid the necessary taxes and fees arising from the quarry operations.

While the benefit of hindsight allows us to have the clear view that Villarosa indeed had no power to issue the permits, it does not automatically mean that the quarry operators received "unwarranted benefits." The benefits these operators received do not at once become "unwarranted" simply because they arose from Villarosa's misinterpretation of the LGC. They would only be "unwarranted" had they been granted out of corrupt motives or ill-intent, as shown by, for example, grants of permits without going through the regular process, or allowing these operators to not pay the corresponding taxes or fees.

The Court may also refer to its ruling in *Rivera v. People*,[60] wherein the Court upheld the conviction of the accused therein under Section 3(e) of RA 3019 for entering into a negotiated contract with a corporation, *i.e.*, PAL Boat Industry (PAL Boat), for the construction of seven floating clinics despite the fact that the said entity was not qualified.

In discussing the element of unwarranted benefit, the Court explained that the said element was satisfied because the totality of the circumstances clearly established that the accused therein deliberately sought to give an unwarranted benefit particularly to PAL Boat, exhibiting obvious and specific preference for the latter:

> x x x PAL Boat was not financially and technically capable of undertaking the floating clinics project. The court *a quo* believed that the petitioners knew that and still awarded the project to PAL Boat. They also failed to follow the proper procedure and documentations in awarding. This Court is convinced that all these circumstances taken together clearly demonstrate the manifest partiality of the petitioners towards PAL Boat, giving the latter unwarranted benefits to obtain the government project. x x x These unwarranted benefits were due to the manifest partiality exhibited by them in numerous instances.[61]

Hence, as demonstrated in this ruling, the element of unwarranted benefit is *inextricably linked* with the malefactor's purposeful and deliberate intent to give preference or benefit to another. Applying the foregoing to the instant case, Villarosa's act of issuing the extraction permits was, to reiterate, not motivated by the desire to favor one operator over another or to unduly receive any pecuniary benefit. Villarosa's acts were simply driven by his honest, yet incorrect, belief that he had the ample authority to issue the permits.

In sum, Villarosa should be acquitted of the present charges as both the elements of "evident bad faith" and "giving unwarranted benefit or advantage" are absent in this case. To

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[60] 749 Phil. 124 (2014).

[61] *Id.* at 144.

stress, a violation of the LGC — a law that is not penal in nature — does not, as it cannot, automatically translate into a violation of Section 3(e), RA 3019.

A Final Word

Contrary to Justice Leonen and Justice Lazaro-Javier's views, I believe that the *ponencia* does not derogate whatsoever from the time-honored principle that ignorance of the law excuses no one. The *ponencia* merely holds that in prosecuting a public officer accused of violating Section 3(e) of RA 3019 particularly by means of manifest partiality or evident bad faith, proving the accused's non-compliance with a non-penal law is not enough to produce a conviction under the Anti-Graft and Corrupt Practices Act. *Fraudulent intent and evil design* should be established beyond reasonable doubt — a burden which the prosecution failed to discharge in the instant case.

In the course of the deliberations, this question was posed: "Has ignorance of the law now become a bliss that sets the ignorant free?" To be sure, the answer is no. The *ponencia* does not give Villarosa the gift of impunity. The *ponencia* does not make the conclusion that Villarosa did not commit an act contravening the law and that he should not be held responsible for such act. The *ponencia* merely holds that Villarosa cannot be held particularly liable under Section 3(e) of RA 3019 as certain elements of the said offense were not proven beyond reasonable doubt.

Villarosa may be held responsible under the appropriate laws. For instance, he may be charged for Usurpation of Official Functions under Article 177 of the Revised Penal Code.[62] He may even be disciplined for either insubordination or misconduct under the Administrative Code.[63] Simply stated, Villarosa may

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[62] ARTICLE 177. *Usurpation of Official Functions*. — Any person who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.

[63] Book V, Title I, Chapter 7, Section 46, E.O. No. 292, otherwise known as the ADMINISTRATIVE CODE OF 1987.

be held accountable for his act of issuing extraction permits, but ***under the correct law***.

In other words, this stand to acquit Villarosa in this case is not meant to allow a wrongdoing to go unpunished. Accountability of public officers is, of course, a laudable objective. However, convicting someone just for the sake of punishment is not the answer. This is not what justice demands. Conviction under the appropriate law should still be the goal. Simply put, in this case, Section 3(e), RA 3019 is simply not the appropriate law to hold Villarosa accountable.

Justice Lazaro-Javier likewise shares her apprehension of the *ponencia*'s holding because it is "contrary to long-established doctrines."[64] I would like to emphasize, however, that the Court should not shy away from reversing erroneous doctrines when warranted, even if these doctrines are "long-established." The Court exists precisely to rectify incorrect doctrines, not to perpetuate error and injustice. Furthermore, Justice Lazaro-Javier's apprehension on the possible retroactive effect of *ponencia*'s ruling[65] is misguided, considering that new judicial doctrines have only prospective operation and do not apply to cases previously decided.[66]

As a final word, I would like to reiterate anew my sentiment that our penal laws on corrupt public officials are meant to enhance, instead of stifle, public service. If every mistake, error, or oversight is met with criminal prosecution, then no one would ever dare take on the responsibility of serving in the government. We cannot continue to weaponize each little misstep lest we lose even the good people in government. Indeed, while public office is a public trust, the constitutionally enshrined right to presumption of innocence encompasses all persons — private individuals or public servants alike.

Based on these premises, I vote to **GRANT** the Petition.

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[64] Dissenting Opinion of Justice Lazaro-Javier, p. 24.

[65] *Id.*

[66] *Pomeroy v. Director of Prisons*, 107 Phil. 50, 54 (1960).

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

A municipal mayor who effectively usurps the functions of a provincial governor based on the flimsy and convenient excuse that he mistakenly understood the applicable provisions of the Local Government Code (LGC)[1] despite their clear and straightforward nature commits "**gross inexcusable** negligence" and hence, should be held criminally liable for violation of Section 3 (e) of Republic Act No. (RA) 3019.[2]

To be sure, "gross inexcusable negligence" is one of the three (3) recognized modes of committing a violation of Section 3 (e) of RA 3019. The other two (2) modes are "manifest partiality" and "evident bad faith." In *Sison v. People*,[3] the Court stated that:

> The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3 (e) of RA 3019 is enough to convict.[4]

Explaining what these terms mean, the Court has held:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence

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[1] Republic Act No. 7160, entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

[2] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (August 17, 1960).

[3] 628 Phil. 573 (2010).

[4] *Id.* at 583.

has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[5]

Based on the foregoing, it is clear that "gross inexcusable negligence," unlike "manifest partiality" or "evident bad faith," does not require proof of some fraudulent motive, self-interest, or ill will. However, it must be shown that the negligence committed by the public official is characterized "by the want of even slight care[;] acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally[,] with a conscious indifference to consequences in so far as other persons may be affected."[6]

At this juncture, it is apt to mention that the fact that the Information contains the words "with evident bad faith"[7] does not preclude a conviction for violation of Section 3 (e) through the modality of gross inexcusable negligence. In *Sistoza v. Desierto*,[8] the Court held:

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[5] *Id.* at 583-584.

[6] *Id.*

[7] The Information reads (see *ponencia*, p. 4):

That on or about (24 August 2010), in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally and **with evident bad faith**, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to (Gem CHB Maker), contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support. (Emphasis and underscoring supplied).

[8] 437 Phil. 117, 130-131 (2002).

We note that the Information against petitioner Sistoza, while specifying manifest partiality and evident bad faith, does not allege gross inexcusable negligence as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the Information, it was evidently the intention of the Ombudsman to take petitioner to task for gross inexcusable negligence in addition to the two (2) other modalities mentioned therein. **At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by *dolo* or *culpa* and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.** (Emphasis and underscoring supplied)

In the same vein, the Court, in *Albert v. Sandiganbayan*,[9] explained that "a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense,"[10] *viz.*:

In *Sistoza v. Desierto* [see supra note 8], the Information charged the accused with violation of Section 3(e) of RA 3019, but specified only "manifest partiality" and "evident bad faith" as the modalities in the commission of the offense charged. "Gross inexcusable negligence" was not mentioned in the Information. Nonetheless, this Court held that the said section is committed by *dolo* or *culpa*, and although the Information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. In so ruling, this Court applied by analogy the pronouncement in *Cabello v. Sandiganbayan* [274 Phil. 369 (1991)] where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of

[9] 599 Phil. 439 (2009).

[10] *Id.* at 452.

perpetrating the offense. **The Court held that a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense.** x x x.[11] (Emphasis and underscoring supplied)

When a person assumes a particular public office, he has the responsibility to equip himself with the basic knowledge of his fundamental duties, as well as the clear limits of his authority under the law. To fail in this regard is, to my mind, tantamount to gross inexcusable negligence, for which he or she may be rendered culpable. Case law exhorts that "[u]pon appointment to a public office, an officer or employee is required to take his oath of office whereby **he solemnly swears to** support and defend the Constitution, bear true faith and allegiance to the same; **obey the laws**, legal orders and decrees promulgated by the duly constituted authorities; and **faithfully discharge to the best of his ability the duties of the position he will hold**."[12] Thus, unless a mistake is founded upon a doubtful or difficult question of law, or upon an honest mistake of fact, or there exists compelling circumstances that would justify otherwise, a public official's ignorance of the **essential aspects of his office** should not be countenanced. Otherwise, the constitutional provision, which states that "[p]ublic office is a public trust" and that all government officials and employees "must at all times be accountable to the people x x x,"[13] would easily lose its fortitude and fervor.

RA 7160 or the LGC, is the primary statute that delineates the essential functions of local officials, such as a municipal mayor and a provincial governor. Under the LGC, the power to issue extraction permits is not given to the municipal mayor but is **exclusively vested upon the provincial governor**. Section 138 of the LGC unequivocally reads:

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[11] *Id.*

[12] *City Mayor of Zamboanga v. Court of Appeals*, 261 Phil. 936, 938 (1990); emphases supplied.

[13] 1987 CONSTITUTION, Article XI, Section 1.

Section 138. *Tax on Sand, Gravel and Other Quarry Resources*. - The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.

The permit to extract sand, gravel and other quarry resources shall be issued **exclusively by the provincial governor**, pursuant to the ordinance of the *sangguniang panlalawigan*.

x x x (Emphasis and underscoring supplied)

In conjunction, RA 7942,[14] otherwise known as the "Philippine Mining Act of 1995," provides the procedure by which any qualified person may be granted a permit to extract quarry resources, *i.e.*, building and construction materials, from the ground. Under Section 43 thereof, the application is made before the "provincial/city mining regulatory board" and that the "**provincial governor**" grants the permit after the applicant has complied with all the prescribed requirements:

Section 43. *Quarry Permit*. – Any qualified person **may apply to the provincial/city mining regulatory board** for a quarry permit on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground. **The provincial governor shall grant the permit after the applicant has complied with all the requirements as prescribed by the rules and regulations.** (Emphases supplied)

Undoubtedly, the wordings of the LGC, as well as the correlative provision of RA 7942, are clear and straightforward. Hence, one would be grossly negligent if he or she still misreads their import to come up with the conclusion that a municipal mayor, and not a provincial governor, has the power to issue

[14] Entitled "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION, AND CONSERVATION," approved on March 3, 1995.

permits for the extraction of sand, gravel and other quarry resources. Indeed, as the legal adage goes, *absolute sentencia expositore non indiget* – when the language of the law is clear, no explanation of it is required.[15]

In this case, petitioner Jose Tapales Villarosa (petitioner) ought to have known that the power to issue extraction permits exclusively belongs to the provincial governor because of the explicit and unequivocal provisions of the LGC and RA 7942. By remaining unaware or by failing to comprehend this basic limitation on his power, notwithstanding the clarity and explicitness of the above legal provisions, petitioner committed acts of indiscretion that smack of gross inexcusable negligence, ultimately resulting in unwarranted benefits in favor of the grantees-operators concerned.

Notably, the municipal mayor's general authority to issue licenses and permits under Section 444 (3) (iv) of RA 7160[16] cannot prevail over the express and specific authority conferred upon the provincial governor to issue extraction permits. Equally basic is the rule that special provisions of law prevail over its

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[15] *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011).

[16] CHAPTER III
Officials and Offices Common to All Municipalities
ARTICLE I
The Municipal Mayor

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation*. – x x x.

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance[.]

general provisions. Neither should petitioner's gross inexcusable negligence be condoned by the Municipal Environment and Natural Resources Office's recommendation that he could approve the questioned permits nor the fact that the shares in the fees for these permits were received by the provincial government.[17] To me, these proffered excuses do not sufficiently justify why petitioner failed to instead consult the clear and unequivocal provisions of the law which point to one singular reasonable conclusion — that is, that a municipal mayor has no power to issue extraction permits as that power exclusively belongs to the provincial governor plain and simple. In this regard, it is of no coincidence that the last sentence of Section 3 (e) of RA 3019 reads:

> Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> 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.** (Emphasis supplied)

The government would garner greater confidence from the people if, correlatively, greater vigilance in public service is not the exception but the norm. This is especially so when it comes to those charged with the duty of granting privileges and licenses to private persons, as these bureaucratic processes have been infamously known to be breeding grounds of graft and corruption. In this regard, the Court ought to be circumspect in discerning legitimate defenses from convenient excuses, and mulling over the consequences of flagrant ineptitude to the faith of our people.

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[17] See *ponencia*, p. 10.

Accordingly, I submit that petitioner's conviction under Section 3 (e) of RA 3019, as ruled by the *Sandiganbayan*, should be upheld on the basis of his gross inexcusable negligence for the reasons herein explained.

DISSENTING OPINION

LEONEN, *J.*:

In issuing extraction permits when he had no power and in blatant disregard of the proper authority's orders, petitioner gave unwarranted advantage and preference to his permits' grantees with evident bad faith.

With respect, I regret that I cannot agree that petitioner should be acquitted on this Motion for Reconsideration.

For this Court's resolution is a Petition for Review on *Certiorari*[1] challenging the Decision[2] and Resolution[3] of the Sandiganbayan in SB-14-Crim. Case Nos. 0348-0356. The Sandiganbayan found Jose T. Villarosa (Villarosa) guilty beyond reasonable doubt of nine (9) counts of violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

In 2014, Villarosa was charged with nine (9) counts of violation of Republic Act No. 3019, Section 3(e).[4] The Informations uniformly read, apart from the dates the offense

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[1] *Rollo*, pp. 7-42.

[2] *Id.* at 43-62. The Decision dated November 17, 2016 was penned by Associate Justice Reynaldo P. Cruz and concurred in by Associate Justices Efren N. De La Cruz (Chair) and Michael Frederick L. Musngi of the First Division, Sandiganbayan, Quezon City.

[3] *Id.* at 63-69. The Resolution dated March 6, 2017 was penned by Associate Justice Reynaldo P. Cruz and concurred in by Associate Justices Efren N. De La Cruz (Chair) and Michael Frederick L. Musngi of the Special First Division, Sandiganbayan, Quezon City.

[4] See *ponencia*, p. 4. Initially, Villarosa was indicted for 10 counts of violating Republic Act No. 3019, Section 3(e). However, the prosecution moved to withdraw the information in SB-14-Crim. Case No. 0347. This was granted in the Sandiganbayan's February 24, 2015 Resolution.

were allegedly committed and the grantee of the extraction permits. The accusatory portion read:

Criminal Case No. 0348

That on or about 14 September 2010, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Gem CHB Maker** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0349

That on or about 17 November 2010, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Timoteo Aguilar** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0350

That on or about 22 November 2010, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the

Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Arvi Dolojan** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0351

That on or about 06 December 2010, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Andres Pablo** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0352

That on or about 21 January 2011, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **R.D. Go Concrete Products** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage

of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0353

That on or about 30 March 2011, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Jojo Pojas** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0354

That on or about 08 April 2011, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Emilia T. De Lara** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0355

That on or about 03 May 2011, in San Jose, Occidental Mindoro, and within the jurisdiction of this honorable Court, the above-named

accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Antonio Villaroza** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.

Criminal Case No. 0356

That on or about 07 June 2011, in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally, and with evident bad faith, give unwarranted benefits, advantage or preference to a private party, by unlawfully issuing an Extraction Permit to **Jessie Glass and Aluminum Enterprise** contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.

CONTRARY TO LAW.[5] (Emphasis supplied)

The charges originated from Occidental Mindoro Provincial Environment and Natural Resources Officer Ruben P. Soledad (Soledad)'s complaint against Villarosa. Soledad alleged that then Municipal Mayor Villarosa illegally issued sand and gravel extraction permits from September 2010 to June 2011, in violation of the Local Government Code.[6]

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[5] *Rollo*, pp. 46-49.

[6] *Id.* at 141, *En Banc* Resolution dated July 17, 2018.

In its November 17, 2016 Decision,[7] the Sandiganbayan found Villarosa guilty as charged. His subsequent Motion for Reconsideration was denied in the Sandiganbayan's March 6, 2017 Resolution.[8] Assailing the judgment, Villarosa filed this Petition for Review before this Court.

On September 13, 2017, this Court issued a Resolution[9] denying the petition for failing to show any reversible error in the assailed judgment.

Petitioner then moved for reconsideration.[10]

In its November 22, 2017 Resolution, this Court denied the motion with finality, "no substantial argument having been adduced to warrant the reconsideration sought."[11] Entry of final judgment was ordered to be issued immediately.

On December 22, 2017, petitioner filed an Urgent Motion for Reconsideration, with Motion for Leave to File and for the Admission of, the same, and Motion for the Referral of the Case to the Honorable Court *En Banc*.[12] He invoked the observation in *Formilleza v. Sandiganbayan* that "the Sandiganbayan is the first and last recourse of the accused before [his or her] case reaches the Supreme Court where findings of fact are generally conclusive and binding."[13] He pleaded that this Court reexamine its practice of issuing a minute resolution

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[7] *Id.* at 43-61. The Decision was penned by Associate Justice Reynaldo P. Cruz, and concurred in by Associate Justices Efren N. De La Cruz (Chair) and Michael Frederick L. Musngi of the First Division, Sandiganbayan, Quezon City.

[8] *Id.* at 63-69. The Resolution was penned by Associate Justice Reynaldo P. Cruz, and concurred in by Associate Justices Efren N. De La Cruz (Chair) and Michael Frederick L. Musngi of the Special First Division, Sandiganbayan, Quezon City.

[9] *Id.* at 77-78.

[10] *Id.* at 88-108.

[11] *Id.* at 110-111.

[12] *Id.* at 112-137.

[13] *Id.* at 113.

denying a petition for review assailing a judgment of conviction from the Sandiganbayan.[14]

On July 9, 2018, this Court, through the Second Division, issued a Resolution[15] granting petitioner's second motion for reconsideration and referring the case to the Court *En Banc*.

In its July 17, 2018 Resolution,[16] the Court *En Banc* resolved to reinstate the Petition and directed the Office of the Special Prosecutor, in behalf of respondent People of the Philippines, to file its comment. This Court held that "the better policy is to limit the rule on the issuance of a minute resolution denying due course to a Rule 45 petition to cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction."[17] Moreover, it held that appeals from a judgment of conviction by the Sandiganbayan, in the exercise of its exclusive original jurisdiction, shall be resolved in a decision or resolution.[18]

On August 1, 2018, respondent filed a Motion for Extension of Time to File Comment,[19] praying for a period of 30 days from August 4, 2018 or until September 3, 2018. This was then followed by a Second Motion for Extension,[20] requesting for an additional 20 days (from September 3, 2018 or until September 23, 2018), and a Third Motion for Extension of Time to File Comment, filed on September 20, 2018.[21]

In its October 2, 2018 Resolution,[22] this Court granted respondent's Motions for Extension, with a warning that no

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[14] *Id.* at 114.

[15] *Id.* at 139-140.

[16] *Id.* at 141-151.

[17] *Id.* at 144.

[18] *Id.* at 146.

[19] *Id.* at 174-178.

[20] *Id.* at 184-188.

[21] *Id.* at 189-193. Despite its prior filing before this Court's October 2, 2018 Resolution, the Motion appears later in the *rollo*.

[22] *Id.* at 188-A-188-B. A copy of this Resolution appears inserted in the *rollo* and is stapled to the previous page.

further extension shall be given. However, in its subsequent October 16, 2018 Resolution,[23] this Court denied respondent's Third Motion for Reconsideration in view of the October 2, 2018 Resolution. It appears that the third motion was filed prior to this Court's October 2, 2018 Resolution.

Respondent then filed three (3) more Motions for Extension,[24] praying for additional time to file its comment. Eventually, it filed its Comment[25] on October, 29, 2018.

On November 13, 2018, this Court issued a Resolution[26] denying respondent's motions. It also resolved to dispense with the comment filed, in compliance with the July 17, 2018 Resolution.

Petitioner filed a Motion to Resolve Petition,[27] praying that his petition be resolved without respondent's comment. This was noted in this Court's February 12, 2019 Resolution,[28] where the Sandiganbayan was also directed to elevate the records of the case.

On June 18, 2019, petitioner filed an Urgent Motion for Permission to Travel,[29] followed by a Supplement to the Urgent Motion.[30] He alleged that he was planning to go to Japan for a family vacation from July 5, 2019 to July 10, 2019. He added that he plans to travel to Singapore as well on July 17, 2019 to July 20, 2019 for medical reasons. These were noted without action in this Court's August 14, 2019 Resolution.[31]

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[23] *Id.* at 193-A-193-B.

[24] *Id.* at 194-206.

[25] *Id.* at 207-238.

[26] *Id.* at 239-240.

[27] *Id.* at 241-245.

[28] *Id.* at 246-247.

[29] *Id.* at 249-257.

[30] *Id.* at 258-263.

[31] *Id.* at 263-A-263-B.

Petitioner then filed a Second Motion to Resolve Petition[32] and an Urgent Motion for Permission to Travel.[33] In the latter, he requested permission to travel to Singapore from October 28, 2019 to October 31, 2019 for medical reasons. This was granted in this Court's October 1, 2019 Resolution, where he was ordered to post a cash bond of ₱5,000.00.[34]

On November 27, 2019, petitioner filed an Urgent Motion for Permission to Travel,[35] requesting permission to travel to Singapore from December 12, 2019 to December 14, 2019 for the same reason. This remains pending before this Court.

In my view, the petition should be denied with finality and the assailed judgment be affirmed. Petitioner should *not* be acquitted.

I

Republic Act No. 3019, Sec. 3(e) reads:

> SECTION 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> 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. (Emphasis in the original)

To sustain convictions for violation of Republic Act No. 3019, Section 3(e), the prosecution must prove the following elements:

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[32] *Id.* at 264-268.

[33] *Id.* at 269-271.

[34] *Id.* at 282-283.

[35] *Id.* at 284-291.

1) The accused must be a public officer discharging administrative, judicial or official functions;

2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3) That his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[36] (Citation omitted)

It is undisputed that petitioner was the Municipal Mayor of San Jose, Occidental Mindoro when he was found to have committed the crime. However, it must also be shown that his action caused "undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference[,]"[37] and that the crime was committed through any of the modes: "manifest partiality, evident bad faith or gross inexcusable negligence."[38]

Albert v. Sandiganbayan[39] differentiates the three (3) modes of committing a violation under this provision:

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. *"Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.* "Gross inexcusable negligence" refers to 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 willfully and intentionally,

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[36] *Reyes v. People*, G.R. No. 237172, September 18, 2019 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65745> [Per J. Leonen, Third Division] citing *Soriano v. Marcelo*, 610 Phil. 72, 80 (2009) [Per J. Carpio, First Division].

[37] *Id.*

[38] *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994) [Per J. Vitug, *En Banc*].

[39] 599 Phil. 439 (2009) [Per J. Carpio, First Division].

with conscious indifference to consequences insofar as other persons may be affected.[40] (Citations omitted, emphasis supplied)

Petitioner, as then Municipal Mayor of San Jose, Occidental Mindoro, had absolutely no authority to issue extraction permits. Republic Act No. 7160, Section 138 is clear:

> SECTION 138. *Tax on Sand, Gravel and Other Quarry Resources*. — The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.
>
> ***The permit to extract sand, gravel and other quarry resources shall be issued exclusively by the provincial governor***, pursuant to the ordinance of the sangguniang panlalawigan.
>
> The proceeds of the tax on sand, gravel and other quarry resources shall be distributed as follows:
>
> (1) Province — Thirty percent (30%)
> (2) Component City or Municipality where the sand, gravel, and other quarry resources are extracted — Thirty percent (30%); and
> (3) Barangay where the sand, gravel, and other quarry resources are extracted — Forty percent (40%). (Emphasis supplied)

The provision is categorical, unambiguous, and makes no room for interpretation. The Provincial Governor has the *exclusive* authority to issue permits to extract sand, gravel, and other quarry resources. Nothing in the provision is susceptible to an interpretation that a Mayor may issue extraction permits.

II

Consequently, I cannot agree with the majority's conclusion that there was *no* evident bad faith because "petitioner was justified by his honest belief that he is authorized by law to issue the said permits."[41]

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[40] *Id.* at 450-451.

[41] *Ponencia*, p. 10.

First, basic is the rule that ignorance of the law excuses no one from compliance.[42]

We cannot exculpate an individual from liability for an illicit act when he or she pleads ignorance of the law. We have all the more reason not to condone a local chief executive's illegal and unauthorized exercise of power, especially when it is because of some patently erroneous personal view that he has the authority. It must be underscored that as a local chief executive, petitioner implements the law in his municipality's territorial jurisdiction.

Second, the majority excused petitioner's blatant disregard of the law "in his [mistaken] reliance on the provisions of the Local Government Code."[43] It does not mention which particular provision of the Local Government Code was vague that warrants petitioner's acquittal. Records revealed that petitioner relied on Section 444 (3) (iv) of the Code:

> SECTION 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* — (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.
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> x x x x x x x x x x x x
>
> (3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:
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> x x x x x x x x x x x x
>
> (iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance[.]

There is no difficult question of law here. As the Sandiganbayan pointed out, this general authority—conferred upon the municipal

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[42] CIVIL CODE, Art. 3.

[43] *Ponencia*, p. 9.

mayor to issue licenses and permits—cannot prevail over the "specific and exclusive authority granted upon the provincial governor to issue extraction permits[.]"[44]

Third, in my view, a public officer's brazen act of granting permits without any basis in law gives rise to a presumption of bad faith. Petitioner's mere issuance of invalid permits constitutes a serious transgression, considering sheer lack of legal basis or any color of law.

Luciano v. Estrella[45] declared that Republic Act No. 3019 is *malum prohibitum*, and not *malum in se*:

> In other words, the act treated thereunder partakes of the nature of a *malum prohibitum*; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain *acts* of Republic officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that the law does not merely contemplate repression of acts that are unlawful or corrupt *per se*, but even of those that may *lead to or result* in graft and corruption. Thus, to require for conviction under the Anti-Graft and Corrupt Practices Act that the validity of the contract or transaction be first proved would be to enervate, if not defeat, the intention of the Act. For what would prevent the officials from entering into those kinds of transactions against which Republic Act 3019 is directed, and then deliberately omit the observance of certain formalities just to provide a convenient leeway to avoid the clutches of the law in the event of discovery and consequent prosecution?[46] (Citation omitted, emphasis in the original)

The majority's contemplation that "there is no showing that petitioner personally gained anything by his issuance of the

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[44] *Rollo*, p. 65.

[45] 145 Phil. 454 (1970) [Per *J.* J.B.L. Reyes, *En Banc*]. See also *Republic v. Sereno*, G.R. No. 237428, May 11, 2018, 863 SCRA 1 [Per *J.* Tijam, *En Banc*].

[46] *Id.* at 464-465.

questioned extraction permits"[47] is immaterial. This is not an element of the crime that must be proven.

I also disagree that "the approval of the said permits went through the regular process."[48] *Nothing* was regular in petitioner's unauthorized and infirm conduct. As the local chief executive, he has the prerogative on whether or not to approve his subordinates' recommendations. He is not an unwitting government official, but one who is mandated to execute laws and manage the affairs within his locality.

His subsequent acts exhibited badges of fraud which militate against his claim of good faith and excusable ignorance.

Soledad, the Occidental Mindoro Provincial Environment and Natural Resources Officer, issued Cease and Desist Orders to his permit grantees. This then caused petitioner to write him two (2) letters, which he generously reproduced in his pleadings. Petitioner wrote that "the Municipality of San Jose *shall not recognize your 'cease and desist order'* until such time that a proper legal process is adhered to by the Provincial Government."[49] Further, he berated Soledad who must "properly respect the inherent powers vested upon this Local Government Unit[.]"[50] While the majority describes this as "emphatic,"[51] this language hardly showed any compassion.

In any case, I fail to see how petitioner acted in good faith when he refused to heed the directive of the Provincial Environment and Natural Resources Officer, who is mandated to protect our natural resources.

Executive Order No. 192, otherwise known as the Reorganization Act of the Department of Environment and Natural Resources,

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[47] *Ponencia*, p. 9.

[48] *Id.*

[49] *Rollo*, p. 93.

[50] *Id.*

[51] *Ponencia*, p. 9.

enumerates the functions of Regional Offices under which the Provincial Environment and Natural Resources Officer serves:

SECTION 21. *Functions of Environment and Natural Resources Regional Office*. — Environment and Natural Resources Regional Offices shall be located in the identified regional capitals and shall have the following functions, but not limited to:

a) **Implement laws, policies, plans, programs, projects, rules and regulations of the Department** to promote the sustainability and productivity of natural resources, social equity in natural resource utilization and environmental protection.

b) Provide efficient and effective delivery of services to the people;

c) **Coordinate with regional offices of other departments, offices, agencies in the region and local government units in the enforcement of natural resource conservation laws and regulations**, and in the formulation/implementation of natural resources programs and projects;

d) Recommend and, upon approval, implement programs and projects on forestry, minerals, and land management and disposition;

e) Conduct comprehensive inventory of natural resources in the region and formulate regional short and long-term development plans for the conservation, utilization and replacement of natural resources;

f) Evolve respective regional budget in conformity with the priorities established by the Regional Development Councils;

g) **Supervise the processing of natural resources products, grade and inspect minerals, lumber and other wood processed products, and monitor the movement of these products;**

h) Conduct field researches for appropriate technologies recommended for various projects;

i) Perform other functions as may be assigned by the Secretary and/or provided by law.

The natural resources provincial and community offices shall absorb, respectively, the functions of the district offices of the bureaus, which are hereby abolished in accordance with Section 24 (b) hereof. The provincial and community natural resource office shall be headed by a provincial natural resource officer and community natural resource officer, respectively. (Emphasis supplied.)

The majority stresses that Soledad filed the complaint for violation of laws which did not include Republic Act No. 3019, but that "the Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3(e) of Republic Act No. 3019."[52]

It must be reiterated that "the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it."[53] The Ombudsman acted well-within its jurisdiction and competence in resolving to file informations for violation of Republic Act No. 3019, instead of the other laws Soledad claimed petitioner violated.

III

I disagree with the majority that there is "no sufficient evidence to prove that the persons in whose favor herein petitioner issued the subject extraction permits received unwarranted benefits, advantage, or preference."[54] As it pointed out, "unwarranted means lacking adequate or official support; unjustified, unauthorized, or without justification or adequate reason."[55]

To sustain petitioner's conviction, there need not be actual proof of how the grantees preyed upon the municipality's

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[52] Draft *ponencia*, p. 11.

[53] *Presidential Commission on Good Government v. Office of the Ombudsman*, G.R. No. 187794, November 28, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814> [Per *J.* Leonen, Third Division].

[54] *Ponencia*, p. 10.

[55] *Id.*

resources to illustrate that they received unwarranted benefit. It is manifest that the grantees benefited from being issued extraction permits, despite having no source of right. Plainly, obtaining the permits from an unauthorized public officer enabled the grantees to extract sand and gravel resources without any legal authority, proper justification, and under no regulation from the concerned government agencies. This Court must not close its eyes when the unwarranted benefit extended to several persons is patent.

All told, in issuing extraction permits when he had no power to do so, and in blatant disregard of the proper authority's orders, petitioner gave unwarranted benefits to his permits' grantees. With no legitimate justification of his unlawful act, petitioner should not be acquitted from the charges.

Thus, I find no error in the Sandiganbayan's finding that petitioner was guilty beyond reasonable doubt of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act. This offense is punishable by "imprisonment for not less than six years and one month nor more than fifteen years [and] perpetual disqualification from public office[.]"[56] Thus, the Sandiganbayan did not err in imposing for each count the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, with perpetual disqualification from public office.

"Public office is a public trust."[57] Public officers must perform their duties with "utmost responsibility, integrity, loyalty, and efficiency."[58] This Court must endeavor to exact accountability from our public officers, lest we unwittingly coddle erring leaders.

The least we must expect from our local chief executives, on whom public trust is reposed, is to know their mandate. Acquitting

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[56] Republic Act. No. 3019 (1960), Sec. 9, as amended by Batas Blg. 195 (1982).

[57] CONST., Art. XI, Sec. 1.

[58] CONST., Art. XI, Sec. 1.

petitioner when he committed brazenly unlawful acts manifesting evident bad faith would be a disservice to the people.

ACCORDINGLY, I vote to **DENY** the petition, and **AFFIRM** the assailed Sandiganbayan Decision and Resolution. Petitioner Jose T. Villarosa should be held liable for nine (9) counts of violating Republic Act No. 3019, Section 3(e).

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

On petitioner's **second** motion for reconsideration, and after the Court had denied petitioner's **first** motion for reconsideration **with finality** and directed that no further pleadings or motions shall be entertained in this case, and entry of judgment be issued immediately,[1] the *ponencia* now decides to acquit petitioner Jose Tapales Villarosa of **nine (9) counts** of violation of Section 3(e), Republic Act (RA) 3019.[2]

I respectfully dissent.

THE FACTS

The Sandiganbayan *Decision* which the *ponencia* reverses and sets aside bears the facts, *viz.*:

The following narration of facts is based on the documentary and testimonial evidence found on record, as well as on the stipulations made between the parties:

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[1] Resolution dated November 22, 2017.

[2] Resolution dated July 17, 2018. Notably, instead of simply tackling the injustice of dismissing petitions for review on *certiorari* from judgments of conviction from the Sandiganbayan through minute resolutions, as was done in the case at bar, to which I wholeheartedly concur, page 6 of the Resolution *de facto* discussed the merits of petitioner's second motion for reconsideration by expressing therein that "the need to dispose this case through a decision or unsigned resolution is bolstered by the **apparent persuasive merit of Villarosa's defense**." The next pages of the Resolution should give any reasonably thinking lawyer the clear impression that, **even before the prosecution on appeal is heard, an acquittal is already forthcoming**. This very real prospect then, has come to pass now.

The controversy started when private complainant Soledad, PENRO of Occidental Mindoro, issued several CDOs to the quarry operators from the Municipality of San Jose who failed to present the necessary extraction permit issued by the Governor of the said province. These quarry operators were found to have been conducting quarrying activities within the municipality by virtue of the Extraction Permits issued by its then Mayor, herein accused.

When the accused learned about this, he wrote a letter dated 23 May 2011, informing private complainant Soledad that the Municipality of San Jose will not obey the CDOs until the Provincial Government observes the proper legal process of conduction public hearings and complying with the publication requirements provided under the LGC for the proposed amendments of the pertinent provisions of the Provincial Tax Ordinance. Furthermore, he insists that the inherent powers vested upon the local government unit to have substantial control over its local affairs be respected.

In his letter dated 26 May 2011, private complainant Soledad tried to explain that none of the provisions of the proposed ordinance that will amend Provincial Tax Ordinance No. 2005-004 was applied. He stated that the CDOs were justified under Section 65 of the existing Provincial Tax Ordinance No. 2005-004 adopted by the Sangguniang Panlalawigan as per SP Resolution No. 11, Series of 2005 dated 07 February 2005. Section 65 thereof mandates that such permit to extract is exclusively issued by the Provincial Governor upon recommendation of the Environment and Natural Resources Office. This is consistent with Section 138 of the LGC which confirms that only the Provincial Governor has the sole and exclusive authority to grant permit to extractors of sand and gravel within the province.

The accused wrote another letter dated 23 August 2011, addressed to the members of the Sangguniang Panlalawigan of the Province of Occidental Mindoro. Here, he expressed his objection to SP Resolution No. 128, which adopted the amendments to Provincial Tax Ordinance No. 2005-004, deleting the authority of the Municipal Government to enforce its own regulatory powers provided under the LGC. Accordingly, he emphasized, the local government unit has the power to organize its own MENRO, which necessarily carries the authority to impose policies on the matter. He declared that the municipality will religiously remit the shares due to the province and the barangay, but it will only honor the original provisions of Provincial Tax Ordinance No. 2005-004, allowing the payment of the permittees to be done through its MTO.

The directive of the CDOs went unheeded. Thus, on 04 October 2011, private complainant Soledad filed a Complaint for Usurpation of Authority, Violation of Section 138 of R.A. 7160 (Local Government Code), Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of R.A. No. 6713 (Code of Conduct and Ethical Standards), against herein accused before the Office of the Ombudsman ("Ombudsman," for brevity). On 19 March 2012, the Ombudsman issued a Resolution finding probable cause for ten (10) counts of violation of Section 3 (e) of R.A. No. 3019 and directed the filing of the corresponding Informations against the accused.

THE REASONS

First. The *ponencia* rules that:

> Alas, even assuming for the sake of argument that petitioner may be held accountable for the issuance of the subject extraction permits, such is not for the offense charged in the present Informations, as the acts being complained of do not constitute the elements of the crime presently charged. **In fact, in his complaints filed with the Ombudsman, complainant Soledad accused petitioner not of violation of Section 3(e) of RA 3019 but of Usurpation of Authority, Violation of Section 138 of RA 7160, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of RA 6713; and Soledad presented evidence to support his accusations. However, the Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3(e) of RA 3019.**[3]

I beg to disagree with the *ponencia*'s statements that the Office of the Ombudsman is hostage to complainant's designation of the offense which respondent public official should be charged with, *and* that the proper offense for the acts committed by petitioner here is Usurpation of Authority and not violation of Section 3 (e) of RA 3019.

As regards the first statement, the truth is that complainant's opinion in this regard does not bind the Office of the Ombudsman. It is the latter, not the complainant who determines what offense to charge an accused with.

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[3] Decision, p. 14.

The doctrine has remained unchanged through several decades now – the public prosecutor has the quasi-judicial prerogative to determine what crime should be filed in court and who should be charged therefor; he or she always assumes and retains full discretion and control of the prosecution of all criminal actions.[4] ***Arroyo v. Department of Justice***[5] reiterates this doctrine:

> The office of a prosecutor does not involve an automatic function to hold persons charged with a crime for trial. Taking the cudgels for justice on behalf of the State is not tantamount to a mechanical act of prosecuting persons and bringing them within the jurisdiction of court. Prosecutors are bound to a concomitant duty not to prosecute when after investigation they have become convinced that the evidence available is not enough to establish probable cause. This is why, in order to arrive at a conclusion, the prosecutors must be able to make an objective assessment of the conflicting versions brought before them, affording both parties to prove their respective positions. **Hence, the fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a prima facie case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of a corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party or any other party for that matter.** Emphatically, the right to the oft-repeated preliminary investigation has been intended to protect the accused from hasty, malicious and oppressive prosecution. In fact, the right to this proceeding, absent an express provision of law, cannot be denied. Its omission is a grave irregularity which nullifies the proceedings because it runs counter to the right to due process enshrined in the Bill of Rights.

In any event, petitioner was not and could not have been prejudiced at all by the divergence of opinion between the complainant and the Office of the Ombudsman as to the nature and designation of the offense with which to charge petitioner. What matters are the facts recited in the Information because these facts determine the defense that an accused would have

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[4] *Leviste v. Alameda*, 640 Phil. 620 (2010); *Insular Life Assurance v. Serrano*, 552 Phil. 469 (2007); *Potot v. People*, 432 Phil. 1028 (2002).

[5] 695 Phil. 302 (2012).

to raise and the offense that an accused may be convicted of. As we held in ***Consigna v. People***:[6]

Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information. As held in People v. Dimaano:

> For complaint or information to be sufficient, it must state 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 time of the commission of the offense, and the place wherein the offense was committed. **What is controlling is not the title of the complaint, nor the designation of the offense charge or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.** The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense....
>
> As early in United States v. Lim San, this Court has determined that:
>
> **From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him**

[6] 731 Phil. 108 (2014).

> **in a defense on the merits..... That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth.** If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. **The designation of the crime** by name in the caption of the information from the facts alleged in the body of that pleading **is a conclusion of law made by the fiscal**. In the designation of the crime the accused never has a real interest until the trial has ended. **For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor.** It is the province of the court alone to say what the name of the crime is or what it is named... (Emphases added)

The *ponencia*'s second statement that petitioner could be held guilty only of the lesser offense of Usurpation of Authority or Official Functions under Article 177 of *The Revised Penal Code*, is, with due respect, erroneous.

It is not out of the ordinary for one who usurped the functions of another in the context of the elements of Article 177 to be also charged with and found guilty of violation of Section 3(e) of RA 3019 if the usurpation was done with manifest partiality, evident bad faith or gross inexcusable negligence and resulted in undue injury to any private or public party or unwarranted benefit, advantage or preference to any private party.

This was the situation in ***Tiongco v. People***[7] where the accused was charged with these two (2) offenses. Tiongco signed disbursement vouchers and checks pertaining to the retirement

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[7] G.R. Nos. 218709-10, November 14, 2018.

gratuity of an employee of the Philippine Crop Insurance Corporation despite her lack of authority to do so. Like herein appellant, Tiongco argued she was of belief that she had authority to sign the documents and her actions were indicative of good faith. Despite Tiongco's defense of good faith, the Court nevertheless found her guilty as charged.

Tiongco held that there is no incompatibility between the elements of Usurpation of Authority or Official Functions and those of violation of Section 3(e) of RA 3019, and depending on the facts proved beyond reasonable doubt, an accused may be found guilty of these two (2) crimes. Thus:

> The petition has no merit and should be denied.
>
> **Usurpation of Official Functions**
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> Article 177 of the Revised Penal Code defines Usurpation of Official Functions:
>
> . . . .
>
> This provision actually speaks of two ways of committing the offense under Article 177. Tiongco is charged with Usurpation of Official Functions. As established by this Court in Ruzol v. Sandiganbayan, usurpation of official functions is committed when "under pretense of official position, [a person] shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so."
>
> To put simply, Usurpation of Official Functions has the following elements:
>
> - The offender may be a private person or public officer.
> - The offender performs any act pertaining to any person in authority or public officer of the Philippine government, any of its agencies, or of a foreign government.
> - The offender performs the act under pretense of official function.
> - The offender performs the act without being legally entitled to do so.

First, it has been conclusively established that Tiongco was a public officer at the time of the commission of the crime. She herself admitted such in her Counter-Affidavit dated 10 October 2006, where she stated that she was then "currently the Acting Senior Vice President of the [PCIC] with a salary grade of 27."

Second, she performed an act that rightfully pertained to the President of PCIC as head of the agency, and not to her as Acting Senior Vice President.

Based on evidence she herself presented, Tiongco's designation as Acting Senior Vice President, Regional Management Group, carried with it the following responsibilities:

. . . . . .

None of the functions pertain to approving the release of retirement gratuity.

While Tiongco's claim that Barbin "asked for help" in running the agency, which was the reason for her designation as Acting Senior Vice President, **she has not shown any specific assignment or conferment of authority related to approving release of retirement benefits. Meanwhile, OMB MC No. 10 specifically states:**

In the event the certification presented states that the prospective retiree has a pending case, the responsibility of determining whether to release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event retiree is found guilty, rests upon and shall be left at the sound discretion of the head of the department, office or agency concerned.

Hence, the assignment cannot be presumed or inferred from the general statement in number 8 of the above-quoted list of responsibilities. It must be specifically granted in light of the explicit mandate of OMB MC No. 10 and that conferment of authority must be clearly shown. Tiongco has not done so.

Third, that Tiongco signed Estacio's disbursement voucher "under pretense of official function" is clear. Tiongco argues that she believed she had the authority to sign and that her acts "are indicative of good faith."

The Court, in Ruzol, recognized good faith as a defense in prosecutions for usurpation of official functions. However, the Court also ruled that:

It bears stressing at this point that in People v. Hilvano, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. **The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."** Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.

Tiongco cannot claim good faith because it has been established that she had "knowledge of circumstances which ought to put [her] upon inquiry." She admitted that **she saw the notation "no pending cases except OMB-0-00-0898 and 0-00-1697"** in Estacio's request for clearance.

Tiongco also admitted that **she was well aware of the provisions of OMB MC No. 10**. She said she did it because Barbin was always absent, an admission that she knew the authority was vested in the PCIC President. **She nonetheless arrogated such authority unto herself, justifying her action with urgency of the situation bringing Section 20.4 of the PCIC CASA into effect.** However, even acting under that authority was wrong, as will be discussed later.

Next, PCIC Board Resolution No. 2006-012 states:

. . . . . .

While OMB MC No. 10 requires only certification, the PCIC Board required a clearance from the Office of the Ombudsman. In other words, the approval of Estacio's retirement was conditional – "subject to" fulfillment of the requirements the Board of Directors set. **Since Estacio only presented a certification, which stated that he had two pending cases, he had not met the requirements of the Board of Directors.**

In cases of such non-fulfillment, OMB MC No. 10 gives the discretion to allow a prospective retiree to retire and receive benefits only to the "head of the department, office or agency." Thus, in cases where the head is absent or the agency currently has no president, the authority is granted to whoever is designated officer-in-charge

or acting as head of agency, not to the one designated merely as Acting Senior Vice President.

Fourth, Tiongco was legally not entitled to act on the release of Estacio's retirement gratuity. As discussed above, the authority was vested in Barbin as head of PCIC under OMB MC No. 10.

Tiongco, however, argues that she acted pursuant to PCIC's CASA, Section 20.4, which states that in case the President is absent or an urgent matter needs his signature, "any two Class A signatories or any Class A signatory signing with any Class B signatory may approve/ sign the transaction in behalf of the President."

As will be discussed later, **the absence of Barbin was not such that he could no longer exercise his discretionary powers**. **He continued to perform his functions**, although he admitted that he was not physically present at the PCIC premises at times. He, however, testified that he regularly went to the PCIC office during that period.

Further, the release of Estacio's retirement gratuity was not an urgent matter. At that time, he was not yet entitled to its release pending compliance with the Board's requirement of an Ombudsman clearance.

Based on the foregoing, the undeniable conclusion is that Tiongco is guilty of the crime of Usurpation of Official Functions.

Violation of Section 3(e) of R.A. 3019

In Rivera v. People, the Court discussed the two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions:

x x x (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference.

It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.

The elements of the offense are as follows:

(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 prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways: through (1) manifest partiality, (2) evident bad faith, or (3) gross inexcusable negligence.

In People v. Atienza, the Court defined these elements:

x x x. There is "**manifest partiality**" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "**Evident bad faith**" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to 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 willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

The Court finds that Tiongco acted with manifest partiality and evident bad faith in this case.

Manifest Partiality

Tiongco's partiality is clear. Her willingness to disregard the PCIC Board's directive and OMB MC No. 10 in order to grant Estacio's request speaks of such partiality. Her actions all point to **facilitating whatever course of action would be favorable to Estacio**.

The Court also finds, in this case, an inclination by Tiongco to take advantage of Barbin's absence from the premises of PCIC to accommodate Estacio, who is, not insignificantly, her former boss. Tiongco made her own determination and characterized Estacio's

request for retirement gratuity as urgent, knowing that doing so, taken with Barbin's absence, would trigger the mechanism under Section 20.4 of the PCIC CASA that would allow her and another Class "A" signatory (in this case, Mordeno, who had fled and left her to suffer the consequences) to sign on the request.

Evident Bad Faith

In Antonino v. Desierto, the Court held that "[b]ad faith per se is not enough for one to be held liable under the law; bad faith must be evident. **Bad faith does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will.**"

As discussed above, **Tiongco's bad faith was clearly exhibited in her willful disregard for OMB MC No. 10 and for the requirements of the PCIC Board**. It is **clear as well that she knowingly encroached on Barbin's authority to approve the payment of retirement gratuity** to one who has pending cases before the Ombudsman.

She herself admitted that she was faced with a difficult question of law. Yet, instead of seeking guidance from PCIC's legal counsel or from Barbin himself, she simply decided on her own and took her own course of action that did not conform to established rules.

Moreover, her failure to ensure restitution from Estacio in case he is found guilty in his pending cases is clearly a breach of her sworn duty as a government official tasked with safeguarding the interest of the service.

Undue Injury or Unwarranted Benefit, Advantage or Privilege

For violation of Section 3(e) of R.A. 3019, "what contextually is punishable is the act of causing undue injury to any party, or giving to any private party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions."

The Court has clarified that "the use of the disjunctive word 'or' connotes **that either act of (a) 'causing any undue injury to any party, including the Government'; [or] (b) 'giving any private party any unwarranted benefits, advantage or preference,' qualifies as a violation of Section 3(e) of R.A. 3019**, as amended." Thus, an accused "may be charged under either mode or both, x x x. In other words, the presence of one would suffice for conviction."

The Court has treated undue injury in the context of Section 3(e) of R.A. 3019 to have "a meaning akin to" the civil law concept of "actual damage," to wit:

Undue injury in the context of Section 3(e) of R.A. No. 3019 **should be equated with the civil law concept of "actual damage."** Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. **Its existence must be proven as one of the elements of the crime.** In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty**.

In this case, **undue injury to the government was caused by the unauthorized disbursement** of ₱1,522,849.48 in public funds, **in that, first, the person who approved said disbursement did not have the authority to do so, and second, because the beneficiary was not yet entitled to the release of the retirement gratuity**.

As such, **Estacio also enjoyed an unwarranted benefit because non-compliance with the requirements** under OMB MC No. 10 **disqualified him to receive his retirement gratuity at that time**. On top of that, **Estacio was given said unwarranted benefit through Tiongco's usurpation of Barbin's official functions** and the violation of OMB MC No. 10.

Estacio's former position afforded him access to the highest officials of the agency, the same ones who were in a position to know how to work through PCIC's processes. Tiongco's overreach was obviously targeted to expedite the process in favor of the former president.

. . . . . .

Moreover, it will not change the ruling of the Court since it has been already determined that the elements of violation of Section 3(e) of R.A. 3019 were proven in this case. (Emphases added)

Here, the identical wording of the nine (9) Informations, except as to the circumstances of the private party benefitted by petitioner's usurpation of authority, states:

That on or about (24 August 2010); in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the

Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally and with evident bad faith, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to (e.g. GemCI-IB Maker), contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from mid take advantage of the privilege to extract quarry resources without legal authority and official support.

The *ponencia* does not have to bother with the crime of Usurpation of Authority or Official Functions because petitioner was not charged with this crime or convicted thereof. The charge is for violation of Section 3(e) of RA 3019, which each of the Informations so clearly alleges and the pieces of evidence establish beyond reasonable doubt.

Second. Section 3(e) of RA 3019 states:

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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 x x x

Sabio v. Sandiganbayan[8] likewise penned by then Associate Justice now Chief Justice Diosdado M. Peralta, and concurred in by Justice Mario Victor "Marvic" F. Leonen, now retired Justice Andres Bernal Reyes, Jr., Justice Ramon Paul L. Hernando, and Justice Henri Jean Paul B. Inting, held:

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[8] G.R. Nos. 233853-54, July 15, 2019.

To constitute a violation of Section 3(e) of RA 3019, the following elements should be proved:

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, evidence 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.

I took the liberty of using ***Sabio***'s sequence of analysis and importing the very words in ***Sabio*** in determining petitioner's criminal liability.

The first element – the offender is a public officer – was established, in that the prosecution and the defense stipulated that petitioner is a public officer.

The second element is also present, in that petitioner issued the assailed extraction permits as Mayor of San Jose, Occidental Mindoro.

The third element is, likewise, present. In several cases, the Court has held that this element may be committed in three (3) ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.

Explaining what "partiality," "bad faith" and "gross negligence" mean, ***Sabio*** ruled:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a

duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[9]

In ***Sabio***, the Court affirmed the conviction of then PCGG Chairperson Sabio for violation of Section 3(e) of RA 3019 for leasing eleven (11) vehicles on behalf of PCGG without undertaking the proper procurement process. As held, Section 10 of RA 9184, the *Government Procurement Reform Act*, mandated all government procurement to be done through competitive bidding, except as provided for in Article XVI of the same law. The words of the statute were clear, plain, and free from ambiguity, thus, must be given their literal meaning and applied without attempted interpretation. Applying the principle of *verba legis*, ***Sabio*** had this to say:

> **Petitioner clearly disregarded the law meant to protect public funds from irregular or unlawful utilization.** In fact, **petitioner admitted that the lease agreements were not subjected to public bidding, because it is their position that the PCGG is exempted from the procurement law** and that **they were merely following the practice of their predecessors. This is totally unacceptable**, considering that the PCGG is charged with the duty, among others, to institute corruption preventive measures. As such, they should have been the first to follow the law. Sadly, however, they failed.

Indeed, Sabio's act of violating the clear command of the law unmistakably reflected "a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will," indicative of bad faith.

Here, there was bad faith on the part of petitioner in issuing extraction permits and allowing private persons to quarry resources based on the following: (1) for not following the clear, unmistakable, and elementary rule in Section 138 of the *Local Government Code* vesting the power to issue extraction permits and allow private persons to extract quarry resources exclusively

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[9] *Supra* note 8.

in the Provincial Governor; and (2) subjecting State resources to illegal private gain of the private persons so allowed.

The extraction permits were awarded to private persons by petitioner when he did not have the power and authority to do so. This is a clear violation of Section 138 of the *Local Government Code*. More, it was shown that his defiance of Section 138 was blatant, overt, and undisguised. He knew his act was contrary to Section 138 but he persisted in doing so.

Petitioner clearly disregarded the law meant to protect quarry resources from irregular or unlawful extraction and utilization. In fact, petitioner admitted that he issued the extraction permits thinking that he was not subjected to Section 138, because it was his position that as Municipal Mayor he was exempt from Section 138 and that he was merely following the practice of precedents. This is totally unacceptable, considering that the Municipal Mayor is charged with the duty, among others, to champion and abide by the provisions of the *Local Government Code*. As such, he should have been the first to follow the law.

In the inimitable prose of his *Concurrence*, the learned Justice Alfredo Benjamin S. Caguioa pounces on one of the sentences above-stated, *i.e.*, *[i]n fact, petitioner admitted that he issued the extraction permits thinking that he was not subjected to Section 138, because it was his position that as Municipal Mayor he was exempt from Section 138 and that he was merely following the practice of precedents*, to support the ruling that petitioner acted in good faith.

With due respect, **the language of this sentence merely followed the language in *Sabio* where the Court in fact found the accused therein guilty beyond a reasonable doubt of the same exact crime charged in the instant case**. To stress, ***Sabio*** held:

Petitioner clearly disregarded the law meant to protect public funds from irregular or unlawful utilization. In fact, **petitioner admitted that the lease agreements were not subjected to public bidding, because it is their position that the PCGG is exempted from the procurement law** and that **they were merely following the practice of their predecessors. This is totally unacceptable**,

considering that the PCGG is charged with the duty, among others, to institute corruption preventive measures. As such, they should have been the first to follow the law. Sadly, however, they failed.

There is **more to the present case** than what was proved in ***Sabio***. Verily, at the time of the issuance of the extraction permits, **petitioner was aware that the private persons who were the beneficiaries of his illegal permits continued quarrying resources despite the imposition of cease and desist orders**. This fact bolstered the presence of the fourth element, that there was unwarranted benefit, advantage or preference given to these private persons.

In ***Sabio***'s succinct **conclusion**, "as correctly ruled by the Sandiganbayan, **petitioner's acts unmistakably reflect 'a dishonest purpose or some moral obliquity and conscious doing of a wrong**: a breach of sworn duty through some motive or intent or ill will.'"

I respectfully stress that here, we should abide by what the Court has said and done in ***Sabio***. There should only be one and the same rule for the goose and the gander. I am one with the judiciary's motto that "let us be united and let us follow the rules."

Let me address petitioner's defense.

Petitioner argues that he acted in good faith when he issued the extraction permits. The applications for extraction permit had undergone legitimate process upon approval from the Municipal Environment and Natural Resources (MENRO).[10] Thereafter, the applications were forwarded to the Municipal Administrator who recommended its approval to him as then mayor. The taxes and fees paid by the quarrying applicants have already been remitted to the Provincial Government of Occidental Mindoro. He did not know that Cease and Desist Orders were issued by the Provincial Government because he was not furnished copies of the same.[11]

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[10] *Rollo*, pp. 23-25.

[11] *Id.* at 29.

The *ponencia* agrees with petitioner that he was not guilty of bad faith when he issued the questioned permits because he "mistakenly" believed that under the Local Government Code, he wielded authority to issue them. In any case, petitioner never gained anything from the issuance of the extraction permits nor did he unduly favor the applicants in the issuance of the same.

Again, I beg to disagree.

Petitioner **could not have been "mistaken"** that he wielded authority to issue extraction permits. **His attention has been precisely called to his lack of power to do so.** He confessed having knowledge thereof when he wrote a letter arguing otherwise. He had been put on actual notice. These facts have been settled with finality by the Sandiganbayan, and these factual findings tally squarely with the evidence on record. None of the exceptions to deviate from the factual findings of the Sandiganbayan has been alleged and established to apply here.

Petitioner's protestations against the law **do not amend the law and do not grant him** the power and authority to issue extraction permits. He was and still is bereft of power to confer power and authority upon himself. His only duty was to enforce the law. He is not a legislator. Neither is he an arbiter of the divergence of opinions – his opinion and the opinion of the rest of the world so to speak – as he is duty-bound to respect the law, especially when doing so makes the playing field level, and not doing so, as in the present case, favored private persons, the beneficiaries of his unwarranted beneficence.

In any event, **assuming without admitting** that petitioner was not given by any other party actual notice of the breadth of his powers *vis-à-vis* extraction permits, I must stress that the term "**good faith**" is used to describe "honesty of intention, and ***freedom from knowledge of circumstances which ought to put the holder upon inquiry; together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious***."[12]

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[12] See *Ruzol v. Sandiganbayan*, 709 Phil. 708 (2013).

Petitioner here clearly failed to demonstrate that he acted in good faith in issuing subject extraction permit, because he could not *but have had knowledge of circumstances* unmistakably pointing to the fact that he utterly had no power to issue extraction permits as such was vested exclusively in the provincial governor. At the very least he was reckless; but then again, prescinding from the evidence before the Sandiganbayan, and the latter's factual findings, he **intentionally violated** Section 138 of RA 7160, the *Local Government Code*, that was his sworn-duty to abide by.

The statutes are clear and unmistakable. The statutes are to him elementary rules of conduct, *because as a local chief executive it was his duty to know and enforce them*.

Section 138 of the *Local Government Code* provides that the issuance of extraction permits is **exclusively** vested in the provincial governor pursuant to a promulgated Sangguniang Panlalawigan ordinance, thus:

> SECTION 138. Tax on Sand, Gravel and Other Quarry Resources. — The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.
>
> The permit to extract sand, gravel and other quarry resources shall be issued ***exclusively by the provincial governor***, pursuant to the ordinance of the sangguniang panlalawigan.

Section 43 of RA 7942, the *Philippine Mining Act*, embodies in substance a similar provision, thus:

> Section 43. Quarry Permit. - Any qualified person may apply to the provincial/city mining regulatory board for a quarry permit on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials that are extracted by quarrying from the ground. The provincial governor shall grant the permit after the applicant has complied with

all the requirements as prescribed by the rules and regulations x x x (Emphasis supplied)

Relevantly, the Sangguniang Panlalawigan of Occidental Mindoro promulgated Provincial Ordinance No. 2005-004, stating:

> Section 65. Administrative Provisions.
>
> a. Permit to extract and dispose of materials applied. No person, partnership or corporation or government entity or private owner shall be allowed to take, extract, or dispose of any resources from public or private land or from the beds of public waters within the territorial jurisdiction of the province, unless authorized by a permit exclusively issued by the Provincial Governor, upon recommendation of the Environment and Natural Resources Office. (Emphasis and underscoring supplied)

A plain reading of these provisions clearly shows that the only way for quarrying operators to legally extract quarrying resources was upon securing an extraction permit **exclusively** from the Provincial Governor, and in this case, the Governor of Occidental Mindoro. There was and still is no room for the interpretation of these laws. The Municipality of San Jose, through petitioner as then Mayor, did not have the authority to issue extraction permits. Petitioner effectively bypassed the provincial government. He arrogated to himself the exclusive authority of the Provincial Governor to grant extraction permits, in clear contravention of the express provisions of the *Local Government Code*, the *Philippine Mining Act*, and Occidental Mindoro's Provincial Ordinance No. 2005-004.

The result of petitioner's issuance of extraction permits was not a simple case of having done something that had no impact elsewhere. For by issuing the extraction permits, petitioner gave unwarranted benefits to the beneficiaries who conducted quarrying operations that were illegal from the start, and continued to do their business on the basis of illegally issued permits and *in defiance of cease and desist orders*.

To emphasize, petitioner cannot feign ignorance of the law as he was San Jose's chief executive. He assumed *not just* an

ordinary post but one that *imposes greater responsibility in the knowledge of the law, being the person who actually executes and enforces it*. As provided under Section 4 of RA 6713,[13] a public officer shall at all times refrain from doing acts contrary to law. Petitioner as public officer is expected to uphold the law, not act against it, and to do so, he *could not have but known* the law he is to execute, most especially the *Local Government Code* which he is presumed not only to know but in fact to master as his principal rule book.

Again, petitioner's situation is **no different from** the situation we dealt with and the person whom we **adjudged guilty** in ***Ferrer v. People***, penned by now Senior Associate Justice Estela M. Perlas-Bernabe and concurred in by now retired Senior Associate Justice Antonio T. Carpio and Justice Caguioa:[14]

> Ferrer's arguments are untenable. As the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then. **As the IA Administrator, Ferrer is presumed aware of the requirements before any construction work may be done on the Intramuros Walls.** This is also palpably clear in the tenor of the lease agreement which provides that the Lessor will "[a]ssist the Lessee in securing all required government permits and clearances

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[13] **Section 4.** *Norms of Conduct of Public Officials and Employees*. – (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

x x x x x x x x x

(c) Justness and sincerity. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

[14] G.R. No. 240209, June 10, 2019.

for the successful implementation of this agreement and to give its conformity to such permits and clearances or permits whenever necessary." **Despite knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances. This amounted to gross inexcusable negligence on his part.** Gross negligence has been defined as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

In ***Alpay v. Sandiganbayan***,[15] we affirmed the Sandiganbayan when it found Alpay to have acted with evident bad faith in distributing the one million peso-fund of the One Million, One Town, One Product Program, **in violation of a law that he ought to have known:**

First, the prosecution's evidence clearly established the irregular issuance of the disbursement vouchers — it was "reversed-processed" with Alpay pre-signing and pre-approving the release of funds before the responsible officers affixed their signatures.

Second, the series of transactions from the issuance of the disbursement vouchers up to the receipt of the equipment and machines by the beneficiaries, all transpired only in one day — the last day of Alpay's term as mayor.

Third, Alpay cannot feign ignorance of the requirements of EO 176 considering that the funds were released and distributed on June 30, 2004, while EO 176 and its IRR were already then effective.

Fourth, Alpay made it appear that the distribution of the proceeds of the one million peso-fund was a direct financial assistance and not a loan, despite the clear directive for repayment of the loan under EO 176.

We concluded that **Alpay's overt acts of eschewing the procedures and requirements of EO 176 in the supposed distribution of cash loans to deserving MSEs sufficiently**

[15] G.R. No. 205976, August 5, 2013.

established his evident bad faith. Alpay could not have claimed good faith or honest mistake in the release and distribution of the one million peso-fund considering that EO 176 clearly mandated the release of the loans to MSEs and not as a direct financial assistance without strings attached to beneficiaries.

In the *En Banc*'s Resolution in ***Locsin v. People***,[16] it was held that manifest partiality and evident bad faith were evident on the part of Mayor Locsin **when despite the disqualification of Europharma due to lack of accreditation from the Department of Health, he nonetheless proceeded with the award of the bid to Europharma and Mallix Drug upon the recommendation of a local committee**. Further, his contentions that he was without any knowledge that Europharma was disqualified and that Pharmawealth did not actually participate were held to be unacceptable. Mayor Locsin was authorized by virtue of the MOA and Resolution to lead the bidding process. Thus, it was **incumbent upon him to check and authenticate the attached documents and authority of the companies intending to bid the multi-million contract**. A mere review of the documents submitted before the actual bidding process would have easily revealed to him that no competitive bidding had been made since two out of the three bidders bore the same business address, hinting an idea that the two were related entities.

In ***Tiongo***, *supra*, the Court dismissed Tiongco's defense of good faith in view of the circumstances which ought to have put her upon inquiry. For one, Tiongco admitted being **aware of her lack of authority to sign disbursement vouchers and checks for retirement gratuities, but did it anyway**. For another, she also admitted knowing that the retiree in issue had a pending case before the Ombudsman, barring anyone, except for the head of the agency, from acting on the retiree's application for retirement benefits. Yet another, the sheer urgency and haste with which Tiongco processed the retirement application was highly suspect.

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[16] G.R. No. 218681, September 14, 2015.

We cannot ignore our precedents and lay down a new set of rules for petitioner. There is nothing in his situation and the equities of this case that require us to call upon angels to re-write the law.

As already referred to above, records show that petitioner's attention was called pertaining to his utter lack of authority to issue the questioned extraction permits. In fact, the *ponencia* mentions as a central factual incident that **petitioner actually had knowledge about the issued Cease and Desist Orders**. Petitioner even wrote a letter dated May 23, 2011 to PENRO Ruben Soledad informing the latter of his alleged "mockery of the whole legislative process," and warning *with the bravado anathema to the rule of law* that he "**shall not recognize** the Cease and Desist Orders until legal process is adhered to by the provincial government." The PENRO, on the other hand, explained in his letter to petitioner that the Cease and Desist Orders were based on Section 65 of Provincial Tax Ordinance No. 2005-004 in relation to Section 138 of the *Local Government Code*.

Indubitably, petitioner's purported good faith was belied by his knowledge of the duly issued Cease and Desist Orders, his recalcitrant response thereto, and his receipt of the PENRO's letter. At the outset, these events *should have already prompted him to automatically recall the extraction permits* he had issued. Instead, petitioner issued more extraction permits, and at the same time, blamed the Provincial Government for alleged "mockery of the legislative process," without explaining what he meant by this.

The Sandiganbayan found as a fact that after petitioner had notice of his lack of authority, he still continued to issue extraction permits[17] that allowed the quarrying operators to continue their illegal extraction activities. This fact cannot be overturned by the Court.

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[17] *Rollo*, pp. 67-68. The Sandiganbayan found that petitioner issued another extraction permit on June 7, 2011, in favor of Jessie Glass and Aluminum, despite being informed on his lack of authority by Provincial Governor Soledad on his letter addressed to petitioner dated May 26, 2011.

Ferrer[18] ordained:

> In view of the foregoing, **the Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case**. "[I]t bears pointing out that **in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact**. Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB's] findings on the foregoing matters should be deemed as conclusive." As such, Ferrer's conviction for violation of Section 3 (e) of RA 3019 must stand.

In any event, whether the Cease and Desist Orders had reached petitioner's ears, he should have known from the start, according to our existing rules, that he was *utterly bereft* of authority to issue extraction permits.

Petitioner cannot also rely upon the recommendation of the MENRO for the grant of questioned permits. To repeat, upon recommendation of the application from MENRO, the authority to grant the extraction permits is **exclusively** within the power of the Provincial Governor and not within the power of a Municipal Mayor. As petitioner swore to protect the interest of the municipality he was serving, it was incumbent upon him to have been curious, careful, and competent in knowing the confines and restrictions of his authority.[19] Instead, petitioner was stubborn and unbending in usurping an authority he did not have. His ignorance of the law is ***feigned, at the very least grossly and inexcusably reckless***, and in reality, ***indicative of evident bad faith and manifest partiality***, and cannot therefore be used to negate his criminal liability.

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[18] *Supra* note 14.

[19] See *Cruz v. Sandiganbayan*, 504 Phil. 321 (2005).

For us to accept petitioner's claim as good faith is to distort grotesquely the otherwise legitimate defense of good faith.

Petitioner insists that the taxes and fees pertaining to the issued extraction permits were remitted to the provincial government. He infers from this payment that the "provincial government expressly, if not tacitly, gave him the authority to issue extraction permits."

We should not accept this argument. For one, the evidence below and referred to by the Ombudsman in its *Comment*, readily and immediately shows that **no** such remittances were ever made by petitioner. The documents referred to by the prosecution before the Sandiganbayan and reiterated by the Ombudsman in its *Comment* prove this fact beyond a reasonable doubt.

In any event, I reiterate the law vesting in the provincial government the power to levy and collect taxes from quarrying operations held within its jurisdiction.[20] Hence, *even if there was supposedly a remittance of the proceeds of the quarrying* here, which the evidence belie beyond reasonable doubt, the Provincial Government had every right to accept the taxes and fees paid for these operations. The **alleged** remittance of these taxes and fees did not in any way legitimize petitioner's illegal act of issuing the questioned extraction permits.

The **alleged** payment and acceptance of these taxes and fees are apart and different from the authority to issue extraction permits. The latter is **exclusively** vested in the Provincial Governor, and there is **no** law authorizing expressly or impliedly the delegation of this **exclusive** duty to other public officers. The Court cannot and should not simply turn a blind eye, and tolerate petitioner's repeated *feigned* and *confused* interpretation of the laws.

Lastly, it is of no moment that there is no evidence pointing to petitioner as having gained anything from the issuance of the extraction permits. Here, as the evidence bears out, no money

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[20] See *Lepanto Consolidated Mining Company v. Ambanloc*, 636 Phil. 233 (2010).

was remitted to the barangay, the municipality and the province. At any rate, wherever the money went, whether he himself obtained pecuniary gain does not hinder the prosecution of petitioner for violation of Section 3(e) of RA 3019 because his own benefit is not an element of this offense. It also cannot be denied that private persons **benefitted** from the illegally issued permits. It was petitioner's act of issuing the extraction permits that gave these select and privileged persons an **advantage** in the form of the resources so extracted by them. These private persons did not share this advantage with other persons in the Municipality of San Jose. The permits were a favor to each of them, a favor illegally granted by petitioner.

Being a local chief executive, petitioner is vested with the public's trust and confidence where he should have knowledgeably observed the rules and regulations not only within the scope of his jurisdiction, but the laws encompassing the parameters and conditions of his authority. He, therefore, cannot feign ignorance of the law while at the same time use this ignorance as a shield against liability. In the end, petitioner's supposed "mistake" should not be recognized by this Court as a saving tool to excuse his explicit transgressions of the law.

Given the legal and factual antecedents of petitioner's case, it cannot be said that he acted in good faith. He knew it was not within his power to issue extraction permits. **At the very least**, he was not only grossly and inexcusably negligent but grossly and inexcusably reckless in not knowing his lack of power to issue extraction permits. **In reality**, he **intentionally** flouted among others Section 138 of the *Local Government Code*.

We held in ***Sanchez v. People***[21] that **a public officer's failure to appreciate the extent of his or her basic powers is gross negligence amounting to gross bad faith** and manifest partiality:

> Second, the **failure of petitioner to validate** the ownership of the land on which the canal was to be built **because of his unfounded belief that it was public land constitutes gross inexcusable negligence**.

[21] 716 Phil. 397 (2013).

In his own testimony, **petitioner impliedly admitted that it fell squarely under his duties to check the ownership of the land with the Register of Deeds. Yet he concluded that it was public land based solely on his evaluation of its appearance**, i.e., that it looked swampy:

x x x x x x x x x

Petitioner's functions and duties as City Engineer, are stated in Section 477 (b) of R.A. 7160, to wit:

The engineer shall take charge of the engineering office and shall:

x x x x x x x x x

(2) Advise the governor or mayor, as the case may be on infrastructure, public works, and other engineering matters;
(3) Administer, coordinate, supervise, and control the construction, maintenance, improvement, and repair of roads, bridges, and other engineering and public works projects of the local government unit concerned;
(4) Provide engineering services to the local government unit concerned, including investigation and survey, engineering designs, feasibility studies, and project management;

x x x x x x x x x

The Court in ***Ambil v. Sandiganbayan***[22] was as emphatic in ruling that ***a local chief executive's disregard of the extent of his power*** *to act on a particular matter* that **resulted in a benefit or advantage to a third party** "**betray[s] his unmistakable bias and the evident bad faith** that attended his actions." Thus we held:

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. **The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system** in determining the

[22] 669 Phil. 32 (2011).

best possible price for the government. **The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.**

There can be no good faith where the circumstances point to the necessary mental element of the offense charged — manifest partiality, evident bad faith or inexcusable negligence. As noted, our case law has already settled the legal impact of petitioner's *feigned* ignorance of the utter lack of power to issue extraction permits. Petitioner gave out extraction permits repeatedly, albeit he had no authority to do so under the clear and unequivocal provision of Section 138 of the *Local Government Code*, Section 43 of the *Philippine Mining Act*, and Provincial Ordinance No. 2005-004. As a result, petitioner's unlawful act benefited and gave advantage to private parties that used the unduly permits to illegally extract resources. Despite petitioner's actual or at least strongly presumed knowledge of his lack of power to do so, he disputed, nay, breaded the plain and categorical language of the *Local Government Code*, the *Philippine Mining Act*, and the Provincial Ordinance No. 2005-004. His actions manifest partiality, evident bad faith or inexcusable negligence.

My esteemed senior colleague, Justice Caguioa, proposes two (2) interesting ideas that somehow charts the direction where ***Villarosa*** is headed:

One. He says:

> In this light, I reiterate that Villarosa's violation of a law that is not penal in nature does not, as it should not, automatically translate into evident bad faith or gross inexcusable negligence that makes one guilty of a violation of Section 3(e) of RA 3019. For it to amount to a violation of Section 3(e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that the ***prosecution must prove the existence of factual circumstances that point to fraudulent intent***.[23]

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[23] Concurring Opinion of Justice Caguioa, p. 15.

Two. He also opines:

> I recognize that this is not the understanding under the current state of jurisprudence. Jurisprudence has defined the term "unwarranted" as simply lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. The term "private party" may be used to refer to persons other than those holding public office, which may either a private person or a public officer acting in a private capacity to protect his personal interest.
>
> Thus, under current jurisprudence, in order to be found guilty for giving any unwarranted benefit, advantage, or preference, it is enough that the public officer has given an unauthorized or unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. By giving any private patty unwarranted benefit, advantage, or preference, damage is not required. It suffices that the public officer has given unjustified favor or benefit to another in the exercise of his official functions. Proof of the extent or quantum of damage is not even essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.
>
> I respectfully submit that it is high time for the Court to revisit this line of reasoning.[24]

As regards Justice Caguioa's **first** point, let me stress that just as the **infringement** of a **non-criminal** rule, regulation, protocol or directive does not automatically translate into a finding of *evident bad faith*, **it** also does **not** erase **per se** the existence of evident bad faith. **As we have seen in our established case law**, many of the rules, regulations, protocols or directives violated were **non-criminal but administrative** in character, yet ultimately, the violations were found to prove manifest partiality, evident bad faith or gross inexcusable negligence. Thus, the **criminal** or **non-criminal nature** of the infringed rule, regulation, protocol or directive has nothing to

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[24] *Id.* at 17.

do *really* with whether the assailed violation translates to evident bad faith. The **controlling** aspect would still be the **attendant circumstances** which of course must be proved beyond a reasonable doubt.

The reference to judges being merely administratively penalized is I believe beside the point. **If the factual antecedents of the complained action or inaction satisfy the elements of violation of Section 3(e) of RA 3019, then the administrative decision does not preclude a criminal prosecution.** Again, it really adds nothing to the discussion to say ***if warranted*** because **that** is the pre-condition of all legally binding events.

Justice Caguioa also uses the **bogeyman** that judges may soon be facing a deluge of criminal cases of violation of Section 3(e) of RA 3019 if the Court were to reject the *ponencia*'s ruling. With due respect, the argument **against** the *ponencia*'s ruling is based on **precedents**, meaning, the interpretation of Section 3(e) that I am espousing has been **culled from existing case law**, and **not something I have just invented**. **But even with this state of our case law**, we **have never seen** the **feared escalation** of criminal cases against judges for violation of Section 3(e) as a result of our findings of administrative liability for gross ignorance of basic statements of the law.

In any event, it is my most respectful submission that instead of frightening our judges, the Court should also start according them the benefit of the doubt and conferring upon their actions the cover of good faith even when they have violated the most basic and clearest statements of the law, and avoid equating their ignorance even if gross and patent with the ineluctable inference of bad faith. This is just to be fair with the judges.

As regards the **second** point, I do not know what the impact of this change in the doctrine would have on the fight against graft and corruption. Public respondents were **not heard** on this issue. All along, the criminal cases were prosecuted on the basis of the doctrinal understanding of the elements of the offense charged. I am **amenable to change** the doctrine and go along with how Justice Caguioa has interpreted it. I **humbly posit** though that since **this change in the doctrine** benefits an accused

and it **has been applied retroactively** to petitioner, it **should also be made to apply retroactively to all those who have been prosecuted and convicted** of violation of Section 3(e) of RA 3019.

With all due respect to Justice Caguioa, this is not a "misguided" apprehension but a legitimate concern. Pursuant to Article 8 of the New Civil Code, judicial decisions applying or interpreting the laws or the Constitution, including the one at bar, form part of the law of the land.[25] Corollarily, Article 22 of the Revised Penal Code calls for the retroactivity of penal statutes so long as they are beneficial to the accused, even if the accused is already serving his or her final sentence.

As the Court pronounced in ***People v. Parel***:[26]

> In most states of the American Union the rule prevails that a statute of limitations of criminal actions is on a parity with a similar statute for civil actions and has no retroactive effect unless the statute itself expressly so provides, and practically all of the authorities cited in support of the theory that such is also the rule here, are upon that point. As from our point of view the rule stated does not obtain in the Philippine Islands, these authorities have, in our opinion, no bearing whatever upon the question here at issue and we shall therefore devote neither time nor space to their further discussion.
>
> In our opinion, the determination of the present case clearly hinges upon the construction of article 22 of the Penal Code,[27] which reads as follows:
>
> > Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony or misdemeanor, **although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving same**.
>
> This article is of Spanish origin, is based on Latin principles, and it seems, indeed, too obvious for arguments that we, in its interpretation, must have recourse to Spanish or Latin jurisprudence. In the case of

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[25] Article 8 of the New Civil Code.

[26] G.R. No. L-18260, January 27, 1923.

[27] Reenacted in Article 22 of Act 3815, otherwise known as the Revised Penal Code.

United States vs. Cuna, this court held that "neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law." In that case the Spanish doctrine invoked was more unfavorable to the accused that the common law rule, but was, nevertheless, adopted by the court. In the present case, the Spanish doctrine is more favorable to the accused and considering the well-known principle that penal laws are to be construed most liberally in favor of the accused, we have stronger reasons here than existed in the Cuna case for rejecting the American doctrine as to the irretroactivity of penal statutes. Both consistency and sound legal principles, therefore, demand that we, in this case, seek our precedents in Latin rather than in American jurisprudence.

For a long period, it has been the settled doctrine in countries whose criminal laws are based on the Latin system that such laws are retroactive in so far as they favor the accused. In Spain and in the Philippine Islands this doctrine is, as we have seen, re-inforced by statutory enactment, and is even made applicable to cases where "final sentence has been pronounced and the convict is serving same."

I also refer to ***People v. Bernal***:[28]

In Criminal Case No. 1647 for illegal possession of firearms and ammunition (violation of PD 1866), **we should apply the ruling enunciated in the recent case of People vs. Walpan M. Ladjaalam** where we declared: "... if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms ... **The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that "no other crime was committed by the person arrested.**" If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we." **In the above-cited case of Ladjaalam, the appellant was convicted by the trial court of (1) illegal possession of firearms, (2) direct assault with multiple attempted homicide and (3) violation of the dangerous drugs law. We acquitted him of the first crime (illegal possession) but affirmed his conviction of the latter two.** In justifying the acquittal, we said inter alia that

[28] 437 Phil. 11 (2002).

"when the crime was committed on September 24, 1997, the original language of PD 1866 had already been expressly superseded by RA 8294 ..." and no "conviction for illegal possession of firearms separate from any other crime" was thus possible. In the present case, the illegal possession of firearms (as a separate offense) was committed by accused-appellant before RA 8294 took effect. Since the amendment contained in RA 8294 is favorable to him in the sense that it would mean his acquittal (from the charge of illegal possession of firearms), then the law should be given retroactive effect. We cannot therefore affirm the conviction of accused-appellant for illegal possession of firearm in Criminal Case No. 1647.

People v. Delos Santos[29] also ruled:

Likewise, **although accused-appellant was convicted on September 17, 1998, before this Court enunciated the Garcia doctrine, the same must be applied retroactively** to the instant case, in consonance with our ruling in People v. Gallo where we declared that:

> The Court has had the opportunity to declare in a long line of cases that the tribunal retains control over a case until a **full satisfaction of the final judgment** conformably with established legal processes. It has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it becomes imperative in the higher interest of justice or when supervening events warrant it.

Moreover, **our ruling in Garcia forms part of our penal statutes, pursuant to Article 8 of the Civil Code which provides that "judicial decisions applying or interpreting the law shall form part of the legal system of the land." And since Article 22 of the Revised Penal Code provides that "penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony**, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, **although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same," the Garcia doctrine must perforce, be given retroactive effect in this case, said ruling being favorable** to accused-appellant, who is not a habitual criminal.

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[29] 386 Phil. 121 (2000).

This series of case laws **does show** that **I** have **not** been "*misguided*" after all.

In this sense, and if this clarification were adopted by the *ponencia*, I would have withdrawn my dissent and concurred with the *ponencia*.

Another. A violation of Section 3(e) of RA 3019 may also be committed through gross inexcusable negligence. So it may not be accurate to dispense with any discussion on gross inexcusable negligence though the Informations only alleged evidence bad faith. This omission in the Informations' averments is **not** significant because:

> We note that the Information against petitioner Sistoza, while specifying manifest partiality and evident bad faith, does not allege gross inexcusable negligence as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the Information, it was evidently the intention of the Ombudsman to take petitioner to task for gross inexcusable negligence in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by dolo or culpa and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.[30]

Further, the allegation of "bad faith **includes** an allegation of **gross negligence**." This is because, applying *mutatis mutandis*, "[m]alice or bad faith implies moral obliquity or a conscious and intentional design to do a wrongful act for a dishonest purpose. However, a conscious or intentional design need not always be present since negligence may occasionally be so gross as to amount to malice or bad faith. Bad faith, in

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[30] *Sistoza v. Disierto*, 437 Phil. 117 (2002).

the context of Art. 2220 of the Civil Code, includes gross negligence."[31]

Hence, assuming without admitting that no evidence of evident bad faith has been shown, it **cannot be denied** that petitioner had been grossly inexcusably negligent in violating Section 138 of the *Local Government Code* as his attention to this violation has been called several times. Whether we agree with this definition of **gross inexcusable negligence** is beside the point. It is either we abide by the definition, or jettison it for another perhaps more humane and practical explanation, and apply it not *pro hac vice* but retroactively to all accused and convicts similarly situated.

I am **not against** re-defining doctrines in the hope of becoming a better society. **My only call** is for the process to be clear and transparent so that at least in theory everyone will be equal before and under the law.

Despite the telltale signs of petitioner's open defiance and flagrant violation of the law and the ordinance, the *ponencia*, with due respect, has belabored its own fact-finding. But instead of giving a holistic view of the case, it presents its own conclusions without bothering to present, let alone, distill the arguments raised by the prosecutor either during the trial or on appeal, the *ponencia* seemingly adopts the arguments of petition without weighing them against the counter-arguments of the prosecution. It applies the constitutional presumption of innocence and readily concludes that this presumption was not overcome; but conveniently omits to mention the endeavors of the prosecution to overthrow this presumption.

I daresay, this manner and style of presentation translates to serious constitutional violations. Section 14, Article VIII of the Constitution requires:

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[31] *BPI Express Card Corporation v. Armovit*, 745 Phil. 31 (2014); *Bankard Inc. v. Feliciano*, 529 Phil. 53, (2006).

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

. . . . . .

The failure of any court, the Court included, to adhere to this constitutional mandate would deprive party-litigants of their fundamental right to due process of law. Indeed, the Sandiganbayan here would be at a loss on why its verdict of conviction was reversed; the prosecution would have no clue at all where it went wrong in presenting its case; and respondent would be left wondering how petitioner was able to evade his criminal liability for violating the laws which he could **not** have possibly been **unaware** of.

EPILOGUE

I strongly and humbly believe that there are stark contradictions between the doctrines pronounced in the *ponencia* and the long established doctrines in many other rulings of the Court.

The ***ponencia*** does not face head on these contradictions. As a result, we will likely have a situation where in the future the Court will be compelled to reckon with cases made difficult by why ***Villarosa*** was decided the way it was when others similarly situated were not.

I do not relish seeing the Court proclaiming in future cases that ***Villarosa*** is a "stray" decision and must not be followed as it was rendered "*pro hac vice*."

Penned by no less than the Honorable Chief Justice Peralta, **whom I highly and sincerely regard as today's guru of criminal law and criminal procedure**, I would not want the *ponencia* to leave the impression that its ruling is ambiguous or contrary to long-established doctrines.

As it was, the Majority fails to settle expressly the contradictions in clear terms, specifically if the Court is in

fact abandoning our long-established doctrines. The Majority utterly fails to distinguish the fact situation in the instant case (how it is distinct); or otherwise carve out the case at bar as an exception to the general rule "*pro hac vice*," and why it is special or exceptional.

The truth is the Majority has added a new exempting or justifying circumstance in our criminal jurisprudence, that is, IGNORANCE OF THE LAW; and has effectively amended Article 3 of the New Civil Code from "[i]gnorance of the law excuses no one from compliance therewith" to IGNORANCE OF THE LAW IS A BLISS THAT SETS EVERY SELF-CONFESSED IGNORANT FREE OF ACCOUNTABILITY.

Finally, this question hangs in the air: Considering the beneficial effect of the *ponencia* to the accused, will it apply retroactively to those who are similarly situated with petitioner? ***Can they too demand as a matter of right the reopening of their otherwise terminated cases for another round of review to avail of the ponencia?***

ACCORDINGLY, I vote to **DISMISS** the Petition for Review on *Certiorari* and **AFFIRM** in full the assailed *Decision* and *Resolution* of the Sandiganbayan.

FIRST DIVISION

[G.R. No. 235336. June 23, 2020]

LEONIDES P. RILLERA, *petitioner*, *vs.* **UNITED PHILIPPINE LINES, INC. and/or BELSHIPS MANAGEMENT (SINGAPORE) PTE., LTD.,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; THE EMPLOYMENT OF SEAFARERS IS GOVERNED BY THE CONTRACTS THEY SIGN AT THE TIME OF THEIR ENGAGEMENT, THE PARTIES' COLLECTIVE BARGAINING AGREEMENT (CBA), AND THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC). — The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract. Here, petitioner's employment is governed by the contract he executed with respondents in January 2012, the POEA-SEC, and the parties' Collective Bargaining Agreement (CBA).

2. ID.; ID.; THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); A SEAFARER WHO DELIBERATELY CONCEALS A PRE-EXISTING ILLNESS OR CONDITION IN THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) FOR A MALICIOUS PURPOSE SHALL BE LIABLE FOR MISREPRESENTATION AND SHALL BE DISQUALIFIED FOR ANY COMPENSATION AND BENEFITS; ILLNESS WHEN CONSIDERED PRE-EXISTING. — Respondents deny petitioner's claim for disability benefits on ground of the latter's alleged material concealment of pre-existing or previous diagnosis with hypertension and diabetes. Section 20 (E) of the POEA-SEC,

as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2012, provides: A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified for any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions. Thus, an illness shall be considered as *pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. More, to speak of fraudulent misrepresentation does not only mean that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception. Here, the Court agrees with the Court of Appeals that petitioner fraudulently concealed his hypertension and diabetes.

3. ID.; ID.; ID.; ID.; PETITIONER'S ACT OF CONCEALMENT OF PREVIOUS DIAGNOSES AND TREATMENT FOR HYPERTENSION AND DIABETES IN HIS PEME, CONSTRUED AS INTENTION TO DECEIVE HIS EMPLOYER AS REGARDS HIS TRUE MEDICAL CONDITION, DISQUALIFYING HIM FROM CLAIMING ANY DISABILITY COMPENSATION AND BENEFIT. — As the Court of Appeals correctly found, records show that petitioner had already been diagnosed with hypertension during his previous 2009 PEME with another employer. He had been maintained on metoprolol to treat his hypertension. He also got diagnosed with diabetes in 2010 and was treated at Seaman's Hospital and prescribed with metformin as maintenance medicine. But despite personal knowledge of his medical history, petitioner lied about it during his January 2012 PEME. There, he was asked whether he had suffered from or had been diagnosed with hypertension, heart trouble, rheumatic fever, and/or diabetes mellitus. To this question, he indicated "no" in the form he was made to answer. This is clear from the form that he filled out. In the recent case of ***Lerona v. Sea Power Shipping***

Enterprises, Inc., et al., the Court denied a seafarer's claim for disability on ground of concealment, *viz.*: x x x. **The Court had on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition**. This case is not an exception. **For knowingly concealing his hypertension during the PEME, petitioner committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from respondents.** As in ***Lerona***, petitioner's act of concealment, if not downright act of lying in his PEME, could be construed as nothing than his intention to deceive respondents as regards his true medical condition.

4. ID.; ID.; ID.; ID.; PASSING A PEME IS NOT AND CANNOT EXCUSE WILLFUL CONCEALMENT, AS PEME IS NOT EXPLORATORY AND DOES NOT ALLOW THE EMPLOYER TO DISCOVER ANY AND ALL PRE-EXISTING MEDICAL CONDITION WITH WHICH THE SEAFARER IS SUFFERING AND FOR WHICH HE MAY BE PRESENTLY TAKING MEDICATION; THE PEME MERELY DETERMINES WHETHER ONE IS "*FIT TO WORK*" AT SEA OR "*FIT FOR SEA SERVICE*", AND THE "*FIT TO WORK*" DECLARATION CANNOT BE A CONCLUSIVE PROOF TO SHOW THAT THE SEAFARER WAS FREE FROM ANY AILMENT PRIOR TO HIS DEPLOYMENT. — [P]etitioner *never* denied that he was previously diagnosed with and treated for hypertension and diabetes. He simply reiterates that he did not conceal such fact or that respondents could have easily discovered such illness during his PEME. Petitioner's argument fails. ***Lerona*** enunciated that passing a PEME is not and cannot excuse willful concealment. Neither can it preclude rejection of disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "*fit to work*" at sea or "*fit for sea service*" and it does not state the real state of health of an applicant. The "*fit to work*" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. For not disclosing his previous diagnoses

and treatment for hypertension and diabetes, petitioner is guilty of material concealment and is disqualified for any compensation and benefits.

5. ID.; ID.; ID.; CONDITIONS FOR COMPENSABILITY OF OCCUPATIONAL DISEASES AND THE RESULTING DISABILITY OR DEATH; FOR CARDIOVASCULAR DISEASE TO BE COMPENSABLE, IT MUST BE SHOWN THAT THE SEAFARER HAD COMPLIED WITH THE PRESCRIBED MAINTENANCE MEDICATIONS AND DOCTOR-RECOMMENDED LIFESTYLE CHANGES; DIABETES IS NOT COMPENSABLE, AS IT IS NOT WORK-RELATED. — Even assuming that the elements of concealment and non-referral to a third doctor did not exist here, the petition must still fail. The 2010 POEA-SEC states: xxx xxx xxx SECTION 32. A. OCCUPATIONAL DISEASES. For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. It further provides for the conditions before a cardiovascular disease may be deemed compensable, *viz.*: 11. Cardio-vascular events — to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met: x x x. d. **If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A), paragraph 5.** x x x. As stated, petitioner knew he was previously diagnosed with and treated for hypertension and diabetes. His case therefore falls under paragraph (d) above. Petitioner, however, failed to show his compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes. As for diabetes, ***GSIS v. Valenciano*** explains that diabetes mellitus is acquired through the mechanism of inheritance. It is an endocrine and familial disease characterized by metabolic abnormalities remotely caused by environmental and occupational conditions. In sum, diabetes is not work-related, hence, not compensable.

6. ID.; ID.; ID.; THE MEDICAL FINDINGS OF THE COMPANY-DESIGNATED DOCTOR WHO EXAMINED, TREATED, AND MONITORED THE SEAFARER FROM THE TIME HE GOT REPATRIATED UNTIL HE WAS CLEARED FOR WORK, PREVAIL OVER THE DIAGNOSIS OF THE SEAFARER'S PHYSICIAN OF CHOICE WHO MERELY EXAMINED HIM FOR A DAY.— Going now to the contrasting findings of the company-designated doctor on one hand, and those of Dr. Vicaldo on the other, we reckon with the fact that it was the company-designated doctor who examined, treated, and monitored petitioner from the time he got repatriated until he was cleared for work. In contrast, Dr. Vicaldo only saw petitioner once on April 14, 2013. He did not elaborate on how he came up with the conclusion that petitioner was unfit for sea duties. He did not even mention the tests which petitioner supposedly went through, if any, how the latter responded thereto, and what petitioner's exact condition was before and after these examinations and supposed treatment. Per Dr. Vicaldo's report, he based his conclusion on the results of the same tests that the company-designated doctor did on petitioner. With respect to Dr. Lucas, he did not declare petitioner as unfit for sea duties nor give any disability grading for petitioner. On this score, ***Montierro v. Rickmers Marine Agency Phils., Inc.*** x x x **Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate evaluation of Montierro's health condition. The disability grading given by him should therefore be given more weight** than the assessment of Montierro's physician of choice. x x x. In fine, as between the company-designated doctors, Eduardo O. Tanquieng (Pulmonologist), Robert Michael G. Gan (Internal Medicine/ Endocrinologist), and Melissa Co Sia (Adult Clinical and Interventional Cardiologist) who have the complete medical records of petitioner for the entire duration of his treatment and who all opined that petitioners illnesses had been resolved, on one hand, and petitioner's physicians of choice who merely examined him for a day as an outpatient, on the other, the findings of the company-designated physicians must prevail.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. SP No. 144028 entitled "*United Philippine Lines, Inc., and/or Belships Management (Singapore) Pte., Ltd. v. Leonides P. Rillera*":

1. Decision[2] dated January 6, 2017, reversing the grant of total and permanent disability benefits to petitioner Leonides P. Rillera; and
2. Resolution[3] dated October 26, 2017 denying petitioner's motion for reconsideration.

Antecedents

On January 6, 2012, respondent United Philippine Lines, Inc., for and on behalf of its principal respondent Belships Management (Singapore) Pte., Ltd., hired petitioner as 3rd Mate on board the vessel *Carribean Frontier* for nine (9) months with a monthly salary of USD1,316.00.[4]

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[1] *Rollo*, pp. 10-37.

[2] Penned by Associate Justice Mariflor P. Punzalan-Castillo and concurred in by retired Associate Justice Florito S. Macalino and Associate Justice Zenaida T. Galapate-Laguilles, *id.* at 401-421-A.

[3] Penned by Associate Justice Mariflor P. Punzalan-Castillo and concurred in by retired Associate Justice Florito S. Macalino and Associate Justice Zenaida T. Galapate-Laguilles, *id.* at 493-495.

[4] *Id.* at 40 and 402.

As 3rd Mate, petitioner's responsibilities included directing the operation of the ship during his tour of watch, performing navigational duties, plotting ship positions on chart and checking the pre-plotted course, maintaining records of important events during his watch, taking charge of life-saving equipment, lifeboats, and visual signaling equipment, and leading a team in case of emergencies.[5]

Prior to his deployment, petitioner underwent routinary Pre-Employment Medical Examination (PEME). In the process, he was asked whether he was aware of, diagnosed with, or treated for hypertension, heart disease, and diabetes, among others. He answered in the negative. Based on the results of his examination, he was declared fit for sea duty and got deployed on January 22, 2012.[6]

On September 3, 2012, petitioner complained of chest pain, shortness of breath, and difficulty in breathing whenever he climbed stairs. When the ship docked at Kushiro, Japan, he was diagnosed with congestive heart failure, possible infectious endocarditis, and hypertension. At the Wakayama Harbour Clinic in Japan, he was further diagnosed with pleuritis. He was declared unfit to work and was medically repatriated on September 11, 2012.[7]

Upon repatriation, petitioner was referred to the company-designated doctor at the Marine Medical Services of the Metropolitan Medical Center (MMC). He was confined there from September 11, 2012 due to difficulty in breathing. He underwent several laboratory tests such as chest X-ray, 2D echo, and chest CT scan. He was given anti-tuberculosis and anti-hypertensive medications and was discharged on September 21, 2012. He was, however, re-admitted and confined from October 8 to 15, 2012 during which, he was also given medicines for diabetes.[8]

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[5] *Id.* at 263.

[6] *Id.* at 263 and 402.

[7] *Id.* at 402.

[8] *Id.* at 264 and 402.

On November 29, 2012, MMC Assistant Medical Coordinator Dr. Esther Go opined that petitioner's hypertension and diabetes were hereditary, not work-related. Petitioner had a series of check-ups with the company-designated doctors, Dr. Eduardo O. Tanquieng (Pulmonologist), Dr. Robert Michael G. Gan (Internal Medicine/Endocrinologist), and Dr. Melissa Co Sia (Adult Clinical and Interventional Cardiologist) who referred him to an orthopedic surgeon.[9]

Petitioner also complained of knee pain, blurring vision and dizziness but according to him, the company designated doctors only addressed and treated his pleural effusion. Despite treatments, he was not restored to good health. Hence, he consulted Dr. Celestino S. Dalisay, a chest and lung specialist. Dr. Dalisay opined that he had to complete nine (9) months of anti-tuberculosis regimen and advised him not to return to his previous work as a seaman.[10]

On March 14, 2013, Dr. Go informed respondents that the specialists gave the following report on petitioner's condition:[11]

> This is a follow-up report on 3rd Mate Leonides P. Rillera who was initially seen and admitted here at Metropolitan Medical Center on September 12, 2012 and was diagnosed to have Pulmonary Tuberculosis with Left Pleural Effusion; Diabetes Mellitus.
>
> x x x x x x x x x
>
> Repeat laboratory tests done showed normal fasting blood sugar, HBA1C and creatinine. His repeat urinalysis showed no more urine sugar.
>
> x x x x x x x x x
>
> The specialists opine that patient is now cleared for work with regards (sic) to his Pulmonary Tuberculosis and Diabetes Mellitus as of March 14, 2013.
>
> He was advised to continue his oral hypoglycemic medication (Janumet).

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[9] *Id.* at 264-265 and 402-403.

[10] *Id.* at 403.

[11] *Id.* at 412.

Enclosed are the comments of the specialists.

Final Diagnosis - Pulmonary Tuberculosis — Treated
Left Pleural Effusion — Resolved
Diabetes Mellitus, Controlled

Thus, the specialists opined that petitioner was already cleared for work. Petitioner, however, did not accept this finding and informed respondents that he would be seeking the opinion of other doctors.[12]

Petitioner went to cardiologist Dr. Efren R. Vicaldo from the Philippine Heart Center who diagnosed him with hypertensive cardiovascular disease; kocks pleural effusion, left; S/P thoracentesis; and arthritis, knees, bilateral. As such, Dr. Vicaldo declared petitioner to be permanently unfit to resume sea duties.[13]

Petitioner also went to Internal Medicine-Adult Cardiology Specialist Dr. Paul C. Lucas who diagnosed him with hypertensive cardiovascular disease — uncontrolled; type 2 diabetes mellitus; osteoarthritis; urolithiasis; and upper respiratory tract infection and prescribed him several medicines.[14]

Based on these findings, petitioner sought total and permanent disability benefits from respondents. Respondents refused to pay on ground that the company-designated doctor had earlier declared petitioner fit to work. Hence, petitioner filed a complaint before the NCMB for permanent and total disability benefits.[15]

Respondents argued that the NCMB had no jurisdiction over the case considering there was no applicable Collective Bargaining Agreement (CBA) between the parties. In any case, petitioner was precluded from collecting total and permanent disability benefits because he fraudulently concealed the fact that he was previously diagnosed with hypertension and diabetes. During his PEME, when asked whether he suffered from

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[12] *Id.* at 403.

[13] *Id.* at 266 and 403.

[14] *Id.* at 267 and 403.

[15] *Id.* at 13-15.

hypertension and diabetes, petitioner answered in the negative despite knowing full well that he was diagnosed with such illnesses in his previous PEMEs. He disclosed this fact only upon his repatriation. Petitioner also failed to comply with the procedure for claiming disability benefits when he did not ask to be referred to a third doctor.[16]

Even disregarding the foregoing, petitioner was still not entitled to disability benefits because his illnesses were hereditary and not work-related. More, the company-designated doctors had certified petitioner as fit to work. His hypertension was already under control as early as October 2012; his tuberculosis, treated; left pleural effusion, resolved; and diabetes, controlled.[17]

Petitioner, however, denied that he was guilty of concealment. He averred that hypertension and diabetes could easily be detected during his PEME. If, indeed, these illnesses were pre-existing, then respondents' PEME should have revealed he had such illnesses, but it did not. Respondents certified him as fit to work prior to deployment instead.[18]

The NCMB's Ruling

By Decision[19] dated September 18, 2015, MVA Edgar C. Reciña granted petitioner's claim for total and permanent disability benefits, *viz.*:

> **WHEREFORE**, PREMISES CONSIDERED, judgment is hereby rendered **ORDERING** the Respondents UNITED PHILIPPINE LINES, INC. and/or BELSHIPS MANAGEMENT (SINGAPORE) PTE. LTD., to jointly and severally pay complainant, LEONIDES P. RILLERA, the amount of SIXTY THOUSAND U.S. DOLLARS (US$60,000.00) as disability benefits, plus 10% of the total recoverable amount as attorney's fees, at its Philippine Peso equivalent converted at the time of payment.

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[16] *Id.* at 271-272 and 404.

[17] *Id.* at 272-273 and 404.

[18] *Id.* at 404.

[19] *Id.* at 261-293.

All other claims are **DISMISSED** for lack of merit.

SO ORDERED.[20]

MVA Reciña essentially held:

First. The NCMB had jurisdiction over the case because there was an existing IBF JSU/AMOSUP CBA between the parties effective January 1, 2012 to December 31, 2014.[21]

Second. Petitioner was not guilty of material concealment. Information given in good faith by a non-doctor regarding his medical history, if it turned out to be erroneous or untrue will not defeat his or her claim.[22]

Third. Petitioner's failure to be referred to a third doctor should not work against him considering that the company-designated doctor did not make a categorical disability rating within the 120-day period.[23]

Fourth. While hypertensive cardiovascular disease may not be among the occupational diseases listed under Section 32 of the Philippine Overseas Employment Administration—Standard Employment Contract (POEA-SEC), the Court had ruled that the list did not preclude other illnesses not so listed from being compensable. The POEA-SEC even considers illnesses not listed there as presumably work-related where the illness was contracted during employment, as in this case. Respondents failed to dispute this presumption.[24]

More, the Court had repeatedly held that cardiovascular disease and other heart ailments are work-related, thus, compensable. In some cases, the Court even found a causative relation between the strenuous work of a seaman and hypertensive cardiovascular disease. All indications pointed to exposure to risk factors on

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[20] *Id.* at 292-293.

[21] *Id.* at 275-277.

[22] *Id.* at 285.

[23] *Id.* at 289-291.

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

board the vessel which led to the development or even contributed or aggravated petitioner's illness.[25]

At any rate, the company-designated doctor's report saying that petitioner's illness was not work related should not be given credence as it only pertained to hypertension, not hypertensive cardiovascular disease.[26]

Fifth. Petitioner's osteoarthritis was work-related. Petitioner's duties included carrying and lifting heavy materials, forcing him to repeatedly bend and make heavy use of his joints. Petitioner informed respondents of this condition but the latter took no action.[27]

Sixth. The clearance for work of the company-designated doctor was not definite. It did not expressly state that petitioner was fit for sea duties. Also, the clearance was only for tuberculosis and diabetes. Petitioner was not cleared from hypertensive cardiovascular disease. Dr. Dalisay also opined that petitioner must complete nine (9) months of anti-tuberculosis medication. When the company-designated doctor issued her report, petitioner had only had six (6) months of this medication.[28]

Finally. Petitioner was unable to work for more than 120 to 240 days. The company-designated doctors even belatedly issued her report only on the 184th day from petitioner's repatriation. This entitled him to the maximum disability benefits.[29]

In its Resolution[30] dated January 4, 2016, the NCMB denied respondents' motion for reconsideration.

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[25] *Id.* at 277 and 279-282.

[26] *Id.* at 282.

[27] *Id.* at 283.

[28] *Id.* at 285-287.

[29] *Id.* at 287-289.

[30] *Id.* at 295-296.

The Court of Appeals' Ruling

By its assailed Decision[31] dated January 6, 2017, the Court of Appeals reversed, *viz.*:

> ***WHEREFORE***, the petition is ***GRANTED***. Accordingly, the Decision dated September 18, 2015 and the Resolution dated January 4, 2016 both rendered by MVA Edgar C. Reciña in AC-433-RCMB-NCR-MVA-061-06-07-2014 are ***REVERSED***. Private respondent Leonides P. Rillera is declared ***NOT ENTITLED*** to the payment of permanent total disability benefits and attorney's fees.
>
> **SO ORDERED.**[32]

The Court of Appeals held that petitioner was disqualified from receiving compensation benefits for knowingly concealing his previous diagnosis with hypertensive cardiovascular disease and diabetes. The fact that petitioner passed his PEME cannot excuse his willful concealment of his illnesses. PEMEs are not exploratory and do not allow the employer to discover any and all pre-existing medical conditions of the seafarer. PEMEs are nothing more than a summary examination of the seafarer's physiological condition. The "fit-to-work" declaration in the PEME cannot be considered conclusive proof to show that a seafarer was free from any ailment prior to deployment.[33]

Petitioner also failed to observe the proper procedure under the POEA-SEC for contesting the company-designated doctor's findings. The contrary findings of petitioner's chosen doctors should have been referred to a third doctor jointly chosen by the parties. Petitioner should have initiated the referral. But after his chosen doctors declared him unfit for sea duties, petitioner immediately sought payment of total and permanent disability benefits instead. Without referral of the contrary findings to a third doctor, petitioner's complaint was premature, hence, should have been dismissed.[34]

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[31] *Supra* note 2.

[32] *Id.* at 421.

[33] *Id.* at 410-411.

[34] *Id.* at 416-417.

In any event, respondents successfully overcame the presumption that petitioner's hypertensive coronary disease and diabetes were work-related. The company-designated doctor found that petitioner's illnesses were hereditary. In any case, they were already treated and controlled. Between the findings of the company-designated doctor and petitioner's chosen doctors, the former must be given more weight. It was the company-designated doctor who conducted a series of tests to properly treat and address petitioner's ailments. Petitioner's chosen doctors, on the other hand, only saw him once. Records were also bereft of any evidence to show that Dr. Vicaldo and Dr. Lucas administered independent and exhaustive examinations on petitioner from which they could have based their findings. More, neither Dr. Vicaldo nor Dr. Lucas explained how and why petitioner's illnesses were work-related.[35]

MVA Reciña's conclusion in favor of petitioner based on the supposed belated issuance of the certification on the 184th day was erroneous. The employer had 240 days from the employee's repatriation within which to issue a disability grading when the treatment of the employee extends beyond the first 120 days.[36]

As for petitioner's osteoarthritis, the same should not be compensated. There was lack of evidence to show that, indeed, petitioner suffered from arthritis during his deployment. Petitioner also failed to show the causal connection between his duties as 3rd Mate and the development of his arthritis. Dr. Vicaldo's report was also silent on this matter.[37]

Through its assailed Resolution[38] dated October 26, 2017, the Court of Appeals denied petitioner's motion for reconsideration.[39]

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[35] *Id.* at 411-415.

[36] *Id.* at 418-420.

[37] *Id.* at 420-421.

[38] *Supra* note 3.

[39] *Id.* at 423-447.

The Present Petition

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

Petitioner's Position[40]

Failure of the parties to jointly agree to secure the opinion of a third doctor is not fatal to his claim, especially in this case where the company-designated doctor failed to issue a definitive assessment regarding his hypertensive cardiovascular disease within 240 days from his repatriation. Hence, there is no medical certification to speak of which petitioner could have contested. In any case, MVA Reciña correctly weighed the respective merits of the medical assessments of each doctor involved.[41]

Hypertensive cardiovascular disease is an occupational disease under the POEA-SEC. Diabetes is also presumed to be work related. During his PEME, his blood examination revealed normal results for blood sugar, cholesterol, and triglyceride. He did not show any symptoms of illness. It was only while performing his strenuous duties on board respondents' vessel that he experienced chest pain, difficulty in breathing, and easy fatigability. Thus, the relationship between his work and his hypertensive cardiovascular disease is too clear to ignore. The Court of Appeals overlooked the Court's ruling in ***Magsaysay Mitsui OSK Marine, Inc. v. Bengson*** that cardiovascular diseases are compensable.[42]

The company-designated doctor also conveniently omitted "stress" as an element for aggravation of his hypertensive cardiovascular disease. In fact, the stress brought by his tasks on board had either directly caused or greatly contributed to his illnesses.[43] The alleged pre-existence of his illness should

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[40] *Supra* note 1.

[41] *Id.* at 27-29 and 31.

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

[43] *Id.* at 19.

not militate against his claims. What is to be considered is whether, in some degree, his employment as seafarer contributed to the aggravation of his illness.[44]

The Court of Appeals also erred in giving more credence to the company-designated doctor's medical report. It must be noted that Dr. Go was neither a pulmonologist nor a cardiologist. She is a pediatrist. She has no expertise to his medical case, unlike Dr. Vicaldo and Dr. Lucas who are both cardiologists. Dr. Go did not even mention in her report whether he was already cured of hypertensive cardiovascular disease. The report only addressed his tuberculosis and diabetes.[45]

Respondents' Position[46]

Respondents assert that petitioner raises factual questions which are not permitted in petitions for review on *certiorari*.[47] Too, petitioner's arguments are a mere rehash of the matters already resolved by the Court of Appeals.

Petitioner's illnesses are pre-existing which he willfully concealed before deployment. When asked during his PEME whether he had gotten hospitalized due to, or was aware of any medical problems like hypertension and diabetes, petitioner answered in the negative despite knowing full well that he had been diagnosed with these illnesses. It was only when he got medically repatriated on September 11, 2012 that he admitted to the company-designated doctors his past diagnoses. Being pre-existing conditions, therefore, petitioner's illnesses are non-compensable.[48]

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

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[44] *Id.* at 20.

[45] *Id.* at 22-25.

[46] *See* Comment dated May 28, 2018, *id.* at 505-564.

[47] *Id.* at 512-513.

[48] *Id.* at 511-519.

is mandatory. The Supreme Court has consistently held that where there is a conflict between the findings of the company-designated physician and the seafarer's doctor, the seafarer is mandated to initiate the move to bring in a third doctor to verify as to who between the company-designated doctors and petitioner's own chosen doctors have more credible findings.[49]

The Court also consistently held that the very nature of diabetes does not indicate work-relatedness. It is a metabolic and familial disease to which one is predisposed by reason of family history, obesity, or old age. The disputable presumption of work-relatedness under the POEA-SEC is not a magic wand that would readily grant benefits to every seafarer. A seafarer must still establish through substantial evidence that his illness is work-related before he can claim disability benefits.[50]

Regarding petitioner's hypertensive cardiovascular disease, the company designated doctor noted as early as October 2012 that petitioner's blood pressure had already been controlled.[51] As regards his osteoarthritis, the same is not compensable. It did not occur or manifest during his employment aboard the vessel.[52]

In any event, the company-designated doctor declared petitioner fit to work as early as March 14, 2013. Petitioner failed to show an iota of proof that the company-designated doctor's findings are tainted with bias, malice, or bad faith.[53]

Issues

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

2. Assuming that there was no material concealment to speak of, did petitioner comply with the conditions prescribed under

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[49] *Id.* at 539-549.

[50] *Id.* at 519-520.

[51] *Id.* at 508.

[52] *Id.* at 550-555.

[53] *Id.* at 527-528.

the 2010 POEA-SEC to entitle him to total and permanent disability benefits?

Ruling

The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[54]

Here, petitioner's employment is governed by the contract he executed with respondents in January 2012, the POEA-SEC, and the parties' Collective Bargaining Agreement (CBA).

First Issue
Material concealment

Respondents deny petitioner's claim for disability benefits on ground of the latter's alleged material concealment of pre-existing or previous diagnosis with hypertension and diabetes.

Section 20 (E) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2012, provides:

> A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified for any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

Thus, an illness shall be considered as *pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such

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

illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.[55] More, to speak of fraudulent misrepresentation does not only mean that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.[56]

Here, the Court agrees with the Court of Appeals that petitioner fraudulently concealed his hypertension and diabetes.

As the Court of Appeals correctly found, records show that petitioner had already been diagnosed with hypertension during his previous 2009 PEME with another employer. He had been maintained on metoprolol to treat his hypertension. He also got diagnosed with diabetes in 2010 and was treated at Seaman's Hospital and prescribed with metformin as maintenance medicine. But despite personal knowledge of his medical history, petitioner lied about it during his January 2012 PEME. There, he was asked whether he had suffered from or had been diagnosed with hypertension, heart trouble, rheumatic fever, and/or diabetes mellitus. To this question, he indicated "no" in the form he was made to answer. This is clear from the form that he filled out.[57]

In the recent case of ***Lerona v. Sea Power Shipping Enterprises, Inc., et al.***,[58] the Court denied a seafarer's claim for disability on ground of concealment, *viz.*:

> As correctly observed by the CA, **petitioner did not indicate in the appropriate box in his PEME form that he has hypertension**, although he had been taking Norvasc as maintenance medicine for two years. **He only disclosed his pre-existing medical condition**

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[55] *Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr.*, G.R. No. 228504, June 6, 2018, 865 SCRA 456, 470-471.

[56] *Antonio B. Manansala v. Marlow Navigation Phils., Inc., et al.*, 817 Phil. 84, 98 (2017).

[57] *Rollo*, p. 41.

[58] G.R. No. 210955, August 14, 2019.

after he was repatriated to the Philippines. Petitioner claims that he did not reveal his hypertension during his PEME out of an honest belief that it had been "resolved." However, this is not persuasive. That petitioner continues to take maintenance medicine indicates that his condition is not yet resolved. Additionally, within the two years that petitioner had been taking maintenance medication for his hypertension, he had boarded respondents' ships four times. Since PEME is mandatory before a seafarer is able to board a ship, it goes to show that petitioner concealed his hypertension no less than four times as well. This circumstance negates any suggestion of good faith that petitioner makes in defense of his misdeed.

The Court had on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. This case is not an exception. **For knowingly concealing his hypertension during the PEME, petitioner committed fraudulent misrepresentation which unconditionally bars his right to receive any disability compensation from respondents.** (Emphasis supplied)

As in ***Lerona***, petitioner's act of concealment, if not downright act of lying in his PEME, could be construed as nothing than his intention to deceive respondents as regards his true medical condition.

Notably, too, that petitioner *never* denied that he was previously diagnosed with and treated for hypertension and diabetes. He simply reiterates that he did not conceal such fact or that respondents could have easily discovered such illness during his PEME.

Petitioner's argument fails.

Lerona enunciated that passing a PEME is not and cannot excuse willful concealment. Neither can it preclude rejection of disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "*fit to work*" at sea or "*fit for sea service*" and it does not state the real state

of health of an applicant. The "*fit to work*" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.[59]

For not disclosing his previous diagnoses and treatment for hypertension and diabetes, petitioner is guilty of material concealment and is disqualified for any compensation and benefits.

Second Issue
Not entitled to disability benefits

Even assuming that the elements of concealment and non-referral to a third doctor did not exist here, the petition must still fail.

The 2010 POEA-SEC states:

x x x x x x x x x

SECTION 32 – A. OCCUPATIONAL DISEASES.

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

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

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

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

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation

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[59] Also see *Espere v. NFD International Manning Agents, Inc., et al.*, 814 Phil. 820, 839 (2017).

was clearly precipitated by an unusual strain by reasons of the nature of his work

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

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

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

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

As stated, petitioner knew he was previously diagnosed with and treated for hypertension and diabetes. His case therefore falls under paragraph (d) above. Petitioner, however, failed to show his compliance with the prescribed maintenance medications and doctor-recommended lifestyle changes.

As for diabetes, ***GSIS v. Valenciano***[60] explains that diabetes mellitus is acquired through the mechanism of inheritance. It is an endocrine and familial disease characterized by metabolic abnormalities remotely caused by environmental and occupational conditions. In sum, diabetes is not work-related, hence, not compensable.

Similarly, petitioner's osteoarthritis is not compensable. For petitioner did not even show any symptoms of osteoarthritis during his employment on board respondents' vessel. He only complained of the same after he got repatriated. Hence, there is no causal connection between petitioner's work and his supposed osteoarthritis.

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[60] 521 Phil. 253, 260 (2006).

Anent petitioner's pulmonary tuberculosis and left pleural effusion, the same is not one of the occupational diseases under the 2010 POEA-SEC. Pleural effusion is listed under Asbestosis as an occupational disease. There is, however, no showing that petitioner was exposed to asbestos during his employment aboard the Caribbean Frontier.

Going now to the contrasting findings of the company-designated doctor on one hand, and those of Dr. Vicaldo on the other, we reckon with the fact that it was the company-designated doctor who examined, treated, and monitored petitioner from the time he got repatriated until he was cleared for work. In contrast, Dr. Vicaldo only saw petitioner once on April 14, 2013. He did not elaborate on how he came up with the conclusion that petitioner was unfit for sea duties. He did not even mention the tests which petitioner supposedly went through, if any, how the latter responded thereto, and what petitioner's exact condition was before and after these examinations and supposed treatment. Per Dr. Vicaldo's report, he based his conclusion on the results of the same tests that the company-designated doctor did on petitioner. With respect to Dr. Lucas, he did not declare petitioner as unfit for sea duties nor give any disability grading for petitioner.

On this score, ***Montierro v. Rickmers Marine Agency Phils., Inc.***[61] ordained:

> Further, a juxtaposition of the two conflicting assessments reveals that the certification of Montierro's doctor of choice pales in comparison with that of the company-designated physician. Fitting is the following discussion of the CA:
>
> x x x x x x x x x
>
> **Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate**

[61] 750 Phil. 937, 947-948 (2015).

> **evaluation of Montierro's health condition. The disability grading given by him should therefore be given more weight** than the assessment of Montierro's physician of choice. (Emphasis supplied)

Hernandez v. Magsaysay Maritime Corporation[62] further decreed:

> Reliance on the assessment of the company-designated physician was justified not only by the law governing the parties under the contract, but by the time and resources spent as well as the effort exerted by the company-designated doctor in the examination and treatment of petitioner while still on board and as soon as he was repatriated in the Philippines.
>
> Based on the Medical Report dated July 13, 2013, it appears that Dr. Catapang conducted his physical examination of petitioner only once and that he merely made his own interpretation of the MRI results of the Lumbar Spine taken on January 21, 2013. While he acknowledged that respondents' company-designated physician examined petitioner and later underwent physiotherapy, he failed to state that reports were regularly issued to update on petitioner's medical condition as well as the particular treatment administered and medicines prescribed to him, which eventually became the basis of Dr. Agbayani's Grade 11 disability assessment on March 8, 2013. Dr. Catapang did not conduct any diagnostic tests or procedures to support his assessment of a permanent total disability. **Moreover, petitioner failed to show any bad faith that attended the company-designated doctor's medical reports, or that the same were self-serving and were issued just to allow respondents to avoid liability.** Certainly, the assessment of Dr. Agbayani is entitled to great weight and respect, considering that it is more reliable. With his **consistent treatment and monitoring of petitioner for several months, he had acquired detailed knowledge and familiarity as to the latter's health condition**. We stress that the reason behind our favorable rulings on the findings of company-designated physicians is not due to their infallibility; rather, it is assumed that **they have "closely monitored and actually treated the seafarer" and, therefore, are in a better position to form an accurate diagnosis and evaluation of the seafarers' degree of disability**. (Emphasis supplied)

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[62] 824 Phil. 552, 564-565 (2018).

In fine, as between the company-designated doctors, Eduardo O. Tanquieng (Pulmonologist),[63] Robert Michael G. Gan (Internal Medicine/Endocrinologist),[64] and Melissa Co Sia (Adult Clinical and Interventional Cardiologist) who have the complete medical records of petitioner for the entire duration of his treatment and who all opined that petitioners illnesses had been resolved, on one hand, and petitioner's physicians of choice who merely examined him for a day as an outpatient, on the other, the findings of the company-designated physicians must prevail.[65]

All told, the Court of Appeals did not err when it dismissed petitioner's claim for total and permanent disability benefits.

ACCORDINGLY, the petition is **DENIED** and the Decision dated January 6, 2017 and Resolution dated October 26, 2017 of the Court of Appeals in CA-G.R. SP No. 144028, **AFFIRMED**. Petitioner Leonides P. Rillera's complaint for total and permanent disability benefits is **DISMISSED**.

SO ORDERED.

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

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[63] *Rollo*, pp. 97 and 110.

[64] *Id.* at 110.

[65] See *Maricel S. Nonay v. Bahia Shipping Services, Inc., et al.*, 781 Phil. 197, 229 (2016).

FIRST DIVISION

[G.R. No. 235820. June 23, 2020]

ADELIO ABILLAR, *petitioner, vs.* **PEOPLE'S TELEVISION NETWORK, INC. (PTNI) as represented by THE OFFICE OF THE NETWORK GENERAL MANAGER,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; RETIREMENT; WHEN A PUBLIC OFFICER OR EMPLOYEE RETIRES FROM THE CIVIL SERVICE, HE, IN EFFECT, WITHDRAWS FROM OFFICE, PUBLIC STATION, OCCUPATION OR PUBLIC DUTY. — Jurisprudence defines retirement as the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. When a public officer or employee retires from the civil service, he, in effect, withdraws "from office, public station, x x x occupation or public duty. It is undisputed that petitioner voluntarily terminated his employment relationship with the respondent. He applied for early retirement in the hope that he would be able to receive the benefits under the "government rationalization plan" which, at that time, was still in the formative stage. R.A. No. 10390, otherwise known as AN ACT REVITALIZING THE PEOPLE'S TELEVISION NETWORK, INCORPORATED, was signed into law only on March 14, 2013 or nearly two years after the petitioner filed his application. x x x [P]etitioner seeks to benefit from x x x [Section 19 of R.A. No. 10390 and Section 35 of its Implementing Rules] on early retirement which apply exclusively to the respondent's employees who were separated or displaced from the service as a result of the network's reorganization, abolition, or creation of offices, or institution of cost-cutting and other similar measures. Petitioner's ineligibility for early retirement benefits is even bolstered by his failure to meet the condition that the employee must have rendered at least one year of service in the network when R.A. No. 10390 took effect.

To recall, petitioner was deemed retired on May 15, 2011 as reflected in his service record, Clearly, petitioner is not entitled to the retirement benefits provided under R.A. No. 10390.

2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ONE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT SINCE MERE ALLEGATION IS NOT EVIDENCE. — Elementary is the rule that one who alleges a fact has the burden of proving it since mere allegation is not evidence. Petitioner miserably failed to substantiate his claim that GM Caluag influenced him to avail of early retirement. He did not present any evidence to support the allegation that the early retirement package was offered to him and that the respondent committed to grant him the benefits under the reorganization plan. It was completely of his own intent and volition to retire. x x x Well-aware of the absence of any existing retirement package of the respondent, petitioner proceeded with his application for early retirement and hastily and mistakenly assumed that his request shall be granted.

3. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY AND GOOD FAITH IN THE PERFORMANCE OF DUTIES; BAD FAITH; PURPORTS BREACH OF A KNOWN DUTY THROUGH SOME MOTIVE, INTEREST OR ILL WILL THAT PARTAKES OF THE NATURE OF FRAUD, INCLUDING DISHONEST PURPOSE OR SOME MORAL OBLIQUITY AND CONSCIOUS DOING OF A WRONG, AND THE EXISTENCE OF BAD FAITH MUST BE SHOWN BY CLEAR AND CONVINCING EVIDENCE FOR THE LAW ALWAYS PRESUMES GOOD FAITH. — Time and again, we have held that bad faith does not simply connote bad judgment or negligence. It purports breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong. The existence of bad faith must be shown by clear and convincing evidence for the law always presumes good faith. In this case, petitioner's pleadings and other submissions are bereft of any showing that GM Caluag was motivated by ill-will when it accepted petitioner's application for early retirement. There was no evidence whatsoever to corroborate the claim that GM Caluag misled petitioner into believing that he shall receive the early retirement benefit under the government rationalization plan.

> At most, GM Caluag's categorical acceptance of petitioner's application constitutes an error of judgment made in good faith. Accordingly, absent proof to the contrary, GM Caluag should be presumed to have acted with regularity and good faith in the performance of his duties. Worthy to mention is that as a manifestation of good faith, the respondent has paid petitioner the amounts of ₱42,831.00 and ₱123,774.69 representing his last salary and terminal leave pay, respectively, as evidenced by the Certification dated December 22, 2014 issued by the respondent.

APPEARANCES OF COUNSEL

Adelio B. Abillar for petitioner and counsel for himself.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*,[1] filed under Rule 45 of the Rules of Court seeking to reverse and set aside the Amended Decision[2] dated June 23, 2017 and the Resolution[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142722.

The Antecedents

Adelio Abillar (petitioner) was employed as writer in the news department of People's Television Network, Inc. (PTNI) (respondent) and worked as such from September 16, 1994 to May 15, 2011.[4]

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[1] *Rollo*, pp. 10-28.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court), with Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz, concurring; *id.* at 30-35.

[3] *Id.* at 46-47.

[4] *Id.* at 71.

In his desire to avail of the early retirement under the government rationalization plan, petitioner tendered a letter on March 23, 2011, which reads:

Dear GM Caluag:

Greetings!

This is to formalize my intention to avail of early retirement under the government rationalization plan.

Hopefully, I will be entitled to the economic incentives available to retiring employees considering the more than 16-year service that I rendered to the Network.

In the meantime that my early retirement is undergoing assessment particularly with respect to the monetary incentives, may I request to be allowed to take an indefinite leave of absence without pay starting April 01, 2011.

Thank you for accommodating my request.[5]

On June 6, 2011, petitioner received a letter of acceptance from the respondent. It states:

Dear Mr. Abillar:

Your early retirement effective at the close of office hours on 15 May 2011 is hereby accepted with regrets.

Please accept our heartfelt thank [sic] for serving the PTV Network selflessly for more than 16 long years.

Personnel Office and Finance will process your last salary and retirement benefits due you upon completion of all documentary requirements to support your retirement benefit claims.[6]

However, when the respondent's early retirement program was implemented, allegedly sometime in August 2012, petitioner learned that he was not included as among those who would receive retirement pay and benefits under the early retirement package. He requested for reinstatement but the same was rejected.[7]

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[5] *Id.* at 89.

[6] *Id.* at 90.

[7] *Id.* at 72.

On February 3, 2014, petitioner filed a Complaint for Illegal Dismissal with Urgent Prayer for Reinstatement[8] against the respondent, represented by its General Manager Cleo Donggaas, before the Civil Service Commission (CSC). He alleged that it was former General Manager Renato Caluag (GM Caluag) who advised him to avail of the early retirement "since the new management will be implementing an early retirement package to its employees as part of the network streamlining strategy."[9]

The CSC Ruling

On February 26, 2015, the CSC dismissed petitioner's complaint for lack of merit. It held that the respondent was able to discharge the burden that petitioner voluntarily retired from the service before it had an early retirement program as provided in Republic Act (R.A.) No. 10390. It declared that the filing of the complaint for illegal termination of employment was a mere afterthought on the part of petitioner.

Petitioner filed a Motion for Reconsideration which was granted by the CSC in its Resolution[10] dated July 1, 2015. It ruled that GM Caluag's approval of petitioner's request to avail of early retirement makes the respondent bound to honor its commitment to grant the early retirement benefits. It clarified that petitioner acted in good faith when it relied on GM Caluag's assurance that the management will approve and release his early retirement. Respondent, on its part, acted in bad faith when it callously excluded petitioner from its early retirement. The CSC further stated that the amount of ₱60,000.00 which petitioner received as retirement benefits and terminal leave pay was insufficient considering the length of his service in the network.

Aggrieved thereby, the respondent moved for reconsideration of the July 1, 2015 Resolution but the same was denied in its September 28, 2015 Resolution.[11]

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

[9] *Id.* at 72.

[10] *Id.* at 74-81.

[11] *Id.* at 82-88.

The CA Ruling

In its Decision dated November 9, 2016, the CA denied the respondent's appeal. It agreed with the CSC's finding of bad faith on the part of the respondent in excluding petitioner from its early retirement program and reiterated the latter's entitlement to full retirement benefits.

Undeterred, the respondent filed a Motion for Reconsideration. It contended "that there was no law that granted separation package at the time [petitioner] availed himself of the early retirement; that R.A. No. 10390, particularly the provisions therein pertaining to the separation packages for displaced PTNI employees, has no retroactive effect; and that there is nothing under the law that entitles [petitioner] to any separation benefits because his alleged retirement was made prior to the effectivity of R.A. No. 10390."[12]

On June 23, 2017, the CA amended its November 9, 2016 Decision and affirmed the February 26, 2015 CSC Decision dismissing petitioner's complaint for lack of merit. It enunciated that petitioner failed to meet the minimum qualification provided in Section 19 of R.A. No. 10390 as to the required number of service years.[13]

Hence, this petition raising the following issues: 1) whether petitioner is entitled to the early retirement benefits under R.A. No. 10390; and 2) whether respondent's act of excluding petitioner from the coverage of R.A. No. 10390 was attended by bad faith.

Petitioner argues that the respondent misinterpreted his desire to avail of early retirement as resignation. He posits that when respondent, through GM Caluag, approved his request to avail of early retirement and go on indefinite leave of absence, he was made to believe that he was already qualified to receive the retirement benefits under the government rationalization program. He claims that he was refused to be reinstated and was terminated from his employment.

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[12] *Id.* at 32.

[13] *Id.* at 33.

Respondent, on the other hand, counters that petitioner cannot claim retirement benefits from the respondent for lack of enabling law. It states that there was yet not law providing for the grant of separation package or separation benefits at the time when petitioner tendered his early retirement letter on March 23, 2011. It also avers that it did not act in bad faith when it rejected the claim for retirement benefits since petitioner freely, voluntarily, and willfully severed his employment. It notes that when petitioner handed his retirement letter, he knew fully well that there was no rationalization plan yet for the respondent.[14]

Our Ruling

The petition is denied.

Jurisprudence defines retirement as the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[15] When a public officer or employee retires from the civil service, he, in effect, withdraws "from office, public station, x x x occupation or public duty."[16]

It is undisputed that petitioner voluntarily terminated his employment relationship with the respondent. He applied for early retirement in the hope that he would be able to receive the benefits under the "government rationalization plan" which, at that time, was still in the formative stage. R.A. No. 10390, otherwise known as AN ACT REVITALIZING THE PEOPLE'S TELEVISION NETWORK, INCORPORATED, was signed into law only on March 14, 2013 or nearly two years after the petitioner filed his application. Section 19 of R.A. No. 10390 and Section 35 of its Implementing Rules and Regulations (IRR) respectively state:

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[14] *Id.* at 92-97.

[15] *Cercado v. UNIPROM, Inc.,* 647 Phil. 603 (2010).

[16] *Civil Service Commission v. Moralde*, G.R. Nos. 211077 & 211318, August 15, 2018.

Section 19. *Separation and Retirement Benefits.* – In the event an employee is separated from the Network by reason of reorganization, abolition, or creation of offices, or institution of cost-cutting and other similar measures, the employee shall be entitled to a separation benefit equivalent to one (1) month salary for every year of service in the government: *Provided*, That the separated or displaced employee has rendered at least one (1) year of service at the time of the effectivity of this Act.

Section 35. Terms of Reference– Subject to the approval of the Board and the Secretary of PCOO, the following terms of reference shall be implemented:

1. The Network's Main office shall be re-structured first and the regional and branch offices/stations shall follow right after;
2. There shall be parity in size, scope and responsibility among the various units and equity in assets and liabilities. Performance shall be the yardstick in all selection and placement actions; and
3. There shall be a provision for an early retirement program, primarily for redundant positions.

It is worth observing that petitioner seeks to benefit from the above provisions on early retirement which apply exclusively to the respondent's employees who were separated or displaced from the service as a result of the network's reorganization, abolition, or creation of offices, or institution of cost-cutting and other similar measures. Petitioner's ineligibility for early retirement benefits is even bolstered by his failure to meet the condition that the employee must have rendered at least one year of service in the network when R.A. No. 10390 took effect. To recall, petitioner was deemed retired on May 15, 2011 as reflected in his service record.[17] Clearly, petitioner is not entitled to the retirement benefits provided under R.A. No. 10390.

Petitioner asserts that the respondent acted in bad faith when he was not included in the list of retirees entitled to receive the benefits under R.A. No. 10390. He claims that he was induced to take an early retirement and that GM Caluag assured him that the respondent will approve and endorse his early retirement

[17] *Rollo*, p. 70.

benefits under the government rationalization plan. He alleged in his complaint:

> Mr. Caluag told the [petitioner] to just avail of early retirement since the new management will be implementing an early retirement package to its employees as part of the network streamlining strategy. He made it clear that if [petitioner] is not inclined to remain in his present position as writer, his only choice is either resignation or early retirement.

Elementary is the rule that one who alleges a fact has the burden of proving it since mere allegation is not evidence.[18] Petitioner miserably failed to substantiate his claim that GM Caluag influenced him to avail of early retirement. He did not present any evidence to support the allegation that the early retirement package was offered to him[19] and that the respondent committed to grant him the benefits under the reorganization plan. It was completely of his own intent and volition to retire. He stated in the petition:

> On March 23, 2011, petitioner opted to avail of early retirement after learning from management of a plan to make such offer to their employees the following year. He has been a writer throughout his employment and notwithstanding the fact that petitioner had already passed the bar examinations and became a lawyer in 2007.
>
> For lack of a lawyer position to aspire for within the Network, he was constrained to apply for early retirement as soon as he learned it is being planned. In [*sic*] June 6, 2011, he received a letter-reply from management that his application for early retirement had been approved.[20]

Well-aware of the absence of any existing retirement package of the respondent, petitioner proceeded with his application for early retirement and hastily and mistakenly assumed that his request shall be granted.

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[18] *Office of the Court Administrator v. Runes*, 730 Phil. 391, 395 (2014).

[19] *See* July 1, 2015 Resolution of the Civil Service Commission quoting petitioner's Motion for Reconsideration, *rollo*, p. 75.

[20] *Id.* at 13.

Petitioner maintains that the respondent, through GM Caluag, acted in bad faith in accepting his application and making it appear that he shall be granted the retirement benefits once the implementation of the rationalization plan commences. The Court does not agree.

Time and again, we have held that bad faith does not simply connote bad judgment or negligence. It purports breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong. The existence of bad faith must be shown by clear and convincing evidence for the law always presumes good faith.[21] In this case, petitioner's pleadings and other submissions are bereft of any showing that GM Caluag was motivated by ill-will when it accepted petitioner's application for early retirement. There was no evidence whatsoever to corroborate the claim that GM Caluag misled petitioner into believing that he shall receive the early retirement benefit under the government rationalization plan. At most, GM Caluag's categorical acceptance of petitioner's application constitutes an error of judgment made in good faith. Accordingly, absent proof to the contrary, GM Caluag should be presumed to have acted with regularity and good faith in the performance of his duties. Worthy to mention is that as a manifestation of good faith, the respondent has paid petitioner the amounts of ₱42,831.00 and ₱123,774.69 representing his last salary and terminal leave pay, respectively, as evidenced by the Certification dated December 22, 2014 issued by the respondent.[22]

All told, petitioner was not illegally dismissed but voluntarily retired from the service and is thus not entitled to the retirement benefits under R.A. No. 10390.

WHEREFORE, the petition is **DENIED.** The Amended Decision dated June 23, 2017 and the Resolution dated November

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[21] *China Airlines v. Court of Appeals*, 453 Phil. 959, 978 (2003).

[22] See September 28, 2015 Resolution of the Civil Service Commission, *rollo*, p. 87.

29, 2017 of the Court of Appeals in CA-G.R. SP No. 142722 are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 239396. June 23, 2020]

MARK E. SAMILLANO, *petitioner, vs.* **VALDEZ SECURITY AND INVESTIGATION AGENCY, INC./EMMA V. LICUANAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION. — As a rule, only questions of law may be raised in and resolved by the Court in a Rule 45 petition. The Court is precluded from inquiring into the veracity of the CA's factual findings especially when supported by substantial evidence. The findings of fact of the CA are final, binding, and conclusive upon us except when they are contrary to those of the administrative body exercising *quasi*-judicial functions from which the action originated. In such case, the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion. x x x In this case, the pivotal issue of whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that petitioner was not dismissed from the service was not resolved in the assailed CA Decision. The CA entered a contrary ruling without expressly stating that the NLRC's Resolution was not supported by substantial evidence and is inconsistent with law and prevailing jurisprudence. Thus, while the jurisdiction of this Court is

confined to questions of law, we are more constrained to make our own independent findings of facts in view of the conflicting findings of the labor tribunals and the CA.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGRATIVE; PLACING SECURITY GUARDS ON FLOATING OR RESERVED STATUS DOES NOT CONSTITUTE DISMISSAL PROVIDED IT IS CARRIED OUT IN GOOD FAITH. — Most contracts for services provide that the client may request the replacement of security guards assigned to it. In such setting, the security agency has the right to transfer or assign its employees from one area of operation to another subject to the condition that there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause. Known as placement "on floating or reserved status," *this industry practice does not constitute dismissal*, as the assignments primarily depend on the contracts entered into by the agency with third parties, and is *a valid exercise of management prerogative* provided it is carried out in good faith.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; IT IS IMPERATIVE THAT THE EMPLOYEE FIRST ESTABLISHES THAT HE WAS DISMISSED FROM THE SERVICE; IF THERE IS NO DISMISSAL THEN THERE CAN BE NO QUESTION AS TO THE LEGALITY OR ILLEGALITY THEREOF. — Jurisprudence teaches us that in illegal dismissal cases, it is imperative that the employee first establishes by substantial evidence that he was dismissed from the service. If there is no dismissal, then there can be no question as to the legality or illegality thereof. This springs from the rule that the one who alleges a fact has the burden of proving it; mere allegation is not evidence. Considering that he has been assigned to another posting, even to a particular client, within six months from the time he was relieved from his post, petitioner cannot be said to have been dismissed, actually or constructively, from the service.

4. ID.; ID.; ID.; ABANDONMENT; THERE MUST BE DELIBERATE AND UNJUSTIFIED REFUSAL OF AN EMPLOYEE TO RESUME HIS EMPLOYMENT; NOT APPLICABLE IN THE CASE AT BAR. — Abandonment is defined as the "deliberate and unjustified refusal of an employee to resume

his employment" and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 297] of the Labor Code on the ground of neglect of duty. x x x In this case, the respondents failed to establish the petitioner's deliberate and unjustified intent to abandon his employment. First, mere absence or failure to report for work is not tantamount to abandonment even when a notice to return to work has been served, as in this case. Second, it is well to note that petitioner's complaint of illegal dismissal is coupled with a prayer for reinstatement which clearly negates the claim of abandonment. Settled is the rule that the act of filing an illegal dismissal complaint is inconsistent with abandonment of employment, moreso when it includes reinstatement as a relief prayed for. The filing of the complaint even fortifies petitioner's desire to return to work. Third, petitioner has rendered five years of continuous service to the respondents which gives us no rational explanation as to why he would disrupt his tenure, abandon his work and forego the benefits to which he may be entitled.

5. ID.; ID.; ID.; ILLEGAL DISMISSAL; WHERE THE PARTIES FAILED TO PROVE THE PRESENCE OF EITHER THE DISMISSAL OF THE EMPLOYEE OR THE ABANDONMENT OF HIS WORK, THE REMEDY IS TO REINSTATE SUCH EMPLOYEE WITHOUT PAYMENT OF BACKWAGES. — Time and again, we have held that where the parties failed to prove the presence of either the dismissal of the employee or the abandonment of his work, the remedy is to reinstate such employee without payment of backwages.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] seeking to reverse and set aside the Decision[2] dated December 20, 2017 and the

[1] *Rollo*, pp. 13-33.

[2] Penned by Associate Justice Rosmari D. Carandang (now a Member of

Resolution[3] dated April 24, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 147502.

The Facts

On August 17, 2008, Valdez Security and Investigation Agency, Inc. (respondent company) hired Mark E. Samillano (petitioner) as a security guard. He was required to work from 7:00 p.m. to 7:00 a.m. from Monday to Saturday at Mornesse Center of Spirituality (Mornesse) in Calamba, Laguna.

On December 3, 2013, petitioner was relieved from his post upon the request of Sister Christina Maguyo, a representative of Mornesse. The request was made after petitioner and his co-security guard Nilo Mamigo (Mamigo) impleaded Mornesse in the complaint for money claims against the respondent company and its president and general manager Emma V. Licuanan (Licuanan). On the same date, Mamigo was also relieved from his post due to abandonment of work when he went on absence without leave (AWOL).[4]

On September 17, 2014, petitioner and Mamigo filed a complaint for illegal dismissal with money claims, moral and exemplary damages and attorney's fees against the respondent company and Licuanan (collectively, respondents). On October 27, 2014, they filed an amended complaint excluding their money claims in view of a pending case between the parties involving the same subject matter.[5]

In their Position Paper, petitioner and Mamigo asserted that they were dismissed from service without just cause and that no valid reason was given to justify their unceremonious dismissal. Further, the respondent company did not furnish them a notice of termination in wanton disregard of law.[6]

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the Court), with Associate Justices Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles, concurring; *id.* at 34-42.

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

[4] *Id.* at 35.

[5] *Id.*

[6] *Id.* at 70.

For their part, the respondents maintained in their Position Paper that there was no dismissal, much less illegal dismissal, since petitioner and Mamigo went on AWOL, abandoned their work and refused to report to work without justifiable reason.[7] They averred that on December 3, 2013, their security inspector SO Romeo Francisco served the Relieve Order[8] on petitioner but he refused to sign and accept it. Petitioner was informed that he will be relieved from his post on account of a client's request and that he will be deployed or transferred to another client. The respondents stressed that petitioner's refusal to follow their lawful order to report to their head office for re-assignment or deployment constitutes insubordination.[9]

On September 15, 2015, the Labor Arbiter dismissed the case for lack of merit. Declaring that petitioner and Mamigo were not dismissed from service, the Labor Arbiter held:

> Based on the notice that was sent to complainants, they were merely relieved of their posts at the Mornesse Center for Spirituality on December 3, 2014 (sic) and that, shortly, on December 14, 2013 (sic) they were sent return-to-work notices (See pp. 33 & 34, record) but they failed to comply. We note that in their position paper, complainants made a sweeping statement that they were dismissed outright by Licuanan without, however, explaining in detail how it was carried out. Under the circumstances, we are more inclined to believe that the client had indeed requested for their relief as it was dragged into a case that complainants filed against the agency and the client. Offhand, we note that it was only in complainants' reply that they alleged that they were "placed on floating status" thereby changing their theory which is an indication that the position of respondents is more accurate.[10]

Aggrieved thereby, petitioner filed an appeal before the National Labor Relations Commission (NLRC). In its Decision dated January 28, 2016, the NLRC held that petitioner and

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[7] *Id.* at 76-77.

[8] *Id.* at 94.

[9] *Id.* at 78.

[10] *Id.* at 99.

Mamigo were not dismissed from service when they were merely relieved from their posts upon the client's request. It enunciated that Mornesse has the right to demand petitioner's relief from his post for impleading it as a respondent in their complaint since under the contract, a client can request for the relief of the guard assigned to it even for want of cause.[11] Further, the NLRC stated that petitioner and Mamigo abandoned their work as shown by the following circumstances: (1) petitioner and Mamigo did not show up at the respondent company's office after they were relieved from their posts; 2) they were offered new posts but they refused the same and manifested that they are no longer willing to return to work; and 3) they only filed the instant complaint 10 months from the time they were relieved from their assignments.[12]

In its Decision dated December 20, 2017, the CA ruled that petitioner and Mamigo were dismissed from service for just cause. It enunciated that petitioner and Mamigo refused to report back to work despite having been served with return to work notices, an act that is tantamount to "grossly abandoning or neglecting your work."[13] The CA, however, found that they were not afforded due process prior to their dismissal since no evidence was presented to show that return to work notices were sent to them. Further, it stressed that the notices issued by the respondents "were hardly sufficient for them to adequately prepare and defend themselves."[14] The CA awarded petitioner and Mamigo the amount of ₱30,000.00 each as nominal damages for failure of the respondents to observe the twin notice rule in termination cases. The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the instant petition is **AFFIRMED with MODIFICATION** that Private Respondent Valdez Security and Investigation Agency, Inc. is **ORDERED** to pay Mark

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[11] *Id.* at 122.

[12] *Id.* at 123-124.

[13] *Id.* at 38.

[14] *Id.* at 40.

Esconde Samillano and Nilo Tueres Mamigo the amount of ₱30,000.00 each as nominal damages for non-compliance with statutory due process.

SO ORDERED.[15]

Hence, this petition raising the issue of whether or not the CA erred in finding that there was just cause for petitioner's termination from employment.

Petitioner posits that he did not abandon his work as would amount to a just cause for his dismissal from the service. He reiterates that he was placed on floating status by the respondents and did not receive any actual notice of reassignment thereafter. Refuting the respondents' claim of abandonment of work, petitioner asseverates that the respondents did not present evidence that he failed to report back to work and that he abandoned his post. He further notes that the fact that he filed the instant complaint militates against the respondent's theory of abandonment.[16]

Respondents, on the other hand, counter that petitioner was not dismissed from service but abandoned his work after being validly relieved from his last post/assignment as security guard. They maintain that had petitioner reported to the head office as instructed, he would have a new assignment at Anaconda Metal Fastener. Still, petitioner chose to ignore the Relieve Order.[17]

We resolve.

As a rule, only questions of law may be raised in and resolved by the Court in a Rule 45 petition. The Court is precluded from inquiring into the veracity of the CA's factual findings especially when supported by substantial evidence. The findings of fact of the CA are final, binding, and conclusive upon us except when they are contrary to those of the administrative body exercising *quasi*-judicial functions from which the action

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[15] *Id.* at 41.

[16] *Id.* at 20-24.

[17] *Id.* at 216.

originated. In such case, the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion.[18] As held in *Montoya v. Transmed Manila Corporation/Mr. Ellena*,[19] the assailed CA Decision must be examined "from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it."[20]

In labor cases, grave abuse of discretion may be imputed to the NLRC in the absence of substantial evidence to support its findings and conclusions. Suffice it to say that if the NLRC's determination is clearly in accord with the evidence and applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[21] In this case, the pivotal issue of whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that petitioner was not dismissed from the service was not resolved in the assailed CA Decision. The CA entered a contrary ruling without expressly stating that the NLRC's Resolution was not supported by substantial evidence and is inconsistent with law and prevailing jurisprudence. Thus, while the jurisdiction of this Court is confined to questions of law, we are more constrained to make our own independent findings of facts in view of the conflicting findings of the labor tribunals and the CA.[22] To recall, the Labor Arbiter and the NLRC uniformly declared that petitioner was not dismissed from employment. On the other hand, the CA held that the respondents terminated petitioner's employment for gross and habitual neglect of duty under Article 297 paragraph (b) of the Labor Code.[23]

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[18] *Slord Development Corporation v. Noya*, G.R. No. 232687, February 4, 2019.

[19] 613 Phil. 696 (2009).

[20] *Id.* at 707.

[21] *Coca-Cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019.

[22] *Santos v. Integrated Pharmaceutical, Inc.,* 789 Phil. 447, 488 (2016).

[23] Formerly Article 282 of the Labor Code.

Petitioner was not dismissed from the service

Most contracts for services provide that the client may request the replacement of security guards assigned to it. In such setting, the security agency has the right to transfer or assign its employees from one area of operation to another subject to the condition that there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause. Known as placement "on floating or reserved status," *this industry practice does not constitute dismissal*, as the assignments primarily depend on the contracts entered into by the agency with third parties, and is *a valid exercise of management prerogative* provided it is carried out in good faith.[24]

Petitioner was relieved from his post on December 3, 2013 upon the request of the respondent company's client. A Memorandum/Relieve Order was issued informing him that he shall be reassigned or transferred to another post. He was instructed to report in complete uniform at the respondent company's head office on December 5, 2013 at 9:00 a.m. Clearly, petitioner was not dismissed from service but was merely placed on temporary "off-detail" or floating status. On December 5, 2013, petitioner did not report to work. In fact, when the Relieve Order was served upon him, petitioner refused to sign and accept the same. Petitioner's refusal to receive the Relieve Order was witnessed by two other co-security guards, as reflected in that same order.

In *Tatel v. JLFP Investigation Security Agency, Inc.,* we held:

> Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts

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[24] *Soliman Security Services, Inc. v. Sarmiento*, 792 Phil. 708, 714-715 (2016).

are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. **When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed**.[25] (Emphasis supplied)

It bears stressing that on December 14, 2013, the respondent company sent a Notice to petitioner notifying him that he has been on AWOL status since December 5, 2013. He was directed to report to the head office of the respondent company to determine if he is still interested to work for it. He was also informed of a new assignment at Anaconda Metal Fastener, Inc. in Pasig City, contrary to his claim that a new assignment was offered only during the mediation proceeding. The notice was sent to the address appearing on petitioner's 201 files via registered mail as evidenced by the registry receipt.

Jurisprudence teaches us that in illegal dismissal cases, it is imperative that the employee first establishes by substantial evidence that he was dismissed from the service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[26] This springs from the rule that the one who alleges a fact has the burden of proving it;[27] mere allegation is not evidence.[28] Considering that he has been assigned to another posting, even to a particular client, within six months from the

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[25] 755 Phil. 171, 183 (2015).

[26] *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017.

[27] *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209 (2006).

[28] *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 409 (2012).

time he was relieved from his post, petitioner cannot be said to have been dismissed, actually or constructively, from the service.

Petitioner is not guilty of abandonment

Abandonment is defined as the "deliberate and unjustified refusal of an employee to resume his employment" and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 297] of the Labor Code on the ground of neglect of duty. The Court explained in *Symex Security Services, Inc.*:

> To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[29]

In this case, the respondents failed to establish the petitioner's deliberate and unjustified intent to abandon his employment. First, mere absence or failure to report for work is not tantamount to abandonment even when a notice to return to work has been served, as in this case.[30] Second, it is well to note that petitioner's complaint of illegal dismissal is coupled with a prayer for reinstatement which clearly negates the claim of abandonment. Settled is the rule that the act of filing an illegal dismissal complaint is inconsistent with abandonment of employment, moreso when it includes reinstatement as a relief prayed for.[31] The filing of the complaint even fortifies petitioner's desire to return to work. Third, petitioner has rendered five years of

[29] *Supra* note 26.

[30] *Philippine Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951, 960 (1999).

[31] *Pu-od v. Ablaze Builders, Inc.*, G.R. No. 230791, November 20, 2017.

continuous service to the respondents which gives us no rational explanation as to why he would disrupt his tenure, abandon his work and forego the benefits to which he may be entitled.[32]

The CA stated that it is difficult to believe that petitioner did not receive the notice sent by the respondent company directing him to return to work because it was sent to a wrong address.[33] Records will show that petitioner's address in the return to work order is Alfonso, Cavite while his address in the complaint for illegal dismissal is Sto. Tomas, Batangas. The Court does not discount the possibility that during the period of his five-year employment with the respondent company, petitioner changed his address without updating his record in the 201 files. This could only be the plausible reason why petitioner did not receive a copy of the return to work notice. It is thus improper to readily conclude that petitioner intended to discontinue his employment with the respondent company simply because he failed to report back to work.

Petitioner must be reinstated to his former position without payment of backwages

Time and again, we have held that where the parties failed to prove the presence of either the dismissal of the employee or the abandonment of his work, the remedy is to reinstate such employee without payment of backwages. This is in accord with our pronouncement in *Danilo Leonardo v. National Labor Relations Commission and Reynaldos Marketing Corporation*[34] that "in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss." Accordingly, if petitioner chooses not to return to work, he must then be considered as having resigned from employment.[35]

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[32] *Supra* note 25, at 184.

[33] *Supra* note 2, at 38.

[34] 389 Phil. 118, 128 (2000).

[35] *Id.*

WHEREFORE, the petition is **DENIED**. The complaint for illegal dismissal is **DISMISSED**. The Respondents are **ORDERED TO REINSTATE** petitioner Mark E. Samillano to his former position without payment of backwages, in accordance with this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 240217. June 23, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **REGGIE BRIONES *y* DURAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE UNDER THE REVISED PENAL CODE, DISTINGUISHED FROM "EXPLOITED IN PROSTITUTION OR OTHER SEXUAL ABUSE" UNDER REPUBLIC ACT NO. 7610. — In *People v. Tulagan*, the Court ruled that "force, threat or intimidation" is the element of rape under Article 266-A(1)(a) of the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. In the event where the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, *Tulagan* directs that the accused should still be prosecuted and penalized pursuant

to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION AND CONCLUSION THEREON IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT AND EVEN FINALITY. — Settled is the rule 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, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.

3. CRIMINAL LAW; RAPE; "SWEETHEART DEFENSE"; MUST BE PROVEN BY COMPELLING EVIDENCE; THAT THE ACCUSED AND THE VICTIM WERE LOVERS AND THAT THE VICTIM CONSENTED TO THE ALLEGED SEXUAL RELATIONS; CASE AT BAR. — Time and again, the Court has held that in rape, the "*sweetheart*" defense must be proven by compelling evidence: *first*, that the accused and the victim were lovers; and, *second*, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust. Thus, Briones can offer love letters to prove that FFF was his lover, but the fact that they were sweethearts does not necessarily establish FFF's consent to the sexual act. To repeat, FFF categorically testified in open court that she tried pushing Briones away and even pleaded for him to stop. Still, to corroborate his "*sweetheart defense*," Briones presented his cousin, Mary Ann, who allegedly witnessed their love affair. But We sustain with approval the appellate

court's finding that Mary Ann never testified that the sexual relations between Briones and FFF were with the latter's consent. x x x Indeed, a testimony as to an apparent sweetness between two people does not instantly prove consent to a sexual encounter. It cannot be denied, therefore, that the evidence on record is bereft of any indication that FFF consented to Briones' bestial acts.

4. ID.; ID.; FORCE OR INTIMIDATION NEED NOT BE IRRESISTIBLE; WHAT IS NECESSARY IS THAT THE FORCE OR INTIMIDATION BE SUFFICIENT TO CONSUMMATE THE PURPOSE THAT THE ACCUSED HAD IN MIND OR IS OF SUCH A DEGREE AS TO IMPEL THE DEFENSELESS AND HAPLESS VICTIM TO BOW INTO SUBMISSION. — It must be borne in mind that FFF was only twelve (12) years old when Briones, nineteen (19), raped her. It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, or strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. As such, We sustain the CA when it rejected Briones' claim that the element of force, threat, or intimidation was not proven in this case as shown by the fact that FFF did not shout during the incident. Neither did she immediately report the same. Indeed, force or intimidation, as an element of rape, need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind or is of such a degree as to impel the defenseless and hapless victim to bow into submission.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF YOUNG AND IMMATURE GIRLS ARE ENTITLED TO FULL FAITH AND CREDENCE IN CONSIDERATION NOT ONLY OF THEIR VULNERABILITY, BUT ALSO THE SHAME AND EMBARASSMENT TO WHICH SUCH A GRUELING EXPERIENCE AS A COURT EXPOSES THEM TO; CASE AT BAR. — We cannot adhere to Briones' argument that FFF and her family were merely motivated by the scandal and shame of their love affair and

FFF's consequent pregnancy. On the contrary, it is even more scandalous for FFF to undergo the arduous process of putting Briones, their family friend, behind bars. In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable receptivity on the part of the trial courts to lend credence to the testimonies of said victims. This is in consideration of not only the offended parties' relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, FFF's testimony is entitled to full faith and credence; Briones is hereby found guilty beyond reasonable doubt of the crime charged herein.

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 Decision[1] dated January 22, 2018 of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 09007 which affirmed, with modification, the Decision[2] dated May 26, 2016 of the Regional Trial Court *(RTC)* of Masbate City, Branch 48, finding Reggie Briones *y* Duran guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph (1) of the Revised Penal Code (*RPC*).

The antecedent facts are as follows.

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Marie Christine Azcarraga-Jacob and Ronaldo B. Martin, concurring; *rollo*, pp. 2-11.

[2] Penned by Acting Presiding Judge Manuel L. Sese; CA *rollo*, pp. 40-48.

Reggie Briones *y* Duran was charged with the crime of rape in an Information, the accusatory portion of which reads:

> That on or about July 19, 2006, at 1:00 o'clock in the afternoon at Sitio DDDDDD, Barangay PPPPPP, district 111111, Municipality of MMM, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and deliberate intent and abuse of confidence and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one FFF, a 12-year-old child, against her will.[3]

During arraignment, Briones, assisted by counsel, pleaded not guilty to the charge. Subsequently, trial on the merits ensued. By the testimonial and documentary evidences, the prosecution sought to establish the following facts:

On July 19, 2006, FFF,[4] a twelve (12)-year-old girl,[5] was alone in their house when Briones arrived to watch television. Since Briones was their neighbor whom she considered her "*kuya*," FFF let Briones inside the house. Upon arriving, Briones asked FFF to increase the volume of the television as he closed the front door. He then embraced FFF, pushed her to the door, and forcibly removed her underpants. While they were in a standing position, he was able to insert his penis into her

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[3] CA *rollo*, p. 40.

[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. 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.

[5] See FFF's Birth Certificate.

vagina. FFF tried to push Briones away and pleaded for him to stop, but he was still able to consummate his sexual desire. Subsequently, Briones told FFF not to tell anybody what happened or he would kill her and all the members of her family. The sexual encounters between FFF and Briones were repeated eight (8) more times. But FFF did not tell anyone what Briones had been doing to her for fear for her life and the lives of her family. Despite this, her parents still learned of her ordeal in December 2006 when she missed her monthly period. Consequently, her parents brought her to the City Health Office where the examination by Dr. Natividad Isabel R. Magbalon conducted on January 1, 2007 revealed that FFF was pregnant with completely healed old hymenal lacerations at 1, 6, and 9 o'clock positions. FFF's father asserted the Briones is their neighbor and a close family friend who had free access to their house as he was treated like a member of the family.[6]

For his part, Briones denied the accusation against him. He insisted that he and FFF became sweethearts in July 2006, but they hid their relationship from FFF's parents as she was only around thirteen (13) years old at that time. To prove that they were indeed lovers, Briones presented the following letters written by FFF: (1) a letter dated June 26, 2006; (2) an undated letter where she wrote "my father or mother might see you, tell them we just kissed thrice and nothing else happened" in the vernacular; and (3) a letter dated November 28, 2006, which was written after her sister saw them in the kitchen partially naked, having just been sexually intimate. The defense also presented Briones' cousin, Mary Ann Briones, to corroborate his claim. Mary Ann testified that FFF disclosed to her that FFF had a romantic relationship with Briones. She added that there was even a time when FFF and her younger brother went to Briones' house where Mary Ann was also staying. Then, FFF and Briones went inside the latter's bedroom for about 30 minutes, while Mary Ann and FFF's brother were watching television in the living room. Mary Ann insisted that what happened between FFF and Briones was consensual in nature,

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[6] *Rollo*, pp. 3-4.

because she was the one who delivered FFF's love letters to Briones.[7]

On May 26, 2016, the RTC rendered its Decision finding Briones guilty of the crime charged, disposing of the case as follows:

> **WHEREFORE**, in view of all the foregoing, this Court finds the accused REGGIE D. BRIONES guilty beyond reasonable doubt [of] the crime of RAPE and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> The accused shall be credited in full for the period of his preventive imprisonment.
>
> The accused is hereby ordered to indemnify the victim FFF in the amount of Php75,000.00 as civil indemnity, Php75,000.00 as payment for moral damages and Php30,000.00 as exemplary damages.
>
> SO ORDERED.[8]

The RTC found that, judging on the basis of the testimonies of both the prosecution and defense in connection with which documentary pieces of evidence were formally offered, the prosecution sufficiently established that Briones has committed the offense charged against him.

In a Decision dated January 22, 2018, the CA affirmed, with modification, the RTC Decision in the following manner:

> **WHEREFORE**, premises considered, the appeal filed by Reggie Briones y Duran is DENIED. The [May 26, 2016] Decision of the Regional Trial Court of Masbate City, Branch 48 is **AFFIRMED** with the following MODIFICATIONS: (1) the award of exemplary damages is INCREASED to ₱75,000.00; and (2) all the amounts of damages awarded shall earn interest at the rate of six percent (6%) per annum from the date of finality of judgment until fully paid.
>
> **SO ORDERED.**[9]

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[7] *Id.* at 4.

[8] CA *rollo*, p. 48.

[9] *Rollo*, pp. 10-11.

According to the appellate court, there is no reason to disturb the findings of the RTC holding that FFF's credibility, by well-established precedents, is given great weight and accorded high respect.

Now before Us, Briones manifested that he is dispensing with the filing of a supplemental brief, considering that he had exhaustively discussed the assigned errors in his Appellant's Brief filed before the CA.[10] The Office of the Solicitor General *(OSG)* similarly manifested that it had already discussed its arguments in its Appellee's Brief.[11]

In his Brief, Briones criticized the ruling of the trial court for having conflicting findings. While the body of the decision found him guilty of violating an unspecified provision of R.A. No. 7610, its *fallo*, however, indicates that he is guilty beyond reasonable doubt of the crime of rape. But according to him, rape under the RPC cannot be complexed with a violation of R.A. No. 7610, a special law. Thus, the trial court erred in concluding that his "*sweetheart theory*" is not a defense to offenses under R.A. No. 7610. But even assuming that the RTC convicted him of rape under Article 266-A of the RPC, Briones claimed that the trial court had no basis to do so. He maintained that he was able to establish by convincing proof his "*sweetheart defense*" and that the sexual intercourse that transpired between him and FFF was free and voluntary on their part given that they are lovers. In particular, Briones presented love letters written by FFF for him, as well as the testimony of his cousin Mary Ann. Moreover, contrary to the findings of the trial court, Briones insists that FFF's testimony cannot be given credence. For one, it is contrary to human experience that she did not shout during that long time when he allegedly raped her. For another, FFF's conduct after the alleged rape belies her claims, specifically, when she washed her bloodied underwear, went to school, and even had more sexual encounters with him. According to Briones, these were all indicative of FFF's love

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[10] *Id.* at 24.

[11] *Id.* at 20.

for him. In the end, he claimed that it is only the scandal of their love affair and FFF's consequent pregnancy that motivated FFF's family members to pursue the case against him.[12]

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding Briones guilty of the acts charged against him.

Prefatorily, We begin by addressing Briones' criticism of the trial court's decision insofar as the apparent confusion between rape under the RPC and under R.A. No. 7610 is concerned. In *People v. Tulagan*,[13] the Court ruled that "force, threat or intimidation" is the element of rape under Article 266-A (1) (a)[14] of the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5 (b)[15] of R.A. No. 7610. In the event where the elements of both

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[12] CA *rollo*, pp. 30-36.

[13] G.R. No. 227363, March 12, 2019.

[14] 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;
x x x x x x x x x.

[15] SEC. 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
(1) Acting as a procurer of a child prostitute;
(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
(3) Taking advantage of influence or relationship to procure a child as prostitute;
(4) Threatening or using violence towards a child to engage him as a prostitute; or

violations of Section 5 (b) of R.A. No. 7610 and of Article 266-A, paragraph 1 (a) of the RPC are mistakenly alleged in the same Information and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, *Tulagan* directs that the accused should still be prosecuted and penalized pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610.[16]

In the present case, while there may be inconsistencies in the decision of the RTC, We sustain the finding of the CA that the same would be of little significance in view of the fact that the prosecution duly established, by competent evidence, Briones' guilt of the crime as charged in the Information. To recall, said Information states:

> That on or about July 19, 2006, at 1:00 o'clock in the afternoon at Sitio DDDDDD, Barangay PPPPPP, district 111111, Municipality of MMM, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and deliberate intent and abuse of confidence and **by means of force and intimidation**, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one FFF, a 12[-]year[-]old child, against her will.[17]

As mentioned previously, the elements of rape are provided under Article 266-A, paragraph (1) (a) of the RPC which provides that rape is committed: "(1) By a man who shall have carnal

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(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

[16] *People v. Tulagan*, *supra* note 13.

[17] *Supra* note 3. (Emphasis ours)

knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."[18] Accordingly, We concur with the findings of the courts below that the prosecution was able to prove these elements through the credible testimony of FFF who painstakingly recalled, in a sincere and convincing manner, how Briones succeeded in having carnal knowledge of her through force, threat, and intimidation. FFF vividly testified on the matter as follows:

Q: Can you tell us what happened in the afternoon on that day while you were inside your house?
A: While I was inside our house on July 19, 2006 and our television set was open at that time, while my mother and my father went outside of the house because they were attending to the hallow blocks which is a little bit far from our house.

x x x x x x x x x

Q: What incident do you recall on such date and time while you were alone inside your house?
A: While I was alone the accused entered our house and requested to increase the volume of our television set and I followed him and I went near to the television set and increase[d] the volume of it.

Q: After you increased the volume of the television and after Reggie has already entered your house, what happened next?
A: Then he closed our door.

Q: Did he lock your door?
A: Yes, sir.

Q: After he locked the door, what else transpired, Madam Witness?
A: He pulled me near the television and pushed me to our door.

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[18] *People v. Manuel Basa, Jr. a.k.a. "Jun"*, G.R. No. 237349, February 27, 2019.

PROS. MESA:
We would like to [put] it of record that the witness has been crying from the very beginning of her testimony up to now.

COURT:
Noted.

PROS. MESA
Q: After you were pinned down in (sic) the door of (sic) Reggie what else did he do?
A: He held my hands and using his feet, he removed my short.

Q: While he did that to you, what did you do, Madam Witness?
A: I was trying to push him away and I plead not to do that to me but he still continued.

x x x x x x x x x

Q: After he was able to remove your short, what else did he do?
A: He told me that, if ever you [reveal] this matter, I will kill all the members of your family, one by one. (sic)

Q: After the threat, what else did he do, Madam Witness?
A: He held my hands but I cannot move because I was so afraid and as if I was floating the air (sic). Then after he removed my short he tried to insert his penis and it was very painful.

Q: Was he able to insert his penis into your organ?
A: Yes, sir. He succeeded in inserting his penis into my vagina.

Q: And for how long did he do that to you?
A: It lasted for quite long.

Q: And what (sic) happened while both of you were standing?
A: Yes, sir.

Q: Did you not shout when he do (sic) that to you?
A: I was not able to shout because I was so afraid because I do not know what to do. I pleaded to him but he did not listen to me.

Q: After he did that to you, what else did he do to you?
A: And after that he left and left a word that I should be the one to wash my panty and should not be shown to my parents (sic) because otherwise he will kill me.[19]

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[19] *Rollo*, pp. 6-8.

Based on the above testimony, We sustain the conclusion of the trial court, as affirmed by the appellate court, that the elements of the crime charged herein were duly proven. Settled is the rule 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, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[20]

Despite the foregoing testimony, Briones essentially insists that the sexual encounter between him and FFF was with the consent of FFF given the fact that they were lovers. In support of said contention, he presented love letters written by FFF, as well as the testimony of his cousin who confirmed their affair. Like the appellate court, however, We reject Briones' defense. Time and again, the Court has held that in rape, the "*sweetheart*" defense must be proven by compelling evidence: *first*, that the accused and the victim were lovers; and, *second*, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.[21] Thus, Briones can offer love letters to prove that FFF was his lover, but the fact that they were sweethearts does not necessarily establish FFF's consent to the sexual act. To repeat, FFF categorically testified

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[20] *People v. Jelmar Matutina y Maylas, et al.*, G.R. No. 227311, September 26, 2018.

[21] *People v. Victoria*, 763 Phil. 96, 101 (2015).

in open court that she tried pushing Briones away and even pleaded for him to stop.

Still, to corroborate his "*sweetheart defense*," Briones presented his cousin, Mary Ann, who allegedly witnessed their love affair. But We sustain with approval the appellate court's finding that Mary Ann never testified that the sexual relations between Briones and FFF were with the latter's consent. Records merely show that all Mary Ann testified to was that there was one time when FFF and Briones went inside the latter's bedroom for about thirty (30) minutes. Unfortunately for Briones, however, Mary Ann's testimony can barely save his plight. *First* of all, she categorically stated that she did not know what happened therein. Yet, as the CA ruled, agreeing to enter one's room is far from consenting to any sexual act that may have happened therein. *Second*, this encounter that Mary Ann testified to was, in fact, not the act FFF complained of in this case.[22] Indeed, a testimony as to an apparent sweetness between two people does not instantly prove consent to a sexual encounter.[23] It cannot be denied, therefore, that the evidence on record is bereft of any indication that FFF consented to Briones' bestial acts.

It must be borne in mind that FFF was only twelve (12) years old when Briones, nineteen (19), raped her. It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, or strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.[24] As such, We sustain the CA when it rejected Briones' claim that the element of force, threat, or intimidation was not proven in this case as shown by the fact that FFF did not shout during the incident. Neither did she immediately report the same. Indeed, force or intimidation, as an element of rape,

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[22] *Rollo*, pp. 9-10.

[23] *People v. Gecomo*, 324 Phil. 297, 329 (1996), cited in the CA Decision.

[24] *People v. Dimanawa*, 628 Phil. 678, 688 (2010).

need not be irresistible; it may be just enough to bring about the desired result. What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind or is of such a degree as to impel the defenseless and hapless victim to bow into submission.[25]

Thus, We cannot adhere to Briones' argument that FFF and her family were merely motivated by the scandal and shame of their love affair and FFF's consequent pregnancy. On the contrary, it is even more scandalous for FFF to undergo the arduous process of putting Briones, their family friend, behind bars. In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable receptivity on the part of the trial courts to lend credence to the testimonies of said victims. This is in consideration of not only the offended parties' relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars.[26] Hence, FFF's testimony is entitled to full faith and credence; Briones is hereby found guilty beyond reasonable doubt of the crime charged herein.

As for the penalty imposed and amount of damages awarded by the appellate court, the Court affirms the same. Thus, Briones is sentenced to suffer the penalty of *reclusion perpetua* and is **ORDERED** to **PAY** FFF the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, pursuant to *People v. Jugueta*,[27] all of which shall likewise earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

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[25] *Rollo*, p. 8.

[26] *People v. Macapagal*, G.R. No. 218574, November 22, 2017, 846 SCRA 409, 432.

[27] 783 Phil. 806 (2016).

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit. The assailed Decision dated January 22, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09007, which affirmed, with modification, the Decision dated May 26, 2016 of the Regional Trial Court of Masbate City, Branch 48, is **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 242695. June 23, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **PO1 DENNIS JESS ESTEBAN LUMIKID,** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE RULE THAT FACTUAL FINDINGS OF THE TRIAL COURT INVOLVING THE CREDIBILITY OF WITNESSES ARE ACCORDED UTMOST RESPECT SINCE TRIAL COURTS HAVE FIRST-HAND ACCOUNT ON THE WITNESSES' MANNER OF TESTIFYING IN COURT AND THEIR DEMEANOR DURING TRIAL DOES NOT APPLY WHERE THE JUDGE WHO PENNED THE TRIAL COURT'S JUDGMENT WAS NOT THE SAME ONE WHO HEARD THE PROSECUTION WITNESSES TESTIFY, AND THE RECORDS INDICATE THAT BOTH THE TRIAL COURT AND THE APPELLATE COURT HAVE OVERLOOKED SOME MATERIAL FACTS AND CIRCUMSTANCES OF WEIGHT WHICH COULD MATERIALLY AFFECT THE RESULT OF THIS CASE. — As a rule, the trial court's findings of fact are entitled to

great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts. It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first-hand account on the witnesses' manner of testifying in court and their demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility. However, this rule is not applicable in the present case. In *Garcia v. Court of Appeals*, this Court stated that: In general, factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon this Court. The rule, however, does not apply in the present case. For one, the judge who penned the trial court's judgment was not the same one who heard the prosecution witnesses testify. For another, our review of the records indicates that both the trial court and the appellate court have overlooked some material facts and circumstances of weight which could materially affect the result of this case. In the instant case, Presiding Judge Retrina E. Fuentes, the *ponente* of the Decision convicting PO1 Lumikid, did not observe or assess the demeanor of the prosecution's material lone witness while testifying as it was another judge who heard and received her testimony. Considering that the Court of Appeals and the Office of the Solicitor General heavily relied on the Decision of the RTC, an extensive review of this Court is proper.

2. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; A CRIMINAL CASE RISES OR FALLS ON THE STRENGTH OF THE PROSECUTION'S CASE, NOT ON THE WEAKNESS OF THE DEFENSE; ONCE THE PROSECUTION OVERCOMES THE PRESUMPTION OF INNOCENCE BY PROVING THE ELEMENTS OF THE CRIME AND THE IDENTITY OF THE ACCUSED AS PERPETRATOR BEYOND REASONABLE DOUBT, THE BURDEN OF EVIDENCE THEN SHIFTS TO THE DEFENSE WHICH SHALL THEN TEST THE STRENGTH OF THE PROSECUTION'S CASE EITHER BY SHOWING

THAT NO CRIME WAS, IN FACT, COMMITTED OR THAT THE ACCUSED COULD NOT HAVE COMMITTED OR DID NOT COMMIT THE IMPUTED CRIME OR, AT THE VERY LEAST, BY CASTING DOUBT ON THE GUILT OF THE ACCUSED. — While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime or, at the very least, by casting doubt on the guilt of the accused.

3. ID.; ID.; ID.; IN EVERY CRIMINAL CASE, THE PROSECUTION MUST PROVE BEYOND REASONABLE DOUBT THE COMMISSION OF THE CRIME CHARGED, AND ESTABLISH WITH THE SAME QUANTUM OF PROOF THE IDENTITY OF THE PERSON OR PERSONS RESPONSIBLE THEREFOR, BECAUSE, EVEN IF THE COMMISSION OF THE CRIME IS A GIVEN, THERE CAN BE NO CONVICTION WITHOUT THE IDENTITY OF THE MALEFACTOR BEING LIKEWISE CLEARLY ASCERTAINED. — In every criminal case, the task of the prosecution is always two-fold: (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the

identity of the malefactor being likewise clearly ascertained. The greatest care should be taken in considering the identification of the accused, especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

4. ID.; ID.; CREDIBILITY OF WITNESSES; THE INCONSISTENCIES BETWEEN THE SWORN AFFIDAVIT AND THE TESTIMONY OF THE LONE WITNESS IN COURT RELATING TO THE IDENTIFICATION OF THE ASSAILANT CANNOT BE TAKEN LIGHTLY, AS THE SAME CAST A DOUBT AS TO THE TRUE IDENTITY OF THE ASSAILANT AND THE CREDIBILITY OF THE LONE WITNESS. — Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimonies in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject. The circumstances surrounding this case militate against the application of the aforecited principle. The inconsistency between the three statements relates to the identification of the assailant. At Matinong's initial interview, she categorically declared that she did not see the actual shooting as the gunman already ran away downhill. On the other hand, in her sworn affidavit, Matinong saw the gunman glance at her from the cyclone wire near the back of the stage, and turned his back and casually walked away. Meanwhile, during her cross-examination, she stated that after she heard the gunshot, she looked at the direction where the gunshot came from, and saw the gunman still aiming his gun at Jessie. These inconsistencies of the lone witness cannot be taken lightly as it will cast a doubt as to the true identity of the assailant and the credibility of the lone witness.

5. ID.; ID.; ID.; A SUCCESSFUL PROSECUTION OF A CRIMINAL ACTION DEPENDS ON PROOF OF THE IDENTIFICATION OF THE AUTHOR OF THE CRIME AND HIS ACTUAL COMMISSION OF THE SAME; AN

AMPLE PROOF THAT A CRIME HAS BEEN COMMITTED HAS NO USE IF THE PROSECUTION IS UNABLE TO CONVINCINGLY PROVE THE OFFENDER'S IDENTITY. — It is clear that Matinong asserted in open court that she saw PO1 Lumikid for the second time only during the case conference. She did not bother to mention that she saw PO1 Lumikid for the second time on June 15, 2010, as reflected in her sworn statement. This fact is crucial in determining the identity of the assailant. The whereabouts of PO1 Lumikid in Barangay Guza, Manay Police Station and eventually at White Sand Cone Beach Resort were all corroborated by several defense witnesses and even by police officials. How could Matinong see PO1 Lumikid in Barangay Old Macopa if he was in another place? Is it possible that the real assailant was the one Matinong saw in the morning of June 15, 2010 and not PO1 Lumikid? There is no other evidence in this case aside from the testimony of the lone eyewitness which directly implicates PO1 Lumikid to the crime. The inconsistent statements could not be dismissed as inconsequential because the inconsistency goes into the very identification of the perpetrator of the crime, which is a crucial aspect in sustaining a conviction. In *People v. Tumambing*, we declared that: A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.

6. ID.; ID.; DEFENSE OF ALIBI; WHILE ACCUSED'S DEFENSE OF ALIBI IS BY NATURE A WEAK ONE, IT ASSUMES CREDENCE AND IMPORTANCE IN THE FACE OF THE DEFICIENCY IN THE PROOF SUBMITTED BY THE PROSECUTION ANENT THE IDENTITY OF THE PERPETRATOR OF THE CRIME; EVEN IF THE DEFENSE OF THE ACCUSED MAYBE WEAK, THE SAME IS INCONSEQUENTIAL IF THE PROSECUTION FAILED TO DISCHARGE THE ONUS OF THEIR IDENTITY AND CULPABILITY. — The inconsistency in the statements of the prosecution's lone witness on material points significantly erodes the credibility of her testimony, juxtaposed against the forthright and consistent testimonies of

the defense witnesses. With the probative value of the testimony of the prosecution's lone witness greatly diminished, the alibi of the accused-appellant must be given credence. In the face of the deficiency in the proof submitted by the prosecution anent the identity of the perpetrator of the crime, the alibi of PO1 Lumikid assumes credence and importance. While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak. At any rate, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability. Let it be underscored that conviction must be based on the strength of the prosecution evidence and not on the weakness of the evidence for the defense, it is incumbent upon the prosecution to prove the guilt of the accused and not the accused to prove his innocence.

7. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE CONVICTION OF THE ACCUSED MUST REST NOT ON THE WEAKNESS OF THE DEFENSE, BUT ON THE STRENGTH OF THE PROSECUTION; THE BURDEN IS ON THE PROSECUTION TO PROVE GUILT BEYOND REASONABLE DOUBT, NOT ON THE ACCUSED TO PROVE HIS INNOCENCE, AND THE FAILURE OF THE PROSECUTION TO DISCHARGE ITS BURDEN, WILL FOLLOW, AS A MATTER OF COURSE, THE ACQUITTAL OF THE ACCUSED. —Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. In the present case, it appears that the trial court brought it upon PO1 Lumikid to produce evidence to prove his innocence rather than the prosecution to do so. The statement made by the trial court is contrary to the fundamental precept of criminal law that the accused is presumed innocent until proven guilty. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution but, similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional

presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.

8. ID.; ID.; ID.; THE COURT IS NOT CALLED UPON TO SPECULATE ON WHO COMMITTED THE CRIME AND HOW IT WAS COMMITTED, AS ITS TASK IS CONFINED IN RESOLVING WHETHER THE PROSECUTION HAS ADDUCED SUFFICIENT EVIDENCE TO PROVE THAT THE CRIME ALLEGED IN THE INFORMATION WAS COMMITTED AND THAT THE ACCUSED-APPELLANT IS THE CULPRIT THEREOF. — It is apparent in this case that the lower courts greatly relied on the testimony of Matinong and disregarded all the witnesses presented by the defense for reasons that the testimonies were mostly immaterial, dealing exclusively on investigations of the incident, without the submission of any strong evidence in favor of the accused-appellant to exculpate him from the crime charged. However, this Court sees the testimony of SPO3 Juddjit Daculan material to the case. He was one who responded first to the crime scene and investigated by gathering information relative to the shooting incident. He was one of the first police officers who interviewed Matinong. x x x. The x x x testimony accompanied by the tickler of PO3 Mabini and video footage of the interview of Matinong, where she declared that she only saw the gunman near a "*lubi*" (coconut tree) which is clearly several meters away from where the victim was seated, cast a serious doubt as to her testimony in court identifying PO1 Lumikid as the assailant. Certainly, we can only speculate at this stage on who perpetrated the crime as there is nothing on the records to provide us with any better clue than what has heretofore been surmised. However, the Court is not called upon to speculate on who committed the crime and how it was committed. Our task is confined in resolving whether the prosecution has adduced sufficient evidence to prove that the crime alleged in the Information was committed and that the accused-appellant is the culprit thereof. Regrettably, the prosecution failed to discharge the *onus* of proving the identity of the malefactor.

9. ID.; ID.; ID.; WHILE THE LAW DOES NOT REQUIRE ABSOLUTE CERTAINTY, THE EVIDENCE PRESENTED BY THE PROSECUTION MUST PRODUCE IN THE MIND OF THE COURT A MORAL CERTAINTY OF THE

ACCUSED'S GUILT, FOR WHEN THERE IS EVEN A SCINTILLA OF DOUBT, THE COURT MUST ACQUIT; ACQUITTAL OF THE ACCUSED-APPELLANT OF THE CRIME CHARGED, WARRANTED. — In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit. Therefore, considering the above circumstances, the acquittal of PO1 Lumikid is called for.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Largo Bernales-Largo Tumanda Hernandez & Guinomla for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal from the September 25, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01558-MIN, which affirmed with modification the May 26, 2016 Decision[2] of the Regional Trial Court *(RTC)*, Branch 10, Davao City.

The Facts

Accused-appellant PO1 Dennis Jess Esteban Lumikid was indicted for Murder as defined and penalized under Article 248 of the Revised Penal Code. The accusatory portion of the Information, filed on August 16, 2010, alleged:

That on or about June 14, 2010 in Manay, Davao Oriental, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually

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[1] *Rollo*, pp. 3-21. Penned by Associate Justice Louis P. Acosta, with the concurrence of Associate Justices Oscar V. Badelles and Ronaldo B. Martin.

[2] CA *rollo*, pp. 99-153. Penned by Presiding Judge Retrina E. Fuentes.

helping one another, while armed with handgun and with deliberate intent to kill Desiderio "Jessie" Camangyan, with treachery, evident premeditation and accused PO1 Lumikid taking advantage of his position as police officer, did then and there willfully, unlawfully, and feloniously attack, assault and shoot said Desiderio "Jessie" Camangyan with the use of said firearm, thereby inflicting upon the latter gun shot wound causing his death.[3]

In his arraignment, PO1 Lumikid pleaded not guilty[4] to the offense charged in the information. Thereafter, trial on the merits ensued.

The prosecution presented five (5) witnesses, namely, PSI Felino Magbanua, Jr., Ruth Matinong, Alfonso Alcantara, SPO Rodante Palma Gil and Deputy Provincial Director for Operations Nemesio De Quia.[5] The defense, for its part, presented a total of ten (10) witnesses, namely, SPO3 Juddjit Daculan, PO3 Normel Alan Mabini, SPO1 Roniechito Macadagat, Alvin M. Magdagasang, PSI Arnel Nueva, Editha Andoyo, Jerome Pausta, Aurelio Gonato, Jr., PO3 Normel Alan Mabini, and the accused-appellant himself, PO1 Lumikid.[6]

Version of the Prosecution:

On the evening of June 14, 2010, Desiderio "Jessie" Camangyan and his common-law partner, Ruth Matinong, attended an amateur singing contest in Barangay Old Macopa, Manay, Davao Oriental, to which Jessie was invited by Barangay Captain Romeo Antolin to host the event. Jessie was a media practitioner and a block timer in a local FM radio station in Manay, Davao Oriental. Matinong and her child were seated on one of the benches provided for the audience, located just beside the stairs of the stage.[7]

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[3] Record (Vol. I), p. 1.

[4] *Id.* at 99.

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

[6] *Id.* at 6.

[7] CA *rollo*, p. 99.

At one point, Matinong went to the restroom. On her way to the restroom, she observed two (2) men beside the comfort room talking, one of them was wearing a black t-shirt, camouflage pants and combat boots, and was intently watching Jessie with suspicious eyes, twelve (12) meters away from the stage where Jessie was hosting. After she went back to her bench, Jessie went down the stage. During that time, Matinong told Jessie, "Pang, there are two persons talking near the comfort room and their eyes are focused on you and they were looking at you." Jessie, after looking at the said men, assured Matinong that they were part of Barangay Captain Antolin's security personnel who were there to guard the event.[8]

At about 10:30 p.m., Matinong heard a single gunshot and allegedly saw one of the two (2) suspicious-looking men shoot Jessie from behind. Matinong ran towards Jessie and still saw the assailant, who was wearing a black t-shirt, camouflage pants and combat boots, allegedly aiming a gun towards Jessie outside the cyclone fence and walked downhill. Matinong shouted for help and a commotion ensued. The security personnel fired warning shots in the air, while the gunman fled towards a grassy and dark area at the back of the stage. She continued to scream for help but nobody came to her succor. Even Barangay Captain Antolin was seen going back to his house which was fronting the covered court.[9]

It was only at 9:00 a.m. of the following day that Jessie's body was removed and brought to Padilla Funeral Homes in Mati City. In the Medico-Legal Report issued by PSI Felino M. Brunia, Jr., the cause of death of Jessie was a gunshot wound to the head.[10]

Thereafter, "Task Force Jessie" was created to investigate Jessie's death. In the course of the investigation, Matinong gave the description of the gunman whom she saw minutes before Jessie was killed. Out of the description given, a cartographic

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[8] *Id.* at 99-100.

[9] *Id.* at 100.

[10] *Id.* at 101.

sketch was made. When Matinong was shown the copies of the pictures of seven (7) police personnel assigned in Manay, Davao Oriental, she identified the accused-appellant, PO1 Lumikid, as the one who shot Jessie.[11]

Version of the Defense:

PO1 Lumikid alleges that in the afternoon of June 14, 2010, he went to the house of Aurelio Gonato, Jr. in Barangay Guza, Manay, Davao Oriental, with Jerome Pausta and Joel Mamparo, where they drank liquor and sang videoke until 1:00 a.m. of June 15, 2010. According to PO1 Lumikid, he slept over at Gonato's house until 9:00 a.m. and left after receiving a text message from PSI Nueva to report immediately at Manay Police Station.[12]

Upon arriving at the Manay Police Station, PO1 Lumikid was instructed to proceed to White Sand Cone Beach Resort, and to report directly to PSI Nueva. Thus, he went immediately to the White Sand Cone Beach Resort and arrived there at around 12 noon of June 15, 2010.[13]

Six (6) days after the shooting incident, or on June 20, 2010, PO1 Lumikid, along with other police officers, was instructed to attend a case conference at the PNP Provincial Headquarters in Mati City, Davao Oriental. During the conference, PO1 Lumikid just sat and listened. No questions were propounded to him. Two (2) days after the conference, or on June 22, 2010, PO1 Lumikid received a text message from PSI Nueva, informing him that he would be disarmed upon orders of the PNP Provincial Director. Upon the instructions of PSI Nueva, PO1 Lumikid complied with the orders and turned over his firearms. At that point, PO1 Lumikid was informed by PSI Nueva that he was to be placed under restricted status, and was to be escorted immediately to the PNP Provincial Headquarters in Mati City upon orders of the PNP Provincial Director.[14]

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[11] *Id.* at 102.

[12] *Id.* at 107-108.

[13] *Id.* at 108.

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

For five (5) months, PO1 Lumikid was confined in the radio room of the PNP Provincial Headquarters in Mati City under restricted status. On November 3, 2010, he was eventually transferred to the Provincial Jail in Mati City.[15]

On May 26, 2016, the RTC convicted PO1 Lumikid of the crime charged. The dispositive portion of the Decision states:

> WHEREFORE, the Court finds accused Dennis Lumikid guilty of the crime of Murder with treachery as the qualifying circumstance and hereby sentences him to suffer a penalty of reclusion perpetua with the accessory penalties prescribed by law. He is ordered to pay the heirs of the victim the amounts of ₱75,000.00 for the death of Camangyan, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.
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> SO ORDERED.[16]

In concluding that Matinong was able to convince the trial court that PO1 Lumikid indeed committed the killing of Jessie, the RTC ratiocinated:

> Ruth Matinong is the only credible eye witness in the killing of Desiderio Camangyan on June 14, 2010. The evidence presented by the accused failed to destroy the credibility of prosecution's lone witness.
>
> Her eyewitness account of what happened is credible compared to the unreliable alibi of the accused conveniently stating that he was in a drinking session with his three close friends, as rain poured out heavily as the reason why he was not able to go home or went to other place which is only 60 kilometers more or less to Barangay Old Macopa.
>
> Such alibi not supported by any reliable evidence, cannot overcome the convincing testimony of Ruth Matinong that accused is the gunman.
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> Moreover, there is no possible reason why Ruth Matinong would falsely testify against accused and insists on his guilt for such serious and heavy offense as charged.

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[15] *Id.* at 110.

[16] *Id.* at 152.

"It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law."[17]

On appeal, the CA agreed with the findings of the trial court that the defense failed to discredit the straightforward, unequivocal and convincing testimony of Matinong who positively identified PO1 Lumikid as the perpetrator of the crime. The appellate court was convinced that there is no showing of any ill or improper motive on the part of Matinong to testify against PO1 Lumikid. Her relationship with the victim even made her testimony more credible and truthful. Likewise, the CA concurred with the RTC that the killing of Jessie was attended with treachery, the prosecution having established that the fatal shooting of the victim was swift and sudden, without any warning, leaving Jessie defenseless. While the judgment of conviction was sustained, the award of damages was modified. The *fallo* of the September 25, 2017 Decision reads:

WHEREFORE, the Decision dated 26 May 2016 of the Regional Trial Court, 11th Judicial Region, Branch 10, Davao City in Criminal Case No. 5630-10 is hereby AFFIRMED with MODIFICATION.

The awards of civil indemnity *ex delicto*, moral and exemplary damages against PO1 Dennis Jess E. Lumikid are hereby increased to Php100,000.00 each. PO1 Dennis Jess E. Lumikid is also ordered to pay interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid.

SO ORDERED.[18]

Now before us, the People manifested that it would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in its appellee's brief before the CA.

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[17] *Id.* at 146-147; citation omitted.

[18] *Rollo*, p. 20.

Meanwhile, PO1 Lumikid filed his Supplemental Brief, summarizing his arguments raised in his Appellant's Brief, Reply and Motion for Reconsideration which he filed before the CA.

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and PO1 Lumikid should be acquitted based on reasonable doubt.

As a rule, the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal. However, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[19] After a judicious examination of the records, this Court found material facts and circumstances that the lower courts had overlooked or misappreciated which, if properly considered, would justify a conclusion different from that arrived by the lower courts.

It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first-hand account on the witnesses' manner of testifying in court and their demeanor during trial. The Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility.[20] However, this rule is not applicable in the present case. In *Garcia v. Court of Appeals*,[21] this Court stated that:

> In general, factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon this Court. The rule, however, does not apply in the present case. For one, the judge who penned the trial court's judgment was not the same one who heard the prosecution witnesses testify. For another, our review of the records indicates that both the trial court and the appellate court have overlooked some material facts and circumstances of weight which could materially affect the result of this case.[22]

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[19] *People v. Juan Credo y De Vergara, et al.*, G.R. No. 230778, July 22, 2019.

[20] *People v. Ramos, et al.*, 715 Phil. 193, 208 (2013).

[21] 420 Phil. 25 (2001).

[22] *Id.* at 36-37; citations omitted.

In the instant case, Presiding Judge Retrina E. Fuentes, the *ponente* of the Decision convicting PO1 Lumikid, did not observe or assess the demeanor of the prosecution's material lone witness while testifying as it was another judge who heard and received her testimony. Considering that the Court of Appeals and the Office of the Solicitor General heavily relied on the Decision of the RTC, an extensive review of this Court is proper.

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime or, at the very least, by casting doubt on the guilt of the accused.[23]

In every criminal case, the task of the prosecution is always two-fold: (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there

[23] *People v. Rodrigo*, 586 Phil. 515, 527 (2008).

can be no conviction without the identity of the malefactor being likewise clearly ascertained.[24]

The greatest care should be taken in considering the identification of the accused, especially when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.[25]

In the present case, the records show that PO1 Lumikid's arrest and eventual conviction were wholly based on the testimony of Matinong who testified as an eyewitness and who identified PO1 Lumikid as the perpetrator of the crime. To the prosecution, the trial court, and the appellate court, an eyewitness identification coming from the common-law partner of the victim appeared to have been enough to qualify the identification as fully positive and credible. Thus, none of them appeared to have fully examined the real evidentiary worth of the identification Matinong made.

The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of PO1 Lumikid as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. Here, an impermissible suggestion was made when the photographs of the police officers, except PO1 Lumikid, shown to Matinong, were official photographs showing the police officers in their proper uniform. Likewise, it appears that PO1 Lumikid's photograph was only a cropped image, and not his official and formal picture in the police records. In addition, except for PO1 Lumikid, all other policemen in the pictures are stationed in Baganga, Davao Oriental, while PO1 Lumikid was the only

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[24] *People v. Vargas, et al.*, 784 Phil. 144, 149 (2016).

[25] *People v. Rodrigo*, 586 Phil. 515, 528 (2008).

police officer stationed in Manay, Davao Oriental. At this point, the initial photographic identification of PO1 Lumikid already cast a doubt as to the identity of the person who killed Jessie.

Based from the records of the present case, there are three (3) versions as to how Matinong, the prosecution's lone eyewitness, allegedly saw the assailant. *First*, Matinong saw the gunman already running downhill after the shooting.[26] *Second*, while hugging Jessie, Matinong saw the gunman glance at her from the cyclone wire near the back of the stage; the gunman then turned his back and casually walked away.[27] *Third*, prior to going up the stage, she glanced at the direction where the gunman was positioned at, and she saw the gunman still aiming his gun towards Jessie.[28] Also, it must be noted that based on Matinong's Sworn Statement, she averred that in the morning of June 15, 2010, while still in Barangay Old Macopa, she saw Barangay Captain Antolin, together with two (2) camouflaged escorts, who was about to leave the area. She declared under oath that one of the escorts of Barangay Captain Antolin is the same person she saw who shot the victim in the evening of June 14, 2010, herein accused-appellant.[29]

Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimonies in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject.[30]

The circumstances surrounding this case militate against the application of the aforecited principle. The inconsistency between

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[26] Records (Vol. III), pp. 613-614.

[27] Records (Vol. I), p. 20.

[28] TSN, May 9, 2012, p. 11.

[29] Records (Vol. I), p. 22.

[30] *Gonzales, Jr. v. People*, 544 Phil. 409, 417-418 (2007).

the three statements relates to the identification of the assailant. At Matinong's initial interview, she categorically declared that she did not see the actual shooting as the gunman already ran away downhill. On the other hand, in her sworn affidavit, Matinong saw the gunman glance at her from the cyclone wire near the back of the stage, and turned his back and casually walked away.[31] Meanwhile, during her cross-examination, she stated that after she heard the gunshot, she looked at the direction where the gunshot came from, and saw the gunman still aiming his gun at Jessie. These inconsistencies of the lone witness cannot be taken lightly as it will cast a doubt as to the true identity of the assailant and the credibility of the lone witness.

Another glaring inconsistency in Matinong's declarations was apparent in her sworn statement executed on June 21, 2010. According to her sworn statement, she saw the assailant on June 15, 2010 which is the day after the shooting incident. She declared under oath that the person who shot the victim on the night of June 14, 2010 was the same person she saw in the morning of June 15, 2010 with Barangay Captain Antolin in Barangay Old Macopa. The following are excerpts of the sworn statement:

> 41. Q - How sure are you that the person in photograph marked with letter "D" was the same person who shot Jessie Camangyan on June 14, 2010 at around 10:30 in the evening at the gym arena of Brgy. Macopa, Manay, Davao Oriental?
>
> (At this moment, witness Ruth Matinong shed tears)
>
> A - I am very sure sir. For I clearly saw him as the very same person who was as if monitoring Jessie Camangyan prior to the shooting, and then again the very same person I saw face to face as he shot Jessie Camangyan, and then again he was also the VERY SAME PERSON who escorted Brgy. Capt. Antoling *(sic)* at the vicinity near the crime scene in the morning of June 15, 2010 at Brgy. Macopa, Manay, Davao Oriental.[32]

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[31] Records (Vol. I), p. 20.

[32] *Id.* at 22.

However, a review of the entire open court testimony of Matinong will reveal that no testimony was made by Matinong that she saw PO1 Lumikid on June 15, 2010. The following are Matinong's testimonial account of the second time she allegedly saw and identified PO1 Lumikid.

Q: By the way Madam witness, after that incident on June 14, 2010, when for the second time have you seen accused Lumikid?
A: June 21, Ma'am.

Q: Where did you see him?
A: At the Barracks of the Police, Police Camp at Dahican, Mati, Davao Oriental.

Q: Are you referring to the conference room of Davao Oriental Police Provincial Office, Mati City?
A: Yes Ma'am.[33]

COURT: Just few clarificatory questions from the Court.

Q: From the time you allegedly saw the accused shot your live-in-partner, how many days or months again were you able to see the accused?
A: I saw him again on June 21, 2010 when the PPO had a conference.

Q: How were you able to see the accused?
A: The CIDG made me identify if the accused is present.[34]

It is clear that Matinong asserted in open court that she saw PO1 Lumikid for the second time only during the case conference. She did not bother to mention that she saw PO1 Lumikid for the second time on June 15, 2010, as reflected in her sworn statement. This fact is crucial in determining the identity of the assailant. The whereabouts of PO1 Lumikid in Barangay Guza, Manay Police Station and eventually at White Sand Cone Beach Resort were all corroborated by several defense witnesses and even by police officials. How could Matinong see PO1 Lumikid in Barangay Old Macopa if he was in another place?

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[33] TSN, December 20, 2011, p. 77.

[34] TSN, September 6, 2012, pp. 27-28.

Is it possible that the real assailant was the one Matinong saw in the morning of June 15, 2010 and not PO1 Lumikid? There is no other evidence in this case aside from the testimony of the lone eyewitness which directly implicates PO1 Lumikid to the crime. The inconsistent statements could not be dismissed as inconsequential because the inconsistency goes into the very identification of the perpetrator of the crime, which is a crucial aspect in sustaining a conviction.

In *People v. Tumambing*,[35] we declared that:

> A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.

The inconsistency in the statements of the prosecution's lone witness on material points significantly erodes the credibility of her testimony, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the testimony of the prosecution's lone witness greatly diminished, the alibi of the accused-appellant must be given credence.

In the face of the deficiency in the proof submitted by the prosecution anent the identity of the perpetrator of the crime, the alibi of PO1 Lumikid assumes credence and importance. While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak. At any rate, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability. Let it be underscored that conviction must be based on the strength of the prosecution evidence and not on the weakness of the evidence for the defense, it is incumbent upon the prosecution to prove

[35] 659 Phil. 544 (2011); citation omitted.

the guilt of the accused and not the accused to prove his innocence.[36]

While judiciously reviewing the Decision of the RTC, this Court noted a statement where the RTC began its disquisition of this case, it stated that:

> After going over the evidence presented by both parties in this case, the court finds that the accused has absolutely no solid evidence to rely on for his acquittal.[37]

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[38] In the present case, it appears that the trial court brought it upon PO1 Lumikid to produce evidence to prove his innocence rather than the prosecution to do so. The statement made by the trial court is contrary to the fundamental precept of criminal law that the accused is presumed innocent until proven guilty. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution but, similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.[39]

Moreover, the prosecution has not completely ruled out the probability that another person/s may have committed the crime.

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[36] *People v. Ariel Manabat Cadenas, et al.*, G.R. No. 233199, November 5, 2018.

[37] Records (Vol. IV), p. 777.

[38] *Daayata, et al. v. People*, 807 Phil. 102, 118 (2017).

[39] *Id.*

It is unusual that members of the Philippine Army or CAFGU assigned to secure the area, who were most likely wearing a black t-shirt, camouflage pants and combat boots, were not invited by the task force for questioning. In fact, it was not established that PO1 Lumikid was in Barangay Old Macopa during the time of the killing. Also, it must be emphasized that no physical evidence was presented by the prosecution that will show that PO1 Lumikid was in Barangay Old Macopa before, during and after the shooting. Another strange fact from the instant case was the fact that of the three hundred (300) or more persons in attendance during the time of the shooting, not even one was presented by the prosecution.

It is apparent in this case that the lower courts greatly relied on the testimony of Matinong and disregarded all the witnesses presented by the defense for reasons that the testimonies were mostly immaterial, dealing exclusively on investigations of the incident, without the submission of any strong evidence in favor of the accused-appellant to exculpate him from the crime charged. However, this Court sees the testimony of SPO3 Juddjit Daculan material to the case. He was one who responded first to the crime scene and investigated by gathering information relative to the shooting incident. He was one of the first police officers who interviewed Matinong. Pertinent portions of his testimony are the following:

Q: What are the particular questions you propounded on Ruth Matinong?
A: First question that I asked her what was *(sic)* happened and she said that her live-in-partner Jessie Camangyan was shot by unidentified person. She said he was shot and then after that . . .

Q: Just a minute. Was shot?
A: Yes, Your Honor.

Q: What was your subsequent question?
A: My second question is did you see the assailant.

Q: And what was the response?
A: She did not answer, Your Honor, in a yes or no but she elaborate[d] to me.

Q: What was the elaboration?
A: When the singing contest started and until 10:30 in the evening, she heard a gun burst. When she heard the gun burst, she immediately looked at her live-in-partner at the stage. She saw her live-in-partner Jessie Camangyan wet with blood and then he fell on the ground of the barangay stage and she immediately ran to her live-in-partner but before she ran, she looked around. She turned her head leftward and she saw a man running at the back of the barangay stage.

x x x x x x x x x

Q: Did you ask her if she saw the face of the assailant in your investigation?
A: I asked her if she saw the face of the assailant. She could not recognize because the man was already running towards the back portion of the barangay stage.[40]

The following testimony accompanied by the tickler[41] of PO3 Mabini and video footage of the interview of Matinong, where she declared that she only saw the gunman near a "*lubi*" (coconut tree) which is clearly several meters away from where the victim was seated, cast a serious doubt as to her testimony in court identifying PO1 Lumikid as the assailant. Certainly, we can only speculate at this stage on who perpetrated the crime as there is nothing on the records to provide us with any better clue than what has heretofore been surmised. However, the Court is not called upon to speculate on who committed the crime and how it was committed. Our task is confined in resolving whether the prosecution has adduced sufficient evidence to prove that the crime alleged in the Information was committed and that the accused-appellant is the culprit thereof. Regrettably, the prosecution failed to discharge the *onus* of proving the identity of the malefactor.

In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral

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[40] TSN, November 14, 2012, pp. 9-12.

[41] Records (Vol. III), pp. 613-614.

certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit.[42] Therefore, considering the above circumstances, the acquittal of PO1 Lumikid is called for.

WHEREFORE, premises considered, the September 25, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01558-MIN is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant PO1 Dennis Jess Esteban Lumikid is **ACQUITTED** of the crime charged, based on 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 Regional Superintendent of the Davao Prison and Penal Farm, for immediate implementation. Said Regional Superintendent is ordered to report to this Court within five (5) working days from receipt of this Decision the action he has taken.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 243024. June 23, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JEFFERSON BACARES,** *accused-appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; MAY BE CHARACTERIZED AS THAT EVIDENCE THAT PROVES A FACT OR SERIES OF FACTS FROM WHICH

[42] *Hilario B. Aliling v. People*, G.R. No. 230991, June 11, 2018.

THE FACTS IN ISSUE MAY BE ESTABLISHED BY INFERENCE. — Circumstantial evidence may be characterized as that evidence that proves a fact or series of facts from which the facts in issue may be established by inference. It is not a weaker form of evidence *vis-a-vis* direct evidence, as case law has consistently recognized that it may even surpass the latter in weight and probative force.

2. ID.; ID.; ID.; WHEN SUFFICIENT FOR CONVICTION; GUIDELINES THAT COURTS MUST OBSERVE WHEN FACED WITH CIRCUMSTANTIAL EVIDENCE IN DECIDING CRIMINAL CASES. — Under Section 4, Rule 133 of the Revised Rules on Evidence, 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. *Almojuela v. People* reiterated the following guidelines that the courts must observe when faced with circumstantial evidence in deciding criminal cases: a. Circumstantial evidence should be acted upon with caution; b. All the essential facts must be consistent with the hypothesis of guilt; c. The facts must exclude every other theory but that of the guilt of the accused; and d. The facts must establish with certainty the guilt of the accused so as to convince beyond reasonable doubt that the accused was the perpetrator of the offense. 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. Thus, the determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test and not a quantitative one. The proven circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. In this wise, the Court has held that "[c]ircumstantial evidence is like a 'tapestry made up of strands which create a pattern when interwoven.' Each strand cannot be plucked out and scrutinized individually because it only forms part of the entire picture."

3. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES AND DISCREPANCIES PERTAINING TO TRIVIAL MATTERS; CASE AT BAR. — Although appellant has also pointed out some inconsistencies in the witnesses' testimonies, such are insignificant and do not affect the credibility of their entire testimonies. Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrator of the crime.

4. ID.; ID.; ID.; AS A RULE, TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION THEREOF, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO RESPECT. — [T]his 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 their 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.

5. CRIMINAL LAW; *CORPUS DELICTI*; REFERS TO THE FACT OF THE COMMISSION OF THE CRIME, NOT TO THE PHYSICAL BODY OF THE DECEASED; ELEMENTS. — *Corpus delicti* is the body, foundation or substance of a crime. It refers to the fact of the commission of the crime, not to the physical body of the deceased. Because *corpus delicti* may be proven by circumstantial evidence, it is not necessary for the prosecution to present direct evidence to prove the *corpus delicti*. Nevertheless, the prosecution must present the following elements: (a) that a certain result or fact has been established, *i.e.*, that a man has died; and (b) that some person is criminally responsible for it. In this case, the prosecution was able to prove the death of the victim and that the circumstances presented proved that appellant caused such death.

6. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES AND MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS

SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED. — Anent appellant's defenses of denial and alibi, such are inconsequential. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.

7. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; TO BE PROPERLY APPRECIATED, IT MUST BE SHOWN THAT THE ADVANTAGE OF SUPERIOR STRENGTH WAS PURPOSELY AND CONSCIOUSLY SOUGHT BY THE ASSAILANT; CASE AT BAR. — It has been stressed that for abuse of superior strength to be properly appreciated as a qualifying circumstance, it must be shown that the advantage of superior strength was purposely and consciously sought by the assailant. x x x To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case. The testimonies of the witnesses do not establish that appellant made any conscious effort to use his age, size, or strength to facilitate the commission of the crime. Thus, the prosecution failed to prove that appellant purposely sought advantage of his superior strength. It is established that qualifying circumstances must be proven by clear and convincing evidence. It also bears reiterating that a qualifying circumstance must be proven as clearly as the crime itself. Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.

8. ID.; HOMICIDE; DEFINED; CRIME COMMITTED IN CASE AT BAR; PENALTY. — [T]his Court must rule out abuse of superior strength as a qualifying circumstance and, there being no other circumstance alleged and proven to qualify the crime to murder, appellant can only be liable for homicide. Under Article 249 of the Revised Penal Code, homicide is defined as follows: Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by

reclusion temporal. Applying the Indeterminate Sentence Law, the appellant should be sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* to twenty (20) years of *reclusion temporal*.

9. CIVIL LAW; DAMAGES; MODIFICATION THEREOF; PROPER IN CASE AT BAR. — [T]he award of damages must also be modified in conformity with *People v. Jugueta*, where the Court laid down the rule that in crimes where the death of the victim resulted and the penalty is divisible, such as in homicide, the damages awarded should be ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

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 resolution of this Court is the appeal of accused-appellant Jefferson Bacares that seeks to reverse and set aside the Decision[1] dated July 11, 2018 of the Court of Appeals *(CA)*, affirming and modifying the Decision[2] dated May 30, 2016 of the Regional Trial Court *(RTC)*, Branch 29, San Fernando City, La Union, finding him guilty beyond reasonable doubt of the crime of Murder.

The facts follow.

Around 7:30 a.m. of December 19, 2013, Alvin Almoite went to the house of appellant in Cabaroan, Bacnotan, La Union to hang out with the latter. When Almoite arrived at the place, appellant was having a drinking spree with Dong Mapili, Benjie

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan (now an Associate Justice of the Supreme Court).

[2] CA *rollo*, pp. 66-74. Penned by Presiding Judge Asuncion Fikingas-Mandia.

Delena and John Bacares, appellant's brother. Emily Chan, appellant's mother, was also there. The men finished drinking at 9:00 a.m., with the three companions of the appellant leaving the house one by one. When Almoite, appellant and appellant's mother were the only ones left at the house, Almoite heard appellant whisper to his mother about his anger and intention to kill Clarita Lubian-Espero, the victim, saying, "*Putang inang matandang Caling na yan, papatayin ko ang matandang yan*." Almoite knew that appellant was referring to the victim because he witnessed the said victim and appellant's mother having a heated argument several days before December 19, 2013. Almoite then saw appellant and his mother embrace each other. Thereafter, Almoite left appellant's house and stayed until 11:00 a.m. at Florante Espero's house, about 50 meters away. Almoite went back to appellant's house to ask whether the others who were in the drinking spree went back, but only appellant's mother was in the said house.[3]

On the same date, around 11:40 a.m., Michael Sibayan, a neighbor of the victim in Cabaroan, Bacnotan, La Union, was at the back of his house watering the plants when he suddenly heard a loud sound coming from the house of the victim, and then saw appellant come out of the victim's house swinging a pointed metal that he was holding. Sibayan was about two meters away from appellant when he saw the latter. Sibayan further noticed that appellant was wearing a light green shirt with red stains on the left portion, as well as what appears to be blood on appellant's hand. Thereafter, he saw appellant go to his own house. After a few minutes, Sibayan again saw appellant and noticed that the latter had already changed his shirt into a blue one. Sibayan and appellant walked together towards the same direction going to the cooperative. Sibayan then asked appellant why he looked worried and the latter kept silent. When they reached the cooperative, appellant asked his older sister to give him ₱20.00 because he said that he was going somewhere.[4]

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

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

Later that same morning, Almoite went to the house of the victim and noticed that the bamboo fence located at the back of the house was damaged. Almoite proceeded to call out to the victim but there was no response. Almoite then saw his brother, Dale Bryan, arriving at the victim's house, followed by Florence Espero, the victim's granddaughter.[5]

Florence came from her school Christmas party when she arrived at her grandmother's house, around 11:50 a.m. of December 19, 2013, where she saw Almoite and Dale Bryan at the victim's backyard and asked them if her grandmother was home. Almoite answered that the victim was not home but Florence still knocked at the front door, with no response. She proceeded to the back door and found that the said door was unlocked with the tie used to close it appearing to be cut by a knife. When she entered the room, she saw her grandmother unconscious and lying flat on the floor in her own blood. Florence tried to wake her grandmother up and noticed that the latter incurred stab wounds on her back. She then immediately cried for help.[6]

Thereafter, PO2 Vladimir Espero, the son of the victim, arrived at the latter's house after he was notified by his brother of what transpired. PO2 Espero saw his mother's body and, together with his brother, brought the victim to the Bacnotan District Hospital but was declared dead on arrival. PO2 Espero reported the incident at the Bacnotan Police Station.[7]

The victim's cause of death, as shown in the medico-legal report, was due to "blunt traumatic injuries of the head and chest and stab wounds at the back."[8]

As such, the victim's family incurred ₱29,000.00 as funeral expenses and ₱5,000.00 as burial costs.[9]

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[5] *Id.* at 69.

[6] *Id.* at 68.

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

[8] *Id.* at 67.

[9] *Id.*

Consequently, an Information was filed against appellant for the crime of murder that reads as follows:

> That on or about the 19th day of December 2013, in the Municipality of Bacnotan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with cruelty and abuse of superior strength, did then and there willfully, unlawfully, and feloniously x x x attack, assault, and stab Clarita Lubian-Espero, thereby inflicting upon her blunt traumatic injuries of the head and chest and stab wounds at the back which caused her death, to the damage and prejudice of her heirs.
>
> CONTRARY TO LAW.[10]

During his arraignment, appellant entered his plea of "not guilty." Thereafter, trial on the merits ensued.

The prosecution presented the testimonies of Almoite, Sibayan, Florence and PO2 Espero.

Appellant, during his testimony, raised the defenses of denial and alibi. According to him, on December 19, 2013, around 5:00 a.m., he was at their residence in Cabaroan, Bacnotan, La Union with his mother, Emily, who was not feeling well at that time. They were with his siblings — John Bacares, Jamaica Bacares and Jess Bacares — and his friends Almoite, Dong and Delena. They had a drinking spree the night before and, around 7:00 a.m., they all ate before he went to Manila. Around 8:00 a.m., he proceeded to the national highway to ride a tricycle going to the town proper. On his way to the town, he saw Sibayan and asked the latter for a light on his cigarette.[11]

It was while he was in Antipolo that he learned about the death of the victim and, after six to seven months, he found out that he was the suspect. He, thus, intended to go back to Cabaroan to defend himself but was warned by his mother not to do so because his life was in danger.[12]

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[10] *Id.* at 66.

[11] *Rollo*, p. 6.

[12] *Id.*

The RTC, on May 30, 2016, promulgated its Decision finding appellant guilty beyond reasonable doubt of the crime of murder, thus:

> WHEREFORE, premises duly considered, the Court finds the accused Jefferson Bacares GUILTY beyond reasonable doubt of the crime of murder and hereby sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the victim civil indemnity in the amount of ₱75,000; moral damages in the amount of ₱75,000; exemplary damages in the amount of ₱30,000 and actual damages in the amount of ₱34,000. The period of his preventive imprisonment shall be credited in his favor.
>
> SO ORDERED.[13]

The RTC ruled that the circumstantial evidence presented by the prosecution was sufficient to establish the fact that the victim was murdered by appellant because of the qualifying aggravating circumstance of abuse of superior strength.

Appellant elevated the case to the CA and, on July 11, 2018, it dismissed the appeal and affirmed the decision of the RTC with modifications, thus:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit.
>
> The Decision dated 30 May 2016 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 29, in Criminal Case No. 10329 is AFFIRMED subject to the following MODIFICATIONS respecting the proper penalty to be imposed and award of damages, *viz.*:
>
> a. Accused-appellant Jefferson Bacares is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; and
>
> b. The awards of civil indemnity, moral damages, and exemplary damages are increased to Php100,000.00 each.
>
> Furthermore, interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid is to be

[13] CA *rollo*, p. 74.

imposed on the civil indemnity, moral damages, exemplary damages, and actual damages.

SO ORDERED.[14]

The CA ruled that the guilt of appellant was proven by the prosecution beyond reasonable doubt. According to the CA, the series of circumstances presented by the prosecution constituted an unbroken chain which led one to a fair and reasonable conclusion pointing to the appellant, to the exclusion of the others, as the guilty person. It also agreed with the RTC that the qualifying aggravating circumstance of abuse of superior strength was proven sufficiently by the prosecution.

In his appeal with this Court, appellant raises the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED BY MERELY RELYING ON QUESTIONABLE CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PROSECUTION.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF MURDER DESPITE THE PROSECUTION'S FAILURE TO PROVE ALL THE ELEMENTS THEREOF.

III

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL AND ALIBI.[15]

Appellant insists that his guilt was not proven beyond reasonable doubt by the prosecution.

The appeal is unmeritorious.

According to appellant, the circumstantial pieces of evidence presented by the prosecution do not collectively constitute a

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

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

clear pattern and unbroken chain that would lead to a conclusion that he committed the crime charged against him. The argument deserves scant consideration.

The CA did not err in finding that the series of circumstances presented by the prosecution as evidence established appellant's guilt beyond reasonable doubt, thus:

> After a thorough evaluation and scrutiny of the evidence on record, We arrive at the conclusion that the guilt of appellant of the crime charged was established beyond reasonable doubt. We shall discuss *in seriatim* the series of circumstances establishing his guilt, *viz.*:
>
> First. Around 9:00 a.m. on 19 December 2013, or about a couple of hours before the lifeless body of Espero was found inside her house, Alvin Almoite overheard appellant whisper to his mother, "*PUTANG INANG MATANDA NA YAN PAPATAYIN KO YAN*."
>
> Second. Between 11:00 a.m. to 12:00 noon of the same day, Michael Sibayan, who was then watering the plants at the backyard of the victim's house, heard a thud inside the victim's house. Thereafter, he saw a restless and nervous appellant coming out of Espero's house holding a pointed metal and swinging it and was going to the direction of his (appellant's) house. He also noticed that there was blood stain on the left portion of the light green shirt he was wearing. After watering the plants, Sibayan chanced upon appellant who was going to the direction of a cooperative. He observed that appellant had changed into a clean blue shirt. But when he asked him why he looked uneasy, appellant answered that nothing was bothering him.
>
> Third. The autopsy report revealed that the victim died due to stab wounds inflicted on her back using a sharp object. She likewise suffered from traumatic injuries on her head, neck, chest, and extremities. Intent to kill is thus evident in the manner in which the victim was attacked, the weapon used, and the nature of the wounds sustained.
>
> Fourth. After the incident, appellant deserted Bacnotan, La Union and went to Laguna allegedly to work for a trucking company as a truck helper. The Court is more convinced that appellant evaded arrest and went into hiding because despite learning that he was the primary suspect for the death of Espero, he never showed up to clear his name. In fact, he was apprehended only on 14 October 2015 in Antipolo City. While not an element of the crime of murder, flight is indicative of guilt.

Fifth. Appellant was positively identified by the prosecution witnesses in open court. Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. A witness may not have actually seen the very act of commission of a crime but he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime.

Sixth. It was appellant who had the motive to kill the victim due to some previous quarrels and disagreements between appellant and the victim. In fact, a few days before the fateful incident, appellant threatened to kill Espero after the latter accused the former of stealing her chicken. On that occasion, the victim threatened to have appellant incarcerated should he fail to pay her Php25,000.00. While the motive of an accused in a criminal case is generally held to be immaterial, not being an element of the crime, motive becomes important, when, as in this case, the evidence of the commission of the crime is purely circumstantial.

Seventh. The Court sees no cogent reason to doubt the truthfulness of the incriminatory testimonies of the prosecution witnesses against the appellant considering that as admitted by the appellant himself, they had no ill-motive towards him.[16]

Circumstantial evidence may be characterized as that evidence that proves a fact or series of facts from which the facts in issue may be established by inference.[17] It is not a weaker form of evidence *vis-à-vis* direct evidence, as case law has consistently recognized that it may even surpass the latter in weight and probative force.[18]

Under Section 4, Rule 133 of the Revised Rules on Evidence, 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

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[16] *Rollo*, pp. 9-11; citations omitted.

[17] *People v. Elever Jaen*, G.R. No. 241946, July 29, 2019.

[18] *Id.*

reasonable doubt. *Almojuela v. People*[19] reiterated the following guidelines that the courts must observe when faced with circumstantial evidence in deciding criminal cases:

a. Circumstantial evidence should be acted upon with caution;

b. All the essential facts must be consistent with the hypothesis of guilt;

c. The facts must exclude every other theory but that of the guilt of the accused; and

d. The facts must establish with certainty the guilt of the accused so as to convince beyond reasonable doubt that the accused was the perpetrator of the offense. 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.[20]

Thus, the determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test and not a quantitative one. The proven circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. In this wise, the Court has held that "[c]ircumstantial evidence is like a 'tapestry made up of strands which create a pattern when interwoven.' Each strand cannot be plucked out and scrutinized individually because it only forms part of the entire picture."[21]

Although appellant has also pointed out some inconsistencies in the witnesses' testimonies, such are insignificant and do not affect the credibility of their entire testimonies. Minor

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[19] 734 Phil. 636, 647 (2014).

[20] *Id.* at 646-647; citation omitted.

[21] *People v. Elever Jaen*, G.R. No. 241946, July 29, 2019.

inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrator of the crime.[22] Moreover, 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 their 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.[23]

Appellant further raises the argument that the prosecution's failure to present as evidence the shirt that he was wearing and prove that the same was indeed stained with blood, as testified to by the witnesses, and the weapon used to kill the victim is fatal to the case. This, however, does not deserve merit.

Corpus delicti is the body, foundation or substance of a crime. It refers to the fact of the commission of the crime, not to the physical body of the deceased. Because *corpus delicti* may be proven by circumstantial evidence, it is not necessary for the prosecution to present direct evidence to prove the *corpus delicti*. Nevertheless, the prosecution must present the following elements: (a) that a certain result or fact has been established, *i.e.*, that a man has died; and (b) that some person is criminally responsible for it.[24] In this case, the prosecution was able to prove the death of the victim and that the circumstances presented proved that appellant caused such death.

Anent appellant's defenses of denial and alibi, such are inconsequential. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently

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[22] *People v. Cabtalan*, 682 Phil. 164, 168 (2012).

[23] *Medina, Jr. v. People*, 724 Phil. 226, 234-235 (2014).

[24] *People v. Peñaflor*, 766 Phil. 484, 498 (2015).

and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.[25]

This Court, however, finds that the conviction of appellant for murder was flawed due to the erroneous appreciation of abuse of superior strength as a qualifying circumstance. The presence of the said circumstance in the commission of the crime was not sufficiently proven by the prosecution.

The RTC and the CA, in considering abuse of superior strength as a qualifying circumstance, took into account the gender and age of the victim, a sexagenarian female, and the appellant, a male in his early twenties. This Court, on the other hand, disagrees with such appreciation.

It has been stressed that for abuse of superior strength to be properly appreciated as a qualifying circumstance, it must be shown that the advantage of superior strength was purposely and consciously sought by the assailant, *viz.*:

> Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victims. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of the aggravating circumstance depends on the age, size, and strength of the parties.[26]

To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense

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[25] *People v. Las Piñas, et al.*, 739 Phil. 502, 528 (2014).

[26] *People v. Roland Miraña y Alcaraz*, G.R. No. 219113, April 25, 2018; citation omitted.

available to the person attacked.[27] However, as none of the prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case.[28] The testimonies of the witnesses do not establish that appellant made any conscious effort to use his age, size, or strength to facilitate the commission of the crime. Thus, the prosecution failed to prove that appellant purposely sought advantage of his superior strength. It is established that qualifying circumstances must be proven by clear and convincing evidence.[29] It also bears reiterating that a qualifying circumstance must be proven as clearly as the crime itself.[30] Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.[31]

Therefore, this Court must rule out abuse of superior strength as a qualifying circumstance and, there being no other circumstance alleged and proven to qualify the crime to murder, appellant can only be liable for homicide.[32] Under Article 249 of the Revised Penal Code, homicide is defined as follows:

> Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

Applying the Indeterminate Sentence Law, the appellant should be sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* to twenty (20) years of *reclusion temporal*.

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[27] *People v. Cesar Cortez*, G.R. No. 239137, December 5, 2018.

[28] See *People v. Eugene Villanueva y Cañales*, G.R. No. 218958, December 13, 2017.

[29] *People v. Cesar Villamor Corpin*, G.R. No. 232493, June 19, 2019.

[30] See *People of the Philippines v. Dadivo*, 434 Phil. 684, 689 (2002).

[31] *Martiniano B. Saldua v. People*, G.R. No. 210920, December 10, 2018.

[32] *People v. Rodel Magbuhos y Diola*, G.R. No. 227865, November 7, 2018.

As a consequence, the award of damages must also be modified in conformity with *People v. Jugueta*,[33] where the Court laid down the rule that in crimes where the death of the victim resulted and the penalty is divisible, such as in homicide, the damages awarded should be ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

WHEREFORE, the Decision dated July 11, 2018 of the Court of Appeals is **AFFIRMED** with **MODIFICATION** in that accused-appellant Jefferson Bacares is found **GUILTY** beyond reasonable doubt of the crime of Homicide under Article 249 of the Revised Penal Code, as amended; and is hereby sentenced to serve the indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, maximum, as the minimum term, to seventeen (17) years and four (4) months of *reclusion temporal*, medium, as the maximum term.

He is also ordered to pay the heirs of the victim the following amounts: ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R.No. 243926. June 23, 2020]

GERONIMO R. LABOSTA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[33] 783 Phil. 806 (2016).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A SINGLE, TRUSTWORTHY AND CREDIBLE WITNESS COULD BE SUFFICIENT TO CONVICT AN ACCUSED. —** Cases have settled that the testimony of a single, trustworthy and credible witness could be sufficient to convict an accused. This is because witnesses' accounts are weighed, not numbered. "The testimony of a sole witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt. Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate."

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. —** To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

3. **ID.; ID.; SELF-DEFENSE, NOT A CASE OF. —** As correctly observed by the appellate court, the number of wounds of the victim belies the accused's claims of self-defense. In determining the reasonable necessity of the means employed, the courts may look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court assailing the Decision[1] dated May 31, 2018 of the Court of Appeals (CA) and its subsequent Resolution[2] dated December 17, 2018 in CA-G.R. CR No. 38997.

These are the facts:

Geronimo R. Labosta (Labosta) was charged with homicide through an Information dated November 5, 2003, which reads:

> That on or about the 25th day of September 2003 at around 6:00 o'clock in the evening, at barangay Lipata, municipality of Buenavista province of Marinduque, Philippines (sic), and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there, [willfully], unlawfully and feloniously attack, assault and stab with a [balisong] one Maximo Saludes y Pelendiana, inflicting upon the latter, wounds causing his death, to the damage and prejudice of his legal heirs.
>
> CONTRARY TO LAW.[3]

At his arraignment on January 27, 2004, Labosta pleaded not guilty.

Trial proceeded and the prosecution presented four witnesses: Erlino De Luna (De Luna), Dr. Eleanor May Grate (Dr. Grate), Police Inspector Tomas Regis Magdalita (Insp. Magdalita) and SPO2 Wenifredo Barreno (SPO2 Barreno).

Based on their testimonies, the prosecution sought to prove that on September 25, 2003, at around 6:00 p.m., De Luna was working at the *peryahan* located in Barangay Lipata, Buenavista,

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[1] Penned by Associate Justice Ronaldo Roberto B. Martin, with Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 31-39.

[2] *Id.* at 95-96.

[3] See CA Decision, *id.* at 42.

Marinduque, when he saw from a distance of about 10 meters, Labosta stabbed Maximo Saludes (victim) with a *balisong*. Labosta held a plastic chair with his left hand which he used to push the victim to the ground. Then Labosta stabbed the victim three or four times. After stabbing the victim, Labosta wiped the balisong with a plastic bag and carried it when he left.

The victim suffered 12 injuries inflicted by a sharp instrument.

The accused also voluntarily surrendered to the authorities and gave the *balisong* that was used in the crime.

In his defense, Labosta testified that the victim was his *kumpare* and that he only acted in self-defense. On the night in question, he was on his way home and passed by the *peryahan* when the victim angrily approached him with a knife. As the victim approached him, the latter said "*papatayin kita*" then attempted to stab him twice. Labosta was able to parry the stabbing thrusts with the use of a plastic chair. The victim continued stabbing him so he backtracked fearing that the victim might kill him. When he was cornered, he let go of the chair and pulled out his *balisong* hidden in his underwear and stabbed the victim.

Labosta further related that he surrendered first to the *barangay* captain then, soon after, to the police.[4] Thereafter, Labosta posted bail.[5]

The RTC Ruling

On June 8, 2016, the Regional Trial Court (RTC), Branch 94 of Boac, Marinduque, rendered its Decision, disposing as follows:

WHEREFORE, this Court finds accused GERONIMO LABOSTA Y REANZARES **GUILTY BEYOND REASONABLE DOUBT** of the crime of Homicide and hereby sentenced to an indeterminate penalty ranging from three (3) years, four (4) months and one (1) day of [*prision correccional*] as minimum and eight (8) years and

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[4] *Rollo*, pp. 32-34.

[5] *Id.* at 92-95.

one (1) day of [*prision mayor*] as maximum, and to pay the heirs of Maximo Saludes the amount of Fifty Thousand (₱50,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos as moral damages.

Accused **GERONIMO LABOSTA Y REANZARES** is hereby ordered committed to the National Penitentiary, New Bilibid Prisons, Muntinlupa City for the service of this sentence.

SO ORDERED.[6]

The trial court gave weight to the testimony of the prosecution witness, De Luna, that it was Labosta who was the aggressor in the incident. It held that Labosta was more likely the aggressor and not the victim as he was positively identified by the eyewitness as the one who initiated the attack. Labosta also had more reason to initiate the conflict as he had an existing grudge against the victim arising from a land dispute between the two. Another factor which belied the claim that the accused merely acted in self-defense was the number of wounds inflicted upon the victim.

The trial court however appreciated the mitigating circumstances of voluntary surrender and seniority in lowering the penalty. The defense was able to prove that Labosta was already 74 years old at the time of the incident.[7]

Labosta filed an appeal alleging that the trial court erred in giving undue weight to the testimonies of the prosecution witnesses and in not finding that he merely acted in self-defense.[8]

The CA Ruling

On May 31, 2018, the CA rendered the herein assailed Decision denying Labosta's appeal, finding that he failed to prove the existence of the justifying circumstance of self-defense. The *fallo* reads:

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[6] *Id.* at 34.

[7] *Id.* at 62-65.

[8] *Id.* at 35.

WHEREFORE, premises considered, the Appeal is hereby **DENIED**. The Decision, dated 08 June 2016 of the Regional Trial Court, Fourth Judicial Region, Branch 94, Boac, Marinduque in Criminal Case No. 118-03 is **AFFIRMED**.

SO ORDERED.[9]

The CA held that the trial court correctly rejected the plea of self- defense and ruled that Labosta was in fact the aggressor in this case. The RTC noted that during his direct testimony, Labosta admitted that he had a grudge against the victim because the latter was able to transfer the title of Labosta's land to the victim's name.

The CA further noted De Luna's testimony that it was Labosta who approached the victim and pushed the latter to the ground with a plastic chair. When the victim was on the ground, Labosta even stooped down in order to stab the victim. If Labosta had no evil intent against the victim, he could have just ran away after the victim fell to the ground. The number of wounds sustained by the victim is also inconsistent with a plea of self-defense.

The appellate court gave weight to Dr. Grate's report which found that the lacerated wounds, measuring 7.5 inches (anterior chest, left radiating to the neck), 5.0 cm. (anterior check, near anterior axillary line, left), 2.5 cm (anterior chest, left) and 2.0 cm (level 5^{th}-6^{th} rib, left) caused the victim's bleeding, leading to a hypovolemic shock. Hypovolemic shock involves blood loss, damaging the internal organs such as the heart and kidney, which causes instantaneous death.

The CA likewise observed that Labosta failed to present any witness to corroborate his claim. Since the place where the incident happened was a *peryahan*, it would have been easy to find someone to corroborate Labosta's defense, if what he said was true.[10]

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[9] *Id.* at 38.

[10] *Id.* at 36-37.

On August 8, 2019, Labosta filed a Motion for Substitution of Bail Bond to which the Office of the Solicitor General did not object.[11]

The Present Petition

Labosta is now before the Court raising the following issues:

I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE REGIONAL TRIAL COURT'S DECISION DESPITE THE FACT THAT THE LATTER GAVE UNDUE WEIGHT AND CREDENCE TO THE SELF-SERVING TESTIMONY OF THE PROSECUTION'S LONE EYEWITNESS.

II

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ERROR IN FINDING THE PETITIONER GUILTY OF THE CRIME OF HOMICIDE DESPITE CLEAR AND CONVINCING EVIDENCE THAT HE MERELY ACTED IN SELF-DEFENSE.[12]

Labosta argues that De Luna's testimony should have been given scant consideration by the RTC and the CA since it was self-serving and uncorroborated by other witnesses.

Granting that De Luna's testimony was worthy of credence, Labosta asserts that, still, he should have been acquitted since he merely acted in self-defense. There was unlawful aggression on the part of the victim. The victim suddenly attacked him (Labosta) twice with a knife which he was able to parry with the use of a chair. There was also reasonable necessity to use the means employed to avert the aggression. Labosta was already 74 years old when he was attacked by the victim with the use of a knife. After Labosta was cornered, he had no choice but to defend himself with the use of a knife. The prosecution also failed to establish that there was sufficient provocation on the part of petitioner.[13]

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[11] *Id.* at 21-23.

[12] *Id.* at 19.

[13] *Id.* at 21-23.

The Court's Ruling

The Court denies the petition.

Settled is the doctrine that the findings of the trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed during appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellant. Moreover, factual findings of the trial court, when affirmed by the CA, are considered binding and conclusive. While there are recognized exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could affect the result of the case,[14] the Court is of the view that none of these exceptions exist in the case at bar.

It is true that De Luna's testimony was uncorroborated as he was the lone eyewitness of the prosecution. This, however, does not lessen the weight of his account.

Cases have settled that the testimony of a single, trustworthy and credible witness could be sufficient to convict an accused. This is because witnesses' accounts are weighed, not numbered. "The testimony of a sole witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt. Corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate."[15]

In this case, there is no reason to doubt the truthfulness of De Luna's account as it was detailed and straightforward. There was also no indication that he had any ill motive against the accused that would have impelled him to give false testimony.

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[14] *Napone, Jr. v. People*, G.R. No. 193085, November 29, 2017, 847 SCRA 79.

[15] *People v. Orosco*, 757 Phil. 299, 305 (2015).

Thus, we find no reason to depart from the well-established rule that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grueling examination.[16]

Labosta next laments the lower courts' resolve not to give merit to his claim of self-defense, insisting that he merely parried the attacks of the victim who made the first acts of aggression.

We are not swayed.

A plea of self-defense is as much a confession as it is an avoidance. By invoking self-defense, the accused admits having killed or having deliberately inflicted injuries on the victim, asserting only that he has not committed any felony and is not criminally liable therefor.[17]

When an accused invokes the justifying circumstance of self-defense, the burden of evidence shifts to him. This is because, by his admission, he is to be held criminally liable for the death of the victim unless he satisfactorily establishes the fact of self-defense. It is incumbent upon the accused to prove his innocence by clear and convincing evidence. He must rely on the strength of his evidence and not on the weakness of the prosecution for, even if the latter is weak, it could not be denied that he has admitted to be the author of the victim's death.[18]

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[19]

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[16] *People v. Mancao*, G.R. No. 228951, July 17, 2019.

[17] *People v. Panerio*, G.R. No. 205440, January 15, 2018.

[18] *Napone, Jr. v. People*, *supra* note 14.

[19] *Id.*

Here, both lower courts rejected Labosta's plea of self-defense after finding that he was in fact, the aggressor. Giving weight to the testimony of prosecution witness De Luna, the trial court found that Labosta pushed the victim with the chair he was holding with his left hand. And while the victim was on the ground, Labosta stabbed the victim three or four times.[20] This is consistent with the autopsy report which showed that the victim sustained seven lacerated wounds, five contusions and abrasions.[21]

As correctly observed by the appellate court, the number of wounds of the victim belies the accused's claim of self-defense. In determining the reasonable necessity of the means employed, the courts may look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor.[22]

The trial court also noted that in his direct testimony, Labosta admitted that he had an existing grudge against the victim because of a land dispute wherein the victim was able to transfer the title of Labosta's land to the victim's name.[23] This admission coupled with the unbiased testimony of De Luna bolsters the prosecution stance that it was Labosta and not the victim who initiated the attack.

Given the circumstances, the prosecution correctly found Labosta to be guilty of homicide.

Article 249 of the Revised Penal Code states that:

> ART. 249. *Homicide*. — Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

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[20] *Rollo*, p. 33.

[21] *Id.* at 36.

[22] *People v. Olarbe*, G.R. No. 227421, July 23, 2018.

[23] *Rollo*, p. 36.

In this case, De Luna positively identified Labosta as the one who killed the victim:

A: What I saw is that Geronimo Labosta was holding a bench "bangko" and a knife.

Q: Describe to us the bench he was holding?

A: Plastic chair...

Q: [Who] is bigger, Geronimo Labosta or Maximo Saludes?

A: Geronimo Labosta...

Q: Did accused get the plastic chair in order to protect him from the deceased Maximo Saludes?

A: Yes, sir.

Q: So, in other words, Maximo Saludes was approaching the accused Geronimo Labosta when the latter was holding a plastic chair?

A: It was Geronimo Labosta who is at that time approaching Maximo Saludes...

Q: What did accused Geronimo Labosta do with the plastic chair?

A: He used the plastic chair in pushing Maximo Saludes and then he stabbed Saludes.

Q: Did Maximo Saludes fall on the ground when he was pushed allegedly by the accused?

A: Yes, sir.

Q: So when accused allegedly stabbed Maximo Saludes, the latter was already lying on the ground, is that what you want to impress the Honorable Court?

A: Yes, sir.

Q: How many times did accused allegedly stab Maximo Saludes?

A: Three or four times, sir...

Q: So, when accused allegedly hit the victim, was he in a prone position when he was allegedly stabbing the victim? I mentioned a prone position, what was actually the accused,

what was the actual position of the accused when the alleged stabbing incident happened?

A: He was holding the chair and he stooped and delivered the stabbing thrust.[24]

As for the penalty, the trial court correctly imposed the indeterminate penalty of three years, four months and one day of *prision correccional* as minimum and eight years and one day of *prision mayor* as maximum, in view of the mitigating circumstances of voluntary surrender and age of the accused. The RTC also correctly imposed damages in the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, consistent with prevailing jurisprudence. In addition, however, we find that all damages awarded should be subject to the rate of 6% legal interest per annum from finality of this Decision until full satisfaction.[25]

WHEREFORE, the petition is **DENIED** for lack of merit. The Court of Appeals Decision dated May 31, 2018 and the Resolution dated December 17, 2018 are **AFFIRMED** with **MODIFICATION**. Geronimo Labosta *y* Reanzares is found guilty of Homicide and is hereby sentenced to an indeterminate penalty of three (3) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum, and to pay the heirs of Maximo Saludes the amount of Fifty Thousand (₱50,000.00) Pesos as civil indemnity and Fifty Thousand (₱50,000.00) Pesos as moral damages, which amounts shall be subject to 6% legal interest per annum from finality of this Decision until fully paid.

SO ORDERED.

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

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[24] Comment *rollo*, pp. 117-119.

[25] *People v. Jugueta*, 783 Phil. 806, 856, (2016).

FIRST DIVISION

[G.R. No. 246125. June 23, 2020]

PACIFIC OCEAN MANNING, INC., V. SHIPS UK LTD., SOUTHERN SHIPMANAGEMENT CO. S.A. and/or ENGR. EDWIN S. SOLIDUM, *petitioners, vs.* **RAMON S. LANGAM,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; COMPENSABILITY OF THE OCCUPATIONAL DISEASE AND THE RESULTING DISABILITY; CONDITIONS; AN INJURY OR ILLNESS IS COMPENSABLE WHEN IT IS WORK-RELATED AND WHEN IT EXISTED DURING THE TERM OF THE SEAFARER'S EMPLOYMENT CONTRACT. — The entitlement to disability benefits of a seafarer who suffers illness or injury during the term of his contract is governed by Section 20 (B) (6) of the POEA-SEC x x x. [A]n injury or illness is compensable when it is work-related AND when it existed during the term of the seafarer's employment contract. Specifically, under Section 32 (A) of the POEA-SEC, the compensability of the occupational disease and the resulting disability is determined by the fulfillment of these conditions: (1) the seafarer's work must involve the risks described; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; A FACTUAL MATTER CANNOT BE REVIEWED BY THE COURT IN A RULE 45 PETITION AS IT IS NOT A TRIER OF FACT. — The PVA, in its June 5, 2018 Decision, stated: "*[I]t is worthy to note that a perusal of the parties' respective pleadings yielded that the work-relatedness, and the existence of [respondent]'s illness during*

the term of his employment contract were never expounded to be crucial issues by the contending parties. For this, as far as this Panel is concerned, these are already non-issues, the main consideration being whether the Grade 7 assessment deserves belief." Considering the uniform factual findings of the PVA and the CA, the Court accords not only respect but also finality to their findings and are deemed binding upon us as long as they are supported by substantial evidence. Further, whether or not respondent's eye ailment is compensable is essentially a factual matter which this Court cannot review in a Rule 45 petition as it is not a trier of fact.

3. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; THE SEAFARER HAS THE RIGHT TO SEEK THE OPINION OF OTHER DOCTORS BUT THIS IS ON THE PRESUMPTION THAT THE COMPANY-DESIGNATED PHYSICIAN HAD ALREADY ISSUED A FINAL CERTIFICATION AS TO HIS FITNESS OR DISABILITY AND HE DISAGREED WITH IT. — Settled is the rule that the right to disability benefits of every seafarer is a matter governed by law, contract, *i.e.*, collective bargaining agreement and the POEA-SEC, and the medical findings. x x x Time and again, the Court has enunciated that the seafarer has the right to seek the opinion of other doctors but this is on the presumption that the company-designated physician had already issued a final certification as to his fitness or disability and he disagreed with it. This is not obtaining in this case as there was yet no final assessment from the company-designated physician as to respondent's fitness or unfitness to resume his duties as a seafarer or final disability grading of respondent's illness. Clearly, respondent did not observe the proper procedure for claiming disability benefits. Consequently, respondent is only entitled to partial permanent disability which corresponds to Grade 7 disability assessment as reflected in the company-designated physician's final medical report. He is therefore entitled to 41.80% US$50,000.00 or US$20,900.00 representing grade 7 disability compensation pursuant to the Schedule of Disability of Allowances in Section 32 of the POEA-SEC.

4. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY BENEFITS; MERE INABILITY TO WORK FOR A PERIOD OF 120 DAYS DOES NOT ENTITLE A SEAFARER TO PERMANENT AND TOTAL DISABILITY BENEFITS, FOR THE 120-DAY TREATMENT PERIOD MAY BE EXTENDED WHEN THERE EXISTS SUFFICIENT JUSTIFICATION. — On **August 25, 2017,** the company-designated physician issued a medical report giving respondent a final disability rating of "Grade 7 per POEA contract eye #7." While the company-designated physician's final assessment was not issued within the 120-day period as initially required by the POEA-SEC, it was given 232 days from the date the respondent was repatriated. We have held in *Marlow Navigation Philippines, Inc. v. Osias* that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits. The 120-day treatment period may be extended when there exists sufficient justification such as when further medical treatment is required or when the seafarer is uncooperative. In this case, when the 120-day treatment period expired on May 5, 2017, the company-designated physician has determined that they needed more medical tests and procedures in evaluating respondent's condition. In fact, before the 120-day period expired, the attending physicians recommended that respondent undergo evoked potential tests. Three (3) days after the 120-day period expired, the neurologist suggested that respondent undergo lumbar puncture test to confirm or rule out other diseases but he refused. The close and continuous monitoring of respondent's condition by the company-designated physicians immediately before and after the lapse of the 120-day treatment period would show that his eye ailment could not be completely addressed in such a limited period of time. Indubitably, the extension of the treatment period from 120 days to 240 days was satisfactorily justified. Here, the final medical assessment of the company-designated physician was issued well-within the 240-day period which expires on **September 2, 2017.**

APPEARANCES OF COUNSEL

Nolasco & Associates Law Offices for petitioners.
Bermejo Laurino Bermejo Law Offices for respondent.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] seeking to reverse and set aside the Decision[2] dated December 12, 2018 and the Resolution[3] dated March 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 157086.

The Facts

On May 10, 2016, Ramon S. Langam (respondent) was hired as chief cook by Pacific Ocean Manning, Inc. for its principal, V Ships UK Ltd./Southern Shipment Co. S.A. (collectively, petitioners), on board the vessel "*Cochrane*." Prior to embarkation, respondent underwent pre-employment medical examination and was declared fit for sea duty.[4]

On January 2, 2017, respondent was cooking in the vessel's kitchen when the hot cooking oil "accidentally splashed, splattered and hit his right eye." To relieve the pain, he immediately washed his eye with running water and resumed with his normal activities. The following day, he felt persistent pain in the right eye which appeared to be swollen and experienced blurred vision. He initially sought medical assistance from the ship doctor but due to lack of proper medical equipment in the vessel, he was brought to a hospital in Korea. The attending physician in Korea declared respondent unfit for duty in order to rule out optic nerve neuritis and ischemic syndrome in the right eye. On January 5, 2017, respondent was medically repatriated.[5]

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[1] *Rollo*, pp. 3-38.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Samuel H. Gaerlan and Pablito A. Perez, concurring; *id.* at 44-65.

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

[4] *Id.* at 67.

[5] *Id.* at 68.

On January 9, 2017, respondent reported to petitioners and requested a post-medical evaluation. He was referred to the company-designated physician at the Chinese Medical Hospital. Based on Dr. Carter S. Rabo's prognosis, respondent is unlikely to recover his vision to its normal acuity. Thus, respondent continued with the medical treatment. He claimed that there was hardly an improvement in his medical condition when he was informed by the company-designated physician that his treatment was already discontinued. He asked for a copy of the final assessment and an explanation of his true medical condition but he was refused and referred to petitioner. The latter allegedly reasoned that the medical reports and assessment were confidential.[6]

To ascertain his medical condition, respondent's family referred him to an independent medical expert, Dr. Eileen Faye Enrique-Olanan (Dr. Enrique-Olanan) who requested him to undergo diagnostic test. Dr. Enrique-Olanan diagnosed respondent with optic atrophy in the right eye and attested to his unfitness for sea service.[7]

Respondent went to see Dr. Michael Bravo (Dr. Bravo) for consultation. Dr. Bravo confirmed that respondent is suffering from optic atrophy in the right eye and declared him unfit for sea duty "because of his very poor vision and poor color perception of the right eye and blurred vision on the left, which can affect his depth perception."[8]

Respondent informed petitioners of the findings of Dr. Enrique-Olanan and Dr. Bravo, requested for a third medical opinion, and sought for the payment of disability benefits. Petitioners refused, prompting respondent to file a complaint for payment of permanent and total disability benefits, moral and exemplary damages, and attorney's fees against them before the Panel of Voluntary Arbitrators.

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

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

[8] *Id.* at 70-71.

Petitioners, for their part, averred that respondent's employment contract is covered by an overriding collective bargaining agreement (CBA) which provides for disability benefits only on disability as a result of an accident. It alleged that when respondent returned to the Philippines on January 5, 2017, he was immediately referred to the company-designated physician at Trans Global Health System, Inc.[9]

On February 22, 2017, after several tests and procedures, the attending medical specialist diagnosed respondent with optic atrophy and the neurologist opined demyelinating disease. The neurologist suggested that lumbar puncture be performed to confirm or rule out other diseases but respondent refused. Respondent underwent a test for neuromyelitis optica (NMO) to determine the need to continue with his steroid treatment. Upon review of the NMO test results, the specialist stated that petitioner is unlikely to recover his vision to its normal acuity. Thus, on August 25, 2017, the company-designated physician declared that respondent's final disability grading is "Grade 7 per Philippine Overseas Employment Administration (POEA) contract eye #7."[10]

Petitioners offered respondent disability benefits equivalent to Grade 7 assessment based on the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) but the latter refused the same.[11]

After the conciliation proceedings failed, the parties filed a submission agreement referring the case to the Panel of Voluntary Arbitrators (PVA) for resolution.

The PVA Ruling

In its Decision[12] dated June 5, 2018, the majority of the PVA ruled in favor of respondent and ordered petitioners Pacific

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

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

[11] *Id.* at 74.

[12] *Id.* at 66-81.

Ocean Manning Inc. and/or V Ships UK Ltd. and/or Southern Shipmanagement Co. S.A. and/or Engr. Edwin S. Solidum to pay jointly and severally respondent permanent total disability benefits in the amount of US$102,308.00 and attorney's fee equivalent to 10% of the total judgment award or its peso equivalent at the time of actual payment. The PVA declared that petitioners failed to act on respondent's request for referral to a third doctor despite having shown the conflicting medical assessment of the company-designated physician and his physicians of choice. It stated that the declaration of Grade 7 disability is doubtful and biased on its face because respondent has yet to fully recover from his condition. It likewise emphasized that the fact that respondent was not re-deployed is an eloquent proof of permanent disability.

Petitioners moved for reconsideration but the same was denied in a Resolution dated August 6, 2018.

The CA Ruling

In its Decision dated December 12, 2018, the CA affirmed the June 5, 2018 Decision of the PVA. It accorded great weight to the findings of respondent's doctors of choice Dr. Enrique-Olanan and Dr. Bravo that he can no longer perform his usual work as a seaman with consequent impairment of his earning capacity and, thus, entitled to permanent and total disability benefits.

Petitioners moved for reconsideration but the same was denied in a Resolution dated March 21, 2019.

Hence, this petition.

Our Ruling

The petition is granted.

Petitioners contend that respondent is not entitled to total and permanent disability as he was validly assessed with a Grade 7 disability by the company-designated physician. They stress that the medical certificates issued by Dr. Enrique-Olanan and Dr. Bravo were based on a one-time consultation and, therefore, cannot prevail over the assessment of the company-designated

physician after a series of medical treatment and examination. They also question the award of attorney's fees emphasizing that the right to litigate does not carry with it the right to seek compensation by way of attorney's fees.

Respondent, on the other hand, argues that petitioners did not inform him of his actual medical condition and refused to furnish him a copy of the final assessment of the company-designated physician at the time when his medical treatment was discontinued and upon the lapse of the 120/240 day period of medical treatment. He notes that petitioners failed and refused to refer him for the mandatory third medical opinion under the conflict resolution provision of the POEA-SEC.

The entitlement to disability benefits of a seafarer who suffers illness or injury during the term of his contract is governed by Section 20 (B) (6) of the POEA-SEC which provides:

SEC. 20. COMPENSATION AND BENEFITS. —

x x x x x x x x x

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

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.

Analyzing the foregoing, an injury or illness is compensable when it is work-related AND when it existed during the term of the seafarer's employment contract. Specifically, under Section 32 (A) of the POEA-SEC, the compensability of the occupational disease and the resulting disability is determined by the fulfillment of these conditions: (1) the seafarer's work must involve the risks described; (2) the disease was contracted

as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.[13]

The PVA, in its June 5, 2018 Decision, stated: "*[I]t is worthy to note that a perusal of the parties' respective pleadings yielded that the work-relatedness, and the existence of [respondent]'s illness during the term of his employment contract were never expounded to be crucial issues by the contending parties. For this, as far as this Panel is concerned, these are already non-issues, the main consideration being whether the Grade 7 assessment deserves belief.*"[14] Considering the uniform factual findings of the PVA and the CA, the Court accords not only respect but also finality to their findings and are deemed binding upon us as long as they are supported by substantial evidence.[15] Further, whether or not respondent's eye ailment is compensable is essentially a factual matter which this Court cannot review in a Rule 45 petition as it is not a trier of fact.[16] Thus, the only issue left for determination is whether the respondent is entitled to total and permanent disability benefits.

Settled is the rule that the right to disability benefits of every seafarer is a matter governed by law, contract, *i.e.*, collective bargaining agreement and the POEA-SEC, and the medical findings.[17]

Section 20 (B) (3) of the POEA-SEC provides:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has

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[13] *Vetyard Terminals & Shipping Services, Inc. v. Suarez,* 728 Phil. 527, 532 (2014).

[14] *Rollo*, p. 75.

[15] *Cabaobas v. Pepsi-Cola Products Philippines, Inc.,* 757 Phil. 96, 119 (2015).

[16] *Bright Maritime Corp. v. Racela,* G.R. No. 239390, June 3, 2019.

[17] *Gomez v. Crossworld Marine Services, Inc.*, 815 Phil. 401, 416 (2017).

been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

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

In *Rickmers Marine Agency Phils., Inc. v. San Jose,*[18] the Court echoed the above standard procedure in claiming total and permanent disability benefits in this wise:

1. The seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. If physically incapacitated to do so, written notice to the agency within the same period shall be deemed compliance.
2. The seafarer shall cooperate with the company-designated physician on his medical treatment and regularly report for follow-up check-ups or procedures, as advised by the company-designated physician.
3. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within 120 days from repatriation. The period may be extended to 240 days if justifiable reason exists for its extension (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative).
4. If the company-designated physician fails to give his assessment within the period of 120 days or the extended 240 days, as the case may be, then the seafarer's disability becomes permanent and total.

Respondent was medically repatriated on **January 5, 2017** and immediately underwent treatment under the supervision of the company-designated physician. According to petitioners, respondent was seen by the company-designated physician and specialists on the following dates:

[18] G.R. No. 220949, July 23, 2018.

January 11, 2017	Respondent complained of blurring of vision on his right eye. The specialist recommended "Perimetry, OTC of optic nerve, and MRI of the brain."[19]
January 23, 2017	Respondent underwent perimetry test and Optical Coherence Tomography (OCT) of the optic nerve. Results showed thinning of the nerve fiber layer.[20]
February 22, 2017	The attending specialist's assessment was optic atrophy while the neurologist opined demyelinating disease.[21]
May 8, 2017	The neurologist recommended that lumbar puncture be performed to confirm or rule out other disease but respondent refused to undergo the procedure. The attending specialist likewise recommended that respondent undergo neuromyelitis optica (NMO) test to determine if the steroid treatment shall continue.[22]
June 19, 2017	The attending specialist evaluated the NMO test and declared that respondent is unlikely to recover his normal vision.[23]

On **August 25, 2017,** the company-designated physician issued a medical report giving respondent a final disability rating of "Grade 7 per POEA contract eye #7." While the company-designated physician's final assessment was not issued within the 120-day period as initially required by the POEA-SEC, it was given 232 days from the date the respondent was repatriated. We have held in *Marlow Navigation Philippines, Inc. v. Osias*[24]

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[19] *Rollo*, p. 9.

[20] *Id.*

[21] *Id.*

[22] *Rollo*, p. 10.

[23] *Id.*

[24] 773 Phil. 428, 443 (2015).

that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits. The 120-day treatment period may be extended when there exists sufficient justification such as when further medical treatment is required or when the seafarer is uncooperative.[25] In this case, when the 120-day treatment period expired on May 5, 2017, the company-designated physician has determined that they needed more medical tests and procedures in evaluating respondent's condition. In fact, before the 120-day period expired, the attending physicians recommended that respondent undergo evoked potential tests. Three (3) days after the 120-day period expired, the neurologist suggested that respondent undergo lumbar puncture test to confirm or rule out other diseases but he refused. The close and continuous monitoring of respondent's condition by the company-designated physicians immediately before and after the lapse of the 120-day treatment period would show that his eye ailment could not be completely addressed in such a limited period of time. Indubitably, the extension of the treatment period from 120 days to 240 days was satisfactorily justified. Here, the final medical assessment of the company-designated physician was issued well-within the 240-day period which expires on **September 2, 2017.**

It is interesting to note that the ophthalmological reports issued by respondent's physicians of choice Dr. Enrique-Olanan and Dr. Bravo were dated June 20, 2017 and July 12, 2017, respectively, or 66 days and 44 days before the company-designated physicians even issued their own final medical report. Both ophthalmological reports, however, were silent as regards the diagnostic tests and medical procedures conducted and their results that led Dr. Enrique-Olanan and Dr. Bravo to conclude that respondent "is no longer advised to go back to his job as a seaman"[26] and that he "is unfit as a seafarer" because of his poor vision and poor color perception in the right eye.[27] More importantly, neither Dr. Enrique-Olanan nor Dr. Bravo certified

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[25] *Id.*

[26] *Rollo*, p. 70.

[27] *Id.* at 71.

that respondent's condition is characterized as total and permanent disability. It may be gleaned from these facts that respondent hastily sought second and third medical opinion without awaiting the issuance of the company-designated physician's final assessment or the expiration of the 240-day period. He did so while his treatment was still ongoing under the medical supervision of the company-designated physicians. After obtaining a favorable medical evaluation from his physicians of choice, respondent heavily relied on their ophthalmological reports to support his claim for total and permanent disability benefits.

Time and again, the Court has enunciated that the seafarer has the right to seek the opinion of other doctors but this is on the presumption that the company-designated physician had already issued a final certification as to his fitness or disability and he disagreed with it.[28] This is not obtaining in this case as there was yet no final assessment from the company-designated physician as to respondent's fitness or unfitness to resume his duties as a seafarer or final disability grading of respondent's illness. Clearly, respondent did not observe the proper procedure for claiming disability benefits. Consequently, respondent is only entitled to partial permanent disability which corresponds to Grade 7 disability assessment as reflected in the company-designated physician's final medical report. He is therefore entitled to 41.80% US$50,000.00 or US$20,900.00 representing grade 7 disability compensation pursuant to the Schedule of Disability of Allowances in Section 32 of the POEA-SEC.

Finally, the Court sees no reason to award the attorney's fees for failure of the respondent to show that petitioners acted in bad faith in denying his claim for permanent total disability benefits. As aptly held by the Court in *Rickmers Marine Agency Phils., Inc.,* held:

> Being compelled to litigate is not sufficient reason to grant attorney's fees. The Court has consistently held that attorney's fees cannot generally be recovered as part of damages based on the policy that

[28] *Olaybal v. OSG Shipmanagement Manila, Inc.*, G.R. No. 211872, 761 Phil. 534, 547 (2015).

no premium should be placed on the right to sue. Under Article 2208 of the Civil Code, factual, legal, and equitable grounds must be presented to justify an award for attorney's fees. Absent a showing of bad faith on the part of petitioners, the award of attorney's fees is deemed inappropriate.[29]

WHEREFORE, the petition is **GRANTED.** The Decision dated December 12, 2018 and the Resolution dated March 21, 2019 of the Court of Appeals in CA-G.R. SP No. 157086 are **SET ASIDE.** Respondent Ramon S. Langam is **DECLARED** to be entitled to, and petitioners Pacific Ocean Manning, Inc., V. Ships UK Ltd., and Southern Shipmanagement Co. S.A., are adjudged solidarily liable for, the amount of US$20,900.00 or its peso equivalent. The respondent is hereby **DIRECTED** to return to the petitioners any amount received in excess thereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 246580. June 23, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **RONILEE CASABUENA *y* FRANCISCO and KEVIN FORMARAN *y* GILERA,** *accused-appellants*.

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — To sustain a conviction for robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, the

[29] *Supra* note 18.

prosecution must prove the following elements: 1. The taking of personal property is committed with violence or intimidation against persons; 2. The property taken belongs to another; 3. The taking is with the intent to gain or *animo lucrandi*; and 4. By reason or on occasion of the robbery, homicide is committed.

2. ID.; ID.; 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; THE KILLING MAY OCCUR BEFORE, DURING, OR AFTER THE ROBBERY. — 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. The killing, however, may occur before, during, or after the robbery. It is only the result obtained, without reference to the circumstances, causes, or modes or persons intervening in the commission of the crime, that has to be taken into consideration. Here, the elements of the complex crime of robbery with homicide are all present: **First.** Appellants, through force and intimidation, threatening physical violence and death with the use of a gun and knives, took the personal properties of the passengers of the jeepney. **Second.** The properties found in the person of appellants did not belong to them but to the passengers of the jeepney. **Third.** The intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Appellants were caught in the possession of various small items that belonged to the passengers of the jeepney. **Fourth.** A person died, *i.e.*, Arizala, on the occasion of the robbery.

3. ID.; ID.; ONCE A HOMICIDE IS COMMITTED BY REASON OR ON OCCASION OF THE ROBBERY, THE FELONY COMMITTED IS ROBBERY WITH HOMICIDE; IT IS IRRELEVANT THAT THE VICTIM OF THE HOMICIDE IS ONE OF THE MALEFACTORS. — [I]t is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery; or that two (2) or more persons are killed; or that aside from the homicide, rape, intentional mutilation, or usurpation of authority is

committed by reason or on occasion of the crime. **Further, it is irrelevant if the victim of homicide is one of the robbers. In such scenario, the felony would still be robbery with homicide. Verily, once a homicide is committed by reason or on occasion of the robbery, the felony committed is robbery with homicide.** This is the reason why Article 294, paragraph 1 of the Revised Penal Code reads: ARTICLE 294. *Robbery with violence against or intimidation of persons. – Penalties*. – Any person guilty of robbery with the use of violence against or intimidation of **any person** shall suffer: 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of **homicide** shall have been committed x x x **"Any"** is all-inclusive, including anyone of the robbers themselves.

4. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; WHERE THE LAW DOES NOT DISTINGUISH, THE COURTS SHOULD NOT DISTINGUISH. — We quote with concurrence the opinion of Justice Mario V. Lopez during the deliberation: x x x Article 294, paragraph 1 of the Revised Penal Code is plain and clear. The law only requires the crime of homicide be committed by reason of or on the occasion of robbery. It is not necessary that the person killed must be the victim of the robbery. It can be one of the robbers or an innocent bystander. Neither does it impose that the person who perpetrated the killing must be the same person who committed the robbery. There should be no distinction in the application of the statute where none is indicated. Fundamental is the principle in statutory construction that **where the law does not distinguish, the courts should not distinguish.** ***Ubi lex non distinguit, nec nos distinguere debemus.***

5. ID.; ID.; QUALIFYING WORDS RESTRICT OR MODIFY ONLY THE WORDS OR PHRASES TO WHICH THEY ARE IMMEDIATELY ASSOCIATED. — x x x [D]issecting the paragraphs of Article 294 of the Revised Penal Code reveals that the legislature distinguished the treatment of the different accessory crimes. The first part of the Article 294 (1) deals with the commission of homicide "***by reason or on occasion of the robbery***" without any qualification as to who committed the homicide or when the homicide was committed. However, the second part of paragraph 1 involves the commission of

robbery "***accompanied by*** *rape or intentional mutilation or arson*." The use of the words "**accompanied by**" suggests that for the accessory crimes of rape, mutilation and arson, the robbers themselves must have committed such crimes. On the other hand, the use of the words "**by reason or on occasion of the robbery**," evinces that the law merely requires that a homicide was committed by reason or occasion of the robbery. Notably, **the difference in phraseology within the same paragraph of the law is crucial**. Fundamental is the principle that qualifying words restrict or modify only the words or phrases to which they are immediately associated. The legislature would not have deliberately used different modifying phrases within the same paragraph if it intended similar treatment for the accessory crimes. Further, in Article 294, paragraph 4, the legislature identified who the perpetrator and the victim must be in the special complex crime of robbery with serious physical injuries. It specified that in the course of the execution of robbery, "*the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries*" covered by subdivisions 3 and 4 of Article 263. The law explicitly used the term "*offender*" evincing that the physical injury must be committed by the same person who is guilty of robbery. Yet, no such import can be found in Article 294, paragraph 1. x x x [T]he introductory sentence in Article 294 which provides "*Any person guilty of robbery with the use of violence against or intimidation of any person*" must be interpreted merely as a prelude to the enumeration of penalties to be imposed upon persons guilty of robbery. This is because the proper penalties hinge upon the presence of absence of the attending circumstances specified in Article 294, paragraphs 1 to 5, independent of who brought about such circumstances, unless otherwise qualified in the said paragraphs. To interpret that all the circumstances under Article 294 must be committed by the person guilty of the robbery will erase the distinctions among the five paragraphs that were deliberately put in place by the law.

6. CRIMINAL LAW; CONSPIRACY; ELEMENTS. — Under Article 8, paragraph 2 of the Revised Penal Code, the following are the elements of conspiracy: (1) two (2) or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of a felony was decided upon.

7. ID.; ID.; CONSPIRACY MAY BE DEDUCED FROM THE MODE OR MANNER IN WHICH THE CRIME WAS PERPETRATED; IT MAY ALSO BE INFERRED FROM THE ACTS OF THE ACCUSED EVINCING A JOINT OR COMMON PURPOSE AND DESIGN, CONCERTED ACTION, AND COMMUNITY OF INTEREST. — Conspiracy may be deduced from the mode or manner in which the crime was perpetrated. It may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest. Here, the trial court and the Court of Appeals correctly ruled that conspiracy exists between appellants and Arizala based on Ciara Kristle V. Abella's testimony that they were the persons who helped each other in robbing her and the other passengers of the jeepney. She testified that they boarded the jeepney and declared a hold-up. One of them was at the entrance of the jeepney, while the other was near the driver and holding a knife. The third hold-upper took the belongings of the passengers of the jeepney, including her own. After taking their belongings, the hold-uppers alighted from the jeepney. These acts of appellants and Arizala clearly show a joint or common purpose and design, concerted action, and community of interest. Notably, in conspiracy, the act of one is the act of all.

CAGUIOA, *J.*, *dissenting opinion:*

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; IN THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE, THE VICTIM OF THE HOMICIDE MAY BE ANY PERSON INCLUDING THE ROBBERS THEMSELVES AS LONG AS THE KILLING WAS COMMITTED BY REASON OF OR ON OCCASION OF THE ROBBERY. — I agree with the *ponencia* that in the special complex crime of Robbery with Homicide, the victim of the homicide (*i.e.*, the person killed) may be any person, including the robbers themselves, as long as the killing was committed by reason of or on occasion of the robbery. **However, I submit that this is the rule only if the homicide is committed by any of the persons guilty of robbery. In other words, this ruling does *not* apply when the robber is killed by a third person, a responding police officer**. x x x Paragraphs 1 to 5 of [Article 294 of the RPC] modify the overarching statement of "*Any*

person guilty of robbery with the use of violence against or intimidation of any person," by providing specific penalties for other acts that have been committed in relation to the robbery. Consequently, the overt acts mentioned in each of the enumerated acts, which include the commission of the incidental crimes of homicide, rape, mutilation, kidnapping and physical injuries, refer to the "agent" or "actor" in the general overarching statement, *i.e.*, the person guilty of robbery.

2. ID.; ID.; ID.; THE ACCESSORY CRIMES SHOULD HAVE BEEN COMMITTED OR INFLICTED BY THE PERSON OR PERSONS GUILTY OF THE ROBBERY. — The phrases "*by reason or on occasion of* " and "*accompanied by*" are descriptive only of the time when the accessory crimes have been committed in relation to robbery, and not of the person who committed the said acts. It is settled in jurisprudence that the phrase "*by reason or on occasion of* " covers accessory crimes committed before, during or after the robbery; while the phrase "*accompanied by*" means that the accessory crimes of rape and mutilation must be committed in the course of the robbery. Nonetheless, in both instances, these accessory crimes should have been committed or inflicted by the person or persons guilty of robbery.

3. ID.; ID.; ID.; IT IS NOT A QUESTION OF WHETHER OR NOT SOMEONE DIED "BY REASON OR ON OCCASION OF THE ROBBERY" – RATHER THE QUESTION IS WHETHER OR NOT A "CRIME OF HOMICIDE" WAS COMMITTED "BY REASON OR ON OCCASION OF THE ROBBERY." — [T]he words of paragraph 1 are very clear when they state: "The penalty of *reclusión perpetua* to death, when by reason or on occasion of the robbery, **the crime of homicide shall have been committed**." In simple terms, **it is not a question of whether or not someone died "by reason or on occasion of the robbery" – rather, the question is whether or not a "crime of homicide" was committed "by reason or on occasion of the robbery."** Here, there can be no gainsaying that when PO2 De Pedro shot and killed one of the robbers, he did not, by that act, commit a "crime of homicide." And since the accused also did not shoot and kill their co-accused, they too cannot also be said to have committed a "crime of homicide." Accordingly, the applicable rule of statutory construction is not that relied upon by Justice Lopez, but rather,

that if the statute is plain and clear, it must be given its literal meaning and applied without attempted interpretation, and when there is doubt in the interpretation of criminal laws, all doubts must be resolved in favor of the accused.

4. ID.; ID.; INSTANCES WHEN HOMICIDE IS COMMITTED BY REASON OR ON OCCASION OF A ROBBERY, ENUMERATED; NOT PRESENT IN CASE AT BAR. — Moreover, jurisprudence has established that homicide is committed by reason or on occasion of robbery when the killing was done for the following purposes: (a) to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition; (b) to do away with a witness or to defend the possession of the stolen property; (c) to facilitate the robbery or the escape of the culprit; (d) to preserve the possession by the culprit of the loot; and (e) to prevent discovery of the commission of the robbery. **In this case, it cannot therefore be said that the killing of a co-accused in the robbery by a responding police officer was committed by reason or on occasion of the robbery because none of the foregoing motives is attendant to the killing of one of the robbers by a responding police officer**. During trial, PO2 De Pedro narrated that he "was able to grab possession of the pistol and fire twice – the second shot hit [Arizala] in the chest, as a result of which he died." **In fact, it was not even shown in this case that accused-appellants fired any gun during the incident**. Thus, affirming the conviction of accused-appellants for the special complex crime of Robbery with Homicide, when the killing was committed not by any of them but by a responding police officer, goes beyond the letter and logic of the law.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

Accused-appellants Ronilee Casabuena *y* Francisco and Kevin Formaran *y* Gilera were charged with the complex crime of robbery with homicide punishable under Article 294, paragraph 1 of the Revised Penal Code, *viz.*:

> That on or about the 11th day of October 2012, in the city of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one JIMMY ARIZALA, they mutually helping and aiding each other, armed with a gun and bladed weapons, with intent of gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob and divest the following complainants of their personal belongings, *to wit*:
>
> Ma. Aimee Senapilo y Agustin – pouch bag with medicine, headset and watch all worth ₱6,000.00;
>
> Alfredo Burgos y Agapito – wallet and cellphone worth ₱1,300.00;
>
> Jestony San Juan y Devera – Nokia N85 cellphone and ID worth ₱3,500.00;
>
> Ciara Kritle Abella y Valdez – bag with wallet, Nokia N71 worth ₱3,100.00;
>
> Leslie Anne Fiona Bondocan y Paubsanon – wallet with ₱120.00 cash and UCPB ATM.
>
> while inside a passenger jeepney, by declaring hold-up, poking them with gun and bladed weapons and forcibly taking from them the foregoing items, and on the occasion of the said robbery and reason thereof, homicide was committed, as the above-named conspirator JIMMY ARIZALA, while struggling with the possession of his gun with the responding police, PO2 Ramilo de Pedro, the gun was fired which shot caused his instantaneous death, to the damage and prejudice of the owners thereof in the aforementioned amount.[1]

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[1] *Rollo*, pp. 4-5.

On arraignment, appellants pleaded not guilty.[2]

Prosecution's Version

On October 11, 2012, around 6:00 a.m., Ciara Kristle V. Abella was riding a jeepney headed to Montalban with other passengers. Abella, who fell asleep while she was seated on the front row of the jeepney beside the conductor, was suddenly awakened when three (3) passengers boarded and declared a hold-up. One of the hold-uppers was at the entrance of the jeepney and the other was near the driver and was holding a knife. The third hold-upper took Abella's belongings, *i.e.*, her cellular phone, wallet, and ATM card, which was approximately worth ₱5,000 and placed them inside his backpack. The other passengers likewise surrendered their belongings to one of the hold-uppers. After taking the belongings of the passengers, the hold-uppers alighted from the jeepney. One of the passengers saw a policeman nearby and asked for the latter's assistance.[3]

About 6:20 a.m., PO2 Ramilo P. De Pedro (PO2 De Pedro) and PO2 Michael Albania (PO2 Albania) were patrolling J. Molina corner E. Santos Streets in their patrol car when they noticed a commotion inside a jeepney headed to Montalban. PO2 De Pedro saw three (3) male passengers alight the jeepney and heard one of the passengers shout "*Holdaper yan, tatlo yan, may baril sila!*" Upon seeing the two (2) police officers, one of the three (3) hold-uppers ran toward Bayan-bayanan Street and was chased by PO2 Albania, while the other two (2) were approached by PO2 De Pedro.[4]

PO2 De Pedro introduced himself as a police officer and frisked one of the two (2) hold-uppers. Suddenly, the other hold-upper took a pistol from his backpack, prompting PO2 De Pedro to let go of the M16 rifle he was carrying and wrestle for the possession of the pistol. PO2 De Pedro was able to grab possession of the pistol and fire twice – the second shot hit the

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[2] *Id.* at 5.

[3] *Id.*

[4] *Id.* at 6.

hold-upper in the chest, as a result of which, he died. The other hold-upper then threw away the knife he was holding and was subsequently handcuffed by PO2 De Pedro. Thereafter, PO2 Albania returned with the third hold-upper and was able to recover the items taken from the passengers of the jeepney. The passengers of the jeepney were then brought to the precinct for interrogation by PO2 Albania, while PO2 De Pedro guarded the two (2) hold-uppers, who were later identified to be appellants, while the hold-upper who died was Jimmy Arizala. More, PO2 De Pedro and PO2 Albania executed a *Sinumpaang Salaysay sa Pag-aresto*.[5]

Defense's Version

Appellants denied the charges. They testified that, on October 11, 2012, around 6:30 a.m., they boarded a jeepney in Marikina headed towards Montalban. They alighted when they reached the road in Concepcion. Suddenly, a police mobile stopped them. Two (2) police officers arrived and told them there was a hold-up that happened recently. Appellants were frisked and brought to the police station. There, PO2 De Pedro took their statements. According to appellants, they were on their way to see Casabuena's sister. They remained in the police station until 10 a.m. Thereafter, they were brought to the Criminal Investigation and Detention Office at the Hall of Justice building where they were identified by six (6) persons as the hold-uppers.[6]

Trial Court's Ruling

By the Decision dated June 27, 2017, the RTC found appellants guilty of the complex crime of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code and sentenced them to *reclusion perpetua*.[7]

There was nothing on record to discredit the testimony of Abella, one (1) of the prosecution's eyewitnesses and one (1) of the victims. Abella testified that she and the other passengers

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[5] *Id.*

[6] *Id.* at 7.

[7] *Id.* at 8.

of the jeepney were robbed and divested of their valuables by appellants and Arizala, and that Arizala was shot by PO2 De Pedro. Her account of the incident in the morning of October 11, 2012 was simple, clear, and credible, especially because of her actual presence at the *locus criminis*. Her testimony was replete with details and consistent even on cross-examination. Her testimony, not being flawed by vicious inconsistencies or improper motive, was highly credible. Further, her testimony was conclusively validated by the testimony of PO2 De Pedro, the responding policeman. She testified clearly on what she witnessed after appellants and Arizala alighted from the jeepney up to the time of the shooting incident with Arizala and the arrest of appellants.[8]

Further, conspiracy was clearly manifested in the concerted efforts of appellants and Arizala, as testified by Abella. The precise degree of culpability of appellants, hence, was irrelevant. The act of one may be imputed to his co-conspirators. Consequently, even if Arizala was the one who was killed immediately after the robbery by PO2 De Pedro, appellants should equally be held accountable for the complex crime of robbery with homicide. It is settled that when homicide takes place by reason or on occasion of the robbery, all those who took part in the robbery shall be guilty of the complex crime of robbery with homicide, whether they actually participated in the killing, unless there is proof they endeavored to prevent the killing.[9]

Court of Appeals' Proceedings

In their appeal, appellants contended that the trial court gravely erred when it ruled that they were liable for the complex crime of robbery with homicide. There was no direct relation and intimate connection between the robbery and the killing. It was PO2 De Pedro who fired Arizala's pistol. More, they averred that conspiracy was not duly proven.[10]

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[8] CA *rollo*, p. 65.

[9] *Id.* at 70-71.

[10] *Rollo*, pp. 9-10.

For its part, the Office of the Solicitor General (OSG) maintained that the trial court did not err in finding appellants guilty beyond reasonable doubt of committing robbery with homicide. All of the elements of the crime were present. More, conspiracy was sufficiently proven because the evidence showed that there was unity of purpose and unity in action between appellants and Arizala during the perpetration of the crime.[11]

Court of Appeals' Ruling

Under the assailed Decision[12] dated July 25, 2018, the Court of Appeals affirmed the trial court.

The Present Petition

Appellants now seek affirmative relief from the Court and pray anew for their acquittal. In compliance with the Resolution dated July 3, 2019 of the Court, the OSG and appellants manifested that in lieu of supplemental briefs, they were adopting their respective briefs submitted before the Court of Appeals.[13]

Issue

Did appellants commit the complex crime of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code?

Ruling

Accused-appellants Ronilee Casabuena *y* Francisco and Kevin Formaran *y* Gilera fault the Court of Appeals for affirming the trial court's factual finding that the elements of the complex crime of robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code are all present. There was allegedly no direct relation and intimate connection between the robbery and the killing of Jimmy Arizala.[14]

The Court is not persuaded.

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

[12] *Id.* at 11-13.

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

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

To sustain a conviction for robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, the prosecution must prove the following elements:

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is with the intent to gain or *animo lucrandi*; and
4. By reason or on occasion of the robbery, homicide is committed.[15]

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. The killing, however, may occur before, during, or after the robbery.[16] It is only the result obtained, without reference to the circumstances, causes, or modes or persons intervening in the commission of the crime, that has to be taken into consideration.[17]

Here, the elements of the complex crime of robbery with homicide are all present:

First. Appellants, through force and intimidation, threatening physical violence and death with the use of a gun and knives, took the personal properties of the passengers of the jeepney.

Second. The properties found in the person of appellants did not belong to them but to the passengers of the jeepney.

Third. The intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. Appellants were caught in

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[15] *People v. Buenamer*, 794 Phil. 214, 223 (2016).

[16] *People v. Dela Cruz*, 595 Phil. 998, 1023-1024 (2008).

[17] *People v. Ebet*, 649 Phil. 181, 189 (2010); *People v. De Jesus*, 473 Phil. 405, 427 (2004).

the possession of various small items that belonged to the passengers of the jeepney.

Fourth. A person died, *i.e.*, Arizala, on the occasion of the robbery.[18]

In robbery with homicide, it is essential that there be a direct relation and intimate connection between the robbery and the killing. It does not matter whether both crimes were committed at the same time.[19]

In the same manner, it is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery; or that two (2) or more persons are killed; or that aside from the homicide, rape, intentional mutilation, or usurpation of authority is committed by reason or on occasion of the crime. **Further, it is irrelevant if the victim of homicide is one of the robbers. In such scenario, the felony would still be robbery with homicide. Verily, once a homicide is committed by reason or on occasion of the robbery, the felony committed is robbery with homicide.**[20] This is the reason why Article 294, paragraph 1 of the Revised Penal Code reads:

> ARTICLE 294. *Robbery with violence against or intimidation of persons. – Penalties*. – Any person guilty of robbery with the use of violence against or intimidation of **any person** shall suffer:
>
> 1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of **homicide** shall have been committed. x x x (Emphasis supplied)

"Any" is all-inclusive, including anyone of the robbers themselves.

On this score, the Court distinguishes Article 294, paragraph 1 of the Revised Penal Code from Article 297 of the same Code which reads:

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[18] *Rollo*, pp. 10-11.

[19] *People v. Labagala*, G.R. No. 221427, July 30, 2018.

[20] *People v. Ebet* and *People v. De Jesus*, *supra* note 17. (Emphasis supplied)

ARTICLE 297. *Attempted and frustrated robbery committed under certain circumstances*. — When by reason or on occasion of an attempted or frustrated robbery a **homicide** is committed, **the person guilty of such offenses** shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this Code. (Emphasis supplied)

Here, as clearly testified by PO2 De Pedro, he was on mobile patrol and tailing the jeepney that was being held-up by appellants and Arizala. He personally witnessed them alight from the jeepney. Hence, he immediately accosted them. Then, Arizala pulled out his gun. PO2 De Pedro grappled with Arizala for possession of the gun. In the process, Arizala got shot and died.[21] Applying Article 294, paragraph 1 of the Revised Penal Code and *People v. Ebet*[22] and *People v. De Jesus*,[23] appellants as two (2) of the robbers are guilty of the complex crime of robbery with homicide.

We quote with concurrence the opinion of Justice Mario V. Lopez during the deliberation:

x x x Article 294, paragraph 1 of the Revised Penal Code is plain and clear. The law only requires the crime of homicide be committed by reason of or on the occasion of robbery. It is not necessary that the person killed must be the victim of the robbery. It can be one of the robbers or an innocent bystander. Neither does it impose that the person who perpetrated the killing must be the same person who committed the robbery. There should be no distinction in the application of a statute where none is indicated. Fundamental is the principle in statutory construction that **where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit, nec nos distinguere debemus***.

x x x [D]issecting the paragraphs of Article 294 of the Revised Penal Code reveals that the legislature distinguished the treatment of the different accessory crimes. The first part of Article 294 (1)

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[21] CA *rollo*, p. 70.

[22] *People v. Ebet* and *People v. De Jesus*, *supra* note 17.

[23] *Id.*

deals with the commission of homicide "***by reason or on occasion of the robbery***" without any qualification as to who committed the homicide or when the homicide was committed. However, the second part of paragraph 1 involves the commission of robbery "***accompanied by rape or intentional mutilation or arson***." The use of the words "**accompanied by**" suggests that for the accessory crimes of rape, mutilation and arson, the robbers themselves must have committed such crimes. On the other hand, the use of the words "**by reason or on occasion of the robbery**," evinces that the law merely requires that a homicide was committed by reason or occasion of the robbery. Notably, **the difference in phraseology within the same paragraph of the law is crucial**. Fundamental is the principle that qualifying words restrict or modify only the words or phrases to which they are immediately associated. The legislature would not have deliberately used different modifying phrases within the same paragraph if it intended similar treatment for the accessory crimes.

Further, in Article 294, paragraph 4, the legislature identified who the perpetrator and the victim must be in the special complex crime of robbery with serious physical injuries. It specified that in the course of the execution of robbery, "*the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries*" covered by subdivisions 3 and 4 of Article 263. The law explicitly used the term "*offender*" evincing that the physical injury must be committed by the same person who is guilty of robbery. Yet, no such import can be found in Article 294, paragraph 1.

x x x [T]he introductory sentence in Article 294 which provides "*Any person guilty of robbery with the use of violence against or intimidation of any person*" must be interpreted merely as a prelude to the enumeration of penalties to be imposed upon persons guilty of robbery. This is because the proper penalties hinge upon the presence or absence of the attending circumstances specified in Article 294, paragraphs 1 to 5, independent of who brought about such circumstances, unless otherwise qualified in the said paragraphs. To interpret that all the circumstances under Article 294 must be committed by the person guilty of the robbery will erase the distinctions among the five paragraphs that were deliberately put in place by the law.

In another vein, appellants aver that the Court of Appeals erred in affirming the trial court's factual finding of conspiracy.

According to them, the prosecution failed to establish conspiracy between them and Arizala.[24]

The Court disagrees.

Significantly, when homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing. If a robber tries to prevent the commission of homicide after the commission of the robbery, however, he is guilty only of robbery. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. Evidently, one who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.[25]

Under Article 8, paragraph 2 of the Revised Penal Code, the following are the elements of conspiracy: (1) two (2) or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of a felony was decided upon. Proof of conspiracy need not be based on direct evidence. It may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of a crime. It is likewise not necessary to show that two (2) or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. Conspiracy may be deduced from the mode or manner in which the crime was perpetrated. It may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest.[26]

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[24] *Rollo*, pp. 9-10.

[25] *People v. Ebet* and *People v. De Jesus*, *supra* note 17.

[26] *People v. Lago*, 411 Phil. 52, 59 (2001); *People v. Fegidero*, 392 Phil. 36, 47-48 (2000); *People v. Francisco*, 388 Phil. 94, 122-123 (2000).

Here, the trial court and the Court of Appeals correctly ruled that conspiracy exists between appellants and Arizala based on Ciara Kristle V. Abella's testimony that they were the persons who helped each other in robbing her and the other passengers of the jeepney. She testified that they boarded the jeepney and declared a hold-up. One of them was at the entrance of the jeepney, while the other was near the driver and holding a knife. The third hold-upper took the belongings of the passengers of the jeepney, including her own. After taking their belongings, the hold-uppers alighted from the jeepney.[27]

These acts of appellants and Arizala clearly show a joint or common purpose and design, concerted action, and community of interest. Notably, in conspiracy, the act of one is the act of all.[28]

ACCORDINGLY, the appeal is **DISMISSED.** The Decision dated July 25, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09582 is **AFFIRMED**.

SO ORDERED.

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

Caguioa, J., see dissenting opinion.

DISSENTING OPINION

CAGUIOA, *J.*:

Accused-appellants here were charged with the special complex crime of Robbery with Homicide under paragraph 1, Article 294 of the Revised Penal Code (RPC) under an Information[1] which alleged that they, in conspiracy with one Jimmy Arizala (Arizala), armed with a gun and bladed weapons, with intent to gain and by means of force and violence and

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[27] *Rollo*, p. 13.

[28] *People v. Lago*, *People v. Fegidero*, and *People v. Francisco*, *supra* note 26.

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

intimidation, robbed and divested some of the passengers inside a jeepney of their personal belongings, and on the occasion of said robbery, Arizala was killed while struggling with the possession of his gun with the responding police officer, PO2 Ramilo De Pedro (PO2 De Pedro).[2]

During trial, PO2 De Pedro testified that after announcing the arrest of herein accused-appellants, Arizala took a pistol from his backpack, which prompted PO2 De Pedro to let go of his M16 rifle and wrestle for the possession of the pistol. **PO2 De Pedro was able to grab possession of the pistol and fired twice – the second shot hitting Arizala in his chest, as a result of which, he died**.[3]

Thus, the trial court was faced with the issue of whether accused-appellants can be held guilty of the special complex crime of Robbery with Homicide, **when the person killed was one of the robbers and committed by a third person**, that is, PO2 De Pedro.

The Regional Trial Court, as well as the Court of Appeals, on appeal, convicted accused-appellants of the crime charged on the ground that the "homicide takes place x x x on [the] occasion of the robbery."[4] The *ponencia*, in turn, affirms accused-appellants' conviction ruling that all the elements of Robbery were established beyond reasonable doubt and that on the occasion of the robbery, a person did die, *i.e.*, Arizala, one of the robbers. The *ponencia* explains that it is irrelevant if the victim of the homicide is one of the robbers; once homicide is committed by reason or on occasion of the robbery, the felony committed is Robbery with Homicide. According to the *ponencia*, this is the clear import of Article 294 because the word "*any*" is all inclusive, including anyone of the robbers themselves.[5] The *ponencia* also cites the cases of *People v. Ebet*[6] and *People*

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[2] *Id.*

[3] *Id.* at 3.

[4] *Id.* at 4.

[5] *Id.* at 6.

[6] 649 Phil. 181 (2010).

v. De Jesus[7] in support of its finding that the crime committed is Robbery with Homicide.

I agree with the *ponencia* that in the special complex crime of Robbery with Homicide, the victim of the homicide (*i.e.*, the person killed) may be any person, including the robbers themselves, as long as the killing was committed by reason of or on occasion of the robbery. **However, I submit that this is the rule only if the homicide is committed by any of the persons guilty of robbery. In other words, this ruling does *not* apply when the robber is killed by a third person, a responding police officer**. This is the clear and logical import of the language of Article 294 of the RPC, which reads:

ARTICLE 294. *Robbery with Violence Against or Intimidation of Persons — Penalties.* — **Any person guilty of robbery** with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusión perpetua* to death, when by reason or on occasion of the robbery, **the crime of homicide shall have been committed**.

2. The penalty of *reclusión temporal* in its medium period to *reclusión perpetua*, when the robbery **shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries** penalized in subdivision 1 of article 263 **shall have been inflicted**, or the person robbed **shall have been held for ransom or deprived of his liberty for more than one day**.

3. The penalty of *reclusión temporal*, when by reason or on occasion of the robbery, any of the **physical injuries** penalized in subdivision 2 of the article mentioned in the next preceding paragraph, **shall have been inflicted**.

4. The penalty of *prisión mayor* in its medium period to *reclusión temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, **the offender shall have inflicted upon any person not**

[7] 473 Phil. 405 (2004).

responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.

5. The penalty of *prisión correccional* to *prisión mayor* in its medium period in other cases. (Emphasis and underscoring supplied)

Paragraphs 1 to 5 of the foregoing provision modify the overarching statement of "*Any person guilty of robbery with the use of violence against or intimidation of any person*,"[8] by providing specific penalties for other acts that have been committed in relation to the robbery. Consequently, the overt acts mentioned in each of the enumerated acts, which include the commission of the incidental crimes of homicide, rape, mutilation, kidnapping and physical injuries, refer to the "agent" or "actor" in the general overarching statement, *i.e.*, the person guilty of robbery.

In *People v. Madsali*,[9] the Court held that in a special complex crime, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.[10] Thus, to be convicted under paragraph 1 of Article 294, it must be alleged in the Information and proven during trial that the perpetrator of the robbery is the same person who did the killing, committed on occasion or by reason of the robbery. It is completely illogical for the law to hold a person liable for a crime he did not commit or accede to.

Associate Justice Mario V. Lopez, however, opines that the use of different modifying phrases in each of the enumeration means that the accessory crimes committed in relation to robbery must be treated differently. According to him, the phrase "*by reason or on occasion of* " in paragraph 1 does not qualify as to who committed the homicide, while the phrase "*accompanied by*" in paragraph 2 suggests that the robbers must have committed the accessory crimes of rape and intentional mutilation.[11]

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[8] Italics supplied.

[9] 625 Phil. 431 (2010).

[10] *Id.* at 455.

[11] *Ponencia*, p. 7.

I disagree. The phrases "*by reason or on occasion of*" and "*accompanied by*" are descriptive only of the time when the accessory crimes have been committed in relation to robbery, and not of the person who committed the said acts. It is settled in jurisprudence that the phrase "*by reason or on occasion of*" covers accessory crimes committed before, during or after the robbery;[12] while the phrase "*accompanied by*" means that the accessory crimes of rape and mutilation must be committed in the course of the robbery. Nonetheless, in both instances, these accessory crimes should have been committed or inflicted by the person or persons guilty of robbery.

To be sure, the words of paragraph 1 are very clear when they state: "The penalty of *reclusión perpetua* to death, when by reason or on occasion of the robbery, **the crime of homicide shall have been committed**."[13] In simple terms, **it is not a question of whether or not someone died "by reason or on occasion of the robbery" — rather, the question is whether or not a "crime of homicide" was committed "by reason or on occasion of the robbery."** Here, there can be no gainsaying that when PO2 De Pedro shot and killed one of the robbers, he did not, by that act, commit a "crime of homicide." And since the accused also did not shoot and kill their co-accused, they too cannot also be said to have committed a "crime of homicide." Accordingly, the applicable rule of statutory construction is not that relied upon by Justice Lopez,[14] but rather, that if the statute is plain and clear, it must be given its literal meaning and applied without attempted interpretation,[15] and when there is doubt in the interpretation of criminal laws, all doubts must be resolved in favor of the accused.[16]

Furthermore, robbery with homicide, as a special complex crime, falls under the category of plurality of crimes, where a

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[12] *People v. Torres*, 412 Phil. 375, 385 (2001).

[13] Emphasis and italics supplied.

[14] *Ponencia*, pp. 7-8.

[15] *Padua v. People*, 581 Phil. 489, 500-501 (2008).

[16] *People v. Valdez*, 774 Phil. 723, 747 (2015).

single penalty is imposed by law,[17] even if the actor commits various delictual acts of the same or different kind.[18] Plurality of crimes also include (1) compound crimes, where a single act constitutes two or more grave or less grave offenses; and (2) complex crime proper, where one offense is a necessary means for committing another offense.[19] Similar to complex crime proper, the actor in special complex crimes commits two offenses but the accessory offense (*i.e.*, rape, homicide, mutilation, kidnapping or physical injury) is not necessary for the accomplishment of the other (*i.e.*, robbery).[20] The law treats special complex crimes as one single indivisible crime under a definition of its own and provided for by a special penalty in the RPC even if in reality they are composed of two distinct crimes.[21]

In *People v. Escote, Jr.*,[22] learned former Associate Justice Jose C. Vitug opined that in special complex crimes, like robbery with homicide, "the law effectively treats the offense as an individual felony in itself and then prescribes a specific penalty therefor."[23] The law prescribes a distinct penalty "**in recognition of the primacy given to criminal intent over the overt acts that are done to achieve that intent**."[24] Hence, as a singular crime with one criminal intent, the overt acts constituting its elements, which include the crime of homicide or the other accessory crimes incidental thereto, must be committed by the person or persons guilty of robbery.

Moreover, jurisprudence has established that homicide is committed by reason or on occasion of robbery when the killing was done for the following purposes: (a) to deprive the victim

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[17] See Leonor D. Boado, *NOTES AND CASES ON THE REVISED PENAL CODE*, 266 (2012 ed.)

[18] *Gamboa v. Court of Appeals*, 160-A Phil. 962, 969 (1975).

[19] See RPC, Art. 48.

[20] See *People v. Salazar*, 342 Phil. 745, 766 (1997).

[21] *United States v. Perez*, 32 Phil. 163 (1915).

[22] 448 Phil. 748 (2003).

[23] *Id.* at 801.

[24] *Id.* at 802; emphasis and underscoring supplied; italics omitted.

of his personal property which is sought to be accomplished by eliminating an obstacle or opposition; (b) to do away with a witness or to defend the possession of the stolen property;[25] (c) to facilitate the robbery or the escape of the culprit; (d) to preserve the possession by the culprit of the loot; and (e) to prevent discovery of the commission of the robbery.[26] **In this case, it cannot therefore be said that the killing of a co-accused in the robbery by a responding police officer was committed by reason or on occasion of the robbery because none of the foregoing motives is attendant to the killing of one of the robbers by a responding police officer**. During trial, PO2 De Pedro narrated that he "was able to grab possession of the pistol and fire twice — the second shot hit [Arazala] in the chest, as a result of which he died."[27] **In fact, it was not even shown in this case that accused-appellants fired any gun during the incident**. Thus, affirming the conviction of accused-appellants for the special complex crime of Robbery with Homicide, when the killing was committed not by any of them but by a responding police officer, goes beyond the letter and logic of the law.

Indeed, in *People v. Salazar*,[28] this Court held:

> *Robo con homicidio* is an indivisible offense, a special complex crime. The penalty for robbery with homicide is more severe because the law sees, in this crime, that men placed lucre above the value of human life, thus, justifying the imposition of a more severe penalty than that for simple homicide or robbery. **In view of said graver penalty, jurisprudence exacts a stricter requirement before convicting the accused of this crime. Where the homicide is not conclusively shown to have been committed for the purpose of robbing the victim**, or where the robbery was not proven, **there can be no conviction for *robo con homicidio***.[29] (Emphasis and underscoring supplied)

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[25] *People v. Matic*, 427 Phil. 564, 573-574 (2002).

[26] *People v. Al Madrelejos*, 828 Phil. 732, 738-739 (2018).

[27] *Ponencia*, p. 3.

[28] 342 Phil. 745 (1997).

[29] *Id.* at 766.

The *ponencia*'s interpretation of paragraph 1, Article 294 — that the crime is Robbery with Homicide even if the killing was not committed by the person guilty of the robbery — also violates the fundamental rules on the construction of penal statutes.

In *People v. Sullano*,[30] the Court explained that criminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. Thus, courts *must not* bring cases within the provision of law that are not clearly embraced by it. The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under the provision. Any ambiguity in the law will always be construed strictly against the state and in favor of the accused.[31]

Intimately related to this rule is the principle of lenity. This applies when the court is faced with two interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him. Rule of lenity dictates that the court should adopt the interpretation more favorable to the accused.[32]

In *Centeno v. Villalon-Pornillos*,[33] the Court held:

> x x x [I]t is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. **They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. *If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred.*** The principle is that acts in and of themselves innocent and lawful cannot be held

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[30] G.R. No. 228373, March 12, 2018, 858 SCRA 274.

[31] *Id.* at 288.

[32] *Intestate Estate of Vda. de Carungcong v. People*, 626 Phil. 177, 200 (2010).

[33] 306 Phil. 219 (1994).

to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. **Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.**

The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition or forbidden acts. x x x[34] (Emphasis, underscoring and italics supplied)

As to the cases cited by the *ponencia*, a close reading thereof reveals that they do ***not*** support the finding that the crime committed in this case is Robbery with Homicide. To the contrary, *Ebet* and *De Jesus* affirm that, to be convicted of Robbery with Homicide, the robbery and the killing must be perpetrated by the same person, whether the victim of the homicide is other than the victim of the robbery or one of the robbers themselves.

In *Ebet*, the victim of the homicide was one of the victims of the robbery, while in *De Jesus*, the person killed was a roving security guard who witnessed the robbery. In both cases, and in other cases decided by the Court[35] where conviction for Robbery with Homicide was affirmed, the killing was committed by the person who committed the robbery.

In contrast to the aforementioned cases cited in the *ponencia*, I find the Court's ruling in *People v. Manalili*[36] instructive and applicable to this case. In *Manalili*, the accused was charged, among others, with the special complex crime of Attempted Robbery with Homicide. He was convicted only of Robbery because the killing was committed by a third person, *viz.*:

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[34] *Id.* at 230-231, citing *Gaanan v. Intermediate Appellate Court, et al.*, 229 Phil. 139, 148 (1986).

[35] See *People v. Pedroso*, 391 Phil. 43 (2000); *People v. Boquirin*, 432 Phil. 722 (2002); *People v. Escote, Jr.*, *supra* note 22; *People v. Comiling*, 468 Phil. 869 (2004); *People v. Barra*, 713 Phil. 698 (2013); *People v. Layug*, 818 Phil. 1021 (2017); *People v. Madrelejos*, *supra* note 26; *People v. Bacyaan*, G.R. No. 238457, September 18, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65665>.

[36] 355 Phil. 652 (1998).

It is true that the Information for attempted robbery contained the allegation that one of the robbers was killed during such attempt. This, however, does not warrant a conviction for the special complex crime. Article 297 of the Revised Penal Code provides that the attempted robbery and the killing be perpetrated by the same person. Said article speaks of the same person. "being guilty of such offenses"; that is, robbery and homicide. In this case, it is clear that the dead robber was killed not by his cohorts but by one of the passengers.[37]

That the crime in *Manalili* was only attempted robbery covered by Article 297 of the RPC does not make *Manalili* inapplicable. There is no basis in logic to make a distinction because the law punishes the same criminal acts of robbery and homicide. To be sure, the difference in the stage of execution only affects the penalty prescribed by law.[38] Thus, in consummated Robbery with Homicide, the penalty is *reclusion perpetua* to death, while for attempted and frustrated Robbery with Homicide, the penalty is *reclusion temporal* in its maximum to *reclusion perpetua*.

Moreover, the different languages used in Articles 297 and 294 paragraph 1 of the RPC — that the phrase "person guilty of such offenses" does not appear in Article 294 paragraph 1 — is more imagined than real, as this difference in language cannot trump the logic of applying the same reasoning for both provisions. As already discussed, the accessory crimes mentioned in paragraph 1 and in the other enumerations in Article 294 refer to the overarching statement of "*any person guilty of robbery*." Thus, it would only be redundant and superfluous to put in each paragraph in Article 294 the phrase "person guilty of such offenses."

Again, it bears emphasis that in interpreting and applying criminal law, all doubts should be resolved in favor of the accused. *In dubio pro reo*. When in doubt, rule for the accused. This is in consonance with the constitutional guarantee that the accused shall be presumed innocent unless and until his guilt is established beyond reasonable doubt.[39]

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[37] *Id.* at 685-686.

[38] See RPC, Chapter Four, Sec. One.

[39] *Intestate Estate of Vda. de Carungcong v. People*, *supra* note 32.

Based on the foregoing, I submit that accused-appellants should be held guilty only of Robbery and not the special complex crime of Robbery with Homicide because it was proven during trial that the dead robber, Arizala, was killed not by accused-appellants but by the police officer who responded to the incident.

SECOND DIVISION

[A.C. No. 12006. June 29, 2020]

MATTHEW CONSTANCIO M. SANTAMARIA, *complainant, vs.* **ATTY. RAUL O. TOLENTINO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; THE POWER TO DISBAR OR SUSPEND OUGHT ALWAYS TO BE EXERCISED ON THE PRESERVATIVE AND NOT ON THE VINDICTIVE PRINCIPLE, WITH GREAT CAUTION AND ONLY FOR THE MOST WEIGHTY REASONS; IT SHOULD ONLY BE IMPOSED IN CLEAR CASES OF MISCONDUCT AFFECTING THE STANDING AND MORAL CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND A MEMBER OF THE BAR. — Disbarment is the most severe form of disciplinary sanction given to a lawyer. It is with high regard that this Honorable Court has repeatedly held in various cases that contrary to the penalty that complainant is seeking to be imposed against respondent, the power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons. It should only be imposed in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the Bar.

2. ID.; ID.; IT IS THE DUTY OF THE ATTORNEY FOR THE DECEASED DEFENDANT TO INFORM THE COURT OF

HIS CLIENT'S DEATH AND TO FURNISH THE COURT WITH THE NAMES AND RESIDENCES OF THE EXECUTOR, ADMINISTRATOR, OR LEGAL REPRESENTATIVE OF THE DECEASED, AS THE LAW OPERATES ON THE PRESUMPTION THAT THE ATTORNEY FOR THE DECEASED PARTY IS IN A BETTER POSITION THAN THE ATTORNEY FOR THE ADVERSE PARTY TO KNOW ABOUT THE DEATH OF HIS CLIENT. — No less than the Honorable CA took notice in its Resolution dated September 29, 2011 in the case of *Miriam Maglana vs. Manuel Santamaria* (CA-G.R. CV No. 02279-MIN) of the fact that respondent failed to notify the said Court of the death of his client and along with this, said Court also took notice of the failure of respondent to file an Appellee's Brief for his client. Nowhere in respondent's defense did he deny the said finding of the Court of Appeals. His only proof to support his defense was a mere affidavit of a certain Evelyn Demoni who purportedly claimed that respondent exerted efforts to get a copy of the death certificate of Miriam. At the outset, it must be stressed that "under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased." Sections 16 and 17, Rule 3 of the Rules of Court provide: The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death of the lawyer's client. The deceased litigant is herself or himself protected as he or she continues to be properly represented in the suit through the duly appointed legal representative of his estate. It should be duly noted that unless properly relieved, the counsel is responsible for the conduct of the case. He is obligated by his client and the court to do what the interest of his client requires until the end of litigation or his representation is terminated formally and there is a termination of record. In addition, "the law operates on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the names and addresses of his legal representative or representatives." Indubitably, respondent failed to inform the CA of the death of Miriam. His defense that complainant refused to provide a copy of Miriam's death certificate, the full names

and addresses of her heirs, and that his calls to Lardizabal were ignored, are not, at all convincing for he could have, nonetheless, proceeded to inform the court of his client's death and the surrounding circumstances to prove that he had faithfully and conscientiously discharged his duties as a lawyer despite the lack of cooperation or non-cooperation of the heirs of Miriam. Nowhere was it stated that respondent failed to give a copy of the death certificate.

3. ID.; ID.; A LAWYER WHO FAILS TO FILE AN APPELLEE'S BRIEF IS LIABLE FOR NEGLECT OF DUTY. — As to respondent's failure to file an Appellee's Brief, this Court believes and so holds that he is liable for neglect of duty under Rule 18.03 of the CPR which provides that: Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. In *Barbuco v. Beltran*, the Supreme Court found respondent guilty of negligence and suspended him from the practice of law for six months for his failure to file a brief within the reglementary period. "By accepting a case, a lawyer is duty bound to serve his client with competence and diligence of a good father of a family." Respondent's defense that he was not paid by his client of the expenses does not justify a departure from his avowed duty to serve a client with competence and diligence. Respondent is reminded that practice of law is not a money-making trade. It is not a business but in essence, a form of public service. Non-payment of fees is not a valid justification for not filing an Appellee's Brief.

4. ID.; ID.; THE ATTORNEY HAS ONLY SUCH AUTHORITY AS THE PRINCIPAL HAS CHOSEN TO CONFER UPON HIM, AND ONE DEALING WITH HIM MUST ASCERTAIN AT HIS OWN RISK WHETHER HIS ACTS WILL BIND THE PRINCIPAL; ALL POWER OF ATTORNEYS SHOULD BE REVOCABLE, FOR TO MAKE THE POWER OF ATTORNEY IRREVOCABLE WOULD MEAN THAT THE COUNSEL HAS MORE AUTHORITY OVER THE PROPERTY OF THE PRINCIPAL THAN THE PRINCIPAL WHO ACTUALLY OWNS THE PROPERTY. — As to the issue of an irrevocable power of attorney, it must be stressed that a power of attorney is basically a written document whereby the authority of the principal conferred upon his agent is not to be extended by implication beyond the natural

and ordinary significance of the terms in which that authority has been given. The attorney has only such authority as the principal has chosen to confer upon him, and one dealing with him must ascertain at his own risk whether his acts will bind the principal. Thus, from the definition it can be deduced that all power of attorneys should be revocable as this would defeat its purpose being merely an instrument used to confer authority of the principal to his counsel. This directs to the point that making the power of attorney irrevocable would mean that the counsel has more authority over the property of the principal than the principal who actually owns the property. Although respondent in his defense objected as to the irrevocable nature of the general power of attorney, still he proceeded to notarize the said document despite his knowledge as a lawyer that all power of attorneys should not be irrevocable.

5. ID.; NOTARIES PUBLIC; A NOTARY PUBLIC IS NO LONGER OBLIGATED TO GO BEYOND THE CONTENTS OF THE DOCUMENT WHERE THE SAME WAS EXECUTED FREELY AND VOLUNTARILY BY THE PARTIES; RESPONDENT HAS COMPLIED WITH HIS DUTY IN THE NOTARIZATION OF THE IRREVOCABLE POWER OF ATTORNEY. — Complainant in his verified complaint alleged that respondent violated the provision of the notarial law when he drafted and notarized an Irrevocable General Power of Attorney where Miriam conveyed to Manuel, titles to ten (10) parcels of land despite the fact that there is no such thing as an irrevocable power of attorney. Worse, he took advantage of the ignorance and gullibility of Miriam who was only a high school graduate. This allegation is clearly misplaced. As shown in the records of the case, it was not respondent who drafted the document but a certain Atty. Dela Victoria, while respondent's participation was only to notarize it. Considering that the IGPA was executed freely and voluntarily by the parties, the notary public is no longer obligated to go beyond the contents of the document. x x x. Since the identity of the parties was sufficiently established by competent proof, this Court is convinced that respondent has complied with his duty in the notarization of the irrevocable power of attorney.

6. ID.; ID.; PENALTY OF REPRIMAND, IMPOSED UPON AN ERRING LAWYER WHO FAILS TO OBSERVE HIS DUTY TO THE COURT. — Considering, however, that there is clear

preponderance of evidence that respondent failed to discharge his duty to inform the CA of his client's death within the period provided by the Rules of Court and to file an Appellee's Brief, a REPRIMAND is proper taking into consideration his explanation that complainant refused to furnish him his client's death certificate.

R E S O L U T I O N

DELOS SANTOS, *J.*:

Before Us is an administrative complaint for disbarment filed by Matthew Constancio O. Santamaria (complainant) against Atty. Raul O. Tolentino (respondent) for violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR).

Complainant gives the following account of the facts that spawned the filing of the present administrative complaint.

In his Verified Complaint[1] dated December 21, 2015, complainant alleged that respondent violated his lawyer's oath and the CPR when he drafted and notarized a document known as Irrevocable General Power of Attorney (IGPA)[2] which made possible the conveyance of ten (10) real properties owned by his late mother, Miriam Maglana (Miriam) to his father, Manuel Santamaria (Manuel). When Manuel filed a criminal complaint for adultery against Miriam, respondent appeared as her counsel and represented the latter in the Regional Trial Court (RTC) where the case remained unresolved for an unreasonable length of time. When Miriam was already dying of cancer and in dire need of money, she wrote a letter to Supreme Court Administrator Christopher Lock thereby pleading for relief from the delay of the case.[3] The RTC eventually rendered a Decision[4] dated February 11, 2009, dismissing the case in favor of Miriam. Manuel elevated the adverse judgment to the Court of Appeals

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

[2] *Id.* at 312-314.

[3] *Id.* at 161.

[4] *Id.* at 228-230.

(CA).[5] While the case was pending in the appellate court, Miriam died of cancer. Unfortunately, however, respondent, being her counsel of record, failed to inform the court of his client's death.[6] Worse, he neglected to file an Appellee's Brief in violation of the lawyer's oath and the CPR.[7]

Subsequently, respondent contacted Ivy Lois Lardizabal (Ivy), the sister of complainant, informing her that Manuel filed a motion for reconsideration to which complainant and his siblings should reply immediately and asked for ₱25,000.00 as payment thereof. But the heirs of Miriam informed him that they cannot however afford the said amount. Respondent was also informed by their stepfather to do what is appropriate to protect their interest with a promise for later payment.[8]

In a letter[9] dated March 2, 2012, complainant was surprised when respondent represented Manuel in conveying to complainant and his siblings the alleged 33-hectare farm at Bayabas, Toril, Davao City (Toril farm) which confirmed his suspicion that respondent was behind the proposed Memorandum of Agreement (MOA)[10] dated March 3, 2009, wherein Manuel proposed to sell the same property to pay respondent his legal fees. Furthermore, respondent showed interest in the Toril farm by asking complainant's counsel to put their position in writing.[11]

After receiving the case files from his former lawyer last December 2015, complainant saw certain documents which contained information that led him to file an Addendum to the Verified Complaint Against Atty. Raul O. Tolentino, Roll No. 16154 filed on December 21, 2015.[12] However, due to unfortunate

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[5] *Id.* at 12-16.

[6] *Id.* at 13.

[7] *Id.* at 368.

[8] *Id.* at 18.

[9] *Id.* at 170.

[10] *Id.* at 21-23.

[11] *Id.* at 3.

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

circumstances, when complainant went to the Integrated Bar of the Philippines (IBP) Office in Pasig City to file the said Addendum, it was rejected by the receiving staff at the Commission on Bar Discipline (CBD). Hence, he sought recourse in the Office of the Bar Confidant (OBC).[13]

The OBC, upon receiving the letter[14] of complainant, issued an Indorsement[15] referring the case to Atty. Rosario T. Setias-Reyes, IBP National President, for appropriate action. Dissatisfied with the Report and Recommendation[16] dated October 12, 2016 and the Resolution[17] dated November 05, 2016 of the IBP, complainant prays that such be reconsidered or set aside.

In his defense,[18] respondent denies having committed the unethical and immoral acts which complainant claims he did. He alleged that Miriam and Manuel were married on April 3, 1966 and out of their marriage, Manuel John Santamaria, Mark Santamaria, and Michael Luke Santamaria were born. Sometime in 1981 and 1982, the spouses had frequent quarrels over an alleged romantic relation of Miriam with Ignacio Almonte, Jr. (Ignacio) who was staying as boarder, which eventually resulted to a separation *de facto* between the spouses. Out of Miriam and Ignacio's amorous relationship, Ivy was born. This prompted Manuel to file a criminal case for adultery against them.[19] Miriam sought the legal assistance of respondent and after a thorough discussion with her parents, a decision was arrived at to have the case settled, considering that her parents are well known and well respected in Davao City.[20]

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

[14] *Id.*

[15] *Id.* at 42.

[16] *Id.* at 367-382.

[17] *Id.* at 403.

[18] *Id.* at 512-516.

[19] *Id.* at 204-205.

[20] *Id.* at 372.

Respondent was requested to discuss the settlement with Atty. Dela Victoria and afterwards, Manuel agreed to the settlement provided that certain properties are ceded to him, especially the properties at Bato and Toril, Davao City which he and his parents had redeemed from the bank after Miriam failed to pay the loan. Miriam agreed that ten properties will be ceded to Manuel to sell, possess, and administer as the same could not be transferred to him personally, he being an American citizen.[21]

Prior to October 24, 1989, the parties met in the office of Atty. Dela Victoria where it was agreed that the said lawyer shall draft the power of attorney, while respondent shall prepare the Affidavit of Desistance.[22] Subsequently, the parties met again, this time, in the office of respondent for the signing of the documents but Miriam and respondent objected to the word "irrevocable." However, Atty. Dela Victoria explained that it was to guarantee that Miriam will not later on revoke the power of attorney. Thus, to put an end to the issue of the word "irrevocable," Miriam agreed to such proposal as it was the desire of her children to settle the criminal case between her and Manuel as evidenced by the Transcript of Stenographic Notes[23] in Civil Case No. 26,852-98. This also finds support in complainant's July 26, 2000 letter[24] to his mother Miriam. Miriam signed the IGPA with the name of respondent stamped as notary public. After the execution and notarization of the said document, the parties then proceeded to the City Prosecutor's Office where Manuel signed an Affidavit of Desistance.[25] The City Prosecutor's Office later filed a Motion to Dismiss in court and as a consequence thereof, an Order of dismissal was issued.[26]

Respondent likewise argued that contrary to complainant's allegation, it was Atty. Dela Victoria who drafted the IGPA.

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[21] *Id.* at 512.

[22] *Id.* at 206.

[23] *Id.* at 69-134.

[24] *Id.* at 148-149.

[25] *Id.* at 206.

[26] *Id.* at 373.

He pointed out that Miriam was not totally deprived of her paraphernal properties because she had eighteen (18) properties left after the settlement. Complainant made it appear that he was not aware of the IGPA and that his mother was destitute when it was him who wrote a letter to his mother where he mentioned the IGPA and accused his mother of maintaining a lavish lifestyle.[27]

Respondent argues that there is no truth to the allegation that he employed delaying tactics in the handling of the case of Miriam since the delay was caused by the absence of a regular judge in the sala where it was raffled. Consequently, the hearings were done only by a succession of acting judges assigned to hear it but could only report for work two (2) days in a week. He even drafted a letter addressed to the Office of the Court Administrator where Miriam pleaded for a speedy disposition of the case.[28]

He also denies the allegation that he was not able to inform the Court of Appeals of Miriam's death since it was complainant who refused to provide him a copy of his client's death certificate, the full names and addresses of her heirs, and calls to Bernie Lardizabal (Lardizabal), Miriam's then common-law husband, were ignored. Since the heirs of Miriam are non-cooperative with him, he could not file a withdrawal of appearance in the case nor could he submit an appellee's brief. That contrary to complainant's baseless allegation, respondent contacted Ivy and asked for ₱15,000.00 only which the heirs of Miriam cannot provide.[29]

Finally, respondent was also not aware of the MOA until he received a formal copy of the complaint where it was attached. The MOA appears to have been prepared after the consultation that transpired between Manuel and his children. Respondent is not interested in the Toril farm because he has about 46 hectares of his own contrary to the complainant's allegation.[30]

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[27] *Id.* at 373.

[28] *Id.* at 374.

[29] *Id.*

[30] *Id.* at 375.

Report and Recommendation of the IBP

In a Report and Recommendation[31] dated October 12, 2016, Investigating Commissioner Juan Orendain P. Buted (Commissioner Buted) stated that he failed to see how complainant strongly believes that respondent is at fault as it was evident in complainant's July 26, 2000 letter[32] to his mother that the IGPA gave Manuel the authority to administer and sell the 10 properties and that it was executed by Miriam as part of their settlement in the criminal complaint for adultery. Even assuming that it was respondent who prepared the IGPA, there is no proof as to the vitiation of Miriam's consent in signing the document. No concrete and convincing evidence was presented to support the allegation of conspiracy between respondent and Manuel as pointed out in the report of the Investigating Commissioner.

The CBD likewise finds that the delay in the resolution of the case was caused by the long absence of the presiding judge. Respondent has also sufficiently explained his side as to his inability to notify the CA of his client's death. To support this claim, he submitted an Affidavit[33] of a certain Evelyn C. Demoni stating that respondent had exerted efforts through her to obtain a copy of Miriam's death certificate and the names and addresses of all the heirs.

Commissioner Buted therefore recommends that the complaint be dismissed as there was no showing of malice, ill-will, irregularity or any misconduct on the part of respondent and that an attorney enjoys the legal presumption of innocence and as an officer of the court.

Complainant moved for a reconsideration but the same was denied by a resolution of the IBP Board of Governors.[34]

The Court's Ruling

This Court resolves to adopt the IBP findings with modification.

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[31] *Id.* at 367-382.

[32] *Id.* at 148-149.

[33] *Id.* at 245.

[34] *Id.* at 403.

Disbarment is the most severe form of disciplinary sanction given to a lawyer. It is with high regard that this Honorable Court has repeatedly held in various cases that contrary to the penalty that complainant is seeking to be imposed against respondent, the power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons.[35] It should only be imposed in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the Bar.[36] Hence, this Court has arrived at the following conclusions.

No less than the Honorable CA took notice in its Resolution[37] dated September 29, 2011 in the case of *Miriam Maglana vs. Manuel Santamaria* (CA-G.R. CV No. 02279-MIN) of the fact that respondent failed to notify the said Court of the death of his client and along with this, said Court also took notice of the failure of respondent to file an Appellee's Brief for his client. Nowhere in respondent's defense did he deny the said finding of the Court of Appeals. His only proof to support his defense was a mere affidavit of a certain Evelyn Demoni[38] who purportedly claimed that respondent exerted efforts to get a copy of the death certificate of Miriam. At the outset, it must be stressed that "under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased."[39] Sections 16 and 17, Rule 3 of the Rules of Court provide:

Sec. 16. *Duty of attorney upon death, incapacity, or incompetency of party*. – Whenever a party to a pending case dies, becomes

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[35] *Gatmaytan, Jr. v. Atty. Ilao*, 490 Phil. 165, 166 (2005).

[36] *Montano v. IBP*, 410 Phil. 201, 209 (2001).

[37] *Rollo*, pp. 12-13.

[38] *Id.* at 245.

[39] *Heirs of Maximo Regoso v. Court of Appeals*, 286 Phil. 454, 457-458 (1992).

incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

Sec. 17. *Death of party*. – After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs.

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death of the lawyer's client. The deceased litigant is herself or himself protected as he or she continues to be properly represented in the suit through the duly appointed legal representative of his estate.[40] It should be duly noted that unless properly relieved, the counsel is responsible for the conduct of the case. He is obligated by his client and the court to do what the interest of his client requires until the end of litigation or his representation is terminated formally and there is a termination of record.[41]

In addition, "the law operates on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the names and addresses of his legal representative or representatives."[42]

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[40] *Napere v. Barbarona, et al.*, 567 Phil. 354, 359-360 (2008).

[41] *Orcino v. Gaspar*, 344 Phil. 792, 798 (1997).

[42] *Supra* note 39.

Indubitably, respondent failed to inform the CA of the death of Miriam. His defense that complainant refused to provide a copy of Miriam's death certificate, the full names and addresses of her heirs, and that his calls to Lardizabal were ignored, are not, at all convincing for he could have, nonetheless, proceeded to inform the court of his client's death and the surrounding circumstances to prove that he had faithfully and conscientiously discharged his duties as a lawyer despite the lack of cooperation or non-cooperation of the heirs of Miriam. Nowhere was it stated that respondent failed to give a copy of the death certificate.

As to respondent's failure to file an Appellee's Brief, this Court believes and so holds that he is liable for neglect of duty under Rule 18.03 of the CPR which provides that:

> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In *Barbuco v. Beltran*,[43] the Supreme Court found respondent guilty of negligence and suspended him from the practice of law for six months for his failure to file a brief within the reglementary period. "By accepting a case, a lawyer is duty bound to serve his client with competence and diligence of a good father of a family."[44] Respondent's defense that he was not paid by his client of the expenses does not justify a departure from his avowed duty to serve a client with competence and diligence. Respondent is reminded that practice of law is not a money-making trade. It is not a business but in essence, a form of public service. Non-payment of fees is not a valid justification for not filing an Appellee's Brief.

As to the issue of an irrevocable power of attorney, it must be stressed that a power of attorney is basically a written document whereby the authority of the principal conferred upon his agent is not to be extended by implication beyond the natural and ordinary significance of the terms in which that authority

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[43] 479 Phil. 692 (2004).

[44] Antiquiera, E. (2013). *COMMENTS ON LEGAL AND JUDICIAL ETHICS,* pp. 80-81.

has been given. The attorney has only such authority as the principal has chosen to confer upon him, and one dealing with him must ascertain at his own risk whether his acts will bind the principal.[45] Thus, from the definition it can be deduced that all power of attorneys should be revocable as this would defeat its purpose being merely an instrument used to confer authority of the principal to his counsel. This directs to the point that making the power of attorney irrevocable would mean that the counsel has more authority over the property of the principal than the principal who actually owns the property. Although respondent in his defense objected as to the irrevocable nature of the general power of attorney, still he proceeded to notarize the said document despite his knowledge as a lawyer that all power of attorneys should not be irrevocable.

Complainant in his verified complaint alleged that respondent violated the provision of the notarial law when he drafted and notarized an Irrevocable General Power of Attorney where Miriam conveyed to Manuel, titles to ten (10) parcels of land despite the fact that there is no such thing as an irrevocable power of attorney. Worse, he took advantage of the ignorance and gullibility of Miriam who was only a high school graduate. This allegation is clearly misplaced. As shown in the records of the case, it was not respondent who drafted the document but a certain Atty. Dela Victoria, while respondent's participation was only to notarize it. Considering that the IGPA was executed freely and voluntarily by the parties, the notary public is no longer obligated to go beyond the contents of the document. Section 1, Rule II of A.M. No. 02-8-13-SC provides:

Section 1. *Acknowledgment*. – "Acknowledgment" refers to an act in which in individual on a single occasion:

a. Appears in person before the notary public and presents an integrally complete instrument or document;

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

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[45] *National Bank v. Tan Ong Sze*, 53 Phil. 450, 461-462 (1929).

c. represents to the notary that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

Since the identity of the parties was sufficiently established by competent proof, this Court is convinced that respondent has complied with his duty in the notarization of the irrevocable power of attorney.

Considering, however, that there is clear preponderance of evidence that respondent failed to discharge his duty to inform the CA of his client's death within the period provided by the Rules of Court and to file an Appellee's Brief, a REPRIMAND is proper taking into consideration his explanation that complainant refused to furnish him his client's death certificate.

WHEREFORE, respondent Atty. Raul O. Tolentino is hereby **REPRIMANDED** for failing to observe his duty to the Court and **REMINDED** that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Gaerlan,*[*] *JJ.*, concur.

[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 233089. June 29, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **LUCILLE M. DAVID,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT AND ITS OBSERVATION AS TO THE TESTIMONIES OF THE WITNESSES ARE ACCORDED GREAT RESPECT IF NOT CONCLUSIVE EFFECT BECAUSE THE TRIAL COURTS ARE IN A BETTER POSITION TO DECIDE THE QUESTION OF CREDIBILITY, HAVING HEARD THE WITNESSES THEMSELVES AND HAVING OBSERVED FIRST-HAND THEIR DEMEANOR AND MANNER OF TESTIFYING UNDER GRUELING EXAMINATION. — In *People v. Dela Cruz*, the Court reiterated the rule that the "findings of the trial court on the credibility of witnesses deserve great weight." Moreover, the "factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect if not conclusive effect." This is because the "trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination." This rule requires stricter adherence when the factual findings are sustained by the CA.

2. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (REPUBLIC ACT NO. 8042); ILLEGAL RECRUITMENT IN LARGE SCALE; ILLEGAL RECRUITMENT MAY BE UNDERTAKEN BY EITHER NON-LICENSE OR LICENSE HOLDERS, AND IT IS DEEMED DONE IN LARGE SCALE AND IS CONSIDERED AS AN OFFENSE INVOLVING ECONOMIC SABOTAGE IF IT IS COMMITTED AGAINST THREE OR MORE PERSONS INDIVIDUALLY OR AS A GROUP; ACCUSED-APPELLANT FOUND GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF ILLEGAL RECRUITMENT IN LARGE SCALE UNDER SECTION

6(l) OF RA 8042 FOR FAILURE TO ACTUALLY DEPLOY PRIVATE COMPLAINANTS FOR WORK ABROAD WITHOUT VALID REASON AS DETERMINED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE). — [A]ccused-appellant was charged with Illegal Recruitment in Large Scale under Section 6 (l) and (m) of RA 8042, also known as the "Migrant Workers and Overseas Filipinos Act of 1995." x x x. Illegal recruitment may be undertaken by either non-license or license holders. Non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042. Thus, the defense of accused-appellant that she still had a license when her transactions with private complainants happened is unavailing. Further, illegal recruitment is deemed done in large scale and is considered as an offense involving economic sabotage if it is committed against three or more persons individually or as a group. The Court finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6(l) of RA 8042 as to Jovy and Cherry. Section 6(l) refers to the failure to actually deploy the worker without valid reason as determined by the Department of Labor and Employment (DOLE). This provision requires independent evidence from DOLE, such as the absence of a proper job order, to establish the reason for non-deployment. Undisputedly, Jovy was not able to leave for work to Canada or US.

3. ID.; ID.; ID.; THE ABSENCE OF TESTIMONY ON THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) CERTIFICATION DOES NOT NEGATE ITS PROBATIVE VALUE, FOR A POEA CERTIFICATION, BEING A PUBLIC DOCUMENT ISSUED BY A PUBLIC OFFICER IN THE PERFORMANCE OF OFFICIAL DUTY, IS *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN AND THE SAME IS ENTITLED TO A PRESUMPTION OF REGULARITY. — [T]he Office of the Solicitor General correctly argued in its Brief for the Appellee before the CA that the prosecution offered as evidence the POEA Certification dated May 25, 2011 stating that New Hope and Jani King, which were based in Canada, were not registered with JASIA or any

other licensed recruitment agencies. On the other hand, accused-appellant alleged in her testimony that Cherry's employer was New Hope. However, this allegation is also negated by the POEA Certification dated May 25, 2011. While there was no testimony on the POEA Certification, such does not negate its probative value. In *People v. Banzales*, the Court ruled that a POEA certification is a public document issued by a public officer in the performance of official duty; hence, it is *prima facie* evidence of the facts stated therein pursuant to Section 23 of Rule 132 of the Rules of Court. Further, public documents are entitled to a presumption of regularity. Consequently, the burden of proof rests upon him who alleges the contrary. Here, the POEA Certification dated May 25, 2011, being a public document, is a *prima facie* evidence of the facts stated therein. Unfortunately, accused-appellant failed to counter the contents of the certification.

4. ID.; ID.; ID.; ILLEGAL RECRUITMENT IN LARGE SCALE UNDER SECTION 6(M) OF RA 8042 IS COMMITTED WHERE THE ACCUSED-APPELLANT FAILED TO REIMBURSE THE EXPENSES INCURRED BY THE PRIVATE COMPLAINANTS FOR THE PROCESSING OF THEIR EMPLOYMENT ABROAD, AFTER THEY WERE NOT DEPLOYED, WITHOUT THE COMPLAINANTS' FAULT. — The Court also finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6 (m) of RA 8042, having committed the act against the five private complainants. Here, as correctly ruled by the RTC, the prosecution established that: (1) as admitted by accused-appellant, she received monies from the five private complainants with the understanding that these will be for the processing of their employment abroad; (2) the five private complainants were not deployed for work abroad; and (3) accused-appellant failed to reimburse the expenses incurred by private complainants after they were not deployed. The RTC findings of fact were affirmed by the CA. Further, contrary to accused-appellant's argument, the Court finds that the non-deployment of private respondents was without any fault on their part. As correctly ruled by the CA, while accused-appellant claimed that she delivered the monies paid by Mabelle, Jovy, Cherry, and Jill to the foreign employers as bonds, she failed to prove that the foreign employers received the monies.

5. CRIMINAL LAW; ESTAFA UNDER PARAGRAPH 2 (A), ARTICLE 315 OF THE REVISED PENAL CODE; ELEMENTS; PROVED. — The elements of *Estafa* under paragraph 2 (a), Article 315 of the RPC are as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent acts or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent acts or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage. The fact that accused-appellant had a license does not negate the fact that accused-appellant employed deceit against private respondents. Here, the prosecution was able to prove that the accused-appellant misrepresented to the private complainants that she could provide them with overseas employment when in fact there was none at the time she made such misrepresentation. Because of the assurances, private complainants parted with their money with the expectation of employment abroad which did not materialize; thus causing damage to private complainants to the extent of the sums of money they turned over to the accused-appellant. Further, as to Adoracion, she was made to believe that accused-appellant would purchase her a plane ticket for which she paid ₱51,000.00. However, she was not deployed because the ticket given to her by the accused-appellant was outdated and invalid, it being dated 2004. Thus, the RTC correctly found the accused-appellant guilty of *Estafa*.

6. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (REPUBLIC ACT NO. 8042); ILLEGAL RECRUITMENT IN LARGE SCALE; PROPER IMPOSABLE PENALTY; PENALTY OF LIFE IMPRISONMENT AND A FINE OF ₱500,000.00 IMPOSED UPON THE ACCUSED-APPELLANT FOR THE OFFENSE OF ILLEGAL RECRUITMENT IN LARGE SCALE UNDER SECTION 6 (M) OF RA 8042. — As to the offense of Illegal recruitment in Large Scale, the Court is aware that the penalties in Section 7 of RA 8042 has been amended by Section 6 of RA 10022. Thus, for the illegal recruitment constituting economic sabotage, the penalty under Section 7 (b) of RA 8042 of "life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00" has been increased to "life imprisonment and a fine of not less than

₱2,000,000.00 nor more than ₱5,000,000.00 under Section 6 of RA 10022." In this case, the affidavits of the private complainants executed on various dates on July 2009, as well as their testimonies, indicate that the offenses were committed earlier than March 8, 2010, the date of effectivity of RA 10022. Since the penalties in Section 7 of RA 8042 are more favorable to accused-appellant, the penalties stated in RA 8042 should still apply. Consequently, considering the accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6 (m) of RA 8042, the Court finds no reason to modify the penalty imposed upon her in Criminal Case No. 143740, *i.e.*, penalty of life imprisonment and a fine of ₱500,000.00.

7. CRIMINAL LAW; ESTAFA UNDER PARAGRAPH 2 (A), ARTICLE 315 OF THE REVISED PENAL CODE; PROPER IMPOSABLE PENALTY; PENALTY IMPOSED UPON THE ACCUSED-APPELLANT FOR THE CRIME OF *ESTAFA*, MODIFIED. — As to the crime of *Estafa* for five counts, there is a need to modify the penalties imposed by the RTC and affirmed by the CA, in view of the enactment of RA 10951 which increased the amounts that would correspond to the penalties provided in Article 315 of the RPC. Since the amendment is favorable to accused-appellant, it shall have retroactive effect. As explained in *People v. Dejolde*, Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. Moreover, there being no mitigating and aggravating circumstance, the maximum penalty should be between one (1) year and one (1) day to one (1) year and eight (8) months of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, *i.e.*, between one (1) month and one (1) day to four (4) months. In this case, considering that the amounts involved in Criminal Case Nos. 143742, 143743, 143744, 143745, 143747 are ₱66,550.00, ₱65,500.00, ₱217,000.00, ₱45,000.00 and ₱45,000.00, respectively, the indeterminate penalty for each count of *Estafa* should be modified to a prison term of one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

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.*:

This is an appeal[1] filed by Lucille M. David (accused-appellant) from the Decision[2] dated January 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07816 that affirmed the Joint Judgment[3] dated September 15, 2015 of Branch 166, Regional Trial Court (RTC), Pasig City. The RTC found accused-appellant guilty beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale in Criminal Case No. 143740, and the crime of *Estafa* under paragraph 2 (a), Article 315 of the Revised Penal Code (RPC) in Criminal Case Nos. 143742, 143743, 143744, 143745, and 143747.

The Antecedents

Accused-appellant was charged with the following violations in the following Informations filed on April 6, 2010:

Criminal Case No. 143740 for Large Scale Illegal Recruitment in violation of Section 6 (l) and (m) of Republic Act No. (RA) 8042[4]

"That sometime in the months of February 2008 to November 2008 or thereabout, at Block 32, Lot 5, Phase 2-C2, Kaalinsabay Street, Karangalan Village, Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused LUCILLE M. DAVID, of Jasia International Manpower Services, did then and there

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[1] See Notice of Appeal dated February 6, 2017, *rollo*, pp. 20-21.

[2] *Id.* at 2-19; penned by Associate Justice Jose C. Reyes, Jr. (now a member of the Court) with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a member of the Court), concurring.

[3] CA *rollo*, pp. 33-47; penned by Presiding Judge Rowena De Juan-Quinagoran.

[4] Records, pp. 1-3.

willfully, unlawfully and criminally recruit, enlist and promise overseas employment to the private complainants, namely: CHERRY C. MARCO, JILL R. GRIJALDO, LEILANIE C. PENERA, ADORACION P. CASINTAHAN, JOVY MITRA *[sic]*, MABELLA *[sic]* R. PINEDA AND ERWIN D. ENRIQUEZ as waitresses and service crew in Canada and the United States, the said accused thereby charging, exacting and collecting from the said private complainants amounts ranging from ₱45,000.00 to ₱220,000.00, more or less, and despite the payment of the said fees, the said accused failed to actually deploy the private complainants without valid reasons as determined by the Department of Labor and Employment and despite demand, said accused failed and refused to reimburse the expenses incurred by the said private complainants in connection with their documentation and processing for the purpose of their supposed deployment, to the damage and prejudice of said private complainants.

Contrary to law.[5]

Criminal Case No. 143742 for *Estafa* under paragraph 2 (a), Article 315 of the Revised Penal Code (RPC)[6]

"That sometime in June 2008 or thereabout, at JASIA IMS principal place of business located at Block 32, Lot 5, Phase 2-C2, Kaalinsabay Street, Karangalan Village, Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, being then the president and/or proprietor of JASIA IMS, a holder of a POEA suspended license to recruit workers for deployment abroad by means of deceit, fraudulent acts and false pretenses executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully, and criminally defraud and deceive private complainant MABELLE R. PINEDA, and misrepresent herself as having the capacity to contract, enlist, and transport or actually deploy Filipino workers for employment in Canada and the United States; demand and receive from said private complainant the total amount of SIXTY THOUSAND PESOS (₱60,000.00) which was deposited upon the instruction of said accused to her account no. 1110117769 maintained at Banco de Oro on June 13, 2008, as payment of said private complainant Pineda's application and processing fee, and by reason of above-named accused misrepresentation, false assurance and deceit, complainant Pineda was induced to part with and deliver

[5] *Id.* at 1-2.

[6] *Id.* at 84-86.

the aforesaid amount to herein accused; that said accused, once in possession of said amount misappropriated the same and contrary to her representations and assurances she failed to actually deploy said private complainant; that by reason of said unjustified failure to deploy, private complainant Pineda demanded the return and/or reimbursement of the amount of SIXTY THOUSAND PESOS (₱60,000.00) which said accused fail and refuse to return and/or reimburse despite repeated demands, to the damage and prejudice of herein complainant MABELLE R. PINEDA."

CONTRARY TO LAW.[7]

Criminal Case Nos. 143743, 143744, 143745, and 143747 are also for *Estafa* under paragraph 2 (a), Article 315 of the RPC wherein the Informations are similarly worded with the Information in Criminal Case No. 143742 except for the names of the private complainants, the amounts involved, and the dates covered.[8]

In Criminal Case No. 143743, private complainant Jovy S. Mira (Jovy), who alleged that accused-appellant fraudulently took from her ₱65,000.00 on June 27, 2008.[9]

In Criminal Case No. 143744, private complainant Adoracion P. Casintahan (Adoracion), who alleged that accused-appellant fraudulently took from her US$800.00 and ₱181,000.00 sometime in November 2008.[10]

In Criminal Case No. 143745, private complainant Cherry C. Marco (Cherry), who alleged that accused-appellant fraudulently took from her ₱45,000.00 sometime in February 2008.[11]

In Criminal Case No. 143747, private complainant Jill D. Grijaldo (Jill), who alleged that accused-appellant fraudulently took from her ₱45,000.00 sometime in February 2008.[12]

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

[8] *Rollo*, pp. 3-4.

[9] *Id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *Id.*

Two other Informations also for *Estafa* under paragraph 2 (a) of Article 315 of the RPC were also filed against accused-appellant in Criminal Case Nos. 143741 and 143746. However, the RTC, in its Order[13] dated April 25, 2014 granted the Demurrer to Evidence in Criminal Case Nos. 143741 and 143746. Thus, the RTC acquitted accused-appellant in Criminal Case Nos. 143741 and 143746.[14]

Version of the Prosecution

I. In Criminal Case Nos. 143740 and 143742

Purita R. Pineda (Purita), the mother and attorney-in-fact of Mabelle R. Pineda (Mabelle), testified that on June 13, 2008, she and Mabelle went to Banco de Oro (BDO), Ermita and deposited ₱60,000.00 in Account No. 1110117769 that is under accused-appellant's name as placement fee for Mabelle's job application in Canada.[15] Purita further testified that she and Mabelle went to JASIA International Manpower Services (JASIA) office where they talked to accused-appellant. The accused-appellant told Purita that she was going to Canada with her daughter and that it would not take long before her daughter goes to Canada. Mabelle then told accused-appellant that they already deposited the placement fee in accused-appellant's account.[16] While accused-appellant confirmed that she received the amount, Mabelle was never deployed to Canada and was not able to recover the amount she deposited despite mediation efforts.[17]

II. In Criminal Case Nos. 143740 and 143743

Jovy testified that while he was in Riyadh, he came to know JASIA in various websites stating that there were openings for housekeepers in Canada. He called the agency regarding the

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[13] Records, pp. 308-313.

[14] *Id.* at 313.

[15] *Rollo*, p. 4.

[16] TSN, June 27, 2013, pp. 10-12.

[17] *Rollo*, p. 4.

job openings. Upon arriving in the Philippines, he met up with the accused-appellant who then asked him to pay ₱60,000.00 as cash bond.[18] He deposited the amount in accused-appellant's BDO account on June 27, 2008.[19]

Jovy narrated that a year later, accused-appellant informed him that the employment contract and his Canadian visa had arrived. Accused-appellant then asked him to sign the contract and pay CAD$150.00 as processing fee. However, accused-appellant did not give him the original copy of the contract considering that the contract had to be submitted to the Canadian Embassy for processing. Accused-appellant then told him to wait within two weeks for a letter through the mails which would direct him to undergo medical examination in an accredited clinic. However, three weeks passed without Jovy receiving any letter.[20]

Jovy further testified that he found out from the Philippine Overseas Employment Administration (POEA) that Jani King, the supposed Canadian employer, was not an accredited overseas employer; and that no job order under such name was listed in the POEA. He tried to contact accused-appellant, but found out that JASIA was already closed.[21]

III. In Criminal Case Nos. 143740 and 143744

Adoracion testified that sometime in November 2008, she and her friend, Lailanie C. Penera[22] (Lailanie), went to JASIA because accused-appellant told them to apply as housekeepers in the United States (US). During the orientation which they attended, accused-appellant told the participants that there were already job orders and that they just needed to produce US$4,500.00 each in exchange for the respective job orders. She was able to raise US$800.00 which she delivered to accused-appellant. Upon payment, accused-appellant told her to wait

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[18] *Id.* at 5.

[19] Records, p. 237.

[20] *Rollo*, p. 5.

[21] *Id.*

[22] Referred to as Leilanie C. Pinera in some parts of the records.

for her job order considering that she was not included in the first batch.[23]

Adoracion narrated that sometime in February 2009, accused-appellant asked her to come to JASIA's new office. She had then an interview in the US Embassy on March 6, 2009 and was given a visa. Accused-appellant then told her that she passed the interview. Accused-appellant then asked her to pay ₱130,000.00 as processing fee to be paid to the POEA and ₱51,000.00 for her plane ticket.[24] After giving the placement fee and amount for the plane ticket, accused-appellant told her to wait for the processing of her papers by the POEA and for the plane ticket.[25]

Adoracion further narrated that later in March 2009, accused-appellant informed her that she had the plane ticket already. After accused-appellant gave her a photocopy of the travel itinerary, she went home; she was surprised to find out that the ticket was dated year 2004. She called accused-appellant in her office but she was told that the latter was busy. She called again but accused-appellant could no longer be reached. She and Lailanie then discovered at the POEA that JASIA's license was suspended. Thus, she was never deployed to the US and never recovered the money she gave to accused-appellant.[26]

IV. In Criminal Case Nos. 143740 and 143745

Cherry testified that she came to know of JASIA from her former manager. The former manager arranged a meeting and Cherry was able to talk to accused-appellant's husband, who told her that there was a hiring for service crew in Canada. She then sent to accused-appellant the required documents through LBC. A week later, she, together with a certain Jill, met accused-appellant in JASIA's office. Accused-appellant told them to pay the initial placement fee and/or bond of ₱60,000.00. Thus,

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[23] *Rollo*, p. 5.

[24] *Id.* at 6; TSN, April 25, 2012, pp. 12-13.

[25] *Id.* at 6.

[26] *Id.*

Cherry deposited the amount of ₱45,000.00 in accused-appellant's bank account. Accused-appellant then confirmed receipt of the payment and asked Cherry the date for the payment of the balance. After a week, Cherry followed up her application and was promised deployment by December 2008. However, time passed without her being deployed.[27]

Cherry further testified that in 2009, accused-appellant asked her if she wanted to be deployed instead in the US while waiting for the Canadian job order. She agreed, but her US visa application was denied. She wanted to pull out her application and requested for the refund of her money, but she could not contact accused-appellant anymore.[28] She no longer went to accused-appellant's office because she learned through her co-applicants that accused-appellant's office was already closed and padlocked.[29]

V. In Criminal Case Nos. 143740 and 143747

Jill testified that in February 2008, she asked her cousin, Cherry to go with her to JASIA and apply as service crew in Canada. Accused-appellant told them that there were vacant slots for service crew in Canada, but also told them that they needed to pay a placement fee in the amount of ₱90,000.00. Jill then deposited ₱45,000.00 in accused-appellant's account as she could only pay half. She also gave all her employment requirements with accused-appellant's promise that she will be deployed in Canada before December 2008. However, she was not deployed because according to accused-appellant, there was a problem with the employer in Canada. The accused-appellant then offered her employment in the US and scheduled her for an interview at the US Embassy. However, she was denied a visa because there was proof of employment for her in the US. She then asked for the return of her placement fee which accused-appellant was unable to do.[30]

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[27] *Id.*

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

[29] TSN, September 22, 2011, pp. 24-25.

[30] *Rollo*, p. 7.

Version of the Accused-Appellant

Accused-appellant filed a Demurrer to Evidence (With Prior Leave of Court).[31] However, the RTC denied it with respect to Criminal Case Nos. 143740, 143742, 143743, 143744, 143745, and 143747 in its Order[32] dated April 25, 2014.

On the witness stand, accused-appellant testified that she was the sole proprietor of JASIA; and that it was JASIA's practice to collect US$300.00 per applicant for its services only after the applicant was successfully deployed abroad.[33]

Accused-appellant further testified that she knows the private complainants; that Jovy went to JASIA to follow-up his job application in Canada which JASIA already forwarded to the employer; that after a few months, Jovy became impatient for the Labor Market Opinion (LMO) to arrive; that consequently, she mentioned to Jovy the ongoing interview conducted by a US employer to which Jovy signified his interest; that she explained to Jovy that if he would withdraw his application in Canada, the cash bond could not be refunded anymore since it was already forwarded to the Canadian employer; and that Jovy, however, did not show up at his scheduled interview in the US Embassy.[34]

Accused-appellant furthermore testified that Jovy did not sign an employment contract with Jani King considering that he has not paid a cash bond for his application, and that Jovy signed a contract with New Hope and not with Jani King.

As to Adoracion, accused-appellant testified that she thought Adoracion was able to leave the country since she never heard from her again from the time her US visa was approved. It was also her US employer and not accused-appellant who processed her plane ticket.[35]

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[31] Records, pp. 284-294.

[32] *Id.* at 308-313.

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

[34] *Id.* at 8.

[35] *Id.*

As regards Cherry and Jill, accused-appellant argued that each of them only paid ₱45,000.00 and that it was JASIA which shouldered the balance; that both were not deployed in Canada because they pulled out their applications, were unable to wait for the arrival of the LMO, and wanted to apply in the US instead. However, both failed in their interview at the US Embassy.[36]

Accused-appellant explained that the same thing happened to Mabelle, who became impatient waiting for the arrival of the LMO. Thus, Mabelle withdrew her application for a job in Canada and became interested in working in the US. She however failed to pass the interview for her visa.[37]

Accused-appellant finally argued that she is not obliged to return the cash bonds the applicants paid because all the monies she received were delivered to the foreign employer. Moreover, the transactions happened in 2008 when she still had her license. Thus, she cannot be held liable for *Estafa*. Further, she asserted that while a suspension order was issued against JASIA, it was issued only in May 2009 after JASIA had processed in full all of the private complainants' applications.[38]

Ruling of the RTC

On September 15, 2015, the RTC rendered its Joint Judgment[39] finding accused-appellant guilty beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale, defined and punished under RA 8042 in Criminal Case No. 143740; and the crime of *Estafa* defined and punished under paragraph 2 (a), Article 315 of the RPC in Criminal Case Nos. 143742, 143743, 143744, 143755, and 143747. The dispositive portion of the RTC Joint Judgment provides:

WHEREFORE, premises considered, judgment is rendered finding the accused, Lucille M. David, guilty beyond reasonable doubt of

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[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] CA *rollo*, pp. 33-47.

the crimes of Illegal Recruitment (Large Scale) and Estafa under Art. 315, par. 2(a) of the Revised Penal Code.

Accordingly, in Criminal Case No. 143740 (Illegal Recruitment in Large Scale), the accused is sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00 pursuant to Section 7(b) of Republic Act No. 8042.

In Criminal Case Nos. 143742 and 143743 (Estafa in the amounts of ₱66,550.00 and ₱65,500.00, respectively), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of *prision correccional*, as minimum penalty, to 10 years, 8 months and 21 days of *prision mayor* maximum, as maximum penalty, together with its accessory penalty.

In Criminal Case No. 143744 (Estafa in the amount of ₱217,000.00), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of *prision correccional*, as minimum penalty, to 20 years of *reclusion temporal*, as maximum penalty, together with its accessory penalty.

In Criminal Case Nos. 143745 and 143747 (Estafa in the amount of ₱45,000.00 each), the accused is sentenced to suffer the indeterminate penalty of imprisonment ranging from 6 months and 1 day of *prision correccional*, as minimum penalty, to 8 years, 8 months and 1 day of *prision mayor* medium, as maximum penalty, together with its accessory penalty.

Considering that the parties have already executed a Compromise Agreement and the court already rendered a Partial Decision on the Civil Aspect of the Case, dated January 19, 2012, the same is adopted as judgment on the civil aspect of these cases.

The period of preventive imprisonment is ordered credited in favor of the accused.

SO ORDERED.[40]

Ruling of the CA

Accused-appellant appealed the RTC Joint Judgment. But the CA, in its Decision[41] dated January 16, 2017, denied the appeal and affirmed the RTC's Joint Judgment.

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[40] *Id.* at 46-47.

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

Hence, the accused-appellant filed the instant appeal.[42]

The Court required both parties to file their respective supplementary briefs,[43] however, they opted not to file.[44]

The Court's Ruling

The Court denies the appeal.

In *People v. Dela Cruz*,[45] the Court reiterated the rule that the "findings of the trial court on the credibility of witnesses deserve great weight."[46] Moreover, the "factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect if not conclusive effect."[47] This is because the "trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed first-hand their demeanor and manner of testifying under grueling examination."[48] This rule requires stricter adherence when the factual findings are sustained by the CA.[49]

Illegal Recruitment in Large Scale

Here, accused-appellant was charged with Illegal Recruitment in Large Scale under Section 6 (l) and (m) of RA 8042, also known as the "Migrant Workers and Overseas Filipinos Act of 1995."

RA 8042, Section 6 (l) and (m) states that:

SECTION 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting,

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[42] *Id.* at 20.

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

[44] *Id.* at 30-32 and 36-38.

[45] 811 Phil. 745 (2017).

[46] *Id.* at 763.

[47] *Id.*

[48] *Id.* at 764.

[49] *People v. Escobal*, G.R. No. 206292, October 11, 2017, 842 SCRA 432, 453. Citations omitted.

transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x x x x x x x

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment 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.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

Illegal recruitment may be undertaken by either non-license or license holders.[50] Non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042.[51]

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[50] *People v. Sison*, 816 Phil. 8, 22 (2017).

[51] *Id.*

Thus, the defense of accused-appellant that she still had a license when her transactions with private complainants happened is unavailing.

Further, illegal recruitment is deemed done in large scale and is considered as an offense involving economic sabotage if it is committed against three or more persons individually or as a group.

The Court finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6 (l) of RA 8042 as to Jovy and Cherry.

Section 6 (l) refers to the failure to actually deploy the worker without valid reason as determined by the Department of Labor and Employment (DOLE). This provision requires independent evidence from DOLE, such as the absence of a proper job order, to establish the reason for non-deployment.[52]

Undisputedly, Jovy was not able to leave for work to Canada or US. Further, the Office of the Solicitor General correctly argued in its Brief for the Appellee[53] before the CA that the prosecution offered as evidence the POEA Certification[54] dated May 25, 2011 stating that New Hope and Jani King, which were based in Canada, were not registered with JASIA or any other licensed recruitment agencies.[55]

On the other hand, accused-appellant alleged in her testimony that Cherry's employer was New Hope.[56] However, this allegation is also negated by the POEA Certification dated May 25, 2011.

While there was no testimony on the POEA Certification, such does not negate its probative value. In *People v. Banzales*,[57]

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[52] *People v. Nogra*, 585 Phil. 712, 722 (2008).

[53] CA *rollo*, pp. 104-182.

[54] Records, p. 246.

[55] CA *rollo*, p. 176.

[56] TSN, September 18, 2014, p. 86.

[57] 390 Phil. 1189 (2000).

the Court ruled that a POEA certification is a public document issued by a public officer in the performance of official duty; hence, it is *prima facie* evidence of the facts stated therein pursuant to Section 23 of Rule 132 of the Rules of Court.[58] Further, public documents are entitled to a presumption of regularity. Consequently, the burden of proof rests upon him who alleges the contrary.[59]

Here, the POEA Certification dated May 25, 2011, being a public document, is a *prima facie* evidence of the facts stated therein. Unfortunately, accused-appellant failed to counter the contents of the certification.

The Court also finds that the prosecution, through its witnesses, was able to prove accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6 (m) of RA 8042, having committed the act against the five private complainants.

Here, as correctly ruled by the RTC, the prosecution established that: (1) as admitted by accused-appellant, she received monies from the five private complainants with the understanding that these will be for the processing of their employment abroad; (2) the five private complainants were not deployed for work abroad; and (3) accused-appellant failed to reimburse the expenses incurred by private complainants after they were not deployed.[60]

The RTC findings of fact were affirmed by the CA.[61]

Further, contrary to accused-appellant's argument, the Court finds that the non-deployment of private respondents was without any fault on their part.

As correctly ruled by the CA, while accused-appellant claimed that she delivered the monies paid by Mabelle, Jovy, Cherry,

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[58] *Id.* at 1202, citing *People v. Benedictus*, 351 Phil. 560, 567 (1998).

[59] *Id.*, citing *Cacho v. CA*, 336 Phil. 154, 168 (1997).

[60] *Rollo*, pp. 44-45.

[61] *Id.* at 16-17.

and Jill to the foreign employers as bonds, she failed to prove that the foreign employers received the monies.[62]

Furthermore, as to Mabelle, there is no question that she was not deployed either in Canada or the US. While the defense seemingly imputed fault on her as she allegedly failed to pass the interview of the consul at the US Embassy, the Court does not find this fatal to the case of the prosecution.[63] To begin with, while accused-appellant alleged that Mabelle's foreign principal was North American Management, she failed to adduce any evidence to substantiate the allegation.[64]

Moreover, while accused-appellant offered in evidence the POEA Certification[65] dated April 6, 2015 stating that there was an approved job order for 40 housekeepers with North American Management as the direct employer, the Certification indicated that the date of approval of the job order for 40 housekeepers with North American Management was April 15, 2009. Thus, there was no approved job order at the time Mabelle deposited her placement fee in accused-appellant's BDO bank account on June 13, 2008.

As regards Jovy, the Court agrees with the RTC's factual finding in its Order[66] dated April 25, 2014. The RTC adopted the factual finding in its Joint Judgment — that Jovy was not deployed in Canada despite paying ₱65,500.00 and signing an employment contract dated April 28, 2009 with Jani King.[67] Moreover, the Court finds that while accused-appellant testified that Jovy signed a contract with New Hope as evidenced by the Contract of Service[68] dated July 2, 2008, a perusal of the contract shows that the contract was not signed by any

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[62] *Id.*; TSN, September 18, 2014, pp. 21-22, 25, 51-52, 59, 64-67.

[63] CA *rollo*, p. 42.

[64] TSN, September 18, 2014, pp. 87-88.

[65] Records, p. 393.

[66] *Id.* at 308-313.

[67] CA *rollo*, p. 44.

[68] Records, p. 368.

representative from New Hope.[69] Thus, the Contract of Service has no probative value. More importantly, Jovy convincingly testified that he learned from the POEA that there was no job order listed therein for either Jani King or New Hope. In fact, Jovy's testimony was supported by the POEA Certification[70] dated May 25, 2011.

With respect to Adoracion, accused-appellant told Adoracion sometime in November 2008 that she can deploy her for work abroad and that there was already a job order for the US. Thus, Adoracion paid US$800.00 to accused-appellant. However, accused-appellant told her after payment to wait for the job order because she was not included in the first batch. Thus, Adoracion waited.[71] Upon being asked by accused-appellant, Adoracion paid ₱130,000.00 and ₱51,000.00 as processing fees at the POEA and as payment for her plane ticket. However, as aptly observed by the RTC which the CA affirmed, Adoracion was not deployed because the ticket given to her by the accused-appellant was outdated and invalid considering that it was dated 2004.[72] Further, as correctly found by the RTC, Adoracion convincingly testified that she was not able to go to the airport because accused-appellant did not return her passport and other travel documents after supposedly processing her papers at the POEA.[73]

As regards Cherry and Jill, accused-appellant cannot impute fault on them for not having paid the full amount of ₱65,000.00 each. The CA correctly observed that while both Cherry and Jill were not able to pay the full amount, the accused-appellant still accepted the partial amount of ₱45,000.00 from each of them. The accused-appellant then admitted, during cross-examination, that she shouldered the remaining ₱15,000.00 in Cherry and Jill's respective applications.[74]

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[69] TSN, September 18, 2014, pp. 25-26, 85.

[70] Records, p. 246.

[71] TSN, April 25, 2012, p. 9.

[72] Records, p. 193.

[73] TSN, June 14, 2012, pp. 14, 18-20.

[74] *Rollo*, pp. 15-16.

Moreover, while accused-appellant alleged in her testimony that Cherry and Jill's foreign principals in Canada are New Hope and Global, respectively, she failed to present any evidence to prove her allegation and at least show that there is in fact an available employment for Cherry and Jill.[75]

Finally, while accused-appellant imputes fault on Cherry and Jill for failing to pass the interviews at the US Embassy as part of their job application in the US and after their employment in Canada failed to materialize, the Court does not find this fact prejudicial to the case of the prosecution. In the first place, accused-appellant failed to identify Cherry and Jill's foreign principals in the US. This gives credence to the RTC's factual finding, which was affirmed by the CA, that their visa applications were denied by the US Embassy because there was no proof of employment for them in the US.[76]

Estafa under Article 315 (2) (a) of the RPC

As to the charge of *Estafa* under paragraph 2 (a), Article 315 of the RPC provides in part:

> Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> 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 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 as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense,

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[75] TSN, September 18, 2014, p. 86.

[76] *Rollo*, pp. 15-16.

fraudulent acts or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent acts or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[77]

The fact that accused-appellant had a license does not negate the fact that accused-appellant employed deceit against private respondents. Here, the prosecution was able to prove that the accused-appellant misrepresented to the private complainants that she could provide them with overseas employment when in fact there was none at the time she made such misrepresentation. Because of the assurances, private complainants parted with their money with the expectation of employment abroad which did not materialize; thus causing damage to private complainants to the extent of the sums of money they turned over to the accused-appellant. Further, as to Adoracion, she was made to believe that accused-appellant would purchase her a plane ticket for which she paid ₱51,000.00. However, she was not deployed because the ticket given to her by the accused-appellant was outdated and invalid, it being dated 2004.[78] Thus, the RTC correctly found the accused-appellant guilty of *Estafa*.

Penalties

As to the offense of Illegal Recruitment in Large Scale, the Court is aware that the penalties in Section 7 of RA 8042 has been amended by Section 6 of RA 10022. Thus, for illegal recruitment constituting economic sabotage, the penalty under Section 7 (b) of RA 8042 of "life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00" has been increased to "life imprisonment and a fine of not less than ₱2,000,000.00 nor more than ₱5,000,000.00 under Section 6 of RA 10022."

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[77] *Gamaro, et al. v. People*, 806 Phil. 483, 496 (2017), citing *Franco v. People*, 658 Phil. 600, 613 (2011).

[78] Records, p. 193.

In this case, the affidavits of the private complainants executed on various dates on July 2009, as well as their testimonies, indicate that the offenses were committed earlier than March 8, 2010, the date of effectivity of RA 10022. Since the penalties in Section 7 of RA 8042 are more favorable to accused-appellant, the penalties stated in RA 8042 should still apply.

Consequently, considering the accused-appellant's guilt beyond reasonable doubt of the offense of Illegal Recruitment in Large Scale under Section 6 (m) of RA 8042, the Court finds no reason to modify the penalty imposed upon her in Criminal Case No. 143740, *i.e.*, penalty of life imprisonment and a fine of ₱500,000.00.

As to the crime of *Estafa* for five counts, there is a need to modify the penalties imposed by the RTC and affirmed by the CA, in view of the enactment of RA 10951 which increased the amounts that would correspond to the penalties provided in Article 315 of the RPC. Since the amendment is favorable to accused-appellant, it shall have retroactive effect. As explained in *People v. Dejolde*,[79] Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. Moreover, there being no mitigating and aggravating circumstance, the maximum penalty should be between one (1) year and one (1) day to one (1) year and eight (8) months of *prision correccional*.[80] Applying the Indeterminate

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[79] 824 Phil. 939 (2018).

[80] Article 64 of the RPC provides in part:

Art. 64. *Rules for the application of penalties which contain three periods*. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

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Sentence Law,[81] the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, *i.e.*, between one (1) month and one (1) day to four (4) months.

In this case, considering that the amounts involved in Criminal Case Nos. 143742, 143743, 143744, 143745, 143747 are ₱66,550.00, ₱65,500.00, ₱217,000.00, ₱45,000.00 and ₱45,000.00, respectively, the indeterminate penalty for each count of *Estafa* should be modified to a prison term of one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

WHEREFORE, the appeal is **DISMISSED.** The Decision dated January 16, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07816 is **AFFIRMED** with **MODIFICATION** in that, for each count of *Estafa* under paragraph 2 (a), Article 315 of the Revised Penal Code in Criminal Case Nos. 143742, 143743, 143744, 143745, 143747, accused-appellant Lucille M. David is sentenced to suffer the indeterminate penalty of imprisonment ranging from one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

SO ORDERED.

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

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[81] Section 1 of Act No. 4103, otherwise known as the Indeterminate Sentence Law, provides:

Section 1. *Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense;* and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Italics supplied.)

[*] Designated additional Member per Raffle dated July 3, 2019.

[**] Designated additional member as per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 240108. June 29, 2020]

EDGAR T. CARREON, *petitioner, vs.* **MARIO AGUILLON and BETTY P. LOPEZ,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; A SECOND MOTION FOR RECONSIDERATION SHALL NOT BE ALLOWED, AND THE FILING THEREOF NEITHER SUSPENDS THE RUNNING OF THE PERIOD TO APPEAL, NOR DOES IT HAVE ANY LEGAL EFFECT. — The Rules are explicit that a second motion for reconsideration shall not be allowed. Section 2, Rule 52 of the Rules provides that: Section 2. *Second motion for reconsideration*. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Case law explains that "[t]he rule rests on the basic tenet of immutability of judgments [which evokes that] [a]t some point, a decision [must] becom[e] final and executory and, consequently, all litigations must come to an end." Moreover, "a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect."

2. ID.; ID.; ID.; THE PROHIBITION ON THE FILING OF A SECOND MOTION FOR RECONSIDERATION COMES INTO PLAY WHEN THE SECOND MOTION FOR RECONSIDERATION ESSENTIALLY REPEATS OR REITERATES THE SAME ARGUMENTS ALREADY PASSED UPON BY THE TRIBUNAL, WHEN IT RESOLVED THE FIRST MOTION FOR RECONSIDERATION FILED BY THE SAME PARTY, FOR IF THE ISSUES HAD ALREADY BEEN PASSED UPON AND THERE IS NO SUBSTANTIAL ARGUMENT RAISED, THE FINALITY AND IMMUTABILITY OF A JUDGMENT SHOULD NOT BE OBVIATED; PETITIONER'S MARCH 8, 2018 MOTION FOR RECONSIDERATION IS NOT A SECOND MOTION FOR RECONSIDERATION. — Carreon's March 8, 2018 Motion

for Reconsideration can hardly be considered as a *second* motion for reconsideration as contemplated by the Rules. In fact, the aforesaid motion should have actually been treated as a first motion for reconsideration because it assailed the CA's reconsidered ruling (*i.e.*, the Resolution dated February 19, 2018), and not its original Resolution dated July 28, 2017. x x x. [T]he CA's February 19, 2018 Resolution is a new ruling based on legal grounds that are totally different from its original July 28, 2017 Resolution; hence, when Carreon filed the March 8, 2018 Motion for Reconsideration, he was technically filing a first motion for reconsideration of the February 19, 2018 Resolution wherein the CA, for the first time, traversed the merits of his Annulment Petition. As such, the prohibition on the filing of a second motion for reconsideration found in Section 2, Rule 52 of the Rules did not come into play. Evidently, what the Rules seek to proscribe is a second motion for reconsideration, which essentially repeats or reiterates the same arguments already passed upon by the tribunal, when it resolved the first motion for reconsideration filed by the same party. If the issues had already been passed upon and there is no substantial argument raised, then the finality and immutability of a judgment should not be obviated. Thus, since Carreon's March 8, 2018 Motion for Reconsideration was erroneously treated by the CA as a second motion for reconsideration, the period within which to file an appeal did not lapse and consequently, the CA's ruling did not attain finality.

3. ID.; ID.; SUMMONS; SERVICE OF SUMMONS; A DEFECTIVE SERVICE OF SUMMONS NEGATES THE COURT'S JURISDICTION AND IS A GROUND FOR AN ACTION FOR ANNULMENT OF JUDGMENT. — [I]t bears to note that defective service of summons negates the Court's jurisdiction and is thus recognized as a ground for an action for annulment of judgment. As a rule, any substituted service other than that authorized under Section 7, Rule 14 of the Rules is deemed ineffective and contrary to law. Here, Carreon argued that substituted service of summons was improperly resorted to, considering that no earnest efforts had been exerted by the sheriff or process server of the RTC showing the impossibility of personal service. As the records bear out, it appears that Carreon's argument of the defective service of summons has, at least, *prima facie* basis, considering that: (a) Nothing on record shows that earnest efforts had been exerted by the sheriff

or process server of the RTC to personally serve the defendants with summons within a reasonable period; (b) The Return only states that the summons was purportedly served sometime in December 2009 and that the defendants' son, whose name was not even indicated, allegedly received it; (c) The Return did not specify the address of the defendants' supposed residence where the summons was served; and (d) Carreon explicitly attested that he has no son who could have possibly received the summons in his stead because his only child was his daughter Malaya De Luna, who had likewise executed an affidavit to this effect.

4. ID.; ID.; JUDGMENTS; A PETITION FOR ANNULMENT OF JUDGMENT CANNOT BE CASUALLY DISMISSED BASED ON A BLANKET INVOCATION OF THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES, FOR WHERE THE OFFICIAL ACT IS IRREGULAR ON ITS FACE, THE PRESUMPTION CANNOT ARISE; THE PETITION FOR ANNULMENT OF JUDGMENT IS PARTLY GRANTED IN CASE AT BAR. — [T]he CA cannot casually dismiss the Annulment Petition based on a blanket invocation of the presumption of regularity in the performance of official duties, considering that as case law holds, where the official act is irregular on its face, the presumption cannot arise. Hence, pursuant to Sections 5 and 6, Rule 47 of the Rules, the CA is required to give due course to the Annulment Petition, cause the service of summons, and conduct trial to determine its merits x x x. In proceeding with the case, the CA ought to be guided by the provisions of Rule 47 of the Rules, including Sections 7 and 9 thereof. x x x. In fine, the Court holds that the CA erred in noting without action Carreon's March 8, 2018 Motion for Reconsideration of its February 19, 2018 Resolution, as well as in dismissing outright his Annulment Petition. The present petition seeking the grant of the Annulment Petition and other related reliefs should, however, only be partly granted, considering that the CA must still conduct a trial on its merits and issue the corresponding judgment in accordance with the parameters of Rule 47 of the Rules.

APPEARANCES OF COUNSEL

Dennis G. Dagohoy for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated February 19, 2018[2] and May 4, 2018[3] of the Court of Appeals (CA) in CA-G.R. SP No. 08173-MIN, which dismissed the Petition for Annulment of Judgment (Annulment Petition) filed by petitioner Edgar T. Carreon (Carreon) under Rule 47 of the Rules of Court (Rules).

The Facts

This case stemmed from a complaint for breach of contract, damages, and attorney's fees filed by respondent Mario Aguillon (Aguillon) against Carreon and his wife, Isabel[4] (defendants), before the Regional Trial Court of Davao City, Branch 15 (RTC), docketed as Civil Case No. 33,044-09. In an Order dated March 10, 2010, the RTC, upon Aguillon's motion, declared the defendants in default for failure to file their responsive pleading within the reglementary period despite receipt of summons and a copy of the complaint through their "son" at their residence.[5] Eventually, the RTC rendered a Decision[6] dated October 15, 2010 in favor of Aguillon and ordered the defendants to, among others, pay the amount of ₱47,410.00 as actual damages, plus interests and attorney's fees.[7]

The RTC's Decision attained finality, and consequently, a writ of execution[8] was issued on April 12, 2011. Consequently,

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[1] *Rollo*, pp. 24-50.

[2] *Id.* at 172-175. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.

[3] *Id.* at 183. Issued by Division Clerk of Court Melody Sherry R. Chan.

[4] See RTC Decision; *id.* at 62.

[5] See *id.* at 27.

[6] *Id.* at 62-65. Penned by Judge Ridgway M. Tanjili.

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

[8] *Id.* at 66.

the Sheriff levied on the property belonging to the defendants, which was purportedly their family home. The property was thereafter sold at a public auction where the highest bidder thereof was respondent Betty P. Lopez (Lopez). Thereafter, a Final Certificate of Sale was issued in her favor.[9]

On December 5, 2013, Lopez filed a petition for cancellation[10] of Transfer Certificate of Title (TCT) No. T-208860 registered in the name of the defendants and for the issuance of a new one in her name. On December 12, 2013, the RTC issued an Order requiring the defendants to appear at the hearing of the petition. However, the Return of Service dated January 27, 2014 did not reflect service upon them of a copy of the December 12, 2013 Order. Nonetheless, the RTC proceeded to hear the petition; and on February 17, 2014, it issued an Order granting the same. The defendants were then directed to surrender their Owner's Duplicate Copy of TCT No. T-208860 while the Register of Deeds of Davao City was ordered to cancel the same and to issue a new one in the name of Lopez.[11]

Subsequently, Lopez filed a Motion to Publish the February 17, 2014 Order of the RTC granting the petition for cancellation of the defendants' title. Despite the absence of any affidavit from the Process Server or postman stating that the defendants' address could not be located, the RTC granted the motion in an Order dated May 20, 2014. Consequently, when the February 17, 2014 Order became final after publication, TCT No. T-208860 was cancelled and a new one was issued in Lopez's name, *i.e.*, TCT No. 146-2015001758. On December 11, 2015, Lopez filed before the RTC a petition praying for the issuance of a writ of possession in her favor, which the RTC eventually granted on April 17, 2016.[12]

On June 22, 2017, Carreon learned that they were about to be ousted from their family home when he received a letter

[9] See *id.* at 96.

[10] Docketed as Sp. Proc. No. 12,881-2013.

[11] See *rollo*, pp. 29-30.

[12] See *id.* at 30.

from the City Government of Davao with the writ of possession attached thereto. It was only then that he discovered all the proceedings that transpired without their knowledge and participation. Thus, upon the advice of his counsel, he secured the pertinent records including the subsequent issuances of the RTC which had already become final and executory.[13]

Left with no legal recourse, Carreon, by himself, filed the Annulment Petition before the CA on the grounds of lack of jurisdiction and extrinsic fraud premised on the improper/invalid service of summons.[14]

The CA Ruling

In a Resolution[15] dated July 28, 2017, the CA dismissed the Annulment Petition **on procedural grounds** as Carreon failed to, *inter alia*: *(a)* attach the affidavit of service of the petition to the court of origin as well as the adverse parties;[16] *(b)* attach a copy of TCT No. T-208860; and *(c)* submit affidavit/s of witness/es or documents in support of the cause of action or defense.[17]

Aggrieved, Carreon filed a Motion for Reconsideration with Manifestation, explaining that *(a)* the affidavit of service is not required in a petition for annulment of judgment, the same being an original action before the CA; hence, the rule on service of summons is applicable; *(b)* the failure to attach a copy of TCT No. T-208860 is not a fatal error to warrant the dismissal of the petition, but he nonetheless attached a copy thereof; and *(c)* Carreon himself, as well as his *only child*, Malaya De Luna Carreon (Malaya De Luna), and other witnesses have executed their respective affidavits in support of the Annulment Petition.

In a Resolution[18] dated February 19, 2018, the CA reconsidered its original ruling, stating that the procedural infirmities in

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[13] See *id.* at 31.

[14] *Id.* at 99.

[15] See *id.* at 162-165.

[16] See Section 13, Rule 13 of the Rules.

[17] See Section 4 (3), Rule 47 of the Rules.

[18] See *rollo*, pp. 172-175.

Carreon's petition have already been rectified. However, **on the merits**, it found that the RTC acquired jurisdiction over the person of Carreon and his wife Isabel, there being no irregularity in the service of summons upon them. Hence, the CA dismissed the Annulment Petition entirely.[19]

Focusing solely on the CA's disposition of the case on the merits, Carreon then filed on March 8, 2018 a Motion for Reconsideration (March 8, 2018 Motion for Reconsideration) of the February 19, 2018 Resolution. In a Resolution dated May 4, 2018, the CA noted without action the said motion, opining that it was a *second* motion for reconsideration which shall no longer be entertained for being a prohibited pleading. Hence, the CA directed the issuance of an Entry of Judgment, prompting Carreon to file the instant petition before the Court.

The Issue Before the Court

The essential issues for the Court's resolution is whether or not the CA correctly *(a)* treated Carreon's March 8, 2018 Motion for Reconsideration as a second motion for reconsideration, a prohibited pleading; and *(b)* dismissed the Annulment Petition based on its finding that the RTC acquired jurisdiction over the person of defendants.

The Court's Ruling

The petition is meritorious.

The Rules are explicit that a second motion for reconsideration shall not be allowed. Section 2, Rule 52 of the Rules provides that:

> Section 2. *Second motion for reconsideration*. – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Case law explains that "[t]he rule rests on the basic tenet of immutability of judgments [which evokes that] [a]t some point, a decision [must] becom[e] final and executory and, consequently,

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[19] See *id.* at 174-175.

all litigations must come to an end."[20] Moreover, "a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect."[21]

In this case, the CA characterized Carreon's March 8, 2018 Motion for Reconsideration as a *second* motion for reconsideration. Hence, it noted without action the same for being a prohibited pleading and, resultantly, issued an Entry of Judgment.

The CA is mistaken.

Carreon's March 8, 2018 Motion for Reconsideration can hardly be considered as a *second* motion for reconsideration as contemplated by the Rules. In fact, the aforesaid motion should have actually been treated as a first motion for reconsideration because it assailed the CA's reconsidered ruling (*i.e.*, the Resolution dated February 19, 2018), and not its original Resolution dated July 28, 2017. As will be discussed below, these Resolutions were premised on completely different legal grounds from one another.

To recount, Carreon's earlier Motion for Reconsideration with Manifestation was in response to the CA's original Resolution dated July 28, 2017 which dismissed the Annulment Petition based purely on procedural grounds. As such, this motion was intended to address the alleged procedural infirmities pointed out by the CA. In its February 19, 2018 Resolution, the CA reconsidered its original resolution, holding that there was a "rectification of the infirmities" in the Annulment Petition.[22] Moreover, in the same February 19, 2018 Resolution, the CA proceeded to tackle the merits of the Annulment Petition itself. In particular, the CA held that the issue of extrinsic fraud raised in the Annulment Petition was "too unsubstantial to warrant consideration." Moreover, anent the claim of lack of jurisdiction over the persons of the defendants, the CA, citing the presumption

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[20] *Reyes v. People*, 764 Phil. 294, 303 (2015).

[21] *Id.* at 305; citation omitted.

[22] See *rollo*, p. 173.

of regularity in official duties, found that the service of summons upon the defendants was proper; therefore, the RTC acquired jurisdiction over them.[23]

Clearly, the CA's February 19, 2018 Resolution is a new ruling based on legal grounds that are totally different from its original July 28, 2017 Resolution; hence, when Carreon filed the March 8, 2018 Motion for Reconsideration, he was technically filing a first motion for reconsideration of the February 19, 2018 Resolution wherein the CA, for the first time, traversed the merits of his Annulment Petition. As such, the prohibition on the filing of a second motion for reconsideration found in Section 2, Rule 52 of the Rules did not come into play. Evidently, what the Rules seek to proscribe is a second motion for reconsideration, which essentially repeats or reiterates the same arguments already passed upon by the tribunal, when it resolved the first motion for reconsideration filed by the same party. If the issues had already been passed upon and there is no substantial argument raised, then the finality and immutability of a judgment should not be obviated.

Thus, since Carreon's March 8, 2018 Motion for Reconsideration was erroneously treated by the CA as a second motion for reconsideration, the period within which to file an appeal did not lapse and consequently, the CA's ruling did not attain finality.

In this regard, while the remand of this case back to the CA appears to be in order so that it may now pass upon Carreon's arguments in his March 8, 2018 Motion for Reconsideration, the Court finds it fit to determine whether or not the Annulment Petition has *prima facie* merit.

At the onset, it bears to note that defective service of summons negates the Court's jurisdiction and is thus recognized as a ground for an action for annulment of judgment.[24] As a rule, any substituted service other than that authorized under Section

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[23] See *id.* at 173-175.

[24] See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 734-735 (2014).

7,[25] Rule 14 of the Rules is deemed ineffective and contrary to law.[26] Here, Carreon argued that substituted service of summons was improperly resorted to, considering that no earnest efforts had been exerted by the sheriff or process server of the RTC showing the impossibility of personal service. As the records bear out, it appears that Carreon's argument of the defective service of summons has, at least, *prima facie* basis, considering that:

(a) Nothing on record shows that earnest efforts had been exerted by the sheriff or process server of the RTC to personally serve the defendants with summons within a reasonable period;

(b) The Return only states that the summons was purportedly served sometime in December 2009 and that the defendants' son, whose name was not even indicated, allegedly received it;

(c) The Return did not specify the address of the defendants' supposed residence where the summons was served; and

(d) Carreon explicitly attested[27] that he has no son who could have possibly received the summons in his stead because his only child was his daughter Malaya De Luna, who had likewise executed an affidavit to this effect.[28]

To be sure, the CA cannot casually dismiss the Annulment Petition based on a blanket invocation of the presumption of

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[25] Section 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[26] See *Guigunito Credit Cooperative, Inc. v. Torres*, 533 Phil. 476, 486-487 (2006).

[27] *Rollo*, p. 156.

[28] *Id.* at 157.

regularity in the performance of official duties, considering that as case law holds, where the official act is irregular on its face, the presumption cannot arise.

Hence, pursuant to Sections 5 and 6, Rule 47 of the Rules, the CA is required to give due course to the Annulment Petition, cause the service of summons, and conduct trial to determine its merits:

> Section 5. *Action by the court*. — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.
>
> Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.
>
> Section 6. *Procedure*. — The procedure in ordinary civil cases shall be observed. Should trial be necessary, the reception of the evidence may be referred to a member of the court or a judge of a Regional Trial Court.

In proceeding with the case, the CA ought to be guided by the provisions of Rule 47 of the Rules, including Sections 7 and 9 thereof which state:

> Section 7. *Effect of judgment*. — A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.
>
> Section 9 *Relief available*. — The judgment of annulment may include the award of damages, attorney's fees and other relief.
>
> If the questioned judgment or final order or resolution had already been executed the court may issue such orders of restitution or other relief as justice and equity may warrant under the circumstances.

In fine, the Court holds that the CA erred in noting without action Carreon's March 8, 2018 Motion for Reconsideration of its February 19, 2018 Resolution, as well as in dismissing outright his Annulment Petition. The present petition seeking

the grant of the Annulment Petition and other related reliefs should, however, only be partly granted, considering that the CA must still conduct a trial on its merits and issue the corresponding judgment in accordance with the parameters of Rule 47 of the Rules.

WHEREFORE, the petition is **PARTLY GRANTED.** The Resolutions dated February 19, 2018 and May 4, 2018 of the Court of Appeals in CA-G.R. SP No. 08173-MIN are **REVERSED** and **SET ASIDE**. A new one is **ENTERED** directing the remand of petitioner Edgar Carreon's Petition for Annulment of Judgment to the Court of Appeals which is hereby **DIRECTED** to give due course to the same, issue the necessary summons, and conduct trial for the reception of evidence pursuant to Rule 47 of the Rules of Court.

SO ORDERED.

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

EN BANC

[A.C. No. 7936. June 30, 2020]

IN RE: PETITION FOR THE DISBARMENT OF ATTY. ESTRELLA O. LAYSA, PATRICIA MAGLAYA OLLADA, *complainant, vs.* **ATTY. ESTRELLA O. LAYSA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; FOR FAILURE TO RETURN COMPLAINANT'S MONEY, NON-PAYMENT OF

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[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

INTEGRATED BAR OF THE PHILIPPINES MEMBERSHIP DUES, AND NONCOMPLIANCE WITH THE MANDATORY CONTINUING LEGAL EDUCATION, THE COURT IMPOSES THE PENALTY OF THREE-YEAR SUSPENSION FROM THE PRACTICE OF LAW; RESPONDENT IS ALSO ORDERED TO PAY A FINE AND RETURN COMPLAINANT'S MONEY WITH INTEREST AT THE LEGAL RATE OF 12% *PER ANNUM*. — Atty. Laysa failed to return the complainant's money in the amount of ₱30,000.00, Atty. Laysa is presumed to have misappropriated the money for her own use to the prejudice and in violation of the trust reposed in her by complainant. The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. In this case, Atty. Laysa had shown her great propensity to disregard and disrespect the legal profession. More than just abandonment of complainant's cause and failure to return her ₱30,000.00, Atty, Laysa had continuously evaded her responsibilities to the bar. She has not paid her dues to the IBP and has not complied with her second to fifth MCLE compliance period. x x x [T]he Court finds respondent Atty. Estrella O. Laysa **GUILTY** of violating Rule 16.01, Canon 16 and Rule 18.03, Canon 18 of the Code of Professional Responsibility; and for her non-payment of Integrated Bar of the Philippines membership dues since 2004 and noncompliance with the second to fifth Mandatory Continuing Legal Education compliance period. Thus, the Court imposes upon her the penalty of **THREE-YEAR SUSPENSION** from the practice of law to take effect immediately, subject to her compliance with the Mandatory Continuing Legal Education requirements, her payment of Integrated Bar of the Philippine dues, and the update of her Integrated Bar of the Philippines registration. Respondent Atty. Estrella O. Laysa is likewise **ORDERED** to immediately pay a fine of ₱5,000.00 for her failure to pay her Integrated Bar of the Philippines dues, and for her noncompliance with the Mandatory Continuing Legal Education requirements. Further, respondent. Atty. Estrella O. Laysa is **ORDERED** to return within ten (10) days from notice of this Decision the amount of ₱30,000.00 to complainant Patricia Maglaya Ollada with interest at the legal rate of 12% *per annum* from her date of receipt on January 8, 2007 until June 30, 2013 and 6% *per annum* from July 1, 2013 until full payment. Respondent Atty.

Estrella O. Laysa is directed to submit to the Court proof of payment within ten (10) days thereof.

D E C I S I O N

INTING, *J.*:

For the Court's consideration is the Notice of Resolution[1] dated June 28, 2018 of the Integrated Bar of the Philippines (IBP) Board of Governors that resolved to adopt and approve with modification the Report and Recommendation[2] of the IBP Investigating Commissioner, Atty. Patrick M. Velez (Atty. Velez), dated March 27, 2018. The IBP Board of Governors recommended for the indefinite suspension from the practice of law instead of disbarment of respondent Atty. Estrella O. Laysa (Atty. Laysa) and imposed upon her a fine in the amount of ₱5,000.00 for failure to pay her IBP dues and comply with the Mandatory Continuing Legal Education (MCLE) requirements.

The Antecedents

This is an administrative complaint for disbarment filed by Patricia M. Ollada (complainant) against Atty. Laysa.

Complainant alleged the following:

Complainant, a senior citizen residing in Kaybagal, Tagaytay City, needed legal services for a problem she had against her lessor Melates M. Salcedo. At Casino Filipino, Tagaytay City, complainant was introduced to a certain Atty. Laysa, who then agreed to prepare a Demand Letter[3] dated December 27, 2006 against complainant's lessor.[4]

Thereafter, complainant and Atty. Laysa met again at Casino Filipino where Atty. Laysa gave complainant a copy of the lessor's response letter. Displeased with the contents of the

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

[2] *Id.* at 54-65.

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

[4] *Id.* at 57.

response letter, complainant asked Atty. Laysa to file a case against her lessor; complainant issued Equitable PCI Bank Check No. 0141512[5] in the amount of ₱35,000.00 to Atty. Laysa.

After having the check encashed on January 8, 2007, Atty. Laysa allegedly did not respond or communicate anymore with the complainant. There being no update on the status of her case, and due to her poor health, the complainant eventually lost interest to pursue her case and demanded from Atty. Laysa the return of the balance of her ₱35,000.00, through a Letter[6] dated July 24, 2007. Atty. Laysa, however, ignored the complainant's demand. As such, the complainant retained the services of another counsel, Atty. Cecilia Corazon S. Dulay-Archog. The new counsel sent another Demand Letter[7] dated August 21, 2007 to Atty. Laysa for the return of ₱30,000.00. The amount of ₱5,000.00 was deducted from ₱35,000.00 in view of the letter drafted by Atty. Laysa to the complainant's lessor. Per Certification[8] dated September 24, 2007 issued by PhilPost, the demand letter against Atty. Laysa was received by her office secretary, Vilma Pabines.[9]

Despite receipt of the complainant's demand letters, Atty. Laysa still did not return the complainant's money. Consequently, the complainant filed a Petition[10] for Disbarment against Atty. Laysa on May 29, 2008.

In the Resolution[11] dated July 30, 2008, the Court required Atty. Laysa to file a comment on the complainant's Petition for Disbarment. However, Atty. Laysa did not file her comment. The Court, in its Resolution[12] dated January 18, 2010, ordered

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[5] *Id.* at 9.

[6] *Id.* at 10.

[7] *Id.* at 11.

[8] *Id.* at 12.

[9] *Id.* at 57.

[10] *Id.* at 1-6.

[11] *Id.* at 13

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

Atty. Laysa to explain why she should not be dealt with disciplinary measures for her failure to comply with the Court's order requiring her to file a comment on the Petition for Disbarment.

In the Resolution[13] dated April 18, 2012, the Court noted that the copy of the Resolution dated January 18, 2010 sent to Atty. Laysa's address at "911 Molina St., 4100 Cavite City" was returned unserved with the notation "Return to Sender (RTS)-Moved, Left No Address." The Court ordered the IBP to give information as to Atty. Laysa's current address.

In the Letter[14] dated June 26, 2012, the IBP informed the Court that Atty. Laysa's current address per record was "Litlit, Silang, Cavite."

In the Resolution[15] dated November 12, 2012, the Court noted the address given by the IBP and waited for Atty. Laysa's compliance to the Resolution dated January 18, 2010, which required her to explain why she should not be dealt with disciplinary measures for failing to comment on the petition to disbar her.

There being no compliance from Atty. Laysa, the Court imposed a fine of ₱1,000.00 against her and dispensed with the filing of her comment. The Court finally referred Atty. Laysa's case to the IBP for investigation, report, and recommendation.[16]

On January 10, 2017, Atty. Velez issued a Notice of Mandatory Conference,[17] directing the parties to appear before the Commission on Bar Discipline on February 15, 2017. Atty. Velez also ordered the parties to submit their respective mandatory conference briefs.

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[13] *Id.* at 22.

[14] *Id.* at 23.

[15] *Id.* at 25.

[16] See Resolution dated October 12, 2016, *id.* at 28-29.

[17] *Id.* at 42.

Neither of the parties attended the mandatory conference nor filed their respective briefs. The IBP, in the Order[18] dated April 6, 2017, required the parties to submit their respective position papers, documentary evidence, and witnesses' judicial affidavits. The notice for complainant, however, was returned unserved with the notation "RTS Deceased."[19]

On September 14, 2017, Atty. Velez ordered the IBP-Accounting office and MCLE office for any information regarding Atty. Laysa's standing as a member of the Bar.[20] On even date, the MCLE office provided the following MCLE record of Atty. Laysa:

1st Compliance Period – April 15, 2001 to April 14, 2004 – Non-Compliant (specifically has not filed the required Attorney's Compliance Report (ACR) but has completed the required number of MCLE Units)

2nd Compliance Period – April 15, 2004 to April 14, 2007 – Non-Compliant (no record of MCLE units taken)

3rd Compliance Period – April 15, 2007 to April l4, 2010 – Non-Compliant (no record of MCLE units taken)

4th Compliance Period – April 15, 2010 to April 14, 2013 – Non-Compliant (no record of MCLE units taken)

5th Compliance Period – April 15, 2013 to April 14, 2016 – Non-Compliant (no record of MCLE units taken)[21]

On September 14, 2017, the IBP National Treasurer Jean Francois D. Rivera III reported that Atty. Laysa paid her membership dues only until 2004.[22]

Recommendation of the IBP Investigating Commissioner

Investigating Commissioner Atty. Velez recommended that Atty. Laysa be disbarred from the practice of law for her act

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[18] *Id.* at 43.

[19] *Id.* Attach at the back portion.

[20] See Order dated September 14, 2017, *id.* at 45.

[21] See MCLE Report dated September 14, 2017, *id.* at 46.

[22] *Id.* at 47.

of abandoning a client's cause, and for her continuous evasion of her responsibilities to the bar.

Recommendation of the IBP Board of Governors

In the Resolution[23] dated June 28, 2018, the IBP Board of Governors adopted he findings of facts and recommendation of the Investigating Commissioner Atty. Velez with modification in that Atty. Laysa be meted out with the penalty of indefinite suspension from the practice of law instead of disbarment. The Board also imposed upon her a fine in the amount of ₱5,000.00 for her failure to pay her IBP dues and for her noncompliance with the MCLE requirements.

The Court's Ruling

At the outset, it must be pointed out that Atty. Laysa had been remiss in her duty to report to the IBP Chapter Secretary the changes on her office and residence addresses. The lapse on her part caused extreme difficulty on the part of the IBP, and even to the Court, to serve Atty. Laysa with appropriate pleadings and processes relating to her disbarment case.

Section 19 of the IBP By-Laws provides in part:

Section 19. *Registration.* – x x x

Registration shall be accomplished by signing and filing in duplicate the prescribed registration form containing such information as may be required by the Board of Governors, including the following:

x x x x x x x x x

(c) Office address(es)
(d) Residence address(es);

x x x x x x x x x

Every change after registration in respect to any of the matters above specified shall be reported within sixty days to the Chapter Secretary who shall in turn promptly report the change to the national office. x x x

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

In this case, Atty. Laysa changed her office and residence addresses without updating the IBP. There being no court notice or processes that reached Atty. Laysa, she was unable to file a single answer or position paper on the complaint against her. She also failed to attend the mandatory conference of the case and file the required mandatory conference brief. Had Atty. Laysa fulfilled her duty to update her registration with the IBP, she would have received every pleading and notice in relation to the instant case and be able to explain her side. Indubitably, no one is left to blame, but herself.

In the course of the investigation of Atty. Laysa's administrative case, the MCLE office reported that she had not taken any single MCLE compliance units for her second, third, fourth, and fifth compliance period. Likewise, Atty. Laysa had not even paid her IBP membership dues since 2004. Despite being aware of her noncompliance with the requirements of the IBP and the MCLE, which warrants her removal from the Roll of Attorneys, she still offered her legal services and accepted legal fees in the amount of ₱35,000.00. Worse, Atty. Laysa thereafter neither communicated nor updated the complainant about her case.

Indubitably, not only that Atty. Laysa should be in the list of delinquent lawyers for her failure to comply with the IBP and MCLE requirements, she also violated Rule 18.03, Canon 18 of the Code of Professional Responsibility (CPR) which states that:

> CANON 18 — A lawyer shall serve his client with competence and diligence.
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Atty. Laysa being unmindful of the complainant's cause, the complainant eventually lost interest to pursue her case, and demanded from Atty. Laysa the return of her money worth ₱30,000.00. Atty. Laysa, however, continuously ignored the complainant until the latter's demise.

The foregoing facts showed that Atty. Laysa also violated Rule 16.01, Canon 16 of the CPR which states that:

CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Atty. Laysa failed to return the complainant's money in the amount of ₱30,000.00, Atty. Laysa is presumed to have misappropriated the money for her own use to the prejudice and in violation of the trust reposed in her by complainant.

The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. In this case, Atty. Laysa had shown her great propensity to disregard and disrespect the legal profession. More than just abandonment of complainant's cause and failure to return her ₱30,000.00, Atty. Laysa had continuously evaded her responsibilities to the bar. She has not paid her dues to the IBP and has not complied with her second to fifth MCLE compliance period.

Be that as it may, the Court will not disbar a lawyer if it finds that a lesser penalty, such as suspension, will suffice to accomplish the desired end. From the factual backdrop of the case, the Court finds that the penalty of three-year suspension suffices to address Atty. Laysa's misdeeds. Her three-year suspension, to the mind of this Court, suffices to instill in her a firm conviction of maintaining uprightness required of every member of the profession, subject to her compliance with the MCLE requirements her payment of IBP dues, and the update of her IBP registration.

WHEREFORE, the Court finds respondent Atty. Estrella O. Laysa **GUILTY** of violating Rule 16.01, Canon 16 and Rule 18.03, Canon 18 of the Code of Professional Responsibility; and for her non-payment of Integrated Bar of the Philippines membership dues since 2004 and noncompliance with the second to fifth Mandatory Continuing Legal Education compliance period. Thus, the Court imposes upon her the penalty of **THREE-**

YEAR SUSPENSION from the practice of law to take effect immediately, subject to her compliance with the Mandatory Continuing Legal Education requirements, her payment of Integrated Bar of the Philippine dues, and the update of her Integrated Bar of the Philippines registration.

Respondent Atty. Estrella O. Laysa is likewise **ORDERED** to immediately pay a fine of ₱5,000.00 for her failure to pay her Integrated Bar of the Philippines dues, and for her noncompliance with the Mandatory Continuing Legal Education requirements.

Further, respondent Atty. Estrella O. Laysa is **ORDERED** to return within ten (10) days from notice of this Decision the amount of ₱30,000.00 to complainant Patricia Maglaya Ollada with interest at the legal rate of 12% *per annum* from her date of receipt on January 8, 2007 until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment. Respondent Atty. Estrella O. Laysa is directed to submit to the Court proof of payment within ten (10) days thereof.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent Atty. Estrella O. Laysa's personal record as an attorney, the Integrated Bar of the Philippines, the Department of Justice, and all courts in the country for their information and guidance.

SO ORDERED.

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

EN BANC

[A.M. No. 19-12-293-RTC. June 30, 2020]

RE: RESULT OF THE JUDICIAL AUDIT CONDUCTED IN BRANCH 49, REGIONAL TRIAL COURT, PUERTO PRINCESA CITY, PALAWAN

SYLLABUS

1. LEGAL ETHICS; JUDGES; MANDATED TO ADMINISTER JUSTICE WITHOUT DELAY AND DISPOSE OF THE COURTS' BUSINESS PROMPTLY WITHIN THE PERIOD PRESCRIBED BY LAW; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD, WITHOUT STRONG AND JUSTIFIABLE REASON, CONSTITUTES GROSS INEFFICIENCY. — No less than the Constitution, specifically Section 15 (1) of Article VIII, mandates lower court judges to decide a case within the reglementary period of ninety (90) days. The Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise directs judges to administer justice without delay and dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory. The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases. The speedy disposition of cases is the primary aim of the Judiciary, for only thereby may the ends of justice not be compromised and the Judiciary may be true to its commitment of ensuring to all persons the right to a speedy, impartial, and public trial. To pursue this aim, the Court, through the Rules of Court and other issuances, has fixed reglementary periods for acting on cases and matters. Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.

2. ID.; ID.; ID.; ID.; PLEA OF HEAVY WORKLOAD, LACK OF PERSONNEL, AND FAILING MEDICAL CONDITION ARE NOT JUSTIFICATIONS FOR THE DELAY OR NON-PERFORMANCE; A REASONABLE EXTENSION OF TIME TO RESOLVE CASES MAY BE REQUESTED FROM THE COURT, IF UNABLE TO RESOLVE CASES WITHIN THE REGLEMENTARY PERIOD; CASE AT BAR. — Judge Legazpi's plea of heavy workload, lack of court personnel, and failing medical condition cannot excuse him from liability. These circumstances are not justifications for the delay or non-performance, given that he could have requested the Court for a reasonable extension of time to resolve cases. However, as revealed by the OCA, no requests for extension of time to resolve the cases pending before his court was made by Judge Legazpi. The Court, in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases. If the case load of the judge prevents the disposition of cases within the reglementary period, again, he should ask this Court for a reasonable extension of time to dispose of the cases involved. This is to avoid or dispel any suspicion that something sinister or corrupt is going on. The Court, cognizant of the heavy case load of some judges and mindful of the difficulties encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds.

3. ID.; ID.; GROSS INEFFICIENCY; FAILURE TO DECIDE OR RESOLVE CASES WITHIN THE REGLEMENTARY PERIOD; PENALTY IN CASE AT BAR. — It is settled that failure to decide or resolve cases within the reglementary period constitutes gross inefficiency. It is a less serious charge and is punishable by either suspension from office without salaries and benefits for not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. It must be noted, however, that the fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge within the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances. In this case, in view of the

> resignation filed by Judge Legazpi effective 15 March 2015, the only penalty that can be imposed against him is a fine. In the imposition of fine as penalty for gross inefficiency of judges in the performance of duties for their undue delay in rendering decisions or orders, this Court varied the amounts on account of the distinct circumstances in each case. x x x In this case, while the total number of cases which Judge Legazpi failed to timely decide, act on, or archive, merits a fine higher than that prescribed by the rules, the Court deems the fine of ₱50,000.00, as recommended by the OCA, is commensurate taking into account the mitigating circumstances of heavy caseload aggravated by lack of court personnel, his worsening health condition, and his apologetic demeanor in taking responsibility of his infractions.

D E C I S I O N

DELOS SANTOS, *J.*:

This administrative case stemmed from the judicial audit conducted in the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 49, then presided by Judge Leopoldo Mario P. Legazpi (Judge Legazpi).

The Facts

A judicial audit was conducted in March 2014 in the RTC of Puerto Princesa City, Palawan, Branch 49. The result of the audit, as embodied in a Memorandum dated 20 January 2015 issued by Deputy Court Administrator Raul Bautista Villanueva (Deputy Court Administrator Villanueva), showed that there are: *(1)* eighty-eight (88) cases submitted for decision; seventy-nine (79) of which are beyond the reglementary period to decide; *(2)* fifty-one (51) cases with pending incidents submitted for resolution, forty (40) of which are beyond the reglementary period to resolve; *(3)* forty-nine (49) cases with no further action or setting for a considerable length of time; *(4)* three (3) cases with no initial action; and *(5)* twenty-four (24) cases are due for archiving pursuant to OCA Circular No. 89-2004 dated 12 August 2004. The report further revealed that these cases were not properly reflected in the monthly report of cases and there

is no showing on record that Judge Legazpi requested for extension of time to decide the cases. It was likewise noted that there was a delay in deciding appealed cases which is in violation of Section 7, Rule 40 of the Rules of Court.

In view of the judicial audit report, Deputy Court Administrator Villanueva directed Judge Legazpi to:

1. Decide the eighty-eight (88) cases submitted for decision;
2. Resolve the fifty-one (51) incidents submitted for resolution;
3. Take appropriate action on the forty-nine (49) cases with no further action of setting for a considerable length of time;
4. Take appropriate action on the three (3) cases with no initial action;
5. Take appropriate action on the twenty-four (24) cases due for archiving pursuant to OCA Circular No. 89-2004 dated 12 August 2004;
6. Act on the other findings/observations stated in the memorandum;
7. Explain why the aforementioned cases were not decided within the reglementary period in violation of the Rules and why no request for extension was sought prior to the lapse of the period;
8. Explain why the court failed to disclose the cases submitted for decision in the Monthly Report of Cases and in the Semestral Docket Inventory Reports and require Branch Clerk of Court Pedrosa to likewise submit a separate explanation relative thereto;
9. Accomplish the Monthly Report of Cases and Semestral Docket Inventory Report completely and accurately pursuant to the guidelines set by the Court in Administrative Circular No. 4-2004 dated 4 February 2004 and Administrative Circular No. 76-2007 dated 31 August 2007, respectively; and
10. Submit, as proof of compliance to numbers 1 to 5 and 9 above, copies of the pertinent decisions and orders and the December 2014 Monthly Report of Cases and 2nd

Semestral 2014 Docket Inventory Report on or before 15 April 2015.

In compliance with the Memorandum dated 20 January 2015, Judge Legazpi submitted a written explanation dated 2 March 2015 relative to his failure to decide the cases within the reglementary period, his failure to request for extension to decide the same and his failure to disclose said cases submitted for decision in the monthly report of cases and in the semestral docket inventory report.

Judge Legazpi stated that when he assumed office in August 2007, there were numerous cases already submitted for decision during the time of his predecessors and cases that have been pending trial for more than five years. He tried to remedy the situation by improving the court's trial calendar system by providing each party with a definite number of trial dates on which to conclude the case presentation, without allowing any postponements or even continuance of a witness' presentation except on meritorious grounds. The unintended consequences, according to Judge Legazpi, were that: (1) the number of cases calendared for hearing on each trial date increased; (2) he had to spend practically the whole day hearing cases; (3) the trial of the cases were expedited, terminated and the cases themselves had to be decided; and (4) the stenographers had to transcribe twice, if not thrice, as many of their notes than they previously did. As a result of the fast termination of the trial of many cases, Judge Legazpi had to decide them in addition to the cases which had already been submitted for decision prior to his assumption in office. To address this situation, Judge Legazpi decided to concentrate exclusively on the judicial aspect of the court's operations and left the administrative aspect to the Branch Clerk of Court and the clerks.

Another factor claimed by Judge Legazpi to have contributed to the piling of cases in his court were the vacancies in Branch 51 for five years and in Branch 52 for almost two years. He further stated that for a long period of time, only three branches were included in the raffle of cases. Moreover, Judge Legazpi's own court rarely had the benefit of a full office personnel. He

had no clerk of court when he assumed office. His first two clerks of court stayed only for six months each, and at the time of filing his compliance, he did not have a Branch Clerk of Court since the time the third one resigned in August 2014. In addition, he had no legal researcher since June 2014, and no clerk-in-charge of criminal cases since January 2014. Before the vacancies, he had to contend, for a year and a half, with only two stenographers, after the two others retired from the service in 2013. Before the two retirements, Judge Legazpi wrote to the Court in the third quarter of 2012, requesting the relaxation of the pertinent rule in order to start the search for replacements in advance. However, not only was the request not granted, it also took one and a half years to appoint the replacements. Thus, the two stenographers were more unable to cope with the transcription of their notes and had a huge backlog of unfinished transcription of stenographic notes. He added that in the second quarter of 2014 when he was informed of the resignation of the Branch Clerk of Court and the legal researcher, he requested the Court for the designation of an Assisting Judge but no action was made.

Judge Legazpi stated that not being in the habit of complaining, he plodded through the continuously piling up work and tried his best to perform his duties but the tremendous stress only exacerbated his diabetes and its many complications. Until December 2013, the surgical removal of his neck tumor had to be deferred for several years because his blood sugar and blood pressure would not normalize. Judge Legazpi explicated that he laid down the foregoing facts to present a fuller perspective of the whole circumstances surrounding his work environment. He begged the Court's understanding for his inability to decide the cases on time and for not double-checking the reports to ensure that the cases pending decision were reported properly. He lamented that as much as he wanted to continue in his work in the chance of bringing his performance up to par, his present state of health cannot provide the needed cooperation and thus, he expressed his sincerest apologies.

On 22 January 2015, Judge Legazpi filed a resignation letter effective 15 March 2015, due to health reasons. In the Agenda Report dated 21 April 2015, the Office of the Court Administrator (OCA) recommended the acceptance of his resignation, subject to the usual clearance requirements.

The OCA's Recommendation

In a Memorandum dated 13 November 2019, the OCA issued the following recommendations:

x x x x x x x x x

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

2. Judge Leopoldo Mario P. Legazpi, Presiding Judge, Branch 49, Regional Trial Court, Puerto Princesa City, Palawan, be found **GUILTY** of gross inefficiency and be **FINED** in the amount of Fifty Thousand Pesos (₱50,000.00), to be deducted from his accrued leave credits, if sufficient, otherwise, he be **ORDERED** to pay the amount of the fine directly to the Court; and

3. The Employees Leave Division, Office of Administrative Services, OCA, be **DIRECTED** to compute Judge Legazpi's accrued leave credits, if any, and deduct therefrom the amount representing the payment of the fine.

Issue

The sole issue for this Court's resolution is whether or not Judge Legazpi should be held administratively liable.

The Ruling of the Court

The recommendations of the OCA are well-taken.

No less than the Constitution, specifically Section 15 (1) of Article VIII, mandates lower court judges to decide a case within the reglementary period of ninety (90) days. The Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise directs judges to administer justice without delay and dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly

and speedy disposition of cases. Thus, the 90-day period is mandatory.[1]

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[2] The speedy disposition of cases is the primary aim of the Judiciary, for only thereby may the ends of justice not be compromised and the Judiciary may be true to its commitment of ensuring to all persons the right to a speedy, impartial, and public trial. To pursue this aim, the Court, through the Rules of Court and other issuances, has fixed reglementary periods for acting on cases and matters.[3] Failure to decide cases within the reglementary period, without strong and justifiable reason, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.[4]

Without question, Judge Legazpi had been remiss in the performance of his responsibilities for failing to decide cases and resolve pending incidents within the reglementary period, without any extension granted by this Court. As shown in the judicial audit report, Judge Legazpi failed to decide eighty-eight (88) cases submitted for decision within the prescribed period; failed to resolve fifty-one (51) incidents submitted for resolution within the prescribed period; failed to take appropriate

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[1] See *Re: Findings on the Judicial Audit Conducted at the 7th Municipal Circuit Trial Court, Liloan-Compostela Liloan, Cebu*, 784 Phil. 334, 340 (2016), citing *Re: Cases Submitted for Decision Before Hon. Teresita A. Andoy, former Judge, Municipal Trial Court, Cainta Rizal*, 634 Phil. 378, 381 (2010).

[2] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City*, 600 Phil. 632, 639 (2009), citing *Re: Judicial Audit of the Regional Trial Court, Branch 14, Zamboanga City Presided Over by Hon. Ernesto R. Gutierrez*, 517 Phil. 507 (2006).

[3] *Tamondong v. Pasal*, A.M. No. RTJ-16-2467, 18 October 2017, 842 SCRA 562, 573, citing *Sustento v. Lilagan*, 782 Phil. 270, 276 (2016).

[4] *Gonzalez v. Judge Torres*, 555 Phil. 456, 470 (2007), citing *Celino v. Judge Abrogar*, 315 Phil. 305, 312 (1995).

action on forty-nine (49) cases with no further action of setting for a considerable length of time; failed to take appropriate action on three (3) cases with no initial action; and failed to take appropriate action on twenty-four (24) cases due for archiving. It is worthy to note that, as disclosed by the audit report, all the transcripts of stenographic notes are complete and that in fact, a number of draft decisions prepared by his staff are ready for his consideration, yet the said decisions were not finalized. Indeed, while the lack of court personnel may have had an adverse effect on the orderly and efficient function of the court, Judge Legazpi cannot use this to justify the delay in the disposition of cases.

Judge Legazpi's plea of heavy workload, lack of court personnel, and failing medical condition cannot excuse him from liability. These circumstances are not justifications for the delay or non-performance, given that he could have requested the Court for a reasonable extension of time to resolve cases. However, as revealed by the OCA, no requests for extension of time to resolve the cases pending before his court was made by Judge Legazpi.

The Court, in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases.[5] If the case load of the judge prevents the disposition of cases within the reglementary period, again, he should ask this Court for a reasonable extension of time to dispose of the cases involved. This is to avoid or dispel any suspicion that something sinister or corrupt is going on. The Court, cognizant of the heavy case load of some judges and mindful of the difficulties encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds.[6]

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[5] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City*, 600 Phil. 632, 640 (2009), citing *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, 496 Phil. 478, 487 (2005).

[6] *Gonzalez v. Judge Torres, supra* note 4, at 468, citing *Española v. Panay*, A.M. No. RTJ-95-1325, 4 October 1995, 248 SCRA 684, 687.

This Court cannot overstress the policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the Judiciary and the lowering of its standards.[7] As a trial judge, Judge Legazpi is a frontline official of the judiciary and should have at all times acted with efficiency and with probity. Regrettably, Judge Legazpi failed to live up to the standards of duty and responsibility that his position required.[8]

Penalty

It is settled that failure to decide or resolve cases within the reglementary period constitutes gross inefficiency. It is a less serious charge and is punishable by either suspension from office without salaries and benefits for not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. It must be noted, however, that the fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge within the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances.[9] In this case, in view of the resignation filed by Judge Legazpi effective 15 March 2015, the only penalty that can be imposed against him is a fine.

In the imposition of fine as penalty for gross inefficiency of judges in the performance of duties for their undue delay in rendering decisions or orders, this Court varied the amounts on account of the distinct circumstances in each case. In one case,[10] this Court imposed the fine of ₱20,000.00 for failure of

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[7] See *id.* at 470.

[8] *Cf. Re: Findings on the Judicial Audit Conducted in Regional Trial Court, Branch 8, La Trinidad, Benguet*, 806 Phil. 786, 817 (2017).

[9] *Re: Findings on the Judicial Audit Conducted at the 7th Municipal Circuit Trial Court, Liloan-Compostela Liloan, Cebu*, 784 Phil. 334, 342 (2016), citing *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 72 and 22, Narvacan, Ilocos Sur*, 687 Phil. 19, 23 (2012).

[10] See *Re: Report on the Judicial Audit Conducted in the RTC-Branch 37, Lingayen, Pangasinan*, 391 Phil. 222 (2000).

the respondent judge to decide eighteen (18) cases within the reglementary period, taking into account that he has a record of reprimand twice for the same offense. In another case,[11] this Court imposed a fine of ₱50,000.00 for failure of the respondent judge to take appropriate action on sixteen (16) criminal cases from the time of their filing; to take appropriate action on a total of eighty-three (83) cases without further action or setting for considerable length of time; to resolve motions in a total of nine (9) cases; to decide a total of thirty-eight (38) cases submitted for decision; and to promulgate the decisions in five (5) cases, considering that it was not the first time that the respondent judge has been sanctioned for undue delay in resolving cases. This Court also imposed a fine of ₱50,000.00 in a case[12] where the respondent judge failed to decide seventy (70) criminal cases within the period mandated by the Constitution, to take further action on cases pending in his sala for an unreasonable length of time and satisfactorily explain such failure, taking into consideration the mitigating circumstance that it was his first offense. Still in another case,[13] this Court imposed a fine of ₱50,000.00 for failure of the respondent judge to decide a total of One Hundred Forty-Five (145) cases within the reglementary period.

In this case, while the total number of cases which Judge Legazpi failed to timely decide, act on, or archive, merits a fine higher than that prescribed by the rules, the Court deems the fine of ₱50,000.00, as recommended by the OCA, is commensurate taking into account the mitigating circumstances of heavy caseload aggravated by lack of court personnel, his worsening health condition, and his apologetic demeanor in taking responsibility of his infractions.

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[11] See *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 6, Tacloban City*, 600 Phil. 632 (2009).

[12] See *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan North Cotabato*, 468 Phil. 338 (2004).

[13] See *Office of the Court Administrator v. Former Judge Leonardo L. Leonida of the Regional Trial Court, Branch 27, Sta. Cruz, Laguna*, 654 Phil. 668 (2011).

WHEREFORE, JUDGE LEOPOLDO MARIO P. LEGAZPI is found **GUILTY** of gross inefficiency in the performance of his duties for his undue delay in rendering decisions or orders and is hereby **FINED** in the amount of ₱50,000.00 to be deducted from his accrued leave credits.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, J. Jr., Hernando, Carandang, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Gesmundo and *Lazaro-Javier, JJ.*, no part.

EN BANC

[G.R. No. 188760. June 30, 2020]

THE COMMISSION ON AUDIT, represented by its Chairman, THE BUREAU OF INTERNAL REVENUE, represented by its Commissioner, and THE BUREAU OF CUSTOMS, represented by its Commissioner, *petitioners*, *vs.* **HON. SILVINO T. PAMPILO, JR., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, SOCIAL JUSTICE SOCIETY and VLADIMIR ALARIQUE T. CABIGAO,** *respondents*;

PANGKALAHATANG SANGGUNIAN MANILA AND SUBURBS DRIVER'S ASSOCIATION NATIONWIDE (PASANG MASDA), INCORPORATED, *respondent-intervenor*;

PILIPINAS SHELL PETROLEUM CORPORATION, CALTEX PHILIPPINES, INC., and PETRON CORPORATION, *necessary parties.*

[G.R. No. 189060. June 30, 2020]

CHEVRON PHILIPPINES, INC., *petitioner*, *vs.* **HON. SILVINO T. PAMPILO, JR., Presiding Judge, Regional Trial Court of Manila, Branch 26, SOCIAL JUSTICE SOCIETY and VLADIMIR ALARIQUE T. CABIGAO,** *respondents*;

PANGKALAHATANG SANGGUNIAN MANILA AND SUBURBS DRIVER'S ASSOCIATION NATIONWIDE (PASANG MASDA), INCORPORATED, *respondent-intervenor*.

[G.R. No. 189333. June 30, 2020]

PETRON CORPORATION, *petitioner*, *vs.* **HON. SILVINO T. PAMPILO, JR., SOCIAL JUSTICE SOCIETY, VLADIMIR ALARIQUE T. CABIGAO, and PANGKALAHATANG SANGGUNIAN MANILA AND SUBURBS DRIVERS ASSOCIATION NATIONWIDE, INC. (PASANG MASDA),** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; DEFINED; CASE AT BAR. — A petition for declaratory relief is an action instituted by a person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder. It must be filed before the breach or violation of the statute, deed or contract to which it refers; otherwise, the court can no longer assume jurisdiction over the action. Thus, "[t]he only issue that may be raised in such [an action] is the question of construction or validity of provisions in an instrument or statute."x x x [I]n this case, an action for declaratory relief may no longer be allowed considering that private respondents are not merely asking for a declaration of their rights but are actually asking public respondent RTC to determine whether

there was a violation of Section 11 of RA 8479, for which the Big 3 may be prosecuted and found criminally liable. And since there is already an alleged breach, it cannot be the subject of a declaratory relief. Public respondent RTC therefore committed grave abuse of discretion in not dismissing the Amended Petition.

2. POLITICAL LAW; REPUBLIC ACT NO. 8479 (DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998); DEPARTMENT OF ENERGY-DEPARTMENT OF JUSTICE (DOE-DOJ) JOINT TASK FORCE; DULY AUTHORIZED BY LAW TO INVESTIGATE AND TO ORDER THE PROSECUTION OF CARTELIZATION. — [T]he determination of such issue lies with the DOE-DOJ Joint Task Force. x x x In *Cong. Garcia v. Hon. Corona*,the Court made it clear that it is the DOE-DOJ Task Force which has the power to investigate and cause the prosecution of violators. It ruled that:Article 186 of the [RPC], as amended, punishes as a felony the creation of monopolies and combinations in restraint of trade. The Solicitor General, on the other hand, cites provisions of RA 8479 intended to prevent competition from being corrupted or manipulated. Section 11, "Anti-Trust Safeguards," defines and prohibits cartelization and predatory pricing. It penalizes the persons and officers involved with imprisonment of three (3) to seven (7) years and fines ranging from One Million to Two million pesos. For this purpose, a Joint Task Force from the [DOE] and [DOJ] is created under Section 14 to investigate and order the prosecution of violations. x x x Again, in *Congressman Garcia v. The Executive Secretary, et al.*, the Court declared that:x x x The remedy against the perceived failure of the Oil Deregulation Law to combat cartelization is not to declare it invalid, but to set in motion its anti-trust safeguards under Sections 11, 12, and 13.

3. ID.; 1987 CONSTITUTION; COMMISSION ON AUDIT; PUBLIC ENTITIES AND NON-GOVERNMENTAL ENTITIES RECEIVING FINANCIAL AID FROM THE GOVERNMENT, NOT PRIVATE ENTITIES, FALL UNDER THE AUDIT JURISDICTION THEREOF. — To justify its orders, the public respondent trial court invokes the doctrine of *parens patriae*. Under the doctrine of *parens patriae* (father of his country), the judiciary, as an agency of the State, has the supreme power and authority to intervene and to provide protection to persons *non suijuris* — those who because of their

age or incapacity are unable to care and fend for themselves. In *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, this Court even went further and ruled that "Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits." This doctrine, however, cannot be applied in this case considering that Congress by enacting RA 8479 has already provided for the mechanism to protect the interest of the Filipino consumers. Public respondent RTC, therefore, cannot create a new panel of examiners to replace the DOE-DOJ Joint Task Force as this goes against RA 8479. x x x Without a doubt, the case of the Big 3 would not fall under the audit jurisdiction of COA. They are not public entities nor are they nongovernmental entities receiving financial aid from the government.

4. TAXATION; BUREAU OF INTERNAL REVENUE; WHEN AUTHORIZED TO EXAMINE BOOKS, PAPER, RECORD, OR OTHER DATA OF TAXPAYERS. — With respect to the BIR, its Commissioner is authorized to examine books, paper, record, or other data of taxpayers but only to ascertain the correctness of any return, or in making a return when none was made, or in determining the liability of any person for any internal revenue tax, or in collecting such liability, or evaluating the person's tax compliance.

5. ID.; BUREAU OF CUSTOMS; AUTHORIZED TO AUDIT OR EXAMINE ALL BOOKS, RECORDS, AND DOCUMENTS OF IMPORTERS NECESSARY OR RELEVANT FOR THE PURPOSE OF COLLECTING THE PROPER DUTIES AND TAXES. — The BOC, on the other hand, is authorized to audit or examine all books, records, and documents of importers necessary or relevant for the purpose of collecting the proper duties and taxes. Since there are no taxes or duties involved in this case, the BIR and the BOC likewise have no power and authority to open and examine the books of accounts of the Big 3.

6. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REQUIREMENTS THEREFOR. — As regards the issue of intervention, Section 1, Rule 19 of the Rules of Court requires that: (1) the movant must have a legal interest in the matter being litigated; (2) the intervention must not unduly delay or

prejudice the adjudication of the rights of the parties; and (3) the claim of the intervenor must not be capable of being properly decided in a separate proceeding. The right to intervene, however, is not an absolute right as the granting of a motion to intervene is addressed to the sound discretion of the court and may only be allowed if the movant is able to satisfy all the requirements.

7. ID.; ID.; ID.; ID.; LEGAL INTEREST MUST BE ACTUAL, SUBSTANTIAL, MATERIAL, DIRECT AND IMMEDIATE, AND NOT SIMPLY CONTINGENT OR EXPECTANT; CASE AT BAR. — In this case, *Pasang Masda's* allegation that its members consume petroleum products is not sufficient to show that they have legal interest in the matter being litigated considering that there are other oil players in the market aside from the Big 3. Jurisprudence mandates that legal interest must be actual, substantial, material, direct and immediate, and not simply contingent or expectant.Such is not the situation in this case. In fact, there is no showing that *Pasang Masda* has something to gain or lose in the outcome of the case. Thus, it was grave abuse of discretion on the part of public respondent RTC in allowing *Pasang Masda* to intervene despite its failure to comply with the first requirement. Besides, even if the Court relaxes the definition of "legal interest" in the instant case, the granting of the motion to intervene would still be improper because the subject matter of the petition-in-intervention, just like the petition, cannot be the subject of an action for declaratory relief. Since an intervention is not an independent action but is ancillary and supplement to the main case, the dismissal of the main case would necessarily include the dismissal of the ancillary case.

APPEARANCES OF COUNSEL

Topacio Law Office for PASANG MASDA.

Belo Gozon Elma Parel Asuncion & Lucila for Petron Corporation.

Carlos G. Platon and *Erwin S. Herrera* for Caltex Philippines, Inc.

Samson S. Alcantara for Social Justice Society.

CVC Law for Pilipinas Shell Corporation.

D E C I S I O N

HERNANDO, *J.*:

Before this Court are Consolidated Petitions for *Certiorari*[1] filed under Rule 65 of the Rules of Court assailing the Orders issued by the Regional Trial Court (RTC) of Manila, Branch 26, in Civil Case No. 03-106101, on the following dates: April 27, 2009,[2] May 5, 2009,[3] June 23, 2009[4] and July 7, 2009[5] (collectively referred to as the Assailed Orders).

Factual Antecedents

The material and relevant facts are as follows:

On March 21, 2003, private respondent Social Justice Society (SJS), a political party duly registered with the Commission of Elections, filed with the RTC of Manila, a Petition for Declaratory Relief,[6] docketed as Civil Case No. 03-106101, against Pilipinas Shell Petroleum Corporation (Shell), Caltex Philippines, Inc. (Caltex), and Petron Corporation (Petron), collectively referred to as the "Big 3." In its Petition, private respondent SJS raised as an issue the oil companies' business practice of increasing the prices of their petroleum products whenever the price of crude oil increases in the world market despite that fact that they had purchased their inventories at a much lower price long before the increase. SJS argued that such practice constitutes monopoly and combination in restraint of trade, prohibited under Article 186[7] of the Revised Penal Code (RPC). SJS likewise

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[1] *Rollo*, G.R. No. 188760, Volume I, pp. 2-62; *rollo*, G.R. No. 189060; pp. 3-61; and *rollo*, G.R. No. 189333, pp. 3-71.

[2] *Rollo*, G.R. No. 188760, Volume I, pp. 64-66; penned by Presiding Judge Silvino T. Pampilo, Jr.

[3] *Id.* at 68.

[4] *Id.* at 1166-1167.

[5] *Id.* at 70-71.

[6] *Id.* at 136-142.

[7] Art. 186. *Monopolies and combinations in restraint of trade.* — The

contended that the acts of these oil companies of increasing the prices of its oil products whenever their competitors increase their prices fall under the term "combination or concerted action" used in Section 11 (a)[8] of Republic Act (RA) No. 8479, otherwise known as the Downstream Oil Industry Deregulation Act of

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penalty of *prision correccional* in its minimum period or a fine ranging from two hundred to six thousand pesos, or both, shall be imposed upon:
1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;
2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the price thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market;
3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, of any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, processed, or imported merchandise or object of commerce is used.
If the offense mentioned in this Article affects any food substance, motor fuel or lubricants, or other articles of prime necessity, the penalty shall be that of *prision mayor* in its minimum and medium periods, it being sufficient for the imposition thereof that the initial steps have been taken toward carrying out the purposes of the combination.
Any property possessed under any contract or by any combination mentioned in the preceding paragraphs, and being the subject thereof, shall be forfeited to the Government of the Philippines. Whenever any of the offenses described above is committed by a corporation or association, the president and each one of the directors or managers of said corporation or association or its agent or representative in the Philippines in case of a foreign corporation or association, who shall have knowingly permitted or failed to prevent the commission of such offenses, shall be held liable as principals thereof.

[8] SECTION 11. *Anti-Trust Safeguards*. — To ensure fair competition and prevent cartels and monopolies in the Industry, the following acts are hereby prohibited:

1998 (Approved on February 10, 1998). The Petition was later amended to include private respondent Atty. Vladimir Alarique T. Cabigao (Cabigao), a member of private respondent SJS, as an additional petitioner to the case.[9]

The Big 3 separately moved for the dismissal of the case on the grounds of lack of legal standing, lack of cause of action, lack of jurisdiction, and failure to exhaust administrative remedies.[10]

On December 17, 2003, public respondent RTC issued an Order[11] denying the motions to dismiss and directing the parties to refer the matter to the Joint Task Force of the Department of Energy (DOE) and Department of Justice (DOJ) pursuant to Section 11 of RA 8479. In the meantime, public respondent RTC ordered the suspension of the proceedings.

Chevron sought reconsideration but public respondent RTC denied the same in its June 30, 2004 Order.[12]

Thereafter, the DOE-DOJ Joint Task Force submitted its Report[13] finding no clear evidence that the Big 3 violated Article 186 of the RPC or Section 11 (a) of RA 8479. Based on the said report, the Big 3 orally moved for the dismissal of the case.[14] Private respondents, on the other hand, moved to open and examine the books of account of the Big 3 to enable the court to determine whether Section 11 (a) of RA 8479 had been violated.[15]

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a) *Cartelization* which means any agreement, combination or concerted action by refiners, importers and/or dealers, or their representatives, to fix prices, restrict outputs or divide markets, either by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins.

[9] *Rollo*, G.R. No. 188760, Volume I, pp. 181-187.

[10] *Id.* at 144-180 and 246-278.

[11] *Id.* at 188-189; penned by Acting Presiding Judge Oscar P. Barrientos.

[12] *Id.* at 514.

[13] *Id.* at 190-197.

[14] *Rollo*, G.R. No. 189333, p. 13; and *rollo*, G.R. No. 189060, p. 15.

[15] *Rollo*, G.R. No. 188760, Volume I, pp. 198-201.

Ruling of the Regional Trial Court

On April 27, 2009, public respondent RTC issued the first assailed Order, which resolved to:

(1) deny the motions to dismiss of the Big 3;
(2) grant private respondents' motion to open and examine the books of accounts of the Big 3; and
(3) order the Commission on Audit (COA), Bureau of Internal Revenue (BIR), and the Bureau of Customs (BOC) to open and examine the books of accounts of the Big 3.

The dispositive portion of the Order reads:

> IN VIEW OF THE FOREGOING, the Motion[s] to Dismiss [are] hereby DENIED and Motion for the Opening and Examination of the Books of Account of the [Big 3] is hereby GRANTED. Accordingly, the [COA], [BIR], and [BOC] are hereby ordered to open and examine the cash receipts, cash disbursement books, the purchase orders on the petroleum products, delivery receipts, sales invoices and other related documents on the purchases of the petroleum products covering the period January 2003 to December 2003. The three government agencies are hereby ordered to take necessary actions to comply with the Order of this Court.
>
> Furnish copy of this Order to the [COA], [BIR], and [BOC].
>
> SO ORDERED.[16]

The Big 3 separately sought reconsideration.[17] Private respondents, on the other hand, moved[18] for the production of records and the inclusion of private respondent Cabigao as part of the team that would open and examine the books of accounts of the Big 3.

On May 5, 2009, public respondent RTC issued the second assailed Order, directing the Chairman of COA and the Commissioners of the BIR and the BOC to form a panel of

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

[17] *Id.* at 578-632.

[18] *Id.* at 279-282.

examiners to conduct an examination of the books of accounts of the Big 3 and to submit a report thereon within three (3) months from receipt of the Order.[19]

Though not parties to the case, the COA, the BIR, and the BOC, through the Office of the Solicitor General (OSG), were constrained to file a Motion for Reconsideration[20] of the April 27 and May 5, 2009 Orders on the ground that the order of examination is unwarranted and beyond their respective jurisdictions.

Meanwhile, private respondent-intervenor *Pangkalahatang Sanggunian Manila and Suburbs Drivers' Association Nationwide* (Pasang Masda), Inc. filed a Motion for Intervention with attached Petition-in-Intervention,[21] which the Big 3 opposed.

On June 23, 2009, public respondent RTC issued the third assailed Order, granting *Pasang Masda's* Motion for Intervention and thereby admitting its Petition-in-Intervention.[22]

On July 7, 2009, the RTC issued the fourth assailed Order denying the motions for reconsideration of the Big 3 and the OSG and granting private respondents' motion to include private respondent Cabigao as part of the panel of examiners.[23] Public respondent RTC stood pat on its April 27, 2009 Order citing the doctrine of *parens patriae*.[24]

A few days later, on July 24, 2009, the RTC, acting on the manifestation of private respondents that the government agencies have not acted to comply with its order, directed the COA, the BIR, and the BOC to explain within 72 hours from notice why they should not be cited in contempt for failure to comply.[25]

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[19] *Id.* at 68.

[20] *Id.* at 205-230.

[21] *Id.* at 321-338.

[22] *Id.* at 1166-1167.

[23] *Id.* at 70-71.

[24] *Id.* at 71.

[25] *Id.* at 235.

After the lapse of the 72-hour period, private respondents moved for the issuance of a warrant of arrest against the Chairman of COA and the Commissioners of the BIR and BOC for their refusal to obey the orders of the RTC.[26] Accordingly, the RTC issued an Order[27] giving the Chairman of COA and the Commissioners of the BIR and BOC five (5) days from receipt of the notice within which to file a comment or opposition to the motion for the issuance of a warrant of arrest against them.

Left with no other recourse, the COA, represented by its Chairman, the BIR and the BOC, represented by their respective Commissioners, through the OSG, filed before this Court, on July 31, 2009, a Petition for *Certiorari* with Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction,[28] docketed as G.R. No. 188760, assailing the April 27 and May 5, 2009 Orders of the public respondent RTC. Direct resort to this Court was made because the issues raised were purely legal, which is an exception to the doctrine of hierarchy of courts.

Finding the application for TRO meritorious, this Court on August 4, 2009 issued a TRO,[29] enjoining the implementation of the April 27 and May 5, 2009 Orders of public respondent RTC.

Chevron and Petron followed suit and filed with this Court their respective petitions for *certiorari*. Chevron filed a Petition for *Certiorari* and Prohibition with Application for TRO and/ Writ of Preliminary Injunction with Motion for Consolidation,[30] docketed as G.R. No. 189060, assailing the April 27 and July 7, 2009 Orders while Petron filed a Petition for *Certiorari* (with prayer for issuance of TRO and/or Writ of Preliminary Injunction),[31] docketed as G.R. No. 189333, assailing the April

[26] *Id.* at 677-680.

[27] *Id.* at 112.

[28] *Id.* at 2-62.

[29] *Id.* at 74-76.

[30] *Rollo*, G.R. No. 189060, pp. 3-61.

[31] *Rollo*, G.R. No. 189333, pp. 3-71.

27, June 23, and July 7, 2009 Orders of public respondent RTC. Both Petitions were consolidated with G.R. No. 188760.[32]

Shell, on the other hand, filed with the Court of Appeals (CA) a Petition for *Certiorari* with prayer for the issuance of a TRO and/or a writ of preliminary injunction, docketed as CA-G.R. SP No. 110050,[33] assailing the April 27, June 23, and July 7, 2009 Orders of public respondent RTC.

On August 6, 2010, the CA rendered a Decision[34] on the Petition for *Certiorari*, docketed as CA-G.R. SP No. 110050. Finding grave abuse of discretion on the part of public respondent RTC, the CA reversed and set aside the April 27, June 23, and July 7, 2009 Orders, and ordered the dismissal of the case for declaratory relief for lack of cause of action. The appellate court, in essence, opined that the issues raised by private respondents cannot be made subject of an action for declaratory relief. As to the propriety of the intervention of *Pasang Masda*, it ruled that *Pasang Masda* had no legal interest in the matter.

Aggrieved, private respondents sought to have the August 6, 2010 Decision reconsidered. However, having been informed of the existence of G.R. No. 188760 assailing the same Orders of public respondent RTC, the CA resolved in its November 12, 2010 Resolution[35] to defer any action on the case.

On June 4, 2013, this Court issued a Resolution[36] directing the CA to resolve the pending motion for reconsideration in CA-G.R. SP No. 110050 with dispatch and to inform the Court of whatever action in may take thereon.

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[32] *Id.* at 554-555 and *Rollo*, G.R. No. 188760, Volume I, pp. 770-A-770-B (Volume I).

[33] *Rollo*, G.R. No. 188760, Volume I, pp. 682-770.

[34] *Id.*, Volume III, pp. 1840-1883 (Volume III); penned by Presiding Justice Andres B. Reyes, Jr. (now retired SC Justice) and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

[35] *Id.* at 1908-1914.

[36] *Id.* at 1982.

In compliance with this Court's directive, on August 6, 2013, the CA issued a Resolution[37] denying the Motion for Reconsideration filed by private respondents.

Issues

Hence, the instant consolidated Petitions, raising the following issues:

In G.R. No. 188760, the OSG contends that public respondent RTC gravely abused [its] discretion in that:

I

[It] ordered [the COA, the BIR, and the BOC] to do a patently ultra vires act, directing COA to audit beyond its constitutional mandate and directing BIR and BOC to examine outside their statutory powers.

II.

[It] invoiced *parens patriae* and Rule 27 on Production or Inspection of Documents in [its] compulsory designation of COA, BIR and BOC as anti-trust auditors while usurping the authority of the [DOE-DOJ Joint] Task Force created by the Oil Deregulation Law for anti-trust monitoring.

III.

[It] disregarded Due Process, to enforce [its] void orders, by threatening COA, BIR, and BOC with contempt despite lack of notice and being non-parties to the case.[38]

In G.R. No. 189060, Chevron interposes the following issues:

I. WHETHER [PRIVATE RESPONDENTS'] PETITION IN CIVIL CASE NO. 03-106101:
(i) RAISES A JUSTICIABLE CONTROVERSY OR ACTUAL CASE THAT IS RIPE FOR JUDICIAL DETERMINATION; AND
(ii) REQUIRES EXERCISE OF POWER AND AUTHORITY BEYOND THE SCOPE OF THE "JUDICIAL POWER" OF COURTS AS PROVIDED UNDER THE CONSTITUTION;

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[37] *Id.* at 1987-1991; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda (now a Member of this Court).

[38] *Id.*, Volume I, pp. 12-13.

II. WHETHER THE [PUBLIC RESPONDENT RTC] OF MANILA HAS JURISDICTION TO CONDUCT A PRELIMINARY INVESTIGATION ON WHETHER PLAYERS IN THE DOWNSTREAM OIL INDUSTRY HAVE COMMITTED A VIOLATION OF THE ANTI-TRUST SAFEGUARDS UNDER R.A. 8479.[39]

In G.R. No. 189333, Petron alleges that:

A.

[PUBLIC RESPONDENT RTC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETRON'S MOTION TO DISMISS DESPITE THE FACT THAT [PRIVATE RESPONDENT] SJS' AMENDED PETITION FOR DECLARATORY RELIEF MERELY SEEKS AN ADVISORY OPINION OF THE COURT ON WHETHER X X X PETRON AND THE OTHER OIL COMPANIES, PILIPINAS SHELL PETROLEUM CORPORATION AND CHEVRON PHILIPPINES, INC. HAVE VIOLATED THE LAWS AGAINST MONOPOLY, COMBINATIONS IN RESTRAINT OF TRADE OR CARTELIZATION.

B.

[PUBLIC RESPONDENT RTC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN [IT] DENIED PETRON'S MOTION TO DISMISS [PRIVATE RESPONDENT] SJS' AMENDED PETITION AFTER THE [DOE-DOJ] JOINT TASK FORCE TO WHICH [PUBLIC RESPONDENT RTC] REFERRED THE CASE "FOR THE SPEEDY DISPOSITION OF THE PENDING CONTROVERSY," SUBMITTED ITS REPORT DATED APRIL 17, 2008 THAT THERE IS NO MONOPOLY OR COMBINATION IN RESTRAINT OF TRADE OR CARTELIZATION COMMITTED BY PETRON, SHELL AND CHEVRON.

C.

[PUBLIC RESPONDENT RTC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN [IT] ORDERED THE INSPECTION AND

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[39] *Rollo*, G.R. No. 189060, p. 22.

EXAMINATION OF THE BOOKS OF ACCOUNT OF PETRON, SHELL AND CHEVRON NOTWITHSTANDING THAT THE SAME IS EXCLUSIVELY COGNIZABLE BY THE [DOE-DOJ] JOINT TASK FORCE CREATED UNDER R.A. 8479.

D.

[PUBLIC RESPONDENT RTC] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN [IT] ADMITTED PASANG MASDA'S PETITION-IN-INTERVENTION DESPITE THE LATTER'S LACK OF MATERIAL, DIRECT AND IMMEDIATE LEGAL INTEREST IN THE MATTER OF LITIGATION BEFORE THE LOWER COURT.[40]

Simply put, the issues to be resolved are as follows:

(1) Whether public respondent RTC committed grave abuse of discretion in not dismissing the Amended Petition for Declaratory Relief;

(2) Whether public respondent RTC committed grave abuse of discretion in ordering the COA, the BIR, and the BOC to examine the books of accounts of the Big 3 and in including private respondent Cabigao as part of the "panel of examiners;" and

(3) Whether public respondent RTC committed grave abuse of discretion in allowing *Pasang Masda* to intervene in the case.

The Parties' Arguments

G.R. No. 188760

The OSG assails the April 27 and May 5, 2009 Orders of the RTC on the ground that it would be legally impossible for the COA, the BIR, and the BOC to comply with the said Orders because it is beyond the mandates of these government agencies to examine the books of accounts of the Big 3.[41] Also, the OSG

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[40] *Rollo*, G.R. No. 189333, pp. 21-22.

[41] *Rollo*, G.R. No. 188760, Volume I, pp. 13-24.

asserts that the orders are not sanctioned by the Rules of Court, specifically Rule 27 on the Production or Inspection of Documents or Things, and RA 8479.[42] In fact, under RA 8479, it is the DOE-DOJ Joint Task Force which has the power and authority to monitor or investigate oil companies, and initiate the filing of a complaint, if necessary.[43] In this case, considering that public respondent RTC already referred the case to the DOE-DOJ Joint Task Force for investigation, there was no need for public respondent RTC to issue said orders as it is bound by the task force's finding that no violation was committed by the Big 3 under the doctrine of conclusive finality.[44]

Shell

Shell, impleaded as a necessary party, likewise argues that public respondent RTC committed grave abuse of discretion in ordering the opening of the books of accounts of the Big 3 as this is beyond the scope of a petition for declaratory relief, which is only limited to the declaration of legal rights.[45] Shell claims that it is beyond the mandates and statutory powers of the COA, the BIR, and the BOC to examine the books of accounts of the Big 3,[46] and that such order is a violation of the Big 3's right to due process.[47]

G.R. No. 189060

Chevron ascribes grave abuse of discretion on the part of the RTC in issuing the April 27 and July 7, 2009 Orders. Chevron argues that the Amended Petition for Declaratory Relief filed by private respondents failed to raise a justiciable controversy and to establish a cause of action for a declaratory relief.[48]

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

[43] *Id.* at 29-32.

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

[45] *Id.* at 421-423.

[46] *Id.* at 428-432.

[47] *Id.* at 432-438.

[48] *Rollo*, G.R. No. 189060, pp. 22-32.

Chevron points out that there is no factual allegation in the Petition that private respondents' rights are being threatened or that there is an imminent violation thereof that should be prevented by the declaratory relief sought.[49] Instead, from the allegations, it appears that private respondents want public respondent RTC to investigate and render an opinion on whether the Big 3 violated Article 186 of the RPC or Section 11 of RA 8479.[50] This, however, is not the function of the court.[51] Rather, it is the DOE-DOJ Joint Task Force that has primary jurisdiction to investigate whether there was a violation of Section 11 of RA 8479.[52] Thus, the RTC exceeded its power or authority when it created its own procedure, ordering the government agencies to investigate the Big 3 and allowing private respondent Cabigao to become part of the panel of examiners.[53] To justify its orders, the RTC cites the doctrine of *parens patriae*. Chevron, however, avers that this doctrine is inapplicable as this only applies to measures taken by the State to protect those who cannot protect themselves such as minors, insane, and incompetent persons.[54]

G.R. No. 189333

Petron imputes grave abuse of discretion on the part of the public respondent trial court in issuing the April 27, June 23 and July 7, 2009 Orders. Echoing the arguments of Chevron, Petron posits that a petition for declaratory relief is not available in the instant case because the requisites for an action for declaratory relief are not present, specifically there is no justiciable controversy, and that a reading of the petition readily shows that private respondents are merely asking for an advisory opinion, which courts are proscribed from rendering.[55] Neither

[49] *Id.* at 28-32.

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

[51] *Id.* at 26.

[52] *Id.* at 32-41.

[53] *Id.* at 41-45.

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

[55] *Rollo*, G.R. No. 189333, pp. 23-36.

do private respondents have a cause of action in view of the factual findings of the DOE-DOJ Joint Task Force that the Big 3 did not commit any violation of Section 11 of RA 8479 and Article 186 of the RPC.[56] Also, public respondent RTC exceeded its authority when it ordered the COA, the BIR, and the BOC to inspect and examine the books of accounts of the Big 3 because under RA 8479, it is the DOE-DOJ Joint Task Force which has the primary jurisdiction to monitor, investigate, and file the necessary cases in court against any person or entity in the oil industry.[57] Moreover, public respondent RTC cannot use the doctrine of *parens patriae* to justify its order because the doctrine only refers to the inherent power of the State to provide protection to those who lack the legal capacity to act on their own behalf.[58] With regard to the June 23, 2009 Order, Petron contends that public respondent RTC committed grave abuse of discretion in allowing *Pasang Masda* to intervene despite the fact that it lacked legal interest in the subject matter of litigation.[59] Furthermore, Petron claims that the *Pasang Masda's* Petition-in-Intervention was filed beyond the time allowed by the rules as the parties have already pleaded their respective positions and the DOE-DOJ Joint Task Force had already submitted its Report.[60]

Private respondents' arguments

Private respondents, on the other hand, assert that they availed of the proper recourse and that all the requisites for a declaratory relief are present.[61] They maintain that the RTC has jurisdiction over their Petition and that the rule on primary jurisdiction invoked by the Big 3 is not a hard-and-fast rule.[62] They insist

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[56] *Id.* at 36-48.

[57] *Id.* at 48-51.

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

[59] *Id.* at 54-58.

[60] *Id.* at 58-60.

[61] *Rollo*, G.R. No. 188760, Volume II, pp. 1687-1689.

[62] *Id.*, Volume I, pp. 789-792 and Volume II, p. 1246.

that the jurisdiction of the DOE-DOJ Joint Task Force is not exclusive and that its findings are not conclusive.[63] As regards the order of public respondent RTC to open and examine the books of accounts of the Big 3, private respondents opine that this is in accordance with the principles of social justice and Article 24 of the Civil Code, which grants power to the court to issue such order to protect the consuming public.[64]

Pasang Masda's arguments

Similarly, *Pasang Masda* banks on the social justice provisions of the Constitution as legal basis for the orders of public respondent RTC.[65] It avers that the auditing powers of the COA is not limited to government entities because as a member of the United Nations Board of Auditors (UNBOA), it was previously deployed as part of the auditing team of 17 UN agencies.[66] In addition, *Pasang Masda* cites the case of *Manila Electric Company (MERALCO) v. Lualhati*,[67] where the COA was tasked by the Energy Regulatory Commission to audit MERALCO, as precedent for the orders of public respondent RTC.[68] It also posits that the creation of the DOE-DOJ Joint Task Force cannot divest the court of its judicial power over the instant case and that its findings are merely recommendatory.[69] Regarding its intervention, *Pasang Masda* claims that there had been cases where the court allowed a party to intervene despite the fact that the parties have already submitted a compromise agreement as long as the intervenor had an interest in the case.[70] In this case, it insists that it has an interest in the outcome of the case as consumers of oil products.[71]

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[63] *Id.*, Volume II, pp. 1689-1690.

[64] *Id.*, Volume I, pp. 783-789.

[65] *Id.*, Volume II, pp. 1663-1668.

[66] *Id.* at 1668-1669.

[67] 539 Phil. 509 (2006).

[68] *Rollo*, G.R. No. 188760, Volume II, pp. 1669-1670.

[69] *Id.* at 1670-1674.

[70] *Rollo*, G.R. No. 189333, pp. 599-602.

[71] *Id.*

Ruling

The Petitions are meritorious.

An action for declaratory relief is not the proper remedy.

A petition for declaratory relief is an action instituted by a person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder.[72] It must be filed before the breach or violation of the statute, deed or contract to which it refers; otherwise, the court can no longer assume jurisdiction over the action.[73] Thus, "[t]he only issue that may be raised in such [an action] is the question of construction or validity of provisions in an instrument or statute."[74]

In the instant case, private respondents, in their Amended Petition, alleged that "[the Big 3] now and then increase the price of their petroleum products" and that "an increase in prices declared by one of them is inevitably followed by increases by the others."[75] Private respondents, thus, interposed the following issues:

(A) WHETHER X X X THE ACT OF OIL COMPANIES, INCLUDING [THE BIG 3], IN INCREASING THE PRICE OF THEIR

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[72] Section 1, Rule 63 of the Rules of Court reads:

Section 1. *Who may file petition*. —

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

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

[73] *Tambunting, Jr. v. Sps. Sumabat*, 507 Phil. 94, 98-99 (2005).

[74] *Monetary Board v. Philippine Veterans Bank*, 751 Phil. 176, 182 (2015).

[75] *Rollo*, G.R. No. 188760, Volume I, p. 182.

OIL PRODUCTS WHENEVER THE PRICE OF CRUDE OIL IN THE WORLD MARKET INCREASES, DESPITE THE FACT THAT THEY HAD PURCHASED THEIR INVENTORY OF CRUDE OIL LONG BEFORE SUCH INCREASE IN WORLD MARKET PRICE AND AT A MUCH LOWER PRICE, IS VIOLATIVE OF THE FOREGOING LEGAL PROVISIONS.

(B) WHETHER X X X THE ACT OF AN OIL COMPANY IN INCREASING THE PRICES OF ITS OIL PRODUCTS WHENEVER ITS PROPOSED COMPETITORS INCREASE THEIR PRICES FALLS UNDER THE TERM 'COMBINATION OR CONCERTED ACTIONS' USED IN SECTION 11 (A) OF [RA] 8479.[76]

Based on the foregoing, the core issue involved in the Amended Petition is whether the business practice of the Big 3 violates the RPC and RA 8479. This, however, cannot be made the subject matter of a declaratory relief.

Private respondents filed their Amended Petition based on acts already committed or being committed by the Big 3, which they believe are in violation of the RPC and RA 8479. It appears therefore that the filing of the Amended Petition was done on the assumption that there was already a breach or violation on the part of the Big 3, which cannot be the subject of a declaratory relief. It must be stressed that an action for declaratory relief presupposes that there has been no actual breach as such action is filed only for the purpose of securing an authoritative statement of the rights and obligations of the parties under a contract, deed or statute.[77] It cannot be availed of if the statute, deed or contract has been breached or violated because, in such a case, the remedy is for the aggrieved party to file the appropriate ordinary civil action in court.[78] Thus, the Court has consistently ruled that "[i]f adequate relief is available through another form or action or proceeding, the other action must be preferred over an action for declaratory relief."[79]

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[76] *Id.* at 185.

[77] *Aquino v. Municipality of Malay, Aklan*, 744 Phil. 497, 509-510 (2014).

[78] *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 511 (2014).

[79] *Id.*

Worth mentioning at this point is the ruling in *Sarmiento v. Hon. Capapas*,[80] where the Court explained that:

> x x x if an action for declaratory relief were to be allowed in this case, after a breach of the statute, the decision of the court in the action for declaratory relief would prejudge the action for violation of the barter law.
>
> The institution of an action for declaratory relief after a breach of contract or statute, is objectionable on various grounds, among which is that it violates the rule on multiplicity of suits. If the case at bar were allowed for a declaratory relief, the judgment therein notwithstanding, another action would still lie against the importer respondent for violation of the barter law. So, instead of one case only before the courts in which all issues would be decided, two cases will be allowed, one being the present action for declaratory relief and a subsequent one for the confiscation of the importations as a consequence of the breach of the barter law.
>
> The impropriety of allowing an action for declaratory relief, after a breach of the law, can be seen in the very decision of the court itself, which is now subject of the appeal. Whereas the case at bar was purported to bring about a simple declaration of the rights of the parties to the action, the judgment goes further than said declaration and decrees that the importation by the respondent corporation violates the law, and further directs that the legal importation be confiscated under the provisions of the law (Section 1 (e), R.A. No. 1194). This confiscation directed by the court lies clearly beyond the scope and nature of an action for declaratory relief, as the judgment of confiscation goes beyond the issues expressly raised, and to that extent it is null and void.[81]

Similarly, in this case, an action for declaratory relief may no longer be allowed considering that private respondents are not merely asking for a declaration of their rights but are actually asking public respondent RTC to determine whether there was a violation of Section 11 of RA 8479, for which the Big 3 may be prosecuted and found criminally liable. And since there is already an alleged breach, it cannot be the subject of a declaratory

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[80] 114 Phil. 756 (1962).

[81] *Id.* at 762.

relief. Public respondent RTC therefore committed grave abuse of discretion in not dismissing the Amended Petition.

The DOE-DOJ Joint Task Force is duly authorized by law to investigate and to order the prosecution of cartelization.

Moreover, the determination of such issue lies with the DOE-DOJ Joint Task Force. Section 13 of RA 8479 pertinently provides:

SEC. 13. Remedies. —

a) Government Action — Whenever it is determined by the Joint Task Force created under Section 14 (d) of this Act, that there is a threatened, imminent or actual violation of Section 11 of this Act, it shall direct the provincial or city prosecutors having jurisdiction to institute an action to prevent or restrain such violation with the Regional Trial Court of the place where the defendant or any of the defendants reside or has his place of business. Pending hearing of the complaint and before final judgment, the court may at any time issue a [TRO] or an order of injunction as shall be deemed just within the premises, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Whenever it is determined by the Joint Task Force that the Government or any of its instrumentalities or agencies, including government-owned or controlled corporations, shall suffer loss or damage in its business or property by reason of violation of Section 11 of this Act, such instrumentality, agency or corporation may file an action to recover damages and the costs of suit with the Regional Trial Court which has jurisdiction as provided above.

b) Private Complaint. – Any person or entity shall report any violation of Section 11 of this Act to the Joint Task Force. The Joint Task Force shall investigate such reports in aid of which the DOE Secretary may exercise the powers granted under Section 15 of this Act. The Joint Task Force shall prepare a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public at the discretion of the Joint Task Force. In the event that the Joint Task Force determines that there has been a violation of Section 11 of this Act, the private person or entity shall be entitled to sue for and obtain injunctive relief, as well as damages, in the

Regional Trial Court having jurisdiction over any of the parties, under the same conditions and principles as injunctive relief is granted under the Rules of Court.

Corollarily, DOE Department Circular No. 98-03-004 or the Rules and Regulations Implementing [RA] 8479, "Downstream Oil Industry Deregulation Act of 1998" provides in Section 17 thereof, *viz.*:

SECTION 17. Remedies.

The DOE-DOJ Task Force, created under Section 14 (d) of the Act, shall take the following remedial measures:

a. investigate and act upon complaints or reports from any person of an unreasonable rise in the prices of petroleum products and may, *motu proprio*, investigate and/or file the necessary complaint with the proper court or agency;

b. investigate and act upon complaints or reports of commission of the prohibited acts under Section 11 of the Act, and after determination of such violation endorse the same to the provincial or city prosecutor having jurisdiction for institution of the appropriate action;

c. prepare and submit a report to the Secretary of Energy and Secretary of Justice embodying its findings and recommendations as a result of its investigation of the alleged violation of Section 11 of the Act;

d. investigate and act upon a complaint by any instrumentality or agency of the Government, including government-owned or -controlled corporations, that loss or damage has been suffered or incurred by such instrumentality, agency or government corporation by reason of violation of Section 11 of the Act; and

e. perform such other functions as may jointly be assigned by the Secretary of Energy and the Secretary of Justice.

In *Cong. Garcia v. Hon. Corona*,[82] the Court made it clear that it is the DOE-DOJ Task Force which has the power to investigate and cause the prosecution of violators. It ruled that:

Article 186 of the [RPC], as amended, punishes as a felony the creation of monopolies and combinations in restraint of trade. The

[82] 378 Phil. 848 (1999).

Solicitor General, on the other hand, cites provisions of RA 8479 intended to prevent competition from being corrupted or manipulated. Section 11, "Anti-Trust Safeguards," defines and prohibits cartelization and predatory pricing. It penalizes the persons and officers involved with imprisonment of three (3) to seven (7) years and fines ranging from One million to Two million pesos. For this purpose, a Joint Task Force from the [DOE] and [DOJ] is created under Section 14 to investigate and order the prosecution of violations.

x x x x x x x x x

Section 13 of the Act provides for "Remedies," under which the filing of actions by government prosecutors and the investigation of private complainants by the Task Force is provided. Sections 14 and 15 provide how the [DOE] shall monitor and prevent the occurrence of collusive pricing in the industry.

It can be seen, therefore, that instead of the price controls advocated by the petitioner, Congress has enacted anti-trust measures which it believes will promote free and fair competition. Upon the other hand, the disciplined, determined, consistent and faithful execution of the law is the function of the President. As stated by public respondents, the remedy against unreasonable price increases is not the nullification of Section 19 of R.A. 8479 but the setting into motion of its various other provisions.[83]

Again, in *Congressman Garcia v. The Executive Secretary, et al.*,[84] the Court declared that:

x x x The remedy against the perceived failure of the Oil Deregulation Law to combat cartelization is not to declare it invalid, but to set in motion its anti-trust safeguards under Sections 11, 12, and 13.

x x x x x x x x x

x x x R.A. No. 8479, x x x does not condone these acts; indeed, Section 11 (a) of the law expressly prohibits and punishes cartelization, which is defined in the same section as *"any agreement, combination or concerted action by refiners, importers and/or dealers*, or their representatives, *to fix prices*, restrict outputs or divide markets, either

[83] *Id.* at 868-869.

[84] 602 Phil. 64 (2009).

by products or by areas, or allocate markets, either by products or by areas, in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins." This definition is broad enough to include the alleged acts of overpricing or price-fixing by the Big 3. R.A. No. 8479 has provided, aside from prosecution for cartelization, several other anti-trust mechanisms, including the enlarged scope of the [DOE's] monitoring power and the creation of a Joint Task Force to immediately act on complaints against unreasonable rise in the price of petroleum products. Petitioner Garcia's failure is that he failed to show that he resorted to these measures before filing the instant petition. His belief that these oversight mechanisms are unrealistic and insufficient does not permit disregard of these remedies.[85]

Here, the RTC initially resolved to refer the instant case to the DOE-DOJ Joint Task Force for investigation and determination of whether the Big 3 were in violation of Section 11 of RA 8479. However, upon receipt of the report of the DOE-DOJ Joint Task Force that there was no violation committed by the Big 3, the RTC, instead of dismissing the case, ordered the COA, the BIR, and the BOC to open and examine the books of accounts of the Big 3 and even allowed private respondent Cabigao to be part of the panel of examiners. In doing so, the trial court divested the DOE-DOJ Joint Task Force of its power and authority and vested the same to the COA, the BIR, the BOC and private respondent Cabigao.

To justify its orders, the public respondent trial court invokes the doctrine of *parens patriae*.

Under the doctrine of *parens patriae* (father of his country), the judiciary, as an agency of the State, has the supreme power and authority to intervene and to provide protection to persons *non sui juris* — those who because of their age or incapacity are unable to care and fend for themselves.[86] In *Maynilad Water Services, Inc. v. Secretary of the Department of Environment*

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

[86] *Vasco v. Court of Appeals*, 171 Phil. 673, 677 (1978); *Cabanas v. Pilapil*, 157 Phil. 97, 101-102 (1974); and *Nery v. Lorenzo*, 150-A Phil. 241, 248-249 (1972).

and Natural Resources,[87] this Court even went further and ruled that "Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits."

This doctrine, however, cannot be applied in this case considering that Congress by enacting RA 8479 has already provided for the mechanism to protect the interest of the Filipino consumers. Public respondent RTC, therefore, cannot create a new panel of examiners to replace the DOE-DOJ Joint Task Force as this goes against RA 8479.

It is beyond the mandates of the COA, the BIR, and the BOC to open and examine the books of accounts of the Big 3 in the instant case.

Besides, it is beyond the mandates of the COA, the BIR, and the BOC to open and examine the books of accounts of the Big 3.

In *Fernando v. [COA]*,[88] the Court explained the audit jurisdiction of the COA:

> Section 2, Article IX-D of the 1987 Constitution provides for the COA's audit jurisdiction:
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> SECTION 2. (1) The [COA] shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such

[87] G.R. Nos. 202897, 206823 & 207969, August 6, 2019.

[88] G.R. Nos. 237938 & 237944-45, December 4, 2018.

non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient and independent watchdog of the Government. It granted the COA the authority to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds.

In the case of *Funa v. Manila Economic and Cultural Office, et al.*, this Court enumerated and clarified the COA's jurisdiction over various governmental entities. In that case, this Court stated that the COA's audit jurisdiction extends to the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.

COA's authority to examine and audit the accounts of government and, to a certain extent, non-governmental entities, is consistent with Section (Sec.) 29 (1) of Presidential Decree (P.D.) No. 1445 otherwise known as the Auditing Code of the Philippines, which grants the COA visitorial authority over the following non-governmental entities:

1. Non-governmental entities "subsidized by the government;"
2. Non-governmental entities "required to pay levy or government share;"
3. Non-governmental entities that have "received counterpart funds from the government;" and

4. Non-governmental entities "partly funded by donations through the government."

COA's audit jurisdiction is also laid down in Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987:

> SECTION 11. *General Jurisdiction*. — (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> x x x x x x x x x

As can be gleaned from the foregoing, the COA's audit jurisdiction generally covers public entities. However, its authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government. Thus, it is clear that the determination of COA's jurisdiction over a specific entity does not merely require an examination of the nature of the entity. Should the entity be found to be non-governmental, further determination must be had as to the source of its funds or the nature of the account sought to be audited by the COA.

In the analysis of an entity's nature, this Court, in prior cases, examined the statutory origin, the charter, purpose and the relations that a particular entity has with the State.

In *Phil. Society for the Prevention of Cruelty to Animals v. [COA]*, this Court clarified that totality of an entity's relations with the State must be considered. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private. This Court examined the charter of therein petitioner, Philippine Society for the Prevention of Cruelty to Animals, its employees' membership to social insurance system, and the presence of x x x government officials in its board, among others. In that case, this Court ruled that the mere public purpose of an entity's existence does not, *per se*, make it a public corporation:

> *Fourth*. The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.
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> This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. Examples of these corporations are utility, railroad, warehouse, telegraph, telephone, water supply corporations and transportation companies. It must be stressed that a quasi-public corporation is a species of private corporations, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation.
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> Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation; yet, it is created for a public benefit. Private schools and universities are likewise private corporations; and yet, they are rendering public service. Private hospitals and wards are charged with heavy social responsibilities. More so with all common carriers. On the other hand, there may exist

a public corporation even if it is endowed with gifts or donations from private individuals.

Meanwhile, in *Engr. Feliciano v. [COA]*, this Court ruled that regardless of the nature of the corporation, the determining factor of COA's audit jurisdiction is government ownership or control of the corporation. In this case, the Court found that local water districts (LWDs), are owned and controlled by the government, as evidenced from the fact that "there [was] no private party involved in their creation, ownership of the national or local government of their assets, the manner of appointment of their board of directors and their employees' being subject to civil service laws." The Court also noted as an indication of the government's control, the latter's power to appoint LWD directors, to provide for their compensation, as well as the Local Water Utilities Administration's power to require LWDs to merge or consolidate their facilities or operations.

In *Boy Scouts of the Philippines v. [COA]*, the Court, in arriving at the conclusion that BSP is subject to the COA's audit jurisdiction, examined its charter, Commonwealth Act No. 111, and the provisions of the same concerning BSP's governing body, its classification and relationship with the National Government, specifically as an attached agency of then Department of Education, Culture and Sports (DECS), as well as its sources of funds.

Without a doubt, the case of the Big 3 would not fall under the audit jurisdiction of COA. They are not public entities nor are they non-governmental entities receiving financial aid from the government.

As to *Pasang Masda's* reliance on the case of *Meralco v. Lualhati*,[89] this is misplaced. That case involves a situation different from the present case as what was in issue therein was the authority of the COA under Section 22 of the Administrative Code of 1987 to examine the books, records and accounts of public utilities in connection with the fixing of rates for the purpose of determining franchise taxes. Thus, it cannot be used as precedent to justify the orders of public respondent RTC.

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[89] *Supra* note 67.

With respect to the BIR, its Commissioner is authorized to examine books, paper, record, or other data of taxpayers but only to ascertain the correctness of any return, or in making a return when none was made, or in determining the liability of any person for any internal revenue tax, or in collecting such liability, or evaluating the person's tax compliance.[90] The BOC, on the other hand, is authorized to audit or examine all books, records, and documents of importers necessary or relevant for the purpose of collecting the proper duties and taxes.[91] Since

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[90] Section 5 of Republic Act No. 8424 (Approved on December 11, 1997) or the Tax Reform Act of 1997 provides:

SECTION 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

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[91] Sections 3515 and 3516 of Presidential Decree No. 1464, as amended by Republic Act No. 9135 (Approved on April 27, 2001) or An Act Amending Certain Provisions of Presidential Decree No. 1464, provide:

SEC. 3515. *Compliance Audit or Examination of Records.* — The importers/customs brokers shall allow any customs officer authorized by the Bureau of Customs to enter during office hours any premises or place where the records referred to in the preceding section are kept to conduct audit examination, inspection, verification and/or investigation of those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which such records are created and stored. For this purpose, a duly authorized customs officer shall have full and free access to all books, records, and documents necessary or relevant for the purpose of collecting the proper duties and taxes.

In addition, the authorized customs officer may make copies of, or take extracts from any such documents. The records or documents must, as soon as practicable after copies of such have been taken, be returned to the person in charge of such documents.

A copy of any such document certified by or on behalf of the importer/broker is admissible in evidence in all courts as if it were the original.

An authorized customs officer is not entitled to enter any premises under this Section unless, before so doing, the officer produces to the person occupying or apparently in charge of the premises written evidence of the

there are no taxes or duties involved in this case, the BIR and the BOC likewise have no power and authority to open and examine the books of accounts of the Big 3.

As previously discussed, it is the DOE-DOJ Joint Task Force that has the sole power and authority to monitor, investigate, and endorse the filing of complaints, if necessary, against oil companies. And considering that the remedy against cartelization is already provided by law, the public respondent trial court exceeded its jurisdiction and gravely abused its discretion when it ordered the COA, the BIR, and the BOC to open and examine

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fact that he or she is an authorized officer. The person occupying or apparently in charge of the premises entered by an officer shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this Section.
Unless otherwise provided herein or in other provisions of law, the Bureau of Customs may, in case of disobedience, invoke the aid of the proper regional trial court within whose jurisdiction the matter falls. The court may punish contumacy or refusal as contempt. In addition, the fact that the importer/broker denies the authorized customs officer full and free access to importation records during the conduct of a post-entry audit shall create a presumption of inaccuracy in the transaction value declared for their imported goods and constitute grounds for the Bureau of Customs to conduct a re-assessment of such goods.
This is without prejudice to the criminal sanctions imposed by this Code and administrative sanctions that the Bureau of Customs may impose against contumacious importers under existing laws and regulations including the authority to hold delivery or release of their imported articles.
SEC. 3516. *Scope of the Audit*. —
(a) The audit of importers shall be undertaken:
(1) When firms are selected by a computer-aided risk management system, the parameters of which are to be based on objective and quantifiable data and are to be approved by the Secretary of Finance upon recommendation of the Commissioner of Customs. The criteria for selecting firms to be audited shall include, but not be limited to, the following:
(a) Relative magnitude of customs revenue from the firm;
(b) The rates of duties of the firm's imports;
(c) The compliance track record of the firm; and
(d) An assessment of the risk to revenue of the firm's import activities.
(2) When errors in the import declaration are detected;
(3) When firms voluntarily request to be audited, subject to the approval of the Commissioner of Customs.
(b) Brokers shall be audited to validate audits of their importer clients and/or fill in information gaps revealed during an audit of their importer clients.

the books of account of the Big 3 and allowed private respondent Cabigao, a certified public accountant, to become part of the panel of examiners. Clearly, the RTC not only failed to uphold the law but worse, he contravened the law.

Pasang Masda failed to satisfy all the requirements for intervention.

As regards the issue of intervention, Section 1,[92] Rule 19 of the Rules of Court requires that: (1) the movant must have a legal interest in the matter being litigated; (2) the intervention must not unduly delay or prejudice the adjudication of the rights of the parties; and (3) the claim of the intervenor must not be capable of being properly decided in a separate proceeding. The right to intervene, however, is not an absolute right as the granting of a motion to intervene is addressed to the sound discretion of the court and may only be allowed if the movant is able to satisfy all the requirements.[93]

In this case, *Pasang Masda's* allegation that its members consume petroleum products is not sufficient to show that they have legal interest in the matter being litigated considering; that there are other oil players in the market aside from the Big 3. Jurisprudence mandates that legal interest must be actual, substantial, material, direct and immediate, and not simply contingent or expectant.[94] Such is not the situation in this case. In fact, there is no showing that *Pasang Masda* has something

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[92] Section 1, Rule 19 of the Rules of Court reads:
Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

[93] *The Board of Regents of the Mindanao State University v. Osop*, 682 Phil. 437, 461 (2012).

[94] *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, 656 Phil. 537, 547 (2011).

to gain or lose in the outcome of the case. Thus, it was grave abuse of discretion on the part of public respondent RTC in allowing *Pasang Masda* to intervene despite its failure to comply with the first requirement.

Besides, even if the Court relaxes the definition of "legal interest" in the instant case, the granting of the motion to intervene would still be improper because the subject matter of the petition-in-intervention, just like the petition, cannot be the subject of an action for declaratory relief. Since an intervention is not an independent action but is ancillary and supplement to the main case, the dismissal of the main case would necessarily include the dismissal of the ancillary case.[95]

All told, the Court finds grave abuse of discretion on the part of public respondent RTC as to its issuance of the Assailed Orders.

WHEREFORE, the Consolidated Petitions are hereby **GRANTED.** The April 27, 2009, May 5, 2009, June 23, 2009, and July 7, 2009 Orders of the Regional Trial Court of Manila, Branch 26, in Civil Case No. 03-106101 are hereby **REVERSED** and **SET ASIDE**. The Temporary Restraining Order dated August 4, 2009 is hereby made **PERMANENT**. Accordingly, the Petition for Declaratory Relief is ordered **DISMISSED**.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Carandang, Lazaro-Javier, Inting, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Zalameda, J., no part.

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[95] *B. Sta. Rita & Co., Inc. v. Gueco*, 716 Phil. 776, 785-786 (2013).

FIRST DIVISION

[G.R. No. 203371. June 30, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **CHARLIE MINTAS FELIX *a.k.a.* SHIRLEY MINTAS FELIX,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION OVER THE MAIN CASE EMBRACES ALL INCIDENTAL MATTERS ARISING THEREFROM AND CONNECTED THEREWITH. — It is settled that jurisdiction over the main case embraces all incidental matters arising therefrom and connected therewith under the doctrine of ancillary jurisdiction. Here, the trial court has jurisdiction over respondent's petition for correction of entries in his first birth certificate on file with the LCR-Itogon, Benguet. The trial court has jurisdiction, as well, to direct the cancellation of respondent's second birth certificate with the LCR-Carranglan, Nueva Ecija as an incident or as a necessary consequence of the action to correct the entries sought by respondent. Indeed, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, ***even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.***

2. ID.; ACTIONS; *IN REM*; A PETITION FOR CORRECTION IS AN ACTION *IN REM* AND A DECISION THEREIN BINDS NOT ONLY THE PARTIES THEMSELVES BUT THE WHOLE WORLD AS WELL. — More important, a petition for correction is an action *in rem*. A decision therein binds not only the parties themselves but the whole world, as well. An *in rem* proceeding entails publication as a jurisdictional requirement — to give notice to and bring the whole world as a party into the case. Surely, the LCR-Carranglan, Nueva Ecija is part of the world and based on the records, was in

fact duly notified of the petition. Consequently, it is bound by the judgment rendered there in the case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; CLERICAL ERROR LAW (R.A. 9048); EVEN WITH THE ADVENT OF RA 9048 AS AMENDED BY RA 10172, THE REGIONAL TRIAL COURTS ARE NOT DIVESTED OF THEIR JURISDICTION TO HEAR AND DECIDE PETITIONS FOR CORRECTION OF ENTRIES. — The next question is – Does RA 9048, as amended by RA 10172 divest the regional trial courts of its jurisdiction over petitions for correction of entries under BP 129 in relation Rule 108 of the Revised Rules of Court? ***Republic v. Gallo*** bears the answers, *viz*: Following the procedure in Rule 103, Rule 108 also requires a petition to be filed before the Regional Trial Court. The trial court then sets a hearing and directs the publication of its order in a newspaper of general circulation in the province. After the hearing, the trial court may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar. x x x However, Republic Act No. 9048 amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil registrar. x x x Thus, a person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings. **Rule 103 and 108 only apply if the administrative petition has been filed and later denied.** x x x Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court. However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction. Thus, the doctrine may be waived as in *Soto v. Jareno*: ***Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court.*** We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground

for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it. Verily, even with the advent of RA 9048, as amended by RA 10172 prescribing the administrative remedy for correction of entries with the civil registry, the regional trial courts are not divested of their jurisdiction to hear and decide petitions for correction of entries "Even the failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court."

CAGUIOA, *J.*, *separate opinion:*

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; IN SPECIAL PROCEEDINGS A PARTY SEEKS TO ESTABLISH A STATUS, A RIGHT OR A PARTICULAR FACT THUS THERE IS TECHNICALLY NO "CAUSE OF ACTION" UNDER RULE 2, SECTION 2 OF THE RULES OF COURT. — I disagree, however, that complying with the procedure laid down by R.A. 9048 in 2007 and Rule 108 would amount to splitting a cause of action. In *Chu v. Spouses Cunanan*, the Court explained: x x x Splitting a single cause of action is the act of dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions upon them. A single cause of action or entire claim or demand cannot be split up or divided in order to be made the subject of two or more different actions. x x x In special proceedings like the instant petition, a party seeks to establish a status, a right, or a particular fact. Thus, there is technically no "cause of action" under Rule 2, Section 2 of the Rules of Court. Even if there were, the law itself divides and delineates the matters covered by the administrative and the judicial proceedings. It is my position, therefore, that compliance with the law cannot be considered a violation of the rules.

2. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION AND PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; DISTINGUISHED. — In *Samar II Electric v. Seludo*, the Court explained the corollary concepts of "primary administrative jurisdiction" and "exhaustion of administrative remedies" in this wise: It may not be amiss to reiterate the prevailing rule that the doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts and comes into play

whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice. Corollary to the doctrine of primary jurisdiction is the principle of exhaustion of administrative remedies. The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppels*, the case may be dismissed for lack of cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to corrects its error and dispose of the case.

3. ID.; ID.; ID.; EXCEPTIONS. — In both cases, however, the Court recognized that the foregoing principles are not inflexible rules without exception. *Republic v. Gallo* holds: Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppels on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting of 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 small so 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) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) **when strong pulbic interest is involve**; and, (l) in *quo warranto* proceedings [x x x]

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION AND CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; PUBLIC INTEREST IS BETTER SERVED BY ALLOWING THE PARTY AND OTHER PERSONS SIMILARLY SITUATED TO FILE A SINGLE JUDICIAL PROCEDURE TO EFFECT MULTIPLE CORRECTIONS AND/OR CANCELLATIONS. — **I find that the public interest is better served by allowing (not requiring) respondent and other persons similarly situated to file a single judicial procedure under Rule 108, to effect multiple corrections and/or cancellations that would have otherwise required two or more separate petitions – administrative and/or judicial.** It would be the height of inefficiency (even absurdity) to require respondent to file three separate petitions to obtain the relief sought, *i.e.*, for a single birth certificate to reflect his correct personal information. The same could be said in a situation where a person would have to file (1) an administrative proceeding to correct his or her birth day and birth month, and (2) a separate judicial proceeding to correct his or her birth year. In this regard, I believe introducing some flexibility may help expedite the process, prevent multiplicity of suits, and prove more cost-effective for the concerned parties. As the *ponencia* aptly notes, allowing the same will save respondent and other persons similarly situated a substantial amount of time and expense, which was precisely what R.A. 9048, as amended, sought to accomplish.

5. ID.; ID.; ID.; WHEN A PETITION INVOLVES LOCAL CIVIL REGISTRARS LOCATED IN DIFFERENT PLACES, THE CIVIL REGISTRAR GENERAL SHOULD BE IMPLEADED. — When a petition involves local civil registrars located in different places however – as in this case – the Civil Registrar General should be impleaded as a party under Rule 108,

Section 3. When directed by the court, the Office of the Civil Registrar General, pursuant to its power of control and supervision, may then effect the necessary corrections/changes in all affected units.

LOPEZ, *J.*, *separate concurring opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; NOT ABSOLUTE AND MAY BE DISPENSED WITH FOR REASONS OF EQUITY. — Moreover, RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. To be sure, the local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive. At any rate, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity. One such instance is the failure to raise the issue of non-compliance with the doctrine at an opportune time.

2. ID.; ID.; DOCTRINE OF ANCILLARY JURISDICTION; CONSTRUED. — Lastly, the RTC correctly ordered the LCR to cancel the respondent's second birth certificate. Under the doctrine of ancillary jurisdiction, the courts have the power to adjudicate and determine matters in aid of or incidental to the exercise of its original or primary jurisdiction. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 94253:

1. Decision[2] dated April 23, 2012 affirming the grant of respondent's petition for correction of entries and the trial court's directive for cancellation of respondent's second birth certificate;
2. Resolution[3] dated August 30, 2012 denying the Republic's motion for reconsideration.

The Proceedings Before the Trial Court

In his Petition for Correction of Entries[4] dated July 30, 2007, respondent Charlie Mintas Felix *a.k.a.* Shirley Mintas Felix essentially alleged that he was born on October 1, 1976 in Itogon, Benguet. His birth was registered with the Local Civil Registrar (LCR)-Itogon, Benguet where his birth certificate bore the following erroneous entries: his first name "Shirley" instead of "Charlie," his gender "female" instead of "male," and his father's surname "Filex" instead of "Felix." But he has another birth registration, this time, with the LCR-Carranglan, Nueva Ecija where his birth certificate carried the correct entries: his first name as Charlie, his gender as male, and his father's surname as "Felix."

In all his subsequent official transactions, he used the birth certificate registered with LCR-Carranglan, Nueva Ecija. But

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[1] Under Rule 45, *Rollo*, pp. 8-26.

[2] *Rollo*, pp. 29-33, penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred by Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Agnes Reyes-Carpio.

[3] *Rollo*, pp. 35-36.

[4] Record, pp. 1-3.

when he subsequently requested for authenticated copy of his birth certificate from the National Statistics Office (NSO), what it officially released to him was the erroneous birth certificate with LCR-Itogon, Benguet.[5]

He, thus, prayed for correction of his birth certificate with the LCR-Itogon, Benguet and cancellation of his second birth certificate with the LCR-Carranglan, Nueva Ecija.[6]

The Republic of the Philippines, through the Office of the Solicitor General (OSG), prayed for the dismissal of the petition on ground that the RTC-La Trinidad, Benguet did not have jurisdiction over the LCR-Carrangalan, Nueva Ecija which ought to implement the directive for cancellation of respondent's second birth certificate,[7] should be the same be granted by the trial court.

Following compliance with the requisite publication, notices and posting, the case was heard on the merits. Respondent testified on his petition and offered his two (2) certificates of birth and other documents including the corresponding medical certificate and scrotal ultrasound result indicating that respondent is male.

The Trial Court's Ruling

By Decision[8] dated July 23, 2009, the trial court granted the petition, in this wise:

> WHEREFORE, there being satisfactory proof that the Order setting the case for hearing was duly published as directed; that the allegations of the petition are true and correct and that it is appearing that there is proper and valid cause for the grant of the relief prayed for.
>
> IT IS HEREBY DECREED that for all legal intents and purposes, the Administrator and Civil Registrar General of the National Statistics

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[5] *Id.*

[6] Record, pp. 1-3; *rollo*, p. 31.

[7] Record, pp. 10-14.

[8] *Id.* at 46-48.

Office and the Local Civil Registrar of Itogon, Benguet are ordered to change and correct from its records the following entries in the Certificate of Live Birth of Charlie Mintas Felix, *viz.*:

1. His sex/gender from female to MALE;
2. His first name from Shirley to CHARLIE; and
3. His father's surname from Filex to FELIX.

Furthermore, the Local Civil Registrar of Carranglan, Nueva Ecija is hereby ordered to cancel from its record the registration of the facts of birth of Charlie Mintas Felix.

Furnish copy of this Decision to the Office of the Local Civil Registrar of Itogon, Benguet to correct its record and to issue an amended Birth Certificate to said Charlie Mintas Felix upon his request after payment of the required fees.

Further, furnish copies hereof to the Office of the Solicitor General, Makati City; the Provincial Prosecutor of Benguet; the Administrator and Civil Registrar General of the National Statistics Office, Manila; the Office of the Local Civil Registrar of La Trinidad, Benguet; the petitioner and his counsel.

SO ORDERED.[9]

The Proceedings Before the Court of Appeals

On appeal, the Republic assailed the trial court for taking cognizance of the case, albeit, it had no jurisdiction to order the LCR-Carranglan, Nueva Ecija to cancel respondent's second birth registration therewith.[10]

Respondent, nonetheless, countered that to require him to file another petition to cancel his second birth certificate with the LCR-Carranglan, Nueva Ecija was unnecessary and would only result in the further clogging of the court docket.[11]

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[9] *Id.* at 47.

[10] CA *rollo*, pp. 27-39.

[11] *Id.* at 99-108.

The Court of Appeals' Ruling

By Decision[12] dated April 23, 2012, the Court of Appeals affirmed. It ruled that the RTC-La Trinidad, Benguet had jurisdiction over the petition for correction of entries in respondent's first birth certificate with the LRC-Itogon, Benguet. The consequent cancellation of his second birth certificate with the LCR-Carranglan, Nueva Ecija was merely incidental to and a necessary consequence of his action for correction of entries.[13]

The Court of Appeals further held that the correction of respondent's NSO officially recognized birth certificate with the LCR-Itogon, Benguet and the consequent cancellation of respondent's second birth certificate with LCR-Carranglan, Nueva Ecija may be joined in the same case for correction of entries. Splitting them violated the rule against multiplicity of suits.[14]

The Republic's motion for reconsideration was denied through Resolution dated August 30, 2012.[15]

The Present Petition

The Republic now urges the Court to exercise its discretionary appellate jurisdiction to review and reverse the dispositions of the Court of Appeals.

The Republic repleads its argument that the RTC-La Trinidad, Benguet has no jurisdiction over the LCR-Carranglan, Nueva Ecija, hence, could not have validly ordered the latter to cancel respondent's second birth certificate. According to the Republic, just because the second registration appears to be a mere surplus age does not cure the jurisdictional infirmity which incipiently tainted the proceedings below.[16]

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[12] *Rollo*, pp. 29-33.

[13] *Id.* at 32.

[14] *Id.* at 33.

[15] *Id.* at 35-36.

[16] *Id.* at 17-23.

In refutation, respondent reiterates that the joinder of both actions for correction and cancellation of entries in respondent's birth certificates conformed with the rule against multiplicity of suits.[17]

Issues

First. Did the Court of Appeals commit reversible error when it rejected the Republic's challenge against the trial court's jurisdiction to direct the LCR-Carranglan, Nueva Ecija to cancel respondent's second birth certificate as a consequence of its order to correct respondent's first birth certificate?

Second. Did Republic Act No. 9048 (RA 9048) as amended by Republic Act No. 10172 (RA 10172) divest the regional trial courts of jurisdiction over petitions for correction of entries in the civil registry?

Ruling

The Court of Appeals correctly upheld the trial court's jurisdiction to order the LCR-Carranglan, Nueva Ecija to cancel respondent's second birth certificate.

It is settled that jurisdiction over the main case embraces all incidental matters arising therefrom and connected therewith under the doctrine of ancillary jurisdiction.

Here, the trial court has jurisdiction over respondent's petition for correction of entries in his first birth certificate on file with the LCR-Itogon, Benguet. The trial court has jurisdiction, as well, to direct the cancellation of respondent's second birth certificate with the LCR-Carranglan, Nueva Ecija as an incident or as a necessary consequence of the action to correct the entries sought by respondent. Indeed, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, ***even though the court may thus be called on to consider and decide matters***

[17] *Id.* at 46-52.

which, as original causes of action, would not be within its cognizance.[18]

Mendez vs. Shari'a District Court, 5th Shari'a District, et al.,[19] is in point:

To rule that the ShCC is without jurisdiction to resolve issues on custody after it had decided on the issue of divorce, simply because it appears to contravene Article 143 of P.D. No. 1083, would be antithetical to the doctrine of ancillary jurisdiction. "While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance."

Following the doctrine, the ShCC, in cases involving divorce, possesses the power to resolve the issue of custody, it being a *related issue* to the main cause of action.

x x x x x x x x x

A distinction must be made between a case for divorce wherein the issue of custody is an *ancillary issue* and a case where custody is the *main issue*. Jurisdiction in the former, as discussed above, lies with the ShCC, as the main cause of action is divorce. The latter on the other hand, where the main cause of action is one of custody, the same must be filed with the ShDC, pursuant to Article 143 of P.D. No. 1083.

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[18] *Defensor-Santiago v. Vasquez, Ombudsman, et al.*, 291 Phil. 664, 680 (1993).

[19] 777 Phil. 143, 164-165 (2016).

The Court of Appeals, therefore, correctly affirmed the trial court's directive to cancel respondent's second birth certificate on file with the LCR-Carranglan, Nueva Ecija, as a consequence of the main relief sought by and granted to respondent. To file two (2) separate petitions, one for correction of entries in his first birth certificate with the LCR-Itogon, Benguet and two, for cancellation of his second birth certificate with LCR-Carranglan, Nueva Ecija — will certainly violate the rule against multiplicity of suits.

More important, a petition for correction is an action *in rem*. A decision therein binds not only the parties themselves but the whole world, as well. An *in rem* proceeding entails publication as a jurisdictional requirement — to give notice to and bring the whole world as a party into the case. Surely, the LCR-Carranglan, Nueva Ecija is part of the world and based on the records, was in fact duly notified of the petition. Consequently, it is bound by the judgment rendered there in the case.

RA 9048, as amended does not divest the regional trial courts of jurisdiction over petitions for correction of entries in the civil registry.

Relevant to the issue of jurisdiction, the Court now brings to fore what seems to be an overlap of jurisdictions over petitions for correction of entries under Sec. 19 of Batas Pambansa Blg. 129 (BP 129) in relation to Rule 108 of the Revised Rules of Court, on one hand, and RA No. 9048 as amended by 10172 on the other.

Sec. 19 of BP 129 provides:

Section 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x x x x x x

Deemed included therein are petitions for correction of entries under Rule 108 of the Revised Rules of Court, being themselves incapable of pecuniary estimation. Rule 108 states:

x x x x x x x x x

Section 2. *Entries subject to cancellation or correction*. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriage; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

Section 3. *Parties*. — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

Section 4. *Notice and publication*. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

Section 5. *Opposition*. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

Section 6. *Expediting proceedings*. — The court in which the proceeding is brought may make orders expediting the proceedings and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

Section 7. *Order*. — After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

On April 22, 2001, RA 9048[20] took effect, thus:

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

x x x x x x x x x

Section 3. *Who May File the Petition and Where*. — Any person having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name or nickname in the civil register may file, in person, a verified petition with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.

x x x x x x x x x

On August 15, 2012, R.A. No. 9048 was amended by **R.A. No. 10172**[21] expanding the scope of the entries in the civil registry which may be administratively corrected, *viz.*:

Section 1. Section 1 of Republic Act No. 9048, hereinafter referred to as the Act, is hereby amended to read as follows:

"SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change

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[20] Otherwise known as "An Act Further Authorizing the City or Municipal Civil Registrar or the Consul General to Correct Clerical or Typographical Errors in the Day and Month in the Date of Birth or Sex of a Person Appearing in the Civil Register without Need of a Judicial Order, Amending for this Purpose Republic Act Numbered Ninety Forty-Eight," was passed into law on August 15, 2012 and took effect on October 24, 2012.

[21] An Act Further Authorizing the City or Municipal Civil Registrar or the Consul General to Correct Clerical or Typographical Errors in the Day and Month in **the Date of Birth or Sex of a Person Appearing** in the Civil Register without Need of a Judicial Order, Amending for this Purpose Republic Act Numbered Ninety Forty-Eight.

> of first name or nickname, **the day and month in the date of birth or sex of a person** where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations." (Emphasis supplied)
>
> x x x x x x x x x

Here, respondent resorted to judicial proceedings when he sought the correction of the entries in his birth certificate. For while RA 9048 allowed the administrative correction of respondent's first name and the typographical error in his father's surname, it did not allow correction of the entry pertaining to respondent's biological sex.

For it was only on October 24, 2012 that the amendatory law RA 10172 took effect long before respondent initiated his petition with the court. Had RA 10172 taken effect on or before he initiated his petition, he could have resorted to the administrative process under these twin laws just for the purpose of correcting all at once the three (3) entries in his birth certificate. He could have then saved a substantial amount of time and expense which precisely what RA Nos. 9048 and 10172 seek to accomplish, among others.

But then again, respondent's petition came before RA 10172 took effect, this time allowing correction of erroneous entries pertaining to one's biological sex. Surely, to pursue the administrative procedure prescribed under RA 9048 with respect to his first name and typographical error in his father's name and a judicial procedure under Rule 108 with respect to the correction of his biological sex is anathema to the proscription against splitting a cause of action under Section 4, Rule 2 of the Revised Rules of Court, thus:

> **Section 4, Rule 2.** *Splitting a single cause of action; effect of.* — If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

The next question is – Does RA 9048, as amended by RA 10172 divest the regional trial courts of its jurisdiction over petitions for correction of entries under BP 129 in relation Rule 108 of the Revised Rules of Court?

Republic v. Gallo[22] bears the answer, *viz.*:

Following the procedure in Rule 103, Rule 108 also requires a petition to be filed before the Regional Trial Court. The trial court then sets a hearing and directs the publication of its order in a newspaper of general circulation in the province. After the hearing, the trial court may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.

x x x x x x x x x

However, Republic Act No. 9048 amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil register.

x x x x x x x x x

Thus, a person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings. **Rules 103 and 108 only apply if the administrative petition has been filed and later denied**.

x x x x x x x x x

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.

However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction. Thus, the doctrine may be waived as in *Soto v. Jareno*:[23]

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[22] See G.R. No. 207074, January 17, 2018.

[23] See *Republic v. Gallo* citing *Soto v. Jareno*, 228 Phil. 117, 119 (1986).

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it. (Emphasis supplied)

Verily, even with the advent of RA 9048, as amended by RA 10172 prescribing the administrative remedy for correction of entries with the civil registry, the regional trial courts are not divested of their jurisdiction to hear and decide petitions for correction of entries "Even the failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court."[24]

So must it be.

ACCORDINGLY, the petition is **DISMISSED.** The Decision dated April 23, 2012 and Resolution dated August 30, 2012 of the Court of Appeals in CA-G.R. CV No. 94253 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson) and *Hernando,*[*] *J.*, concur.

Caguioa, J., see separate opinion.

Lopez, J., see concurring opinion.

SEPARATE OPINION

CAGUIOA, *J.*:

I concur in the result.

The instant dispute involves a petition for the cancellation and/or correction of entries under Rule 108 of the Rules of

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[24] *Supra* note 22.

[*] Justice Ramon Paul L. Hernando designated as additional member. Justice Jose C. Reyes, Jr., recused from the case for having concurred in the assailed Court of Appeals decision.

Court.[1] The facts were summarized by the *ponencia* as follows:

Respondent's birth certificate was registered twice.[2] In his **first birth certificate**, which was registered with the Local Civil Registrar of Itogon (LCR-Itogon), Benguet, respondent's first name was erroneously registered as "*Shirley*" instead of "*Charlie*," his father's surname was erroneously spelled as "*Filex*" instead of "*Felix*," and his gender was erroneously entered as "*female*" instead of "*male*."[3] A **second birth certificate** was subsequently registered containing all the correct entries, but the same was filed with the Local Civil Registrar of Carrangalan (LCR-Carrangalan), Nueva Ecija.[4] Respondent thus filed a petition under Rule 108 of the Rules of Court with the Regional Trial Court, La Trinidad, Benguet (RTC) in 2007 seeking to correct the erroneous entries in his first birth certificate (filed with the LCR-Itogon, Benguet) and to cancel his second birth certificate (filed with the LCR-Carrangalan, Nueva Ecija).[5]

The RTC granted the petition, allowed the corrections, and ordered the LCR-Carrangalan, Nueva Ecija to cancel respondent's birth certificate.[6] On appeal, the Court of Appeals (CA) affirmed the decision of the RTC.[7]

The Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), thus filed the instant petition alleging that the RTC had no jurisdiction to order the LCR-Carrangalan, Nueva Ecija to cancel respondent's

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[1] *Ponencia*, p. 2.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 3.

[7] *Id.* at 4.

second birth certificate.[8] Notably, the OSG made no mention of Republic Act No. (R.A.) 9048,[9] which was already in effect when the petition for correction was filed.

The *ponencia* dismisses the petition and holds:

1) The RTC has jurisdiction to order the *correction* of entries in respondent's first birth certificate.[10] As a necessary incident thereof, the *ponencia* concludes that the RTC likewise has jurisdiction to order the *cancellation* of respondent's second birth certificate on file with the LCR-Carrangalan, Nueva Ecija;[11]

2) Petitions for correction of entries are incapable of pecuniary estimation and R.A. 9048 did not divest the RTC of its jurisdiction to decide petitions for correction of entries;[12] and

3) Respondent's direct resort to a judicial procedure is correct because to pursue an administrative procedure for the clerical correction of respondent's first name and his father's surname and a judicial procedure for the correction of his sex would amount to splitting of causes of action.[13]

I concur with the *ponencia* that the reliefs sought by respondent should be allowed. However, my analysis proceeds differently, as follows:

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[8] *Id.*

[9] Entitled "AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES," approved on March 22, 2001.

[10] *Ponencia*, p. 6.

[11] *Id.* at 5.

[12] *Id.* at 10.

[13] *Id.* at 9.

The correction of respondent's first name and of his father's surname are clerical in nature and fall under R.A. 9048.

When respondent filed his petition for the cancellation and/or correction of entries in 2007, I note that R.A. 9048, which provides an administrative procedure for changes of first name and corrections of typographical errors, was already in effect. In *Republic v. Gallo*,[14] the Court explained:

> Under Article 407 of the Civil Code, the books in the Civil Register include "acts, events and judicial decrees concerning the civil status of persons," which are *prima facie* evidence of the facts stated there.
>
> Entries in the register include births, marriages, deaths, legal separations, annulments of marriage, judgments declaring marriages void from the beginning, legitimations, adoptions, acknowledgments of natural children, naturalization, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor, and changes of name.
>
> As stated, the governing law on changes of first name [and correction of clerical and typographical errors in the civil register] is currently Republic Act No. 10172, which amended Republic Act No. 9048. Prior to these laws, the controlling provisions on changes or corrections of name were Articles 376 and 412 of the Civil Code.
>
> Article 376 states the need for judicial authority before any person can change his or her name. On the other hand, Article 412 provides that judicial authority is also necessary before any entry in the civil register may be changed or corrected.
>
> Under the old rules, a person would have to file an action in court under Rule 103 for substantial changes in the given name or surname provided they fall under any of the valid reasons recognized by law, or Rule 108 for corrections of clerical errors.

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[14] G.R. No. 207074, January 17, 2018, 851 SCRA 570. Third Division, penned by Associate Justice Marvic M.V.F. Leonen, with the concurrence of then Associate Justice, now Retired Chief Justice Lucas P. Bersamin, Retired Associate Justice Samuel R. Martires, and Associate Justice Alexander J. Gesmundo.

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Applying Article 412 of the Civil Code, a person desiring to change his or her name altogether must file a petition under Rule 103 with the Regional Trial Court, which will then issue an order setting a hearing date and directing the order's publication in a newspaper of general circulation. After finding that there is proper and reasonable cause to change his or her name, the Regional Trial Court may grant the petition and order its entry in the civil register.

On the other hand, Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors in the entry of the information enumerated in Section 2 of this Rule and those affecting the civil status, citizenship, and nationality of a person. The proceedings under this rule may either be summary, if the correction pertains to clerical mistakes, or adversary, if it pertains to substantial errors.

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Following the procedure in Rule 103, Rule 108 also requires a petition to be filed before the Regional Trial Court. The trial court then sets a hearing and directs the publication of its order in a newspaper of general circulation in the province. After the hearing, the trial court may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.

Mercadera clarified the applications of Article 376 and Rule 103, and of Article 412 and Rule 108, thus:

> The "change of name" contemplated under Article 376 and Rule 103 must not be confused with Article 412 and Rule 108. A change of one's name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings.
>
> In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2,

> Rule 108 also includes "changes of name," the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one's name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108.
>
> This rule in "names," however, does not operate to entirely limit Rule 108 to the correction of clerical errors in civil registry entries by way of a summary proceeding. As explained above, *Republic v. Valencia* is the authority for allowing substantial errors in other entries like citizenship, civil status, and paternity, to be corrected using Rule 108 provided there is an adversary proceeding. "After all, the role of the Court under Rule 108 is to ascertain the truths about the facts recorded therein."

However, Republic Act No. 9048 amended Articles 376 and 412 of the Civil Code, effectively removing clerical errors and changes of the name outside the ambit of Rule 108 and putting them under the jurisdiction of the civil registrar.

In *Silverio v. Republic*:

> The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a privilege, not a right. Petitions for change of name are controlled by statutes. In this connection, Article 376 of the Civil Code provides:
>
> > ART. 376. No person can change his name or surname without judicial authority.
>
> This Civil Code provision was amended by RA 9048 (Clerical Error Law) [x x x]
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> x x x x x x x x x
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> RA 9048 now governs the **change of first name**. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. Under the law, therefore, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108

(Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.

In *Republic v. Cagandahan*:

> The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. In this connection, Article 412 of the Civil Code provides:
>
> > ART. 412. No entry in a civil register shall be changed or corrected without a judicial order.
>
> Together with Article 376 of the Civil Code, this provision was amended by Republic Act No. 9048 in so far as ***clerical or typographical* errors** are involved. The correction or change of such matters can now be made through administrative proceedings and without the need for a judicial order. In effect, Rep. Act No. 9048 removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register.

In *Republic v. Sali*:

> The petition for change of first name may be allowed, among other grounds, if the new first name has been habitually and continuously used by the petitioner and he or she has been publicly known by that first name in the community. The local city or municipal civil registrar or consul general has the primary jurisdiction to entertain the petition. It is only when such petition is denied that a petitioner may either appeal to the civil registrar general or file the appropriate petition with the proper court.

Republic Act No. 9048 also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register or changes in first names or nicknames.

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Thus, a person may now change his or her first name or correct clerical errors in his or her name through administrative proceedings.

Rules 103 and 108 only apply if the administrative petition has been filed and later denied.[15]

Considering that the corrections and cancellations sought with respect to respondent's first name and his father's surname are clerical[16] in nature, the petition to correct the same should have been filed, under R.A. 9084, with the local civil registry office of the city or municipality where the record sought to be corrected or changed is kept.

Under present jurisprudence,[17] when an entry falls within the coverage of R.A. 9048, a person may only avail of the appropriate judicial remedies under Rule 103 or Rule 108 *after* the petition in the administrative proceedings is first filed and later denied.[18] Failure to comply with the administrative procedure generally renders the petition dismissible for failure to exhaust administrative remedies and for failure to comply with the doctrine of primary jurisdiction.[19]

The correction of respondent's sex and the cancellation of respondent's second birth certificate do not fall under R.A. 9048.

It bears emphasis that R.A. 9048 was amended by R.A. 10172[20] in 2012. The latter law expanded the coverage of the

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[15] *Id.* at 587-595. Citations omitted; emphasis and underscoring supplied.

[16] R.A. 9048, Section 2 (3) holds: "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, status or sex of the petitioner.

[17] See *Republic v. Gallo, supra* note 14; *Republic v. Sali*, 808 Phil. 343 (2017); *Bartolome v. Republic*, G.R. No. 243288, August 28, 2019.

[18] *Bartolome v. Republic, id.*

[19] See *supra* note 17.

[20] Entitled "AN ACT FURTHER AUTHORIZING THE CITY OR

administrative procedure provided under R.A. 9048 to include clerical corrections in the day and/or month (but not the year) in the date of birth, or in the sex of the person, where it is patently clear that there was a clerical or typographical error or mistake in the entry, *viz.*:

SECTION 1. Section 1 of Republic Act No. 9048, hereinafter referred to as the Act, is hereby amended to read as follows:

> "Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations." (Underscoring supplied)

Hence, the foregoing entries may now likewise be changed without judicial proceedings, "by filing a subscribed and sworn affidavit with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept."[21]

As aptly observed by the *ponencia*, however, R.A. 10172 was enacted *after* respondent's Rule 108 petition was filed in 2007. Hence, under the laws prevailing in 2007, respondent would have had to file separate proceedings to effect (1) the corrections sought as regards his first name and his father's

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MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT," approved on August 15, 2012.

[21] *Republic v. Gallo, supra* note 14 at 596. Citations and emphasis omitted; underscoring supplied.

surname (administrative proceeding) and (2) the corrections sought as regards his sex (judicial proceeding).[22]

In addition, I find that the civil registrar would have no authority to *cancel* respondent's second birth certificate (filed with LCR-Carrangalan, Nueva Ecija) under R.A. 9048. Notably, the registration of respondent's second birth certificate is not a typographical error, *i.e.*, "a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records," which may be corrected through the administrative procedure. Given this complicated situation, it appears that respondent would have had to file (in addition to the administrative proceeding already discussed above) two separate judicial proceedings as the correction in respondent's sex had to be undertaken in Benguet while the cancellation of the second birth certificate had to be undertaken in Nueva Ecija, pursuant to Rule 108, Section 1.[23] **This is absurd and could not have been the intention of the law and the rules.**

In this regard, I agree with the *ponencia* that (1) R.A. 9048 as amended was enacted precisely to expedite the process of effecting corrections of entries in the civil registry and to make the same more efficient and cost effective for the people,[24] and (2) requiring respondent to file two or even three separate petitions results in delays and in a multiplicity of suits.

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[22] See *Republic v. Sali*, 808 Phil. 343 (2017).

[23] RULE 108, Section 1 provides:

SECTION 1. *Who may file petition*. — Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

[24] *Ponencia*, p. 8.

I disagree, however, that complying with the procedure laid down by R.A. 9048 in 2007 and Rule 108 would amount to splitting a cause of action.[25] In *Chu v. Spouses Cunanan*,[26] the Court explained:

> x x x Splitting a single cause of action is the act of dividing a single or indivisible cause of action into several parts or claims and instituting two or more actions upon them. A single cause of action or entire claim or demand cannot be split up or divided in order to be made the subject of two or more different actions. x x x[27]

In special proceedings like the instant petition, a party seeks to establish a status, a right, or a particular fact.[28] Thus, there is technically no "cause of action" under Rule 2, Section 2 of the Rules of Court.[29] Even if there were, the law itself divides and delineates the matters covered by the administrative and the judicial proceedings. It is my position, therefore, that compliance with the law cannot be considered a violation of the rules.

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[25] *Id.* at 9.

[26] 673 Phil. 12 (2011).

[27] *Id.* at 21.

[28] RULES OF COURT, Rule I, Section 3 provides:

SEC. 3. *Cases governed*. — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, (1a, R2)

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action. (n)

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law. (n)

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. (2a, R2)

[29] Rule 2, Sections 1 and 2 provide:

SECTION 1. *Ordinary civil actions, basis of.* — Every ordinary civil action must be based on a cause of action. (n)

SEC. 2. *Cause of action, defined.* — A cause of action is the act or omission by which a party violates a right of another.

Nevertheless, I vote to grant the reliefs sought by respondent in the interest of speedy and substantial justice, given that the Republic never raised the issue of non-compliance with R.A. 9048 in the proceedings before the lower courts and that in any event, the LCR-Carrangalan was duly notified of the petition.[30]

While I am aware that a "person may only avail of the appropriate judicial remedies under Rule 103 or Rule 108 *after* the petition in the administrative proceedings is filed and later denied,"[31] I find that allowing the corrections and cancellation sought would better serve the apparent purpose of the law, which is to expedite the process of effecting corrections of entries in the civil registry and to decongest court dockets.

The corrections sought and the cancellation of respondent's second birth certificate may be undertaken through a single judicial proceeding under Rule 108.

I disagree with the *ponencia*'s conclusion that petitions under Rule 108 and Rule 103 are "incapable of pecuniary estimation."[32] Be that as it may, I do agree with the *ponencia* that "by removing clerical errors and changes of name from the ambit of Rule 108 [and Rule 103] and putting them under the jurisdiction of the civil register,"[33] the law did **not** divest the RTCs of jurisdiction over the same.

I interpret the provisions of R.A. 9048, as amended, as merely providing for the primary jurisdiction of the civil registrar, that is, "authorizing" or "allowing" the civil registrar to effect changes or corrections which, under the Civil Code, could previously only be done by a court.[34] R.A. 9048 provides a simpler and

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[30] *Ponencia*, p. 8.

[31] *Supra* note 18.

[32] Section 19 (1) of B.P. 129 specifically refers to civil actions while a petition for correction/cancellation of entries is a special proceeding.

[33] *Republic v. Gallo, supra* note 14 at 593.

[34] CIVIL CODE, Article 412 states that:

speedier administrative remedy for the correction of clerical errors and for changes of first name.[35] In *Samar II Electric v. Seludo*,[36] the Court explained the corollary concepts of "primary administrative jurisdiction" and "exhaustion of administrative remedies" in this wise:

> It may not be amiss to reiterate the prevailing rule that the doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.
>
> Corollary to the doctrine of primary jurisdiction is the principle of exhaustion of administrative remedies. The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of cause of action.
>
> The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to

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Art. 412. No entry in a civil register shall be changed or corrected, without judicial order.

[35] See *Republic v. Gallo, supra* note 14 and *Republic v. Sali, supra* note 22.

[36] 686 Phil. 786 (2012).

correct its error and dispose of the case.[37] (Emphasis and underscoring supplied)

Similarly, in *Republic v. Gallo*,[38] the Court explained:

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.

However, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction. Thus, the doctrine may be waived as in *Soto v. Jareno*:

> Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it. (Citation omitted)

Meanwhile, under the doctrine of primary administrative jurisdiction, if an administrative tribunal has jurisdiction over a controversy, courts should not resolve the issue even if it may be within its proper jurisdiction. This is especially true when the question involves its sound discretion requiring special knowledge, experience, and services to determine technical and intricate matters of fact.

In *Republic v. Lacap*:

> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound

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[37] *Id.* at 796. Citations omitted.

[38] *Supra* note 14.

> administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. (Citation omitted)

Thus, the doctrine of primary administrative jurisdiction refers to the competence of a court to take cognizance of a case at first instance. Unlike the doctrine of exhaustion of administrative remedies, it cannot be waived.[39]

In both cases, however, the Court recognized that the foregoing principles are not inflexible rules without exception. *Republic v. Gallo*[40] holds:

> Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (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 small so 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) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) **when strong public interest is involved**; and, (l) in *quo warranto* proceedings. [x x x][41]

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[39] *Id.* at 606-607. Citations omitted; emphasis and underscoring supplied.

[40] *Supra* note 14.

[41] *Id.* at 609; underscoring supplied. *Samar II Electric v. Seludo*, 686 Phil. 786, 797 (2012) likewise states: "[T]he 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

I find that the public interest is better served by allowing (not requiring) respondent and other persons similarly situated to file a single judicial procedure under Rule 108, to effect multiple corrections and/or cancellations that would have otherwise required two or more separate petitions — administrative and/or judicial. It would be the height of inefficiency (even absurdity) to require respondent to file three separate petitions to obtain the relief sought, *i.e.*, for a single birth certificate to reflect his correct personal information. The same could be said in a situation where a person would have to file (1) an administrative proceeding to correct his or her birth day and birth month, and (2) a separate judicial proceeding to correct his or her birth year.

In this regard, I believe introducing some flexibility may help expedite the process, prevent multiplicity of suits, and prove more cost-effective for the concerned parties. As the *ponencia* aptly notes, allowing the same will save respondent and other persons similarly situated a substantial amount of time and expense, which was precisely what R.A. 9048, as amended, sought to accomplish.[42]

When a petition involves local civil registrars located in different places however — as in this case — the Civil Registrar General should be impleaded as a party under Rule 108, Section 3. When directed by the court, the Office of the Civil Registrar General, pursuant to its power of control and supervision, may then effect the necessary corrections/changes in all affected units.

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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."

[42] *Ponencia*, p. 8.

Bartolome v. Republic[43] summarized the rules regarding changes of name and corrections of errors, as follows:

> 1. A person seeking 1) to change his or her first name, 2) to correct clerical or typographical errors in the civil register, 3) to change/correct the day and/or month of his or her date of birth, and/or 4) to change/correct his or her sex, where it is patently clear that there was a clerical or typographical error or mistake, must first file a verified petition with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept, in accordance with the administrative proceeding provided under R.A. 9048 in relation to R.A. 10172. A person may only avail of the appropriate judicial remedies under Rule 103 or Rule 108 in the aforementioned entries *after* the petition in the administrative proceedings is filed and later denied.
>
> 2. A person seeking 1) to change his or her surname, or 2) to change both his or her first name *and* surname may file a petition for change of name under Rule 103, provided that the jurisprudential grounds discussed in *Republic v. Hernandez* are present.
>
> 3. A person seeking substantial cancellations or corrections of entries in the civil registry may file a petition for cancellation or correction of entries under Rule 108. As discussed in *Lee v. Court of Appeals* and more recently, in *Republic v. Cagandahan*, R.A. 9048 "removed from the ambit of Rule 108 of the Rules of Court the correction of such errors. Rule 108 now applies only to substantial changes and corrections in entries in the civil register."[44]

I submit, however, my own view that a person compelled by the foregoing rules to file two or more separate petitions (*i.e.*, administrative and judicial) to effect the desired *corrections or cancellations* may, in the interest of substantial justice, file a single petition for correction/cancellation of entries under Rule 108, provided that all interested parties, including the concerned civil registrars and/or the civil registrar general, as the case may be, are duly notified.

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[43] *Supra* note 17.

[44] *Id.* at 8. Citations and underscoring omitted.

SEPARATE CONCURRING OPINION

LOPEZ, *J.*:

The *ponencia* affirmed the Decision of the Regional Trial Court (RTC) to correct the entries in the respondent's birth certificate referring to his sex, first name, and father's surname under Rule 108 of the Rules of Court, and to order the Local Civil Registrar (LCR) to cancel his second birth certificate.

I concur.

Notably, it was in 2007 that the respondent sought the correction of his birth certificate before the RTC. The erroneous entries include his sex,[1] first name,[2] and father's surname.[3] At that time, Republic Act (RA) No. 9048[4] already authorized the administrative change or correction of clerical or typographical errors[5] in first names or nicknames. However, it was only in 2012 that RA No. 10172[6] introduced an amendment allowing

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[1] "Female" instead of "Male."

[2] "Shirley" instead of "Charlie."

[3] "Filex" instead of "Felix."

[4] An Act Authorizing the City or Municipal Civil Registrar or the Consul General to Correct a Clerical or Typographical Error in an Entry and/or Change of First Name or Nickname in the Civil Register without Need of a Judicial Order, amending for this purpose Articles 376 and 412 of the Civil Code of the Philippines.

[5] Rule 2.8 of the implementing rules and regulations of RA No. 9048 defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing, or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records. In *Republic of the Philippines v. Merlyn Mercader, G.R. No. 186027, December 8, 2010*, we held that a misspelled given name pertains to a mere clerical error. Thus, the correction of petitioner's first name from "MARILYN" to "MERLYN" was ruled as a clerical error in spelling.

[6] An Act Further Authorizing the City or Municipal Civil Registrar of the Consul General to Correct Clerical or Typographical Errors in the Day

the administrative change or correction of similar errors in the sex and the day and month in the date of birth of a person. In this circumstance, the filing of a single petition under Rule 108 to correct the erroneous entries in the respondent's birth certificate is justified. Moreover, RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. To be sure, the local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive.[7] At any rate, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity. One such instance is the failure to raise the issue of non-compliance with the doctrine at an opportune time.[8]

Lastly, the RTC correctly ordered the LCR to cancel the respondent's second birth certificate. Under the doctrine of ancillary jurisdiction, the courts have the power to adjudicate

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and Month in the Date of Birth or Sex of a Person Appearing in the Civil Register without Need of a Judicial Order, amending for this purpose Republic Act Numbered Ninety Forty-Eight.

[7] It is worth noting that the deliberations on RA No. 9048 did not mention that petitions for correction of clerical errors can no longer be filed with the regular courts, though the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law. *(Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac, Adm. Matter No. 06-7-414-RTC, October 19, 2007.)*

[8] In *Republic of the Philippines v. Michelle Soriano Gallo, G.R. No. 207074, January 17, 2018*, We held that for reasons of equity, in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. Thus, we allowed that the corrections of clerical errors sought by the petitioner, such as his first name from "Michael" to "Michelle," her biological sex from "male" to "female", the entry of her middle name as "Soriano", middle name of her mother as "Angangan"; middle name of her father as "Balingao"; and, the date of her parents' marriage as "May 23, 1981,'' despite the filing of a petition under Rule 108, considering the failure of the Office of the Solicitor General to raise the doctrine of primary jurisdiction at the first instance.

and determine matters in aid of or incidental to the exercise of its original or primary jurisdiction.[9] This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

FOR THESE REASONS, I vote to **DENY** the petition.

FIRST DIVISION

[G.R. No. 218964. June 30, 2020]

MARIA AURORA G. MATHAY, ISMAEL G. MATHAY III, MARIA SONYA M. RODRIGUEZ, and RAMON G. MATHAY,[*] *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and ANDREA L. GANDIONCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PREJUDICIAL QUESTION; A PREJUDICIAL QUESTION MUST BE

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[9] While a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance or by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court mad thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. *(City of Manila v. Grecia-Cuerdo, G.R. No. 175723, February 4, 2014, 715 SCRA 182, 206.)*

[*] Also known as Ramon Ismael G. Mathay. See *rollo*, pp. 19, 55 and 125.

DETERMINATIVE OF THE CASE BEFORE THE COURT BUT THE JURISDICTION TO TRY AND RESOLVE THE QUESTION MUST BE LODGED IN ANOTHER COURT OR TRIBUNAL. — The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it that its ascertainment determines the guilt or innocence of the accused. For it to suspend the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.

2. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS. — [T]he elements of qualified theft, committed with grave abuse of confidence, are: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; 6. That it be done with grave abuse of confidence.

3. ID.; FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS. — The elements of falsification of public documents under Article 171(4) of the RPC are: (a) The offender makes in a document untruthful statements in a narration of facts; (b) The offender has a legal obligation to disclose the truth of the facts narrated; (c) The facts narrated by the offender are absolutely false; and (d) The perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioners.
Anarna & Castillo Law Offices for private respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated March 6, 2015 and Resolution[3] dated June 18, 2015 in CA-G.R. SP. No. 137194 rendered by the Court of Appeals (CA) Special Division of Five Former Special Fifteenth Division.

The assailed Decision and Resolution upheld the Order[4] dated September 10, 2014 issued by the Regional Trial Court (RTC) of Pasig City, Branch 265 in Criminal Case No. 153895-PSG,[5] which denied the Omnibus Motion and Motion to Suspend Proceedings filed by petitioners, and ordered the issuance of warrants of arrest against them.

The Facts

Petitioners Maria Sonya M. Rodriguez (Maria Sonya), Ismael G. Mathay III (Ismael III), Ramon G. Mathay (Ramon), and Maria Aurora G. Mathay (Maria Aurora) are siblings, whose parents are the late Quezon City Mayor Ismael A. Mathay, Jr. (Ismael) and Sonya Gandionco Mathay (Sonya).[6]

On March 6, 1980, Sonya and her sons, Ismael III and Ramon, along with Sonya's youngest sister, Andrea L. Gandionco (private

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[1] *Rollo*, pp. 17-53.

[2] *Id.* at 54-75. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Sesinando E. Villon and Romeo F. Barza concurring; Associate Justice Florito S. Macalino filed a Dissenting Opinion (*id.* at 76-86) and Associate Justice Agnes Reyes-Carpio joined in the Dissenting Opinion of Justice Macalino.

[3] *Id.* at 87-88.

[4] *Id.* at 125-130. Penned by Judge Danilo A. Buemio.

[5] Also appears as Criminal Case No. 153895 in some parts of the *rollo*.

[6] *Rollo*, p. 55.

respondent), organized Goldenrod, Inc. During her lifetime, Sonya managed and operated Goldenrod, Inc.[7]

At the time of her death on November 22, 2012, Goldenrod, Inc.'s General Information Sheet (GIS) dated April 4, 2012 reflected Sonya as having subscribed to 30,000 shares of stocks in Goldenrod, Inc., equivalent to 60% of its total shareholdings. This GIS was signed by its corporate secretary, Aida Palarca (Aida), and filed with the Securities and Exchange Commission (SEC).[8] It showed the respective shares of the other Goldenrod, Inc.'s stockholders as follows:

SONYA MATHAY	30,000 SHARES	60%
MARIA SONYA M. RODRIGUEZ	5,000 SHARES	10%
ISMAEL G. MATHAY III	5,000 SHARES	10%
RAMON ISMAEL G. MATHAY	5,000 SHARES	10%
MARIA AURORA G. MATHAY	5,000 SHARES	10%[9]

On December 7, 2012, after Sonya's death, an amended GIS of Goldenrod, Inc. was filed with the SEC. It was signed and attested by Aida, and showed a substantial reduction of the shares of Sonya from 30,000 to 4,000, or from 60% to 8% ownership of Goldenrod, Inc.'s outstanding shares. At the same time, the amended GIS showed that private respondent owned 26,000 shares or 52% of the shareholdings of Goldenrod, Inc.,[10] to wit:

SONYA MATHAY	4,000 SHARES	8%
MARIA SONYA M. RODRIGUEZ	5,000 SHARES	10%

[7] *Id.*

[8] *Id.*

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

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

ISMAEL G. MATHAY III	5,000 SHARES	10%
RAMON ISMAEL G. MATHAY	5,000 SHARES	10%
MARIA AURORA G. MATHAY	5,000 SHARES	10%
ANDREA L. GANDIONCO	26,000 SHARES	52%[11]

The amendment of the GIS was prompted by the presentation of a Declaration and Share Purchase Agreement (SPA) by private respondent to Aida. The Declaration was dated December 24, 2011 and executed by Sonya, who acknowledged therein that private respondent is the real owner of the 60% shares of stock in Goldenrod, Inc. she (Sonya) held on record. Sonya, in said Declaration, returned 52% of said shares of stock to private respondent through the SPA. The remaining 8% shares, upon the wishes of private respondent, were donated to petitioners, but were placed under Sonya's custodianship until their actual distribution to petitioners.[12]

On February 5, 2013 and February 11, 2013, petitioners successively filed two (2) GIS of Goldenrod, Inc. (both for the year 2013) with the SEC. These were signed and attested by Ramon as the new Corporate Secretary. Both GISs showed an increase of Sonya's shares to 60% (30,000 shares) from the 8% shares (4,000 shares) reflected in the amended GIS dated December 7, 2012. Private respondent's name as shareholder was likewise conspicuously absent.[13] Thus:

SONYA MATHAY	30,000 SHARES	60%
MARIA SONYA M. RODRIGUEZ	5,000 SHARES	10%
ISMAEL G. MATHAY III	5,000 SHARES	10%

[11] *Id.* at 56.

[12] *Id.* at 58-59.

[13] *Id.* at 57.

RAMON ISMAEL G. MATHAY	5,000 SHARES	10%
MARIA AURORA G. MATHAY	5,000 SHARES	10%[14]

On February 11, 2013, Goldenrod, Inc. executed the Deed of Absolute Sale of its real estate covered by Transfer Certificate of Title (TCT) No. T-92106 in favor of YIC Group of Companies, Inc. for the sum of ₱8.1 Million.[15]

On February 18, 2013, private respondent filed a civil complaint for Injunction with Prayer for the Issuance of Temporary Restraining Order (TRO) and Writ of Preliminary Mandatory Injunction, and *Mandamus* against petitioners. It was filed before the Quezon City RTC, Branch 93, and docketed as Civil Case No. Q-13-289. Private respondent claimed deprivation of 26,000 shares (52%) of Goldenrod, Inc. belonging to her by virtue of the SPA she allegedly entered into with Sonya. Thus, she prayed: (1) for the return of 26,000 shares; (2) to call a special stockholders' meeting to elect a new set of directors; (3) to restrain petitioners from managing and exercising the powers and duties as directors of Goldenrod, Inc.; (4) for accounting of proceeds and funds paid to, received, and earned by Goldenrod, Inc.; and (5) for inventory of assets of Goldenrod, Inc.[16]

On April 23, 2013, Ismael filed a complaint against private respondent to declare null and void the SPA. It was filed before the Quezon City RTC, Branch 91 and docketed as Civil Case No. Q-13-73089. Ismael alleged that the SPA lacks his written consent, in contravention of Article 124 of the Family Code.[17]

On March 26, 2014, private respondent filed a complaint against petitioners for Qualified Theft through Falsification of

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[14] *Id.* at 57-58.

[15] *Id.* at 23.

[16] *Id.*

[17] *Id.*

Public Documents by a Private Individual.[18] On May 14, 2014, an Information[19] was filed in court, the accusatory portion of which reads:

"During the period from February 5 to 11, 2013, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, being then members of the Board of Directors and officers of Goldenrod, Inc., and as such has access to the corporate papers and properties of the said company, conspiring and confederating together, and all of them mutually helping and aiding one another, with grave abuse of confidence, and with intent to gain, without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously commit acts of falsification in preparing or causing to prepare two (2) General Information Sheets (GIS). which are public documents, by removing the name of the complainant Andrea L. Gandionco represented by Johnny T. Medina, retaining the name of Sonya G. Mathay, complainant's sister which is (sic) already deceased since November 22, 2012, and placing the name of Ramon G. Mathay, who is one and the same person, which making it appear to be true, when in truth and in fact they were false and falsify (sic), and as result thereof, the accused took full and exclusive ownership of the real property covered by Transfer Certificate of Title No. T-92106 in the name of Goldenrod, Inc., enabling to (*sic*) accused to execute a deed of Absolute Sale and was able to dispose and sell the said property, to the damage and prejudice of complainant Andre (sic) L. Gandionco in the amount of Php4,212,000.00 corresponding [to] her 52% shares, being the stockholder of the said company.

Contrary to law."[20]

Petitioners filed an Omnibus Motion for: (1) Judicial Determination of Probable Cause; (2) Annulment of the Resolution dated May 8, 2014 of Pasig City Assistant Prosecutor Leoncio D. De Guzman; (3) Quashal of Information; and (4) Suspension of the Issuance of Warrant of Arrest pending final resolution on the merits of said Omnibus Motion. They also

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[18] *Id.* at 58.

[19] Docketed as Criminal Case No. 153895-PSG and filed before the RTC of Pasig City, Branch 265.

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

filed a Motion to Suspend Proceedings on the ground of a prejudicial question in view of a pending civil case.[21]

RTC Proceedings

The RTC, in its Order[22] dated September 10, 2014, denied the motions of petitioners and ordered the issuance of the corresponding warrants of arrest against them.[23] Holding that a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction, the trial court found that the allegations in the Information and the affidavit-complaint, together with the documents submitted by the prosecution, *prima facie* show all the elements of qualified theft through falsification of public documents. The trial court observed that it was alleged in the Information that petitioners, with grave abuse of confidence and with intent to gain, conspired in taking away the amount of ₱4,212,000.00 without the consent and knowledge of private respondent. The act was accomplished by falsifying two (2) GISs, removing private respondent from the list of owners/shareholders, and selling the property of the corporation. The taking, according to the RTC, appears to have been made with grave abuse of confidence, inasmuch as petitioners could not have taken the subject shares of stocks if not for the positions they hold in the company and their blood relationship with private respondent.[24]

Furthermore, the RTC gave credence to the Declaration where Sonya admitted that her sister, private respondent, is the real owner of the 60% shares of stocks of Goldenrod, Inc.[25]

On the other hand, the counter-allegations of petitioners essentially delved on evidentiary matters that are best passed upon in a full-blown trial.[26]

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[21] *Id.* at 61.

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

[23] *Id.* at 130.

[24] *Id.* at 126-128.

[25] *Id.* at 127.

[26] *Id.* at 128.

As regards the issue on prejudicial question, the RTC found it premature to suspend the criminal action on this ground because of its lack of jurisdiction on the person of the accused. The RTC held it untenable for petitioners to seek such relief without surrendering to the jurisdiction of the court.[27]

CA Proceedings

Petitioners thereafter filed a Petition for *Certiorari* with Urgent Prayer for Issuance of TRO/Preliminary Injunction before the CA. Petitioners argued that the trial court judge acted with grave abuse of discretion when he: (1) failed to quash the Information on the ground that the facts as charged do not constitute an offense; (2) allowed the issuance of warrants of arrest against petitioners without the benefit of bail; and (3) failed to suspend the proceedings despite the manifest existence of a prejudicial question in a previously instituted civil case (Civil Case No. Q-13-289).[28]

The CA denied the petition for lack of merit.[29] The CA ruled that petitioners' alleged act of falsifying the two (2) GISs of Goldenrod, Inc. in order to consummate the sale of a real property owned by the corporation, thereby depriving private respondent of her shares in the proceeds thereof, may be construed as taking of personal property of another. Private respondent, who claims to be the lawful owner of the 52% shares of stock of Goldenrod, Inc. by virtue of the purported Declaration and SPA signed in her favor by Sonya before she died, may be considered to have been deprived of her right to possess, enjoy, and control said personal property through the act of petitioners (in their capacity as officers and members of the Board of Directors of Goldenrod, Inc.) of excluding her name in the GISs.[30]

The CA gave short shrift to the argument of petitioners that the ownership over the subject property must first be determined.

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[27] *Id.* at 129.

[28] See *id.* at 62.

[29] *Id.* at 74.

[30] *Id.* at 66.

Citing *Miranda v. People*[31] *(Miranda)*, the CA held that in the crime of theft, ownership of the stolen property is immaterial. The law merely requires that the stolen property must not belong to the offender.[32] Parenthetically, the CA also held that the resolution of Civil Case No. Q-13-289 will not be determinative of the outcome of the present criminal case as they are independent of each other. The CA emphasized that the only issues in the present criminal case are: (1) whether petitioners falsified the two (2) subject GISs; and (2) whether petitioners, with intent to gain and without private respondent's consent, took her share from the purchase price of the sale of the real property of Goldenrod, Inc. with YIC Group of Companies, Inc.[33]

Finally, the CA found no grave abuse of discretion on the part of the trial court in ordering the issuance of warrants of arrest against petitioners in view of the denial of their motions. The CA found it procedurally incumbent upon the trial court to issue the warrants of arrest so it can acquire jurisdiction over the persons of petitioners. The CA found nothing wrong with the issuance of the warrants of arrest without the benefit of bail since the offense charged was non-bailable and there was no proof that petitioners even filed a petition for bail.[34]

Petitioners filed a motion for reconsideration, but the same was denied for lack of merit via the assailed Resolution[35] dated June 18, 2015. Hence, this Petition.

On January 22, 2016, petitioners filed an Urgent Motion for Application for a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction. The Court, in a Resolution[36] dated February 17, 2016 granted this motion and issued a TRO enjoining the proceedings in Criminal Case No. 153895 and

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[31] G.R. No. 176298, January 25, 2012, 664 SCRA 124.

[32] *Rollo*, p. 67.

[33] See *id.* at 74.

[34] *Id.* at 70-72.

[35] *Id.* at 87-88.

[36] *Id.* at 402-403.

the implementation of the warrants of arrest and Hold Departure Order against petitioners arising from the Information. The TRO took effect immediately and continues to be effective until further orders from the Court.

Issue

Before the Court can delve into the other issues raised by petitioners on whether there is probable cause to charge them with Qualified Theft through Falsification of Public Documents, and whether the Information is defective, the Court holds that the threshold legal issue that needs to be confronted first is whether there is a prejudicial question which warrants the suspension of the criminal proceedings against petitioners.

The Court's Ruling

The Court rules in the affirmative.

Sections 6 and 7 of Rule 111 of the Rules on Criminal Procedure provide when a criminal action may be suspended upon the pendency of a prejudicial question in a civil action, and what the elements of the prejudicial question are, respectively:

SEC. 6. *Suspension by reason of prejudicial question.* – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

SEC. 7. *Elements of prejudicial question.* – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so

intimately connected with it that its ascertainment determines the guilt or innocence of the accused. For it to suspend the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[37]

There are two pending civil cases, Civil Case No. Q-13-73089 and Civil Case No. Q-13-289, which bear issues that, to the mind of the Court, are determinative of the guilt or innocence of petitioners in the instant criminal case.

Civil Case No. Q-13-73089 is a complaint for nullity of the SPA filed by Ismael against private respondent, attacking the validity of the SPA on the ground of his lack of consent thereto. Civil Case No. Q-13-289, on the other hand, involves private respondent praying for the return to her of 26,000 shares of stock in Goldenrod, Inc., among others. She claims ownership over these shares on the basis of the SPA.

The Office of the Solicitor General (OSG), in its Comment,[38] argued that there can be no prejudicial question in a complex crime for the reason that when a complex crime is charged and one offense is not proven, the accused can be convicted of the other. It also argued that there is no prejudicial question because Civil Case No. Q-13-73089 was already dismissed by the trial court.

Private respondent, for her part, argued that there can be no prejudicial question because even if the trial court finds that the SPA is invalid, petitioners would still be liable for qualified theft on the basis of the ruling in *Miranda* that the ownership of the stolen property is immaterial.

The Court disagrees with the arguments of both the private respondent and the OSG.

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[37] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 539-540.

[38] *Rollo*, pp. 315-340.

Firstly, petitioners, in their Reply[39] dated January 18, 2016, attached a Resolution[40] from the trial court reconsidering its previous dismissal of the complaint in Civil Case No. Q-13-73089. This has not been disputed by the OSG. It would appear therefore that Civil Case No. Q-13-73089 is still very much alive.

Secondly, in the event that the trial court in Civil Case No. Q-13-289 rules in favor of petitioners or that the SPA is rendered void in Civil Case No. Q-13-73089, it would follow that private respondent is not entitled to 26,000 shares of stock of Goldenrod, Inc. As such, a criminal case against petitioners for either a complex crime of Qualified Theft through Falsification of Public Documents or any of such component crimes would have no leg to stand on.

The crime of qualified theft is found in Article 310 and is read in relation to Article 308 of the RPC. These Articles provide:

> Art. 310. *Qualified theft.* – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.
>
> Art. 308. *Who are liable for theft.* – Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
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> x x x x x x x x x

Thus, the elements of qualified theft, committed with grave abuse of confidence, are:

1. Taking of personal property;

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[39] *Id.* at 373-390.

[40] *Id.* at 391-394. Penned by Presiding Judge Lita S. Tolentino-Genilo.

2. That the said property belongs to another;

3. That the said taking be done with intent to gain;

4. That it be done without the owner's consent;

5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;

6. That it be done with grave abuse of confidence.[41]

On the other hand, Falsification under Article 172, in relation to Article 171(4) of the RPC, is committed as follows:

> Art. 172. *Falsification by private individual and use of falsified documents.* – The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:
>
> 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document[.]
>
> Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who taking advantage of his official position, shall falsify a document by committing any of the following acts:
>
> x x x x x x x x x
>
> 4. Making untruthful statements in a narration of facts[.]

The elements of falsification of public documents under Article 171(4) of the RPC are:

> (a) The offender makes in a document untruthful statements in a narration of facts;
>
> (b) The offender has a legal obligation to disclose the truth of the facts narrated;
>
> (c) The facts narrated by the offender are absolutely false; and

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[41] *People v. Cahilig*, G.R. No. 199208, July 30, 2014, 731 SCRA 414, 424.

(d) The perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.[42]

Hence, should private respondent be adjudged not entitled to the 26,000 shares of stocks in the pending civil cases, there could have been no crime of qualified theft to speak of as the elements of: (1) the property belonging to another; (2) the taking done with intent to gain; (3) the taking done without the owner's consent; and (4) the taking done with abuse of confidence would be absent.

In the same vein, there would be no crime of falsification to speak of, as well, because there would be no perversion of truth and the statements in the two (2) GISs in 2013 would neither be "untruthful statements in a narration of facts," nor "absolutely false."

WHEREFORE, the Petition is **GRANTED.** The Decision and Resolution dated March 6, 2015 and June 18, 2015, respectively, of the Court of Appeals in CA-G.R. SP. No. 137194 are **SET ASIDE**. The proceedings in Criminal Case No. 153895-PSG and the implementation of the warrants of arrest and Hold Departure Order against petitioners are hereby **ORDERED SUSPENDED** until Civil Case Nos. Q-13-73089 and Q-13-289 are terminated and resolved with finality.

SO ORDERED.

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

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[42] See *Daan v. Sandiganbayan (Fourth Division)*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, 246.

FIRST DIVISION

[G.R. No. 227432. June 30, 2020]

FORFOM DEVELOPMENT CORPORATION, *petitioner, vs.* **PHILIPPINE NATIONAL RAILWAYS,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; ISSUES THAT MUST BE RESOLVED IN AN EXPROPRIATION CASE. — In fine, the expropriation case requires the resolution of the following issues, *viz.*: as threshold issue, the determination of the public purpose of the expropriation proceedings, the alleged right, if any, of PNR to lease out the affected properties and collect rentals from the lessees concerned *vis-à-vis* the alleged right of the owners to demand the turnover to them of the rental collections.

APPEARANCES OF COUNSEL

Nelson A. Loyola for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

In G.R. No. 124795 entitled *Forfom Development Corporation v. Philippine National Railway*,[1] the Court rendered its Decision dated December 10, 2008, among others, directing respondent Philippine National Railways (PNR) to institute the appropriate expropriation case on subject lots for the purpose of determining just compensation therefor, thus:

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[1] Penned by Associate Justice Minita V. Chico-Nazario and concurred in by Associate Justices Consuelo M. Ynares-Santiago, Alicia M. Austria-Martinez, Antonio Eduardo B. Nachura, and Bienvenido L. Reyes.

WHEREFORE, the instant petition is PARTIALLY DENIED insofar as it denies Forfom Development Corporation's prayer for recovery of possession (in whole or in part) of the subject land, unearned income, and rentals. The petition is PARTIALLY GRANTED in that attorney's fees and litigation expenses in the amounts of ₱100,000.00 and ₱50,000.00, respectively, are awarded. **The Philippine National Railways is DIRECTED to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made. As to the claim for the alleged damaged crops, evidence of the same, if any, may be presented before the expropriation court.** No costs.

SO ORDERED. (Emphasis supplied)

Following its finality, the PNR initiated the complaint for expropriation, entitled *Philippine National Railways v. Forfom Development Corporation*, and docketed as Civil Case No. SPL-1542-10. It sought to expropriate subject lots owned by Forfom Development Corporation for the PNR's San Pedro-Carmona Commuter Line Project.[2]

The case was raffled to Regional Trial Court - Branch 93 San Pedro, Laguna.

On April 8, 2011, Forfom filed its Comment[3] praying for the dismissal of the case.

Around the same time, Forfom filed with this Court a Motion to Show Cause dated March 29, 2011 in connection with G.R. No. 124795. Forfom asserted that the PNR should be cited for contempt for: (1) not disclosing to the Court that it (PNR) had already abandoned the railway system for which the supposed complaint for expropriation was sought to be filed; (2) delaying the filing the expropriation case; and (3) leasing out subject properties to private individuals *ultra vires*.[4]

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[2] *Rollo*, pp. 186-193.

[3] *Id*. at 194-202.

[4] *Id*. at 110.

On May 18, 2011, Forfom also filed with the trial court its Answer with prayer for injunction[5] seeking anew the dismissal of the case, with damages. On June 1, 2011, Forfom moved to set its affirmative defenses for hearing.[6] The trial court denied the motion and set the case for preliminary conference and pre-trial in its Order dated December 12, 2011.

Prior to the preliminary conference, Forfom filed a motion for production or inspection[7] of the following documents:

1. Plans for the use or rehabilitation of the railroad tracks involving the subject properties, including its funding requirements;
2. Demand letters from PNR to the squatters to remove their structures along the railroad tracks;
3. PNR rules and regulations prohibiting structures along the railroad tracks; and
4. Proof of posting 10% deposit to Forfom.

Again, the trial court denied the motion under Order dated February 27, 2012.

Meanwhile, the trial court issued Pre-Trial Order dated February 9, 2012[8] which bore, among others, the issues, as stipulated by the parties, *viz.*:

x x x x x x x x x

ISSUES

The amount of just compensation which in this case should be reckoned from January 1973 as ruled by the Supreme Court in the case of Forfom Development Corp. vs. Phil. National Railways, G.R. No. 124795;

How much should the herein defendant-landowner be compensated for the taking of the property way back in 1972;

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[5] *Id.* at 203-230.

[6] *Id.* at 252-257.

[7] *Id.* at 258-262.

[8] *Id.* at 263-264.

May a petition for expropriation proceed or prosper without the requisite deposit of 10 percent of the value of the property seized;

May the land owner be compensated for the improvements, income from the existing crops then growing on the property seized;

Is the PNR from the time of the filing of the present petition up to the present capable of rehabilitating the railroad tracks which it had installed and had already removed from the premises.

Is the presence of squatters along the railroad tracks a physical improbability to the alleged rehabilitation of the line between San Pedro and San Jose GMA.

x x x x x x x x x

On April 18, 2012, Forfom again moved to dismiss[9] the Complaint, this time, citing as ground the failure of the PNR and the Office of the Solicitor General (OSG) to appear during hearings scheduled on March and April, 2012. The OSG opposed the motion, asserting that said hearings were actually reset because of its intention to file a motion to modify the Pre-Trial Order.

The OSG then filed its Omnibus Motion dated April 22, 2012,[10] asking to modify the Pre-Trial Order to conform with the Decision dated December 10, 2008 in G.R. No. 124795. The OSG asserted that the issues to be resolved in the case below should be limited to the determination of amount of just compensation as of the time of taking in 1973 and the amount of damages for the improvement that were destroyed. The OSG also prayed that the trial court issued the order of expropriation and appoint the members of the Board of Commissioners pursuant to Sections 4 and 5 of the Rules of Court.

From its end, Forfom filed its Omnibus Motion[11] to (1) order PNR to desist from leasing out subject lots, (2) allow Forfom to file its supplemental answer with 3rd party complaint and (3) direct 3rd party defendants to show cause why they should not be cited for contempt for leasing out these lots.

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[9] *Id*. at 265-269.

[10] *Id*. at 270-278.

[11] *Id*. at 288-297.

Under Order dated June 11, 2012, the trial court denied the motion to dismiss for failure to prosecute.

In another Order dated March 18, 2013, the trial court denied Forfom's omnibus motion on ground that the issues raised therein were already passed upon with finality in G.R. No. 124795. On the other hand, the trial court granted OSG's motion to modify the pre-trial order pertaining to the limited issues to be resolved and to reckon the date of taking from January 1973. It further pronounced that the PNR is authorized to take the lots for public purpose upon payment of just compensation and that members of the Board of Commissioners will be appointed as soon as the parties shall have submitted their proposed names to the court.

Under Order dated June 24, 2013, Forfom's motion for reconsideration was denied for lack of merit.

Forfom went to the Court of Appeals via CA-G.R. SP. No. 131316 against the trial court's Orders dated December 12, 2011, February 27, 2012, June 11, 2012, March 18, 2013 and June 24, 2013.

While CA-G.R. SP. No. 131316 was pending, this Court issued Resolution dated July 1, 2015 in G.R. No. 124795 finding the concerned PNR officials guilty of indirect contempt for delaying the filing of the expropriation case for eighteen (18) months and for their failure to inform the Court that the PNR had already removed the railroad tracks along the entire San Pedro-Carmona line before it could even file the expropriation case. Taking notice of these supervening events, the Court resolved to modify its Decision dated December 10, 2008, thus:

x x x x x x x x x

WHEREFORE, the President and the General Manager of PNR are hereby found GUILTY of INDIRECT CONTEMPT. The FINE of ₱30,000.00 is imposed on each of them, payable in full within five (5) days from receipt of this resolution. **The December 10, 2008 Decision in G.R. No. 124795 is hereby MODIFIED, in that the Presiding Judge of Branch 93 of the Regional Trial Court of San Pedro, Laguna, is DIRECTED to resolve the public purpose aspect of the expropriation case docketed as Civil Case No. SPL-1542-10.**

SO ORDERED. (Emphasis supplied)

The Court of Appeals' Ruling

Back to CA-G.R. SP. No. 131316, the Court of Appeals dismissed the petition per Decision dated February 9, 2016. It ruled that the trial court's Orders dated December 12, 2011, February 27, 2012, and June 11, 2012 may no longer be assailed beyond the sixty-day reglementary period.

As for the Order dated March 18, 2013, the Court of Appeals found that the same was timely assailed and the issues pertaining to the alleged unlawful taking, necessity of expropriation, PNR's ultra vires act in leasing out portions of the property, rentals, and just compensation were already raised and passed upon with finality in G.R. No. 124795, hence, the same issues may no longer be revived. On the other hand, the issues on the supposed illegal taking and leasing out of the lots should remain with the trial court for resolution.

In its motion for reconsideration, Forfom invoked the Resolution dated July 1, 2015 in G.R. No. 124795 modifying the Decision dated December 10, 2008 and directing the trial court to resolve not only the issue of just compensation but also the issue of whether indeed the taking of the lots is for public purpose. Once again, Forfom brings to the Court's attention that in April 2010, before the expropriation case could even be initiated, the PNR had already removed the train tracks along the entire San Pedro-Carmona Line Project. Hence, since the construction of this Project had already been abandoned, the expropriation of subject lots for this supposed public purpose should be dismissed.

The Court of Appeals denied Forfom's motion for reconsideration under Resolution dated September 21, 2016.

The Present Petition

Forfom now asks the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. It seeks to: (1) order the PNR to refrain from leasing out subject lots and to turn over

its rent collections to Forfom; (2) reverse the trial court's order denying the motion for production of document; (3) by leave of court, to file a third-party complaint and; (4) direct the trial court to act on the expropriation case, with dispatch.

Ruling

The Court of Appeals correctly dismissed the petition for *certiorari* in CA-G.R. SP. No. 131316 insofar as it assailed the trial court's Orders dated December 12, 2011, February 27, 2012 and June 11, 2012 not only because Forfom failed to seek a reconsideration thereof but most important because the sixty (60) day period for Forfom to file the aforesaid petition had already lapsed.

Regarding the Orders dated March 18, 2013 and June 24, 2013 denying the motions for leave to file supplemental answer with third party complaint and to cite the third party complainants for contempt, respectively, we also sustain the Court of Appeals disposition, *viz*.:

> The case had already entered into pre-trial and was set for reception of evidence; hence, the filing of a supplemental answer with third party complaint was out of time and would, undoubtedly, result in unduly delaying the proceedings. x x x
>
> As for the citation for contempt, petitioner's omnibus motion did not comply with the requisites of Section 4 (second paragraph), Rule 71, Rules of Court x x x.[12]

With respect, however, to the existence of public purpose for which the expropriation is being sought, the authority of the PNR to lease out subject lots, the right to recover from PNR the rentals on lots belonging to Forfom, and the amount of just compensation due to Forfom over the affected lots, we rule that these are live and real issues pending with the trial court which it is mandated to resolve pursuant to the Court's Resolution dated July 1, 2015, *viz*.:

x x x x x x x x x

[12] *Id*. at 73.

The Court reiterates that the primary reason behind the rule on estoppel against the owner is public necessity, to prevent loss and inconvenience to passengers and shippers using the line. Therefore, if the property is no longer being used as a railway, no irreparable injury will be caused to PNR and the public in general if Forfom regained possession of its property. In such case, Forfom would no longer be precluded from challenging the expropriation proceedings. **Preventing Forfom from challenging the expropriation case and allowing PNR to expropriate the property without a public purpose would be highly unjust and violative of the Constitution requiring that property be "taken for public use."**[13] (Emphasis supplied)

In fine, the expropriation case requires the resolution of the following issues, *viz.*: as threshold issue, the determination of the public purpose of the expropriation proceedings, the alleged right, if any, of PNR to lease out the affected properties and collect rentals from the lessees concerned *vis-a-vis* the alleged right of the owners to demand the turnover to them of the rental collections. The trial court should conduct a hearing on these issues and resolve the same, with utmost dispatch. So must it be.

WHEREFORE, the petition is **PARTLY GRANTED.**

The Decision dated February 9, 2016 and Resolution dated September 21, 2016 of the Court of Appeals in CA-G.R. SP. No. 131316 are **AFFIRMED with MODIFICATION**. The Regional Trial Court - Branch 93 San Pedro, Laguna is **DIRECTED** to conduct a hearing on the issues heretofore stated and resolve the same, with utmost dispatch.

SO ORDERED.

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

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[13] *Id*. at 115.

FIRST DIVISION

[G.R. No. 233533. June 30, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL LIMSON *y* FERRER, JOEY C. MENESES and CAMILO BALILA,** *accused,* **JOEY MENESES *y* CANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.

2. ID.; ID.; ID.; *CORPUS DELICTI*; EXISTENCE THEREOF IS ESSENTIAL TO A JUDGMENT OF CONVICTION; CASE AT BAR. — The existence of the *corpus delicti* is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. The prosecution witnesses also consistently testified that they arrested three (3) persons and conducted marking, inventory and documentation through photographs at the place where the buy-bust took place. Records show the presence of the required witnesses mandated by law during the marking and physical inventory of the items seized. Further, the brick of leaves and plastic sachet were positively found to contain marijuana and "*shabu*," respectively. Lastly, the seized items were presented during trial and were positively identified by PO2 Dela Cruz to be the same items sold to him by Meneses.

3. ID.; ID.; ID.; COMMISSION THEREOF MERELY REQUIRES THE CONSUMMATION OF THE SELLING TRANSACTION, WHICH HAPPENS THE MOMENT THE BUYER RECEIVES THE DRUG FROM THE SELLER; ABSENCE OF THE AGREEMENT AS TO THE VALUE OF THE CONSIDERATION DOES NOT NEGATE THE CONSUMMATION OF THE CRIME; CASE AT BAR. — The Court stressed in *People v. Endaya:* The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as a police officer or civilian asset went through the operation as a buyer, whose offer was accepted by the appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In the case at bar, the prosecution has amply proven all the elements of the drug sale with moral certainty. In this particular case, the sale was already consummated by the time the brick of marijuana and the sachet of "*shabu*" were delivered and received by PO2 Dela Cruz after the buy-bust money was handed to Meneses, through the other accused, Balila, as payment for the illegal drugs. By the time of relinquishing the physical possession of the illegal drugs, Meneses effectively accepted the offer of PO2 Dela Cruz of Five Hundred Pesos (₱500.00) as his payment for the illegal drugs. Regardless of the amount of the consideration, in the illegal sale of dangerous drugs, the most important part of the buy-bust operation is the actual exchange of the buy-bust money and the subject drug. In a way, Meneses is admitting that there was an actual transaction of illegal sale of dangerous drugs and the only thing that was missing was the agreement as to the value of the consideration. Meneses' argument that the sale is null and void as if no sale had transpired between him and PO2 Dela Cruz is unmeritorious. To be clear, in this kind of situation, the Civil Code will not apply. Technically, the sale was really null and void as the object of the sale is expressly prohibited by law. To emphasize, what only needs to be proven is that there should be a transaction or sale that had taken place. Sale means an actual exchange of the buy-bust money and the illegal drugs. Here, the punishable act was the act of selling the illegal drugs which cannot be negated by mere technicalities of a contract of sale. The fact that there was an agreement between the buyer and the seller to exchange money and drugs, there was already a meeting of

the minds between the parties. As long as the seller accepted the consideration, followed by the delivery of the illegal drugs to the buyer, the crime is already consummated.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DEFENSES OF DENIAL, FRAME-UP AND EXTORTION; INVARIABLY VIEWED BY THE COURTS WITH DISFAVOR FOR THEY CAN EASILY BE CONCOCTED; CASE AT BAR. — Meneses maintains that he was merely framed-up for the crime of illegal sale of dangerous drugs. The defenses of denial, frame-up and extortion, like *alibi*, have been invariably viewed by the courts with disfavor for they can easily be concocted and are common and standard defense ploys in most cases involving violation of the Dangerous Drugs Act. As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed. In this case, the three (3) police officers positively identified Meneses as the person who sold the illegal drugs. Another was the fact that the seized items tested positive for the presence of marijuana and "*shabu*."

5. ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CAN ONLY BE OVERCOME THROUGH CLEAR AND CONVINCING EVIDENCE SHOWING EITHER OF TWO THINGS: THAT THEY WERE NOT PROPERLY PERFORMING THEIR DUTY, OR THAT THEY WERE INSPIRED BY ANY IMPROPER MOTIVE. — [T]he defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SECTION 21, ARTICLE II THEREOF; AND ITS IMPLEMENTING RULES AND REGULATIONS; COMPLIED WITH IN CASE AT BAR. — With regard to the compliance with Section

21, Article II of R.A. No. 9165, as well as its Implementing Rules and Regulations, it is worthy to note that the CAIDSOG's operatives strictly complied with it. Immediately after seizure and confiscation of the illegal drugs from Meneses, a physical inventory, marking and photograph were conducted in the presence of Meneses at the place of arrest where the transaction transpired. All the required witnesses — the media, a DOJ representative and an elected public official — were present, together with Meneses, during the physical inventory, marking and photograph of the seized items. Likewise, in the chain of custody, the monitoring and tracking of the movements of the seized items, from the time they were confiscated from Meneses, to receipt in the forensic laboratory for examination, to safekeeping, and up to the presentation in court, were satisfactorily accounted for by the CAIDSOG's operatives. Hence, the identity and integrity of the seized illegal drugs were preserved and safeguarded.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, FINDINGS AND CONCLUSIONS OF THE TRIAL COURT THEREON, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED. — Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. The rule finds an even more stringent application where said findings are sustained by the CA, as in this case. For this, we find no compelling reason to deviate from the findings of the appellate court that Meneses is guilty beyond reasonable doubt of the crime charged.

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 March 22, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07989 which affirmed the September 30, 2015 Decision[2] of the Regional Trial Court (*RTC*), Branch 48, Urdaneta City, Pangasinan, in Criminal Case No. 19298, finding accused-appellant Joey Meneses *y* Cano guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information[3] dated December 13, 2013, Meneses, together with his co-accused, Joel Limson and Camilo Balila, was charged with violation of Section 5, Article II of R.A. No. 9165, committed as follows:

> That on or about 9:30 o'clock (*sic*) in the evening of December 11, 2013 at Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, did then and there willfully, unlawfully and feloniously sell one marijuana brick weighing 950 grams and one (1) heat-sealed transparent plastic sachet containing 0.581 gram of Methamphetamine Hydrochloride (SHABU), both dangerous drugs.
>
> CONTRARY to Section 5, Article II, R.A. 9165.[4]

In his arraignment, Meneses, together with his co-accused, pleaded not guilty[5] to the crime charged. He was detained at the Urdaneta City District Jail during the trial of the case.

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco.

[2] Records, pp. 205-218; penned by Presiding Judge Gonzalo P. Marata.

[3] *Id.* at 1.

[4] *Id.*

[5] *Id.* at 45.

During the trial, Limson filed a Demurrer to Evidence[6] which was subsequently granted in a Resolution[7] dated November 20, 2014, acquitting him of the crime charged.

The prosecution presented seven (7) witnesses, namely: Police Officer 3 (*PO3*) Elmer Manuel, PO2 Honesto Campos, PO3 Julius Quitaleg, PO2 Marman Dela Cruz, Department of Justice (*DOJ*) representative Twinkle Ramos, media representative Melanie Hing, and *barangay kagawad* Darwin Barcolta. The defense, for its part, presented Meneses, accused Balila, and Ruffa Balila.

Version of the Prosecution

On November 27, 2013, at around 10:00 p.m., a confidential informant (*CI*) approached PO2 Dela Cruz, a member of the City Anti-Illegal Drugs Special Operations Group (*CAIDSOG*), to report a drug trade being conducted by an unidentified male driver of an Elf Truck with plate number RJU 543. On November 28, 2013, a day after, the same CI personally reported to the Intelligence Office of the Urdaneta City Police Station that the said driver made a call to him and had one (1) pack of marijuana worth Three Thousand Pesos (₱3,000.00). The said Elf Truck was parked on Caviganan Street, Poblacion, Urdaneta City and would leave at about 8:00 a.m. Due to time constraints, PO2 Dela Cruz and the CI rushed to the place, but failed to put on blotter the transaction and the serial numbers of the three (3) One Thousand-Peso (₱1,000.00) bills. Upon arrival, the CI went towards the Elf Truck and spoke with three (3) male persons beside it. Meanwhile, PO2 Dela Cruz stood around ten (10) steps away, until he was introduced as the buyer of the marijuana to the truck driver who was subsequently identified as Meneses. Meneses asked PO2 Dela Cruz to give the money to his companion as the other male person served as a lookout. Right after, Meneses brought out one (1) pack of tape-sealed suspected marijuana from his shirt and handed the same to PO2 Dela Cruz.[8]

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[6] *Id.* at 165-171.

[7] *Id.* at 181-183.

[8] *Id.* at 2.

At the particular exchange, PO2 Dela Cruz wanted to immediately arrest Meneses and his companions but for security reasons, he aborted his plan. Instead, he negotiated with Meneses if he could make another delivery for a pack of marijuana, as well as "*shabu*." However, Meneses did no respond and instead asked for PO2 Dela Cruz's phone number and left together with his companions. Thereafter, PO2 Dela Cruz marked the pack of tape-sealed marijuana as "TEST BUY 28 NOV. 2013 UCPS" and submitted it to the Crime Laboratory Office in Lingayen, Pangasinan for laboratory examination. The examination yielded a positive result for the presence of marijuana, a dangerous drug.[9]

On December 11, 2013, the CI came to PO2 Dela Cruz to inform him that Meneses was looking for him and they could meet in front of the CB Mal: Public Transport Terminal. The said matter was immediately reported by PO2 Dela Cruz to their Chief of Police. Subsequently, a briefing was conducted for a possible buy-bust operation, designating PO2 Dela Cruz as the poseur-buyer and the other members of the team, PO3 Quitaleg and PO2 Campos, would serve as back-up. It was agreed by the team that the CI would run towards the south direction to signal that the sale was already consummated.[10]

On even date, at around 8:30 p.m., the buy-bust operation was set but for security reasons, the team decided not to put on blotter the buy-bust operation, as well as the serial numbers of the buy-bust money.[11] At about 9:30 p.m. of the same date, the team proceeded to the CB Mall Public Transport Terminal. PO2 Campos positioned himself near the benches of the terminal, while PO3 Quitaleg settled among the waiting passengers in front of the arriving buses. Upon the arrival of the Elf Truck loaded with vegetables, Meneses and his two (2) companions alighted therefrom. Meneses then approached the CI and PO2 Dela Cruz, and then positioned himself on the left side of the

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[9] *Id*.

[10] *Id*. at 3.

[11] *Id*. at 5.

Elf Truck. Thereafter, Meneses brought out from his shirt a marijuana brick and a sachet of "*shabu*" from his left side pocket, then asking PO2 Dela Cruz if he was going to buy them. PO2 Dela Cruz responded positively and Meneses instructed the former to hand over the money to his companion who was subsequently identified as Balila. Immediately after the exchange, PO2 Dela Cruz grabbed Meneses and the CI ran towards the south direction as a pre-arranged signal, prompting PO3 Quitaleg and PO2 Campos to rush to the scene to arrest Balila and the other companion, identified as Limson.[12]

Later on, the inventory and taking of photographs were conducted at the place of arrest, witnessed by Ramos, Hing and Barcolta. On December 12, 2013, the Request for Laboratory Examination from PO2 Dela Cruz was received by Police Chief Inspector Emelda Roderos for the conduct of laboratory examination of the subject specimen, comprising of one (1) marijuana brick wrapped in paper and packaging tape, with marking "MEC 12/11/13 9:30 pm purok 1 B brgy nancayasan Urdaneta City Pangasisnan," and one (1) heat-sealed transparent plastic sachet, with marking "MEC 12/11/2013 9:30 pm purok 1 B brgy nancayasan Urdaneta city B." The examinations yielded a positive result for marijuana and *shabu*, respectively.[13] The said specimen was then turned over to the evidence custodian, PO3 Elmer Manuel, for safekeeping.[14]

Version of the Defense

On December 11, 2013, Meneses, Balila and Limson, together with Anthony Guzman, were onboard an ELF Truck bound from Tarlac to Manila. Between 9:00 and 9:30 p.m., they parked the Elf Truck in front of the CB Mall Public Transport Terminal to check the tires of the Elf Truck. Meneses alighted from the driver's side, while Balila alighted from the passenger side. Unexpectedly, armed men approached them and pointed theirs guns at them. They were forced to lie facedown in front of the

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[12] *Id*.

[13] *Id*. at 8.

[14] *Rollo*, p. 6.

Elf Truck. Later on, the armed men separated Anthony Guzman and made him board a blue pick-up. After that, they were ordered to sit in front of the CB Mall Public Transport Terminal as the armed men placed something wrapped with a masking tape on a chair in front of them. PO2 Dela Cruz then claimed that the item belonged to them. They were surprised and insisted that the said item was not theirs. After a while, a media personnel and a *barangay kagawad* arrived at the area. Subsequently, they were brought to the hospital for medical check-up and later to the police station where they were detained.[15]

Thereafter, Meneses was told by her wife Rowena that Sally Espino, the owner of the Elf Truck, paid Fifty Thousand Pesos (₱50,000.00) for the release of the Elf Truck and that Anthony Guzman was also released after paying the same amount to the police. This fact was corroborated by Balila after his wife, Ruffa, informed him of the matter. Also, Ruffa testified that her husband told her that a child was singing a Christmas carol to him when the police arrived and arrested him.[16]

RTC Ruling

After trial, the RTC handed a guilty verdict on Meneses for illegal possession and sale of dangerous drugs. The dispositive portion of the September 30, 2015 Decision[17] states:

> WHER[E]FORE, finding accused Joey Meneses guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Sec. 5, Art. II of R.A. 9165 otherwise known as Comprehensive Dangerous Drugs Act of 2002, the court hereby sentences him to suffer the penalty of Life Imprisonment and to pay a fine of Php 500,000.00.
>
> For failure of the prosecution to prove the guilt beyond reasonable doubt of accused Camilo Balila, he is hereby acquitted of the crime charged.

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[15] *Id*. at 7.

[16] CA *rollo*, pp. 59-62.

[17] *Supra* note 2.

The prohibited drugs presented in court as evidence are hereby forfeited in favor of the government and shall be forwarded to the PDEA Office for proper disposition.

Accused Joey Meneses having been convicted is hereby ordered committed to the National Bilibid Prison, Muntinlupa City, Philippines, for the service of his sentence and in the meanwhile[,] he is hereby ordered detained at the Bureau of Jail Management and Penology, Urdaneta City, Pangasinan, pending his transfer to the National Bilibid Prison.

The Jail Warden, Bureau of Jail Management and Penology (BJMP), Urdaneta City is hereby ordered to immediately release accused Camilo Balila upon receipt of this Decision unless he is being detained for some other legal causes.

SO ORDERED.[18]

CA Ruling

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that the policemen who took part in the buy-bust operation were able to convincingly prove the sale of illegal drugs between the seller, Meneses, and the poseur-buyer, PO2 Dela Cruz. The appellate court wants to emphasize that the idea to sell illegal drugs emanated from Meneses himself, and was not instigated by the operatives as Meneses was the one who requested the CI to relay his offer to PO2 Dela Cruz who had earlier purchased marijuana from him. The CA is not convinced with the assertion of Meneses that the sale transaction between him and PO2 Dela Cruz was not consummated on the ground that the price or consideration for the illegal drugs was not established. For the appellate court, the moment Meneses delivered the illegal drugs to the operative after payment was made, there was already a meeting of the minds as to the consideration thereof, regardless of the amount tendered, simply because in accepting the payment, Meneses had expressed his affirmation to the price thereof. Further, the twin defenses of denial and frame-up of Meneses were viewed by the CA with disfavor as no evidence of malice or ill-motive

[18] *Id*. at 217-218.

on the part of the operatives in testifying against Meneses was adduced. Lastly, for the appellate court, the identity and the integrity of the seized illegal drugs were preserved and safeguarded.

Before us, the People and Meneses manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, Meneses maintains his position that, there is a failure on the part of the prosecution to establish the existence of an agreed consideration in the alleged sale and, therefore, he should be acquitted of the crime of illegal sale of dangerous drugs.

Our Ruling

We find the appeal bereft of merit.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[19]

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[20]

Here, poseur-buyer PO2 Dela Cruz and arresting officers PO2 Campos and PO3 Quitaleg positively identified Meneses as the person who sold to PO2 Dela Cruz the brick of marijuana leaves and the plastic sachet of "*shabu*." On the other hand, the buy-bust money which was a Five Hundred-Peso (₱500.00) bill, with serial number TY223398, used as consideration of

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[19] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[20] *People v. Amaro*, 786 Phil. 139, 147 (2016).

the illegal drug sale, was identified by PO2 Dela Cruz. With the foregoing, it is clear that a transaction and a sale took place.

The existence of the *corpus delicti* is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.[21] The prosecution witnesses also consistently testified that they arrested three (3) persons and conducted marking, inventory and documentation through photographs at the place where the buy-bust took place. Records show the presence of the required witnesses mandated by law during the marking and physical inventory of the items seized. Further, the brick of leaves and plastic sachet were positively found to contain marijuana and "*shabu*," respectively. Lastly, the seized items were presented during trial and were positively identified by PO2 Dela Cruz to be the same items sold to him by Meneses.

Clearly, from the foregoing established facts, this Court believes and so holds that all the requisites for the illegal sale of "*shabu*" were met. As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the identity of the buyer, the seller, the prohibited drugs, and the marked money has been proven by the required quantum of evidence.

In the case under consideration, Meneses claims that the prosecution failed to prove the existence of an agreed consideration in the illegal sale of drugs. Likewise, Meneses argues that he and the poseur-buyer did not agree on any amount and consideration for the sale of the subject marijuana and "*shabu*."

We do not agree.

The Court stressed in *People v. Endaya:*[22]

The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives

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[21] *People of the Philippines v. Almaser Jodan y Amla*, G.R. No. 234773, June 3, 2019.

[22] 739 Phil. 611 (2014).

the drug from the seller. As long as a police officer or civilian asset went through the operation as a buyer, whose offer was accepted by the appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In the case at bar, the prosecution has amply proven all the elements of the drug sale with moral certainty.[23] (Citation omitted)

In this particular case, the sale was already consummated by the time the brick of marijuana and the sachet of "*shabu*" were delivered and received by PO2 Dela Cruz after the buy-bust money was handed to Meneses, through the other accused, Balila, as payment for the illegal drugs. By the time of relinquishing the physical possession of the illegal drugs, Meneses effectively accepted the offer of PO2 Dela Cruz of Five Hundred Pesos (₱500.00) as his payment for the illegal drugs. Regardless of the amount of the consideration, in the illegal sale of dangerous drugs, the most important part of the buy-bust operation is the actual exchange of the buy-bust money and the subject drug.

In a way, Meneses is admitting that there was an actual transaction of illegal sale of dangerous drugs and the only thing that was missing was the agreement as to the value of the consideration. Meneses' argument that the sale is null and void as if no sale had transpired between him and PO2 Dela Cruz is unmeritorious. To be clear, in this kind of situation, the Civil Code will not apply. Technically, the sale was really null and void as the object of the sale is expressly prohibited by law. To emphasize, what only needs to be proven is that there should be a transaction or sale that had taken place. Sale means an actual exchange of the buy-bust money and the illegal drugs. Here, the punishable act was the act of selling the illegal drugs which cannot be negated by mere technicalities of a contract of sale. The fact that there was an agreement between the buyer and the seller to exchange money and drugs, there was already a meeting of the minds between the parties. As long as the seller accepted the consideration, followed by the delivery of the illegal drugs to the buyer, the crime is already consummated.

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[23] *Id*. at 623.

Likewise, Meneses maintains that he was merely framed-up for the crime of illegal sale of dangerous drugs. The defenses of denial, frame-up and extortion, like *alibi*, have been invariably viewed by the courts with disfavor for they can easily be concocted and are common and standard defense ploys in most cases involving violation of the Dangerous Drugs Act. As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed.[24] In this case, the three (3) police officers positively identified Meneses as the person who sold the illegal drugs. Another was the fact that the seized items tested positive for the presence of marijuana and "*shabu*."

Furthermore, the defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[25]

In the instant case, Meneses failed to overcome such presumption. The bare denial of Meneses cannot prevail over the positive testimony of the prosecution witnesses that he was the person who sold "*shabu*." As correctly pointed out by the CA, no evidence was presented by Meneses to show that he was coerced and threatened by the CAIDSOG's operatives into admitting the ownership of the seized illegal drugs. In the same vein, no evidence of malice or ill-motive on the part of the said operatives was adduced to discredit their testimonies.

With regard to the compliance with Section 21, Article II of R.A. No. 9165, as well as its Implementing Rules and Regulations, it is worthy to note that the CAIDSOG's operatives strictly complied with it. Immediately after seizure and confiscation of

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[24] *People v. Tamaño, et al.,* 801 Phil. 981, 1004 (2016).

[25] *Id*.

the illegal drugs from Meneses, a physical inventory, marking and photograph were conducted in the presence of Meneses at the place of arrest where the transaction transpired. All the required witnesses — the media, a DOJ representative and an elected public official — were present, together with Meneses, during the physical inventory, marking and photograph of the seized items. Likewise, in the chain of custody, the monitoring and tracking of the movements of the seized items, from the time they were confiscated from Meneses, to receipt in the forensic laboratory for examination, to safekeeping, and up to the presentation in court, were satisfactorily accounted for by the CAIDSOG's operatives. Hence, the identity and integrity of the seized illegal drugs were preserved and safeguarded.

Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. The rule finds an even more stringent application where said findings are sustained by the CA, as in this case.[26] For this, we find no compelling reason to deviate from the findings of the appellate court that Meneses is guilty beyond reasonable doubt of the crime charged.

WHEREFORE, premises considered, the instant appeal is **DISMISSED.** The March 22, 2017 Decision of the Court of Appeals in CA- G.R. CR-HC No. 07989 which affirmed the September 30, 2015 Decision of the Regional Trial Court, Branch 48, Urdaneta City, Pangasinan, in Criminal Case No. 19298, finding accused-appellant Joey Meneses *y* Cano guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

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[26] *Id*. at 1005.

FIRST DIVISION

[G.R. No. 234251. June 30, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **SALOME C. TIMARIO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION AND CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; ALL PERSONS WHO STAND TO BE AFFECTED BY A SUBSTANTIAL CORRECTION OF AN ENTRY IN THE CIVIL REGISTRAR MUST BE IMPLEADED AS INDISPENSABLE PARTIES; FAILURE TO IMPLEAD; EFFECT. — All persons who stand to be affected by a substantial correction of an entry in the civil registrar must be impleaded as indispensable parties. Failure to do so renders all proceedings subsequent to the filing of the complaint including the judgment ineffectual. This requirement hinges on the fact that the books making up the civil register and all documents relating thereto may only be the facts therein contained. Indeed, if entries in the civil register could be corrected or changed through mere summary proceedings, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching. Here, respondent failed to implead her two (2) purported fathers "Pedro Langam" and "Antonio Casera", her mother "Rosenda B. Acasio" and her siblings in violation of Section 3, Rule 108 of the Revised Rules of Court.

2. ID.; ID.; ID.; ID.; ID.; INSTANCES WHERE PUBLICATION MAY DEEM TO CURE THE FAILURE TO IMPLEAD INDISPENSABLE PARTIES; NOT APPLICABLE TO THE CASE AT BAR. — In cases where publication may be deemed to cure one's failure to implead indispensable parties in a petition for correction of substantial entries in the birth certificate, special circumstances must be present to justify the non-inclusion of indispensable parties, such as when earnest efforts were made by petitioners in bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; there was no actual or presumptive awareness of

the existence of the interested parties; or when the party was inadvertently left out. None of these exceptions are present here. There was no proof that the indispensable parties who were not impleaded were aware of the petition, let alone, the status of the proceedings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ronnie G. Tapayan for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 04366-MIN entitled, *"In the Matter of the Correction of the Birth Record of Salome Casera Timario particularly the name of the father from Pedro Langam to Antonio Casera and Date of Birth from November 17, 1949 to November 17, 1950, Salome C. Timario v. The Local Civil Registrar of Ozamis City, Republic of the Philippines"*:

1. Decision[1] dated May 31, 2017 denying the Republic's appeal and affirming the grant of respondent's petition for correction of entries; and
2. Resolution dated August 29, 2017 denying reconsideration.

Antecedents

In her petition for correction of entries dated November 5, 2015,[2] respondent Salome C. Timario essentially alleged:

She was born on November 17, 1950 as the eldest daughter of Spouses Rosenda B. Acasio and Antonio A. Casera. Her

[1] Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Ronaldo B. Martin and Louis P. Acosta; *rollo*, pp. 36-42.

[2] *Rollo*, pp. 61-64.

birth record was duly registered with the Local Civil Registrar, Ozamiz City under Registry No. 2013-7336.[3] All her personal and official records reflected "Antonio Casera" as her father's name. Too, her Voter Certification,[4] Baptismal Certificate[5] and Marriage Contract[6] stated that her date of birth was November 17, 1950.

When she was securing official documents for her survivorship benefits with the Government Service Insurance System (GSIS), she was surprised to discover that she had another birth certificate[7] registered with the Local Civil Registrar, Ozamiz City under Registry No. 92-03432. It erroneously indicated that she was born on November 17, 1949 and her father's name was "Pedro Langam."[8]

Hence, on November 5, 2015, she filed the petition to cancel Registry No. 92-03432. The petition was published for three (3) consecutive weeks in *The Panguil Bay Monitor*,[9] a newspaper of general circulation. The case was set for initial hearing on December 10, 2015.[10]

On February 19, 2016, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic and deputized the Office of the City Prosecutor of Ozamiz City to appear and litigate the case before the trial court.[11]

On February 29, 2016, the trial court allowed respondent to present her evidence *ex parte*.[12]

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[3] *Id.* at 54-55.

[4] *Id.* at 65.

[5] *Id.* at 66.

[6] *Id.* at 56.

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

[8] *Id.* at 62.

[9] *Id.* at 88-93.

[10] *Id.* at 37.

[11] *Id.* at 38.

[12] *Id.* at 83-87.

The Trial Court's Ruling

After due proceedings, the trial court rendered its Decision[13] dated April 8, 2016 granting the petition for correction of entries, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered directing the Local Civil Registrar of Ozamiz City to effect the correction of the birth certificate of Salome Casera Timario as follows:
>
> a) Name of Father From Pedro P. Langam to **Antonio Casera**
>
> b) Date of birth From November 17, 1949 to **November 17, 1950**.
>
> SO ORDERED.[14]

It held that respondent's Voter Certification, Baptismal Certificate and Marriage Contract clearly established there was indeed a need to correct the erroneous entries in Registry No. 92-03432.[15]

The Republic filed its Comment/Opposition dated April 26, 2016,[16] claiming it was only able to receive copy of the petition on April 21, 2016. The Republic averred that the proceedings were void for respondent's failure to comply with the jurisdictional requirements under Section 3, Rule 108 of the Revised Rules of Court. Under this provision, respondent was required to implead both her purported fathers "Pedro Langam" and "Antonio Casera," her mother "Rosenda B. Acasio," as well as her siblings since their successional rights and filiation might be affected by the outcome of the proceedings.[17] Strict compliance with Rule 108 was warranted as the correction sought would affect respondent's filiation with her supposed father "Pedro Langam" or "Antonio Casera."[18]

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[13] Penned by Executive Judge Salome P. Dungog; *rollo*, pp. 47-49.

[14] *Rollo*, p. 113.

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

[16] *Id.* at 77-82.

[17] *Id.* at 78.

[18] *Id.* at 79-80.

The Republic further asserted that respondent failed to adduce sufficient proof to entitle her to the relief prayed for:[19]

First. Respondent's claim that she just "recently discovered" the existence of her two (2) birth certificates was suspicious. For she herself caused the registration of both Registry No. 92-03432 and Registry No. 2013-7336 in 1992 and 2013, respectively.[20]

Second. Respondent also failed to establish that she had no criminal, civil, or other derogatory record which would have shown that her petition was not for the purpose of evading any liability or derogatory record.

Third. Being an entry in the official record made by a public officer in the performance of his duty, a birth certificate is *prima facie* evidence of the facts stated therein.[21] Accordingly, its evidentiary value should be sustained in the absence of strong, complete, and conclusive proof of its falsity or nullity.[22] Too, Section 1, Rule 131, in relation to Section 1, Rule 133 of the 1989 Rules on Evidence imposed the burden of proof upon the party who alleges the truth of his or her claim.[23] Respondent failed to discharge this burden.

Obviously, the Republic's Comment/Opposition was deemed mooted by the decision already rendered by the trial court granting the petition. In view of this development, the Republic interposed an appeal from the Amended Order dated May 30, 2016.[24]

The Court of Appeals' Ruling

The Republic essentially reiterated the arguments in its Comment/Opposition in support of its appeal before the Court of Appeals.[25]

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[19] *Id.* at 78.

[20] *Id.*

[21] Section 44, Rule 130 of the Revised Rules of Court.

[22] *Rollo*, p. 79.

[23] *Id.*

[24] *Id.* at 96.

[25] *Id.* at 103-105.

By Decision dated May 31, 2017,[26] the Court of Appeals affirmed. It ruled that the petition complied with all the jurisdictional requirements under Rule 108. Respondent's supposed failure to implead indispensable parties was deemed cured when the trial court's order setting the case for initial hearing was posted and published for three (3) consecutive weeks in a newspaper of general circulation.[27]

Notices of hearings, too, were duly served on the OSG, the City Prosecutor of Ozamis City and the local civil registrar. Since the city prosecutor who was deputized by the OSG did not oppose respondent's motion to present evidence *ex parte*, the OSG may no longer complain that the proceedings before the trial court were irregular.[28]

As for respondent's alleged failure to present valid grounds and credible evidence to justify subject substantial correction, it ruled that evidence on record clearly reflected "Antonio Casera" as her father and "November 17, 1950" as her date of birth.[29]

By its assailed Resolution[30] dated August 29, 2017, the Court of Appeals denied the Republic's motion for reconsideration.

The Present Petition

The Republic prays that the assailed dispositions be reversed and set aside.

The Republic basically adopts its arguments before the courts below. It also faults the Court of Appeals for holding that the publication of the petition was deemed to have cured respondent's failure to implead indispensable parties, *i.e.*, "Antonio Casera," "Pedro Langam," her mother "Rosenda Acasio," and her siblings.[31]

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[26] Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Ronaldo B. Martin and Louis P. Acosta; *Rollo*, pp. 36-42.

[27] *Rollo*, pp. 40-41.

[28] *Id.* at 41.

[29] *Id.*

[30] *Id.* at 44-46.

[31] *Id.* at 20.

Too, the Court of Appeals is faulted for ruling that the Republic was duly represented by the deputized prosecutor when, in fact, the presentation of evidence was done *ex parte* before the Clerk of Court. Thus, the Republic was deprived of the opportunity to cross-examine respondent during the *ex parte* hearing.[32]

Respondent did not file her comment to the petition despite our directive under Resolution dated January 22, 2018.[33]

Threshold Issue

Did the trial court acquire jurisdiction over the petition for correction of entries?

Ruling

The petition is meritorious.

Rule 108 of the Revised Rules of Court outlines the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary, depending on whether the correction sought is clerical or substantial.[34] If the correction is clerical, the procedure to be adopted is summary. Otherwise, it is adversary.[35] Corrections in either name or names of an individual's parent or parents in his or her birth certificate involve substantial matters which require an adversarial proceeding.[36]

Section 3, Rule 108 of the Rules of Court ordains:

Section 3. *Parties*. – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

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[32] *Id.* at 23.

[33] *Id.* at 124.

[34] If the rectification affects the civil status, citizenship, paternity or filiation of a party, it is deemed substantial.

[35] See *Republic v. Tipay*, G.R. No. 209527, February 14, 2018.

[36] *Tan v. Office of the Local Civil Registrar of the City of Manila*, G.R. No. 211435, April 10, 2019.

The provision is plain and clear. All persons who stand to be affected by a substantial correction of an entry in the civil registrar must be impleaded as indispensable parties. Failure to do so renders all proceedings subsequent to the filing of the complaint including the judgment ineffectual.[37] This requirement hinges on the fact that the books making up the civil register and all documents relating thereto may only be the facts therein contained. Indeed, if entries in the civil register could be corrected or changed through mere summary proceedings, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.[38]

Here, respondent failed to implead her two (2) purported fathers "Pedro Langam" and "Antonio Casera," her mother "Rosenda B. Acasio" and her siblings in violation of Section 3, Rule 108 of the Revised Rules of Court.

The Court of Appeals nonetheless reckoned with ***Barco v. Court of Appeals***[39] which ruled that publication was deemed to have cured respondent's failure to implead indispensable parties in the petition. Notably, in ***Barco***, Nadina Maravilla sought to correct the entries in her daughter June's birth certificate, alleging that June's real biological father was "Armando Gustilo," not "Francisco Maravilla" as declared in June's birth certificate. At first, Nadina impleaded only the Local Civil Registrar of Makati City but subsequently amended her petition to also implead both Francisco and Armando. The trial court eventually granted the petition.

Several years later, June's half siblings Jose Vicente Gustilo and Mary Joy Gustilo, represented by her mother Milagros Barco, surfaced and sought to annul the grant of the petition on ground that Nadina failed to implead them, Armando's children, as indispensable parties in her petition for correction of entries. The Court of Appeals denied the petition for annulment of judgment. On appeal, this Court granted the petition and affirmed

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[37] *Almojuela v. Republic*, 793 Phil. 780, 790 (2016).

[38] *Republic v. Lugnasay Uy*, 716 Phil. 254, 266 (2013).

[39] 465 Phil. 39, 64-65 (2004).

the trial court's ruling. The Court ruled that when Nadina amended her petition to implead Francisco and Armando, she manifested her earnest effort to comply with the jurisdictional requirement under Section 3 of Rule 108. As for Jose Vicente and Mary Joy, who surfaced only years after the trial court had decreed the correction of June's birth certificate, the Court pronounced that it was not Nadina's fault that when she amended her petition to implead indispensable parties, she did not know as yet of the existence of the persons claiming to be her late father Armando's legitimate or illegitimate offsprings.

The case here is different. Respondent had known from the start that she had two (2) registered fathers "Antonio Casera" and "Pedro Langam." She knew her mother "Rosenda Acasio" and all her siblings. Yet, she failed to implead them and offered no explanation therefor.

In cases where publication may be deemed to cure one's failure to implead indispensable parties in a petition for correction of substantial entries in the birth certificate, special circumstances must be present to justify the non-inclusion of indispensable parties, such as when earnest efforts were made by petitioners in bringing to court all possible interested parties;[40] the interested parties themselves initiated the corrections proceedings;[41] there was no actual or presumptive awareness of the existence of the interested parties;[42] or when the party was inadvertently left out.[43]

None of these exceptions are present here. There was no proof that the indispensable parties who were not impleaded were aware of the petition, let alone, the status of the proceedings.

At any rate, the conflicting entries in respondent's birth certificates were based on the information she herself had given to the Local Civil Registrar, Ozamiz City. Thus, bringing in her

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[40] *Republic v. Manda*, G.R. No. 200102, September 18, 2019.

[41] See *Republic v. Kho*, 553 Phil. 161 (2007).

[42] *Supra* note 39.

[43] See *Republic v. Coseteng-Magpayo*, 656 Phil. 550 (2011).

"two fathers," her mother, and her siblings as indispensable parties here will afford them the chance to be heard as the corrections being sought will also affect their own personal circumstances, the names they bear, their filiation and even their successional rights.

All told, the petition for correction of entries below should be dismissed. The trial court's failure to acquire jurisdiction over indispensable parties rendered all proceedings therein, including the decision itself, void.

ACCORDINGLY, the petition is **GRANTED** and the Decision dated May 31, 2017 and Resolution dated August 29, 2017 in CA-G.R. CV No. 04366-MIN **REVERSED AND SET ASIDE.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 237522. June 30, 2020]

NATIONAL BUREAU OF INVESTIGATION, *petitioner, vs.* **CONRADO M. NAJERA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, A QUESTION REGARDING THE APPRECIATION OF EVIDENCE IS ONE OF FACT AND IS BEYOND THE AMBIT OF THE COURT'S JURISDICTION THEREIN; ONE EXCEPTION IS WHEN THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE OFFICE OF THE OMBUDSMAN ARE CONTRADICTORY; CASE AT BAR. — The NBI raised

a question regarding the appreciation of evidence 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 this Court's task to go over the proofs presented below to ascertain if they were weighed correctly. However, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the Ombudsman are contradictory. In this case, the Ombudsman concluded that Conrado is guilty of grave misconduct while the CA ruled that he is liable only for simple misconduct. Considering these conflicting findings warranting the examination of evidence, this Court will entertain the factual issue on whether substantial evidence exists to prove that Conrado committed grave violation in the conduct of the raid operation.

2. ID.; EVIDENCE; SUBSTANTIAL EVIDENCE; QUANTUM OF PROOF IN ADMINISTRATIVE PROCEEDINGS NECESSARY FOR A FINDING OF GUILT; BURDEN TO ESTABLISH THE CHARGES RESTS UPON THE COMPLAINANT. — The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based. The respondent is not even obliged to prove his exception or defense. Given these precepts, we find that there is no substantial evidence to hold Conrado liable for grave misconduct.

3. ID.; ID.; WHILE THE RULES OF EVIDENCE ARE NOT CONTROLLING IN ADMINISTRATIVE BODIES IN THE ADJUDICATION OF CASES, THE EVIDENCE PRESENTED BEFORE THEM MUST AT LEAST HAVE A MODICUM OF ADMISSIBILITY FOR IT TO BE GIVEN SOME PROBATIVE VALUE; CASE AT BAR. — Foremost, there is no evidence to establish the extortion. It is incumbent upon the NBI to prove that Conrado attempted to solicit money from Francis. Yet, the NBI failed to present competent evidence and merely relied on Francis' unsubstantiated narrations. It is settled that an allegation of bribery is easy to concoct but difficult to prove. Hence, it is always demanded from the complainant to present a panoply of evidence in support of the accusation. Also, it bears emphasis that while the rules of evidence are not

controlling in administrative bodies in the adjudication of cases, the evidence presented before them must at least have a modicum of admissibility for it to be given some probative value. Verily, Francis' lone testimony is insufficient to sustain the administrative charge. The CA properly considered Francis' testimony self-serving and a convenient afterthought coming from the mouth of a person who was caught red-handed committing a crime.

4. POLITICAL LAW; REPUBLIC ACT NO. 9208 (ANTI-TRAFFICKING IN PERSONS ACT OF 2003); IMPLEMENTING RULES AND REGULATIONS THEREOF; EXPLICITLY PROVIDE THE RESPONSIBILITY OF THE NATIONAL BUREAU OF INVESTIGATION (NBI) TO COORDINATE CLOSELY WITH ALL THE MEMBERS OF THE INTER-AGENCY COUNCIL AGAINST TRAFFICKING FOR THE EFFECTIVE DETECTION AND INVESTIGATION OF SUSPECTED TRAFFICKERS; CASE AT BAR. — Conrado is not completely absolved from any administrative liability. It is undisputed that Conrado did not bother to inform the Anti-Human Trafficking Division about the raid. This infringed the implementing rules and regulations of Republic Act No. 9208 or the Anti-Trafiicking in Persons Act of 2003 which explicitly provide the responsibility of the NBI to coordinate closely with all the members of the Inter-Agency Council Against Trafficking for the effective detection and investigation of suspected traffickers. Also, when necessary, it must share intelligence information on suspected traffickers to all Council member agencies.

5. ID.; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); IMPLEMENTING RULES AND REGULATIONS THEREOF; SPECIFY THE DUTY OF THE NBI TO CLOSELY COORDINATE WITH ALL THE MEMBERS OF THE INTER-AGENCY COUNCIL ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 FOR THE EFFECTIVE DETECTION AND INVESTIGATION OF SUSPECTED PERPETRATORS. — Conrado transgressed the implementing rules and regulations of Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 which specified the duty of the NBI to closely coordinate with all the members of the Inter-Agency Council on Violence against Women and their Children

for the effective detection and investigation of suspected perpetrators.

6. ID.; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS); LESS GRAVE OFFENSES; SIMPLE MISCONDUCT; DEFINED; PENALTY IN CASE AT BAR. — The records, however, are bereft of evidence showing corruption, clear intent to violate the law, or flagrant disregard of the rules, to hold Conrado liable for grave misconduct. As such, Conrado should be liable for simple misconduct which is defined as a transgression of some established rule of action or an unacceptable behavior that transgresses the established rules of conduct for public officers or any act deviating from the procedure laid down by the rules that warrants disciplinary action. Notably, the violation transpired in 2007 when the Uniform Rules on Administrative Cases in the Civil Service (URACCS) was still effective. The URACCS classified simple misconduct as a less grave offense with the corresponding penalty of suspension for one month and one day to six months for the first offense. Absent any mitigating or aggravating circumstance, the CA properly imposed the medium penalty of three months suspension.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Aguilar Nicolas & Pillos for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

The administrative liability arising from an improper raid operation is the main 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 May 24, 2017 in CA-

[1] *Rollo*, pp. 9-21; penned by Associate Justice Rodil V. Zalameda (now a Member of this Court), with the concurrence of Associate Justices Sesinando E. Villon and Ma. Luisa Quijano-Padilla.

G.R. SP No. 144884, which modified the findings of the Office of the Ombudsman.

ANTECEDENTS

On April 17, 2007 at around 2:00 a.m., agents from the National Bureau of Investigation (NBI) composed of Conrado Najera, Frederick Liwag, Joel Respeto and Wilson Monton posed as customers in a disco and amusement center to verify a complaint for human trafficking. Thereat, the team were allegedly provided with two lady entertainers who offered sexual pleasures for a fee. Afterwards, Conrado announced a raid and apprehended 27 employees including the cashier Francis Quilala. The arrested persons were detained at the NBI Office at Taft Avenue, Manila but were later released.[2]

Thereafter, Francis filed an administrative complaint against the raiding team before the NBI and claimed that the center is not involved in prostitution. Yet, Conrado ransacked the premises and instructed the other agents to confiscate cigarettes, mobile phones and money from the cash register. Moreover, Conrado attempted to extort ₱500,000.00 in exchange for the employees' freedom.[3] On the other hand, Conrado and his team countered that they secured proper authority from their supervisor Chief Head Agent Regner Peneza (Chief Peneza) to raid the establishment which is operating without permit from the local government. At most, Francis fabricated the accusations so he may gain leverage over the charges that they intend to file against him. Lastly, they denied the extortion incident.[4]

At the investigation, Chief Peneza did not appear and chose not to testify.[5] Later, the NBI found that the raid was unauthorized and that the agents failed to coordinate the operation with the Anti-Human Trafficking Division and the Violence Against Women and Children Division. The NBI then charged the raiding

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

[3] *Id*. at 136-137.

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

[5] *Id*. at 16.

team with grave misconduct before the Office of the Ombudsman docketed as OMB-C-A-07-0502-J.[6]

On December 29, 2015, the Ombudsman found Conrado guilty of grave misconduct but dismissed the case against Frederick, Joel and Wilson. It held that Chief Peneza did not authorize Conrado to conduct a raid while the other members merely obeyed the supposed lawful order,[7] thus:

> **WHEREFORE**, respondent Conrado M. Najera is found guilty of Grave Misconduct and is meted the penalty of **Dismissal** from the service, together with its accessory penalties. In the event that the penalty of Dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a fine in the amount equivalent to his salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from the retirement benefits, accrued leave credits or any receivables by the respondent Conrado M. Najera from his office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.
>
> The administrative charge against respondents Frederick G. Liwag. Wilson M. Monton and Joel F. Respeto are hereby **DISMISSED**.
>
> **SO ORDERED.**[8]

Unsuccessful at a reconsideration,[9] Conrado elevated the case to the CA docketed as CA-G.R. SP No. 144884. Conrado argued that the Ombudsman merely affirmed the NBI's bare allegations on the supposed extortion and lack of authority from his supervisor.[10] On May 24, 2017, the CA partly granted the appeal and downgraded Conrado's liability to simple misconduct. It held that the supposed robbery and extortion were unsubstantiated. Also, it gave credence to the claim that Conrado communicated the operation with Chief Peneza. Otherwise, the supervisor would

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[6] *Id*. at 134-135, 138-156.

[7] *Id*. at 97-103.

[8] *Id*. at 102.

[9] *Id*. at 104-112, 113-133.

[10] *Id*. at 68-95.

have been the first to castigate an agent for the oversight. Notably, Chief Peneza did not participate in the investigation which is fatal to NBI's case. Yet, the CA affirmed the Ombudsman's finding that Conrado performed the raid without coordinating it with the other concerned agencies. Accordingly, it suspended Conrado from the service for a period of three months absent proof that his violation was flagrant, *viz.*:

> WHEREFORE, premises considered, the instant Petition for Review is PARTIALLY GRANTED. Accordingly, the Decision dated 29 December 2015 and Joint Order dated 12 February 2016 are MODIFIED in that petitioner is merely found GUILTY of SIMPLE MISCONDUCT and is SUSPENDED for three (3) months without pay. If the penalty of suspension can no longer be served, the alternative penalty of fine equivalent to three (3) months salary of petitioner shall be imposed.
>
> SO ORDERED.

The NBI sought reconsideration but was denied. Hence, this petition. The NBI maintained that the Ombudsman's findings of facts must be respected. There is substantial evidence to support that Conrado extorted money and that he acted without authority from his supervisor and prior coordination with relevant agencies.[11]

RULING

The NBI raised a question regarding the appreciation of evidence 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 this Court's task to go over the proofs presented below to ascertain if they were weighed correctly.[12] However, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the Ombudsman are contradictory.[13] In this case, the Ombudsman concluded that

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[11] *Id*. at 28-45.

[12] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602; *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172 (2017); and *Bacsasar v. Civil Service Commission*, 596 Phil. 858 (2009).

[13] *Office of the Ombudsman v. De Villa*, 760 Phil. 937 (2015); *Miro v.*

Conrado is guilty of grave misconduct while the CA ruled that he is liable only for simple misconduct. Considering these conflicting findings warranting the examination of evidence, this Court will entertain the factual issue on whether substantial evidence exists to prove that Conrado committed grave violation in the conduct of the raid operation.

The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[14] The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based.[15] The respondent is not even obliged to prove his exception or defense.[16] Given these precepts, we find that there is no substantial evidence to hold Conrado liable for grave misconduct.

Foremost, there is no evidence to establish the extortion. It is incumbent upon the NBI to prove that Conrado attempted to solicit money from Francis. Yet, the NBI failed to present competent evidence and merely relied on Francis' unsubstantiated narrations. It is settled that an allegation of bribery is easy to concoct but difficult to prove. Hence, it is always demanded

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Vda. de Erederos, 721 Phil. 772 (2013); *Office of the Ombudsman v. Dechaves*, 721 Phil. 124 (2013).

[14] In *Office of the Ombudsman v. Manalaslas*, 791 Phil. 557 (2016), we ruled that the standard of substantial evidence is satisfied when there is a reasonable ground to believe, based on the evidence presented, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in a criminal case, but the evidence must be enough for a reasonable mind to support a conclusion; see also *Aldecoa-Delorino v. Abellanosa*, A.M. No. P-08-2472, October 19, 2010, 633 SCRA 448, 462.

[15] *Santos v. Tanciongco*. A.M. No. MTJ-06-1631, September 30, 2008, 567 SCRA 134; and *Kilat v. Macias*, A.M. No. RTJ-05-1960, October 25, 2005. 474 SCRA 101.

[16] *Bruselas, Jr. v. Mallari* A.C. No. 9683, IPI No. 17-250-CA-J, IPI No. 17-251-CA-J, *et al.*, February 21, 2017.

from the complainant to present a panoply of evidence in support of the accusation.[17] Also, it bears emphasis that while the rules of evidence are not controlling in administrative bodies in the adjudication of cases, the evidence presented before them must at least have a modicum of admissibility for it to be given some probative value.[18] Verily, Francis' lone testimony is insufficient to sustain the administrative charge.[19] The CA properly considered Francis' testimony self-serving and a convenient afterthought coming from the mouth of a person who was caught red-handed committing a crime.[20]

Similarly, the NBI did not submit substantial evidence showing that Conrado performed the raid without authority from his superior. Notably, Chief Peneza is a key person that can shed light on this issue but he decided to disassociate himself from the investigation for unexplained reasons. Worse, the NBI did not exert any effort to obtain from Chief Peneza any certification or affidavit on his supposed lack of approval. Thus, the CA properly took against NBI the failure to present a material witness, *viz.*:

> Going by what appears on the record, Chief Peneza may have chosen to remain tight-lipped and disassociate himself from petitioner in exchange for a free pass for any liability or accountability despite obviously being ultimately responsible for the conduct of his men, including petitioner. Regardless, We are fairly convinced that Chief Peneza either categorically gave his go-signal to petitioner or acquiesced to petitioner's plan. Otherwise, he would have been the first one to castigate petitioner for his oversight.[21]

Nevertheless, Conrado is not completely absolved from any administrative liability. It is undisputed that Conrado did not bother to inform the Anti-Human Trafficking Division about the

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[17] *Tan v. Usman*, A.M. No. RTJ-14-2390, August 13, 2014, 723 SCRA 623, 628.

[18] *Uichico v. National Labor Relations Commission*, 339 Phil. 242 (1997).

[19] *OCA v. Larida, Jr.*, 729 Phil. 21 (2014).

[20] *Rollo*, p. 17.

[21] *Id*. at 16.

raid. This infringed the implementing rules and regulations[22] of Republic Act No. 9208 or the Anti-Trafficking in Persons Act of 2003 which explicitly provide the responsibility of the NBI to coordinate closely with all the members of the Inter-Agency Council Against Trafficking for the effective detection and investigation of suspected traffickers. Also, when necessary, it must share intelligence information on suspected traffickers to all Council member agencies.[23] Likewise, Conrado transgressed the implementing rules and regulations[24] of Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 which specified the duty of the NBI to closely coordinate with all the members of the Inter-Agency Council on Violence against Women and their Children for the effective detection and investigation of suspected perpetrators.[25]

The records, however, are bereft of evidence showing corruption, clear intent to violate the law, or flagrant disregard of the rules, to hold Conrado liable for grave misconduct.[26] As such, Conrado should be liable for simple misconduct which is defined as a transgression of some established rule of action or an unacceptable behavior that transgresses the established rules of conduct for public officers or any act deviating from the procedure laid down by the rules that warrants disciplinary action.[27] Notably, the violation transpired in 2007 when the Uniform Rules

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[22] Approved on September 17, 2003.

[23] R.A. No. 9208, Sec. 18(g).

[24] Approved on September 21, 2004.

[25] R.A. No. 9262, Sec. 61(k).

[26] *Re: Complaint of Leonardo A. Velasco against Associate Justices Francisco H. Villaruz, Jr., Alex L. Quiroz, and Samuel R. Martires*, 701 Phil. 455 (2013); see also *Office of the Ombudsman v. Apolonio*, 683 Phil. 553 (2012); *Seville v. Commission on Audit*, 699 Phil. 27 (2012); *Office of the Ombudsman v. Reyes*, 674 Phil. 416 (2011); *Salazar v. Barriga*, 550 Phil. 44 (2007); *Vertudes v. Buenaflor*, 514 Phil. 399 (2005); *Civil Service Commission v. Belagan*, 483 Phil. 601 (2004).

[27] See *Benong-Linde v. Lomantas*, A.M. No. P-18-3842, June 11, 2018, 866 SCRA 46; *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9.

on Administrative Cases in the Civil Service (URACCS) was still effective.[28] The URACCS classified simple misconduct as a less grave offense with the corresponding penalty of suspension for one month and one day to six months for the first offense.[29] Absent any mitigating or aggravating circumstance, the CA properly imposed the medium penalty of three months suspension.[30]

FOR THESE REASONS, the petition is **DENIED.**

SO ORDERED.

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

EN BANC

[G.R. No. 240778. June 30, 2020]

ROLANDO S. GREGORIO, *petitioner, vs.* **COMMISSION ON AUDIT and DEPARTMENT OF FOREIGN AFFAIRS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON AUDIT; POWERS; THE CONSTITUTION VESTS THE BROADEST LATITUDE IN THE COA IN DISCHARGING ITS ROLE AS THE GUARDIAN OF PUBLIC FUNDS AND PROPERTIES. — Prefatorily, we note that the Constitution vests the broadest latitude in the COA in discharging its role as the guardian of

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[28] The Revised Rules on Administrative Cases in the Civil Service was promulgated on November 8, 2011.

[29] Rule IV, Section 52(B); see also *De Los Santos v. Vasquez,* A.M. No. P-18-3792, February 20, 2018, 856 SCRA 145; *Rodriguez-Angat v. GSIS*, 765 Phil. 213 (2015).

[30] URACCS, Sec. 54.

public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

2. ID.; ID.; ID.; ID.; IN RECOGNITION OF SUCH CONSTITUTIONAL EMPOWERMENT THE COURT HAS GENERALLY SUSTAINED COA'S DECISIONS OR RESOLUTIONS IN DEFERENCE TO ITS EXPERTISE IN THE IMPLEMENTATION OF THE LAWS IT HAS BEEN ENTRUSTED TO ENFORCE; EXCEPTION. — In recognition of such constitutional empowerment of the COA, the Court has generally sustained COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.

3. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; UNDER THE PRINCIPLE OF *QUANTUM MERUIT* A PARTY THAT HAS SUFFICIENTLY ESTABLISHED HIS RIGHT TO BE COMPENSATED MAY RECOVER A REASONABLE VALUE OF THE THING HE DELIVERED OR THE SERVICE HE RENDERED. — This is also in accord with the principle of *quantum meruit*, invoked by petitioner, which literally means "as much as he deserves." Under this principle a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. Here, petitioner has sufficiently established his right to be compensated for the period for which his services as Consul General was extended, from January 1, 2005 to March 31, 2005.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

CARANDANG, *J.*:

Challenged in this Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court is the Decision[2] dated February 28, 2017 and Resolution[3] dated March 8, 2018 of the Commission on Audit (COA) *En Banc* in COA CP Case Nos. 2015-436 & 437.[4] The COA denied the Petition for Money Claims filed by petitioner Rolando S. Gregorio for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance for the period from January 1, 2005 to June 17, 2005, in the amount of ₱119,487.50 and ₱1,921,659.70, respectively, or a total amount of ₱2,041,147.20.[5]

Rolando S. Gregorio (petitioner), Chief of Mission Class II of the Department of Foreign Affairs (DFA), was the former Consul General of the Philippine Consulate General (PCG) of Honolulu, Hawaii until his retirement on April 17, 2004, at the age of 65. Upon his request, his government service was extended four times beyond his compulsory age of retirement, to wit: (1) from April 18 to June 30, 2004; (2) from July 1 to September 30, 2004; (3) from October 1 to 31, 2004; and (4) from November 1 to December 31, 2004.[6]

The request for extension of services of petitioner for the period of November 1, 2004 to December 31, 2004 was approved on October 29, 2004. Pursuant to the said approval, DFA

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

[2] *Id.* at 17-23.

[3] See *id.* at 31.

[4] *Id.* at 4.

[5] *Id.* at 17-23, 31.

[6] *Id.* at 5.

Secretary Alberto G. Romulo (DFA Secretary Romulo) issued Assignment Order No. 42-04 stating that:[7]

> The tour of duty of Consul General ROLANDO S. GREGORIO, at the Philippine Consulate General, Honolulu, is hereby finally extended from 01 October 2004 to 31 December 2004 with no further extension.[8] (Underscoring supplied)

Starting January 2005 and onwards, documents, such as payrolls, of the PCG were signed by Consul Eva G. Betita (Consul Betita). Nonetheless, petitioner claimed that after the expiration of his service on December 31, 2004, he continued to serve as Consul General starting January 1, 2005 onwards.

In a Letter[9] dated March 22, 2005, the DFA officially designated Consul Betita as Acting Head of Post of Honolulu pursuant to the directive of then Undersecretary for Administration, Franklin M. Ebdalin (DFA Undersecretary Ebdalin). The letter was received by CORATEL on April 1, 2005. It reads:

> To : Honolulu PCG
> Fr : UFME/OPAS
> Re : Ms. Eva G. Betita, Acting Head of Post
> Dt : 22 March 2005
> Cn : HO-39-UFME-2005
>
> Following the end of the approved extension of services of Consul Rolando Gregorio on 31 December 2004, effective 01 January 2005, Consul Eva G. Betita, FSO I, is hereby designated as Acting Head of Post.[10]

On April 21, 2005, DFA Secretary Romulo, through a Memorandum for the President, recommended that the request of petitioner for extension of government service until June 30, 2005 be approved.[11] On May 23, 2005, the DFA received

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[7] *Id.* at 6.

[8] *Id.*

[9] *Id.* at 32.

[10] *Id.*

[11] *Id.* at 18.

a Memorandum dated May 19, 2005 from the Executive Secretary approving petitioner's extension of services as Consul General of the Philippine Consulate in Honolulu "*until June 30, 2005 or until the arrival of his successor, whichever is earlier*."[12]

On June 10, 2005, DFA Secretary Romulo issued a very urgent and confidential Letter[13] instructing petitioner to return to Home Office by June 13, 2005 and to file the appropriate leaves for the days he was absent from work from January 2005.[14]

In a Memorandum[15] dated October 18, 2005, Assistant Secretary Ophelia A. Gonzales, Office of the Personnel and Administrative Services of the DFA requested from the Assistant Secretary of Fiscal Affairs, the payment of unpaid salaries and allowances of petitioner for the approved extension of his services as Consul General from January 1, 2005 to June 30, 2005.[16] The Memorandum further stated that:

> In line with our request, enclosed, for your appropriate action, are copies each of the following:
>
> 1. Certificate of Last Payment x x x
>
> x x x x x x x x x
>
> 6. Approved Leave of Absence for the period from 01 April 2005 to 30 June 2005.[17]

On July 15, 2015, after almost 10 years, petitioner filed two Petitions for Money Claim[18] before respondent COA for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of ₱119, 487.50 and ₱1,921,659.70,

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

[13] *Id.* at 41.

[14] *Id.*

[15] *Id.* at 42.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 102.

respectively, or a total amount of ₱2,041,147.20. The cases were docketed as COA CP Case No. 2015-436 to 437.[19]

In its Answer dated October 28, 2015, respondent DFA, through the Office of the Solicitor General (OSG), prayed that the money claim of petitioner be denied on the following grounds, to wit: (1) petitioner rendered actual service and reported for work, pursuant to approved extensions of service beyond his age of retirement, until December 31, 2004 only; (2) petitioner neither assumed nor continued to hold office from January to June 17, 2005, considering that the requisite approval of the President for the extension of his service was issued only on May 19, 2005, which is beyond the allowed maximum extension of one year; and (3) the effectivity of the Memorandum informing the DFA of the approval of extension of petitioner's services until June 30, 2005 cannot be made to apply on January 1, 2005 considering that Section 3 of Executive Order No. 136,[20] series of 1999 (E.O. No. 136) is explicit that a compulsory retired officer can neither assume nor continue in office without receipt of the requisite authority.[21]

The Audit Team Leader of the DFA, Pasay City agreed with respondent DFA. On the other hand, the Cluster Director, Cluster 1 — Executive Offices, National Government Sector (NGS) of the COA recommended that the Petition for Money Claim of petitioner be given due course on the ground that the approval of Executive Secretary Eduardo R. Ermita (Executive Secretary Ermita) of the extension of service of petitioner as an exemption from Executive Order (EO) No. 136 renders the DFA's opposition to the claim based on Sections 1, 3 and 4 of EO No. 136 ineffective. She ruled that the designation of Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005 by then DFA Undersecretary Ebdalin is void since the latter had no authority to designate Consul Betita.[22]

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[19] *Id.* at 4.

[20] Requiring Presidential Approval of Requests for Extension of Services of Presidential Appointees Beyond the Compulsory Retirement Age.

[21] *Rollo*, p. 19.

[22] *Id.* at 19-20.

In a Decision[23] dated February 28, 2017, COA denied the petition for money claims filed by petitioner. The dispositive portion of the decision states, to wit:

> **WHEREFORE**, premises considered, the Petitions for Money Claim of Mr. Rolando S. Gregorio, former Consul General, Philippine Consulate General, Honolulu, Hawaii, for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of ₱119,487.50 and ₱1,921,659.70, respectively, or a total amount of ₱2,041,147.20, are hereby **DENIED** for lack of merit.[24] (Emphasis in the original)

In denying the petition, the COA ruled that the money claim of petitioner is devoid of merit based on the following grounds. *First*, Section 3 of E.O. No. 136 provides that any officer or employee requesting retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Office of the President. The COA noted that the approved extension until June 30, 2005 pertains to the recommendation of DFA Secretary Romulo that the request of petitioner for extension until June 30, 2005 be granted. However, said request was made only on April 21, 2005 and its approval was communicated in a Memorandum dated May 19, 2005 of the Executive Secretary, which was received by the DFA only on May 23, 2005. The COA ruled that petitioner cannot assume or continue in office pending receipt of authority from the Office of the President and absent such authority, petitioner cannot claim benefit for the period from January 1, 2005 to June 30, 2005.[25]

Second, Section 4 of E.O. No. 136 allows extension of government service beyond the mandatory age of retirement for a maximum of one (1) year only. The COA noted that at the time the request for extension of service was made on April 21, 2005, it was already beyond the maximum period of one

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[23] *Supra* note 2.

[24] *Rollo*, p. 22.

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

(1) year from April 17, 2004. In the Memorandum of then Executive Secretary Ermita approving the extension of service of petitioner, it was expressly stated that petitioner's extension was until June 30, 2005, or until the arrival of his successor, whichever is earlier. It specifically states, to wit:

> Please be advised that upon your recommendation, as an exemption to Executive Order No. 136 (series of 1999), the President has **APPROVED** the extension of service of Consul General **ROLANDO S. GREGORIO**, Chief of Mission Class II, of the Philippine Consulate General in Honolulu, Hawaii, Department of Foreign Affairs, beyond the compulsory retirement age, until June 30, 2005, or until the arrival of his successor, whichever is earlier.[26] (Emphasis and underscoring in the original)

Third, Section 2 of the same provision states that officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for exemplary meritorious reasons. Here, the COA noted that no documents were presented to show that petitioner's service was retained due to exemplary meritorious reasons. The COA found that petitioner's money claim is not supported with proof of actual services rendered.[27]

Petitioner moved for reconsideration but was denied by the COA in a Resolution[28] dated March 8, 2018.

Hence, petitioner filed the present petition asserting that:

> THE COMMISSION ON AUDIT ERRED ON A QUESTION OF LAW IN DENYING THE PETITION FOR MONEY CLAIM ON THE BASIS THAT PETITIONER DID NOT RENDER ACTUAL SERVICES FOR THE PERIOD OF JANUARY 1, 2005 UP TO JUNE 17, 2005 CONSIDERING THAT CONSUL EVA G. BETITA WAS DESIGNATED TO THE POST.[29]

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[26] *Id.* at 110.

[27] *Id.* at 21.

[28] *Supra* note 3.

[29] *Rollo*, p. 8.

Petitioner maintains that, contrary to the findings of the COA, he actually rendered service as the Consul General of the Philippine Consulate in Honolulu from January 1, 2005 until June 10, 2005 in a hold-over capacity.[30] Petitioner further contends that the designation of Consul Betita is void because it was issued by DFA Undersecretary Ebdalin, who had no authority to designate her. He asserts that the extension of a Foreign Service Officer must be approved by the President. It necessarily follows that the designation of a Foreign Service Officer must emanate from the President or, at the very least, must carry with it the *imprimatur* of the Secretary of the DFA, being an alter ego of the President. Moreover, petitioner points out that the designation of Consul Betita is dated March 22, 2005 and was officially received only on April 1, 2005. Therefore, it cannot retroact to January 1, 2005, hence, the DFA's insistence that Consul Betita assumed office as Acting Head of Post of PCG, Honolulu on January 1, 2005 is incorrect.[31] Petitioner also claims that he is entitled to extension pursuant to Section 2 of EO No. 136 considering his exemplary services as evidenced by his commendations and citations.[32] Lastly, petitioner asserts that under the doctrine of *quantum meruit*, he is entitled to his money claims.[33]

In the Comment[34] filed by respondents COA and DFA, through the OSG, they maintain that petitioner did not discharge the function of a Consul General from January 1, 2005 in a hold-over capacity since respondent DFA designated Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005; and that petitioner is not entitled to any salary, allowance and other compensation as Consul General for the said period considering that the requisite approval of the President for the extension of his service of his service was neither given nor issued.[35]

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

[31] *Id.* at 8-10.

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

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

[34] *Id.* at 102-114.

[35] *Id.* at 109.

The main issue to be resolved is whether petitioner is entitled to the payment of his money claims.

Ruling of the Court

The petition is partially granted.

Prefatorily, we note that the Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[36]

In recognition of such constitutional empowerment of the COA, the Court has generally sustained COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.[37]

In this case, we find that the COA overlooked certain facts and evidence which can affect the outcome of petitioner's money claim.

Petitioner claims payment of his salary and other compensation and overseas allowance and living quarters for the period from

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[36] *Miralles v. Commission on Audit,* 818 Phil. 380, 390-391 (2017).

[37] *Secretary Montejo v. Commission on Audit*, G.R. No. 232272, July 24, 2018.

January 1, 2005 to June 30, 2005, when his services as Consul of the PCG of Honolulu was extended beyond his compulsory retirement.

Petitioner being a Presidential appointee, the pertinent law, E.O. No. 136, s. 1999 or the law Requiring Presidential Approval of Requests for Extension of Services of Presidential Appointees Beyond the Compulsory Retirement Age, is applicable. To quote:

> Section 1. The President shall approve the extension of services of Presidential appointees beyond the compulsory retirement age, only upon recommendation by the concerned Department Secretary, unless otherwise provided by law. The extension of services of non-Presidential appointees shall be subject to the approval of the Civil Service Commission, only upon the recommendation of the concerned Department Secretary and in accordance to Executive Order No. 292, otherwise known as "The Administrative Code of 1987" and other existing laws.
>
> Section 2. Officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for exemplary meritorious reasons.
>
> Section 3. Any officer or employee requesting for retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Office of the President.
>
> Section 4. Upon approval of the President, the first extension of services for Presidential appointees shall be for six (6) months, and subsequently for a second extension of six (6) months, or for a maximum extension of one (1) year only.
>
> x x x x x x x x x

Relatedly, Section 23 of Republic Act (RA) No. 7157, otherwise known as the Philippine Foreign Service Act of 1991 provides:

> Part C. Provisions of General Application to All Officers
>
> Section 23. Compulsory Retirements. – **All officers and employees of the Department who have reached the age of sixty-five (65) shall be compulsorily and automatically retired from the Service**: provided, however, that all incumbent non-career chiefs of mission

who are seventy (70) years old and above shall continue to hold office until June 30, 1992, unless sooner removed by the appointing authority. Non-career appointees who shall serve beyond the age of sixty-five (65) years shall be entitled to retirement benefits, (emphasis ours)

In order to determine whether petitioner is entitled to the payment of his salary and other money claims, we need to ascertain the following: 1) whether petitioner's extension of service beyond his compulsory retirement was authorized and approved by the Office of the President and 2) whether petitioner had actually served as Consul General for the period from January 1, 2005 to June 30, 2005.

After an assiduous review of the records, we agree with the recommendation of the Cluster Director, Cluster 1 — Executive Offices, NGS of COA that the money claims of petitioner be given due course. The Memorandum of then Executive Secretary Ermita expressly stated that petitioner's extension was until June 30, 2005, or until the arrival of his successor, whichever is earlier. It specifically states, to wit:

Please be advised that upon your recommendation, **as an exemption to Executive Order No. 136** (series of 1999), the President has **APPROVED** the extension of service of Consul General **ROLANDO S. GREGORIO**, Chief of Mission Class II, of the Philippine Consulate General in Honolulu, Hawaii, Department of Foreign Affairs, beyond the compulsory retirement age, until June 30, 2005, or until the arrival of his successor, whichever is earlier. (Emphasis and underscoring supplied)

Based on the foregoing, the extension of service of petitioner beyond the compulsory retirement age was authorized and approved by the President, albeit belatedly, as the Memorandum advising the DFA of the extension was only received on May 23, 2005. Nevertheless, the petitioner's extension of service also falls within the exemption provided under Sections 3 and 4 of E.O. No. 136, since the required authorization and approval from the Office of the President retroacts to January 1, 2005 as indicated in the Memorandum of Executive Secretary Ermita

dated May 19, 2005 cited above. It should also be noted that the maximum extension of service beyond the age of retirement is one year only, which, in the case of petitioner Gregorio, is only up to April 17, 2005.

Contrary to petitioner's claim that he has served as Consul General from January 1, 2005 to June 30, 2005, the records showed that on April 1, 2005, petitioner's successor, Consul Betita, was designated as Acting Head of Post and was deemed to have effectively and officially assumed office on the said date. However, Consul Betita's service, allegedly from January 1 to March 30, 2005, cannot be considered since her designation effective on January 1, 2005 under the DFA's letter dated March 22, 2005 cannot override the extension of service authorized by the Executive Secretary in the Memorandum dated May 19, 2005 although belatedly received on May 23, 2005.

Thus, in view of the foregoing, we find that petitioner's extension of service was effective from January 1, 2005 to March 31, 2005 only, the period where petitioner continued to assume or hold the post of Consul General, and not until June 30, 2005 as he has claimed. Petitioner has not shown that he has rendered actual services after Consul Betita has been designated as Acting Head of the PCG of Honolulu on April 1, 2005. In fact, the records would show that on March 31, 2005, a Certificate of Clearance was issued by the DFA indicating that petitioner was already cleared of money and property accountability by PCG of Honolulu. Significantly, petitioner did not report for work from April 1, 2005 to June 30, 2005, as evidenced by the Leave of Absence filed by petitioner with the Office of Personnel and Administrative Services for the said period. Therefore, petitioner is entitled to his salary and other benefits only for the period from January 1, 2005 up to March 31, 2005.

This is also in accord with the principle of *quantum meruit*, invoked by petitioner, which literally means "as much as he deserves." Under this principle a person may recover a reasonable value of the thing he delivered or the service he rendered.[38]

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[38] *Geronimo v. COA*, G.R. No. 224163, December 4, 2018.

The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. Here, petitioner has sufficiently established his right to be compensated for the period for which his services as Consul General was extended, from January 1, 2005 to March 31, 2005.

WHEREFORE, premises considered, the Petition for *Certiorari* filed by petitioner is hereby **PARTIALLY GRANTED.** The Decision dated February 28, 2017 and the Resolution dated March 8, 2018 of the Commission on Audit *En Banc* in COA CP Case Nos. 2015-436 & 437 are **SET ASIDE**. Petitioner Rolando S. Gregorio is entitled to the payment of his salary and additional compensation and Overseas Allowance and Living Quarters Allowance as Consul General of the Philippines in Honolulu, U.S.A., for the period from January 1, 2005 to March 31, 2005, the period of his approved extension of service.

Accordingly, this case is **REMANDED** to respondent Commission on Audit for the computation of petitioner's money claim in accordance with the foregoing.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 243375. June 30, 2020]

LUZVIMINDA LLAMADO *y* VILLANA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — [T]o secure a conviction for illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. 9165, the prosecution must establish the following: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.

2. ID.; ID.; ILLEGAL POSSESSION OF EQUIPMENT, INSTRUMENT, APPARATUS, AND OTHER PARAPHERNALIA FOR DANGEROUS DRUGS; ELEMENTS. — [T]he elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

3. ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF R.A. 9165. — Since the offense was committed on July 1, 2011, 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. 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) a representative from the media and the Department of Justice and any elected public official (e) who shall be required to sign the inventory and be given copies thereof. Based on the foregoing, the prosecution was not able to show that the

apprehending officers faithfully complied with the rule on chain of custody. Under the original provision of Section 21 and its IRR, which is applicable at the time the accused-appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This resolves the petition for review on *certiorari* filed by petitioner Luzviminda Llamado *y* Villana (Llamado) from the Decision[1] dated May 31, 2018 of the Court of Appeals-Manila (CA) in CA-G.R. CR No. 39547 and the Resolution[2] dated November 28, 2018 affirming the Decision of the Regional Trial Court (RTC), Branch 156, Marikina City, in Criminal Case Nos. 2011-3921-D-MK and 2011-3922-D-MK finding Llamado guilty beyond reasonable doubt of the charge of illegal possession of dangerous drugs and paraphernalia, defined and penalized under Sections 11 and 12, Art. II of Republic Act No. 9165[3]

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion; *rollo*, pp. 37-52.

[2] *Id.* at 54-55.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425,

otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On July 5, 2011, two separate Informations were filed before the RTC, Branch 156, Marikina City, in Criminal Case Nos. 2011-3921-D-MK & 2011-3922-D-MK. The two separate Informations read as follows:

In Crim. Case No. 2011-3921-D-MK
(for violation of Section 12 of R.A. 9165)

That on or about 1st day of July 2011, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there [willfully], unlawfully and knowingly have in her possession, direct custody and control one (1) black carton pencil case labelled Tomato; one strip of aluminum foil; one (1) disposable cigarette lighter labelled Torch; and one (1) improvised burner, which are instruments, apparatus or other paraphernalia fit or intended for smoking or introducing shabu, a dangerous drug, into the body and such were all found and recovered in the residence of the accused.

CONTRARY TO LAW.[4]

x x x x x x x x x

In Crim. Case No. 2011-3922-D-MK
(for violation of Section 11 of R.A. 9165)

That on or about the 1st day of July 2011, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above named accused without being authorized by law to possess or otherwise use any dangerous drugs, did then and there [willfully], unlawfully and knowingly have in her possession, direct custody and control two (2) plastic sachets each containing 2.8853 grams and 2.8617 grams, respectively, of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above cited law.

OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[4] *Rollo*, p. 84.

CONTRARY TO LAW.[5]

When arraigned, Llamado pleaded not guilty to the charge. After the Pre-Trial conference, trial on the merits ensued.

Version of the Prosecution

According to the prosecution, Llamado became a person of interest in their anti-drug campaign after an informant reported a certain "Minda" allegedly involved in illegal drug activities in the vicinity of Barangays Sto. Niño and Concepcion Uno, Marikina City and nearby localities.

Upon obtaining information from a regular confidential informant, Agent Macairap, sought the permission of his Regional Director to verify the information disclosed. He then immediately organized a team to conduct a surveillance, upon which, a test-buy operation conducted was completed and the pieces of evidence obtained therewith was sent to the crime laboratory and yielded positive results for methamphetamine hydrochloride. When the results of the laboratory examination was obtained, Agent Macairap applied for a search warrant against Llamado, with address at No. 56 Exequiel Street, Brgy. Sto. Niño, Marikina City. A search warrant was then issued by Judge Amor A. Reyes.

For the implementation of the said search warrant, Intelligence Officer 1 Randolph Cordovilla ("IO1 Cordovilla") was designated as seizing officer against the premises where Llamado *a.k.a.* Minda resides. The team was led by Intelligence Agent 3 Liwanag B. Sandaan, (IA3 Sandaan). The team proceeded to the subject premises after proper coordination with the Marikina police and the presence of *Barangay Kagawad* Wilfredo Santos. Upon arrival at the subject premises, IO1 Cordovilla saw the main door of the accused open. After securing the entire perimeter of the place, IO1 Cordovilla entered the house. He saw that there was no one in the first floor so he immediately went to the second floor where he saw the accused. The search warrant was presented to Llamado and search commenced in the second floor of the house. There he found one black carton pencil case, labeled "tomato," containing two heat-sealed transparent plastic

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

sachet containing white crystalline substance suspected to be *shabu*, one aluminum foil strip with white residue, and one white disposable lighter, labeled "torch," used as improvised burner. In the ground floor of the house, IO1 Cordovilla found one improvised burner on top of the hanging cabinet. The items were marked and inventoried in the presence of Agent Almerino, accused Llamado and *Kagawad* Wilfredo Santos. Immediately thereafter, accused was arrested by Special Investigation Agent John Jenne Almerino (SI Almerino). The team thereafter went back to the Philippine Drugs Enforcement Agency (PDEA) main office in Quezon City.

The laboratory examination conducted by Forensic Chemist Jasmyne Lora M. Jaranilla (Jaranilla) on the specimen taken from the house of the accused yielded positive results for methamphetamine hydrochloride. These are the following:

A- One (1) heat-sealed transparent plastic sachet with markings EXH-A-1 RCC 7-1-2011 containing white crystalline substance with a net weight of 2.8853 grams.

B- One (1) heat-sealed transparent plastic sachet with markings EXH-A-2 RCC 7-1-2011 containing white crystalline substance with a net weight of 2.8617 grams.

C- One (1) strip of aluminum foil with markings EXH-A-3 RCC 7-1-2011 with traces of white residue.

The urine testing on the accused also yielded positive results for the said banned substance.[6]

Version of the Defense

On the other hand, Llamado denied the allegations hurled against her and offered a different account of what transpired.

According to Llamado, her house was located at No. 56 Exequiel St., Brgy. Concepcion Uno, Marikina City.

On July 1, 2011 at around 8:00 p.m., she was sleeping beside her grandson inside the room of her house when she was awakened by PDEA operatives who entered the room. She was

[6] *Id.* at 41.

not familiar with them. She asked them for their purpose. One of them told her that they were looking for *shabu* inside her house. They did not present any search warrant to her.

As the search ensued, the things inside the house were in disarray. Accused was brought downstairs and was instructed to sit on top of a table. She was asked by one of the officers where she hid the *shabu*. She replied that she had no knowledge of such. One of the operatives said, "*heto sa iyo di ba?*" exhibiting a transparent plastic sachet containing suspected *shabu*. She dismissed the claim of the operative saying that it was the first time she saw the sachet of *shabu*. She was about to be taken outside the house when a local official of the *barangay* and Vice Mayor Fabian Cadiz arrived. Thereafter, she was brought to the PDEA main office where she was further investigated.

While inside the PDEA, accused was asked where and from whom she got the prohibited drug. She was also asked to produce the amount of ₱150,000.00 to settle her case. She denied ownership of the drug and also added that she did not have the money they were asking for. She was transported back to Marikina City for inquest at the City Prosecutor's Office.

Ruling of the Trial Court

On September 20, 2016, the RTC of Marikina City, Branch 156, convicted Llamado for Possession of Dangerous Drugs, and Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs punished under Sections 11 and 12, Art. 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 Llamado beyond reasonable doubt. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the Court hereby renders judgment as follows:

(1) In Criminal Case No. 2011-3921-D-MK, finding the accused LUZVIMINDA LLAMADO y VILLANA guilty beyond reasonable doubt of violation of Section 12, Art. II of RA 9165, sentencing the said accused to an indeterminate prison term of SIX (6) MONTHS ad ONE (1) DAY to TWO (2) YEARS and a fine of ₱10,000;

(2) In Criminal Case No. 2011-3922-D-MK, finding the accused LUZVIMINDA LLAMADO y VILLANA guilty beyond reasonable doubt of violation of Section 11, Art. II. Of RA 9165, sentencing the said accused to an indeterminate prison term of TWENTY (20) YEARS and ONE (1) DAY to TWENTY-FIVE (25) YEARS and a fine of ₱400,000.00.

Said sentences shall be served simultaneously.

The shabu and drug paraphernalia subject of these cases are forfeited in favor of the government for proper disposal. Let a copy of this Decision be furnished the PDEA, the Office of the Vice Mayor of Marikina City, and the National Police Commission (NAPOLCOM).

[SO ORDERED].

The RTC accentuated that the evidence for the prosecution showed the presence of all the elements of the crimes of Possession of Dangerous Drugs, and Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs respectively punished under Sections 11 and 12 of the Comprehensive Dangerous Drugs Act of 2002.

Aggrieved, accused-appellant appealed to the Court of Appeals.

Ruling of the CA

Subsequently, on May 31, 2018, the Court of Appeals rendered its Decision, affirming Llamado's conviction of the crimes charged. Echoing the trial court's findings, the CA affirmed that all the facts proven, and taken together prove the guilt of the accused beyond reasonable doubt.

Llamado contended that the articles seized from her residence were inadmissible as evidence because to her, the search warrant was invalid for failing to describe the place to be searched with particularity. To recall, the address indicated in the search warrant was "56 Exequiel Street, *Brgy. Sto. Niño*, Marikina City", while the address of the accused-appellant was "56 Exequiel Street, *Brgy. Concepcion Uno*, Marikina City."

Furthermore, accused-appellant contended that there was non-compliance with the mandatory requirement of the presence of

third party representatives because *Barangay Kagawad* Santos arrived at the scene only after the illegal substances and the paraphernalia were confiscated by the authorities in contravention with the proper procedure that he should have been present at the time of the search and seizure.

In addition, accused-appellant avers that there was a broken link in the chain of custody of the allegedly seized sachet of methamphetamine hydrochloride because there was no testimony with regard to how the seized items were managed, store, preserved, labeled and recorded after the chemical analysis by Forensic Chemist Jasmyne Lora M. Jaranilla. The dispositive portion of which provides:

> **WHEREFORE**, premises considered, the *Appeal* filed by Luzviminda Llamado y Villana on 24 October 2016 is **DENIED**. The *Decision* rendered by the Regional Trial Court, Branch 156, Marikina City on 20 September 2016 in Criminal Case Nos. 2011-3921-22-D-MK is AFFIRMED.
>
> SO ORDERED.

Petitioner Llamado moved for reconsideration which was, however, denied by the CA in a Resolution[7] dated November 28, 2018; hence the instant petition.

The Issue

The pivotal issue for this Court's resolution is whether or not Llamado's conviction for illegal possession of dangerous drugs and paraphernalia defined and penalized under Section 11 and 12, Article II of R.A. No. 9165, should be upheld.

Our Ruling

We resolve to acquit petitioner Llamado on the ground of reasonable doubt.

Jurisprudence dictates that to secure a conviction for illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. 9165, the prosecution must establish the following: (1) the

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[7] *Rollo*, pp. 54-55.

accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[8] On the one hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[9] The CA ruled that all the elements of the offenses charged against appellants were established with moral certainty.[10]

To secure conviction for the aforementioned offenses, the existence of the drug or drug paraphernalia is of supreme importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law.[11] There must be a clear showing that "it is the very thing that is possessed by the accused" (illegal possession).[12] Thus, the chain of custody over the confiscated drugs or paraphernalia must be sufficiently proved.

The Dangerous Drugs Board Regulation No. 1, Series of 2002, defines chain of custody as "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction."

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[8] *People v. Minanga*, 751 Phil. 240, 248 (2015).

[9] *People v. Villar*, G.R. No. 215937, November 9, 2016.

[10] *Rollo*, p. 51.

[11] *People v. Rivera*, G.R. No. 225786, November 14, 2018.

[12] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

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 in 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.

While the testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard obtains in case the evidence is susceptible of alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain or custody rule.[13]

In sum, it is the prosecution's duty to establish that the same confiscated drugs and paraphernalia are the ones submitted and presented in court by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is enshrined in Section 21, Article II of R.A. No. 9165 which specifies:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/*

[13] *People v. Havana*, G.R. No. 198450, 776 Phil. 462-476 (2016).

Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs,

required to sign the copies of the inventory and be given a copy thereof controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

SEC. 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; *Provided, further*, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis supplied)

On July 15, 2014, Section 21 was amended by R.A. No. 10640[14] to this effect:

[14] Amendment to R.A. 9165, R.A. 10640, approved on July 15, 2014.

SEC. 21. x x x. —

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with **an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring supplied)

Since the offense was committed on July 1, 2011, 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. 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) a representative from the media and the Department of Justice and any elected public official (e) who shall be required to sign the inventory and be given copies thereof.[15]

Based on the foregoing, the prosecution was not able to show that the apprehending officers faithfully complied with the rule on chain of custody.

Under the original provision of Section 21 and its IRR, which is applicable at the time the accused-appellant committed the crime charged, the apprehending team was required to

[15] *Rontos v. People*, G.R. No. 188024, June 5, 2013.

immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[16]

In the instant case, while there was an inventory made after the seizure and confiscation of the items allegedly recovered from the accused-appellant, the said inventory cannot be said to have been compliant with the strict requirements of Section 21. *Barangay Kagawad* Santos revealed in his testimony the following:

Q: Mr. witness when you arrived at the house of Luzviminda Llamado, the shabu were already confiscated allegedly from her house. Is that correct?

A: Yes, Sir.

Q: So **you were not present anymore when these alleged shabu were being searched**. Is that correct?

A: **Yes, Sir.**

Q: And the officer of PDEA just showed you these shabu when you arrived at the house of Luzviminda Llamado?

A: Yes, Sir.

Prosecutor: I think the witness would be incompetent.

Witness: **'Basta nung dumating ako, nandun na yon'**

Q: **Mr. witness, the inventory was already prepared when they let you sign it.** Is that correct?

A: **Yes, Sir.**

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[16] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

Based on the foregoing, *Barangay Kagawad* Santos was not present in the inventory in clear contravention of the mandatory requirements enumerated under R.A. No. 9165 and its implementing rules and regulations which require the presence of the required witnesses during the conduct of the inventory. Here, the inventory was already finished and prepared when *Barangay Kagawad* Santos came and was only asked to sign the inventory making it appear that he was present all throughout the whole process.

Furthermore, the testimony of SI Almerino provides that there was no witness from the Department of Justice and representative of the media in the inventory. The following is the pertinent portion of SI Almerino's testimony, to wit:

Q: Mr. witness you mentioned that an inventory was prepared after the search and arrest of the accused, is that correct?

A: Yes, sir.

Q: **In that inventory no witness from the Department of Justice was present to sign that inventory**?

A: Yes, sir.

Q: There was also **no representative from the media present to sign that inventory**?

A: Yes, sir.

Q: Despite the pro forma inventory of this property or items from PDEA containing empty signatures of a representative from the media and Department of Justice **you never boter [sic] asking representative from said sectors to witness the search, is that correct**?

A: **Yes, sir.**

As a whole, the testimony of *Kagawad* Santos and SI Almerino shows that none of the required third party witnesses was present during the inventory. Worse, the apprehending officers provided no explanation to justify their non-compliance with the rules.

These witnesses are necessary in order to fortify the links in the chain of custody as it prevents any lingering doubt that the

evidence gathered from the buy-bust operation was merely planted. For failing to observe the witness requirement, the identity and integrity of the drugs and paraphernalia allegedly recovered from Llamado had been compromised at the initial stage of the operations.

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, when there is persistent doubt, the courts are left with no other recourse but to acquit the accused of the charges against him.[17]

WHEREFORE, the petition is **GRANTED.** The Decision dated May 31, 2018 of the Court of Appeals in CA-G.R. CR No. 39547 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Luzviminda Llamado *y* Villana is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause her **IMMEDIATE RELEASE**, unless she 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.

[17] *People v. Jagdon y Banaag*, G.R. No. 234648, March 27, 2019.

FIRST DIVISION

[G.R. No. 243578. June 30, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRYAN DELIÑA *y* LIM,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — Deliña was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, which has the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefore.

2. ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF R.A. 9165. — The confiscated drug constitutes the very *corpus delicti* of the offense; thus, it is essential that the identity and integrity of the seized drug be established with moral certainty. Therefore, it is imperative that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt. In order to purge doubt in the handling of seized substances and ensure that rights are safeguarded, law enforcement officers are required to strictly comply with the chain of custody rule laid down under Section 21 of R.A. 9165[.] x x x Stated simply, the foregoing provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.

3. ID.; ID.; ID.; ID.; SEVERAL LAPSES IN THE BUY-BUST TEAM'S HANDLING OF THE PROHIBITED DRUG WHEN TAKEN COLLECTIVELY RENDER THE STANDARDS OF CHAIN OF CUSTODY SERIOUSLY BREACHED. — Here, as Deliña correctly pointed out in his Brief, there were several lapses in the buy-bust team's handling of the prohibited drug allegedly seized from him which, when taken collectively, render the standards of chain of custody seriously breached. Upon review, the Court has determined that such lapses must necessarily result in Deliña's acquittal. *First*, the police officers who took part in the buy-bust operation failed to mark the confiscated sachets immediately after its confiscation from Deliña. In drug-related cases such as this one, marking is crucial since it serves as the starting point in the custodial link. It is meant to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence. Moreover, the physical inventory and photograph of the retrieved specimen were not done at the place of the arrest but only at the police station where the three (3) required witnesses were purportedly present. In *People v. Tomawis y Ali*, the Court said that "[t]he presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**." Regrettably, the records do not show that the prosecution made the least effort to justify such deviation from the established rule. x x x *Second*, x x x [W]e emphasized that in order to establish an unbroken chain of custody, every person who touched the seized item must describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain. In the case at bench, only Fajardo and PCI Puentespina took the witness stand and their bare testimonies merely states the specimen's transfer from one police officer to the next. Their combined narration sorely lacked an explanation as to the sample's condition during the transfers, how each person made sure that the item was not tampered with or substituted, and an indication of the safeguards that were employed to prevent any tampering or substitution. x x x *Third*, the Court Finds merit in Deliña's argument that the prosecution's failure to present the confidential asset turned poseur-buyer in court was fatal to its cause. It is

> worthy to note that said informant was the only witness to the crime of illegal sale. He/She alone approached Deliña, made an offer to purchase, and received the supposed drug thereby consummating the sale. x x x [T]he poseur-buyer was the witness competent to prove that the buy-bust actually took place considering that Fajardo, *et al.* were positioned about eight to 10 meters away from Deliña and the poseur-buyer. x x x Thus, the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the illegal transaction inevitably weakens the prosecution's evidence.

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.*:

Assailed in this ordinary appeal[1] is the April 12, 2018 Decision[2] of the Court of Appeals, Cebu City (CA) in CA-G.R. CEB CR-HC No. 02414 which affirmed the October 17, 2016 Decision[3] of the Regional Trial Court (RTC) of San Carlos City, Negros Occidental, Branch 59 in Criminal Case No. RTC-5282 finding accused-appellant Bryan Deliña *y* Lim (Deliña) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (R.A.) 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The present case stemmed from an Information[4] dated April 15, 2014 indicting Deliña for illegal sale of dangerous drugs.

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[1] See Notice of Appeal dated May 23, 2018; CA *rollo*, pp. 82-84.

[2] Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a member of this Court) and Louis P. Acosta, concurring; *id.* at 75-81.

[3] Penned by Presiding Judge Katherine A. Go; *id.* at 38-41.

[4] That on or about the 14th day of April 2014, in the municipality of

When arraigned, Deliña entered a not guilty plea. Thence, trial ensued.

The version of the prosecution is set forth in the decision appealed from, from which we quote:

> PO2 Dwight Fajardo [Fajardo] is a member of the Calatrava Municipal Police Station, which has been receiving reports on the illegal drug activities of [Deliña]. Surveillance was conducted on Deliña's house in Barangay Suba, Calatrava, for several weeks, where it was observed that several well-known drug personalities were visiting him.
>
> In the afternoon of April 14, 2014, the Calatrava Police Station was informed by an asset that Deliña was selling drugs. To confirm, they instructed the asset to buy *shabu* worth ₱400.00. When the asset texted that he was able to buy drugs, the Chief of Police, Mark Angelo P. Junco [Chief Junco], decided to conduct a buy-bust operation against Deliña. After informing the [Philippine Drug Enforcement Agency (PDEA)] of their intent and receiving the go-signal, the team proceeded to the target area where the witness was one of the back-up officers. The said witness saw the asset give Deliña marked money worth ₱400.00, while the later handed over two sachets of a white crystalline substance. Upon seeing this, the team rushed to the area and arrested Deliña. Taken from Deliña's possession was the ₱400.00 consisting of two ₱100.00 bills and one ₱200.00 bill. PO1 Erwin Logarta [Logarta] obtained the two sachets of white crystalline substance. Deliña and the specimens were subsequently brought to the police station where the specimens were marked and an inventory was conducted in the presence of the [Department of Justice (DOJ], media, and barangay representatives. Pictures of the proceeding were likewise taken by the police officers. The specimens were then brought to the [Philippine National Police (PNP)] Crime laboratory at Camp Alfredo Montelibano, Sr. in Bacolod City for examination.

Calatrava, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away to a poseur-buyer two (2) heat sealed transparent plastic sachets of Methamphetamine Hydrochloride (*Shabu*), marked as "BLD-1" and "BLD-2" weighing 0.055 gram, a dangerous drug, without any license of permit or authority of law. CONTRARY TO LAW; *id.* at 51.

Police Chief Inspector Paul Jerome Puentespina [PCI Puentespina] is the Forensic Chemist of the PNP Crime Laboratory who examined the specimens pursuant to a request from the Calatrava Municipal Police. He issued Chemistry Report No. D-120-2014, which concluded that the specimens were positive for methamphetamine hydrochloride.[5]

On the other hand, Deliña denied the charges and averred that he was merely framed. He alleged that on the day of his arrest, he was hanging the clothes of his girlfriend when Chief Junco came looking for him. When he went outside, Fajardo and Logarta, without a word, suddenly handcuffed him and brought him to the police station where he was shown two plastic sachets and made to sign documents while being photographed.[6]

In its Decision dated October 17, 2016, the RTC found Deliña guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. It held that Deliña's bare denials and self-serving assertions are insufficient to overturn the presumption of regularity in the police officers' performance of official duties.

The CA, in the herein assailed April 12, 2018 Decision, affirmed the RTC.

Hence, this appeal seeking the reversal of Deliña's conviction.

In a Resolution[7] dated January 30, 2019, we required the parties to submit their respective supplemental briefs if they so desired. The Court, in another Resolution[8] dated July 24, 2019, noted the separate Manifestations filed by the parties both adopting and repleading the briefs they filed before the CA.

In his Brief,[9] Deliña assigned the following errors:

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[5] *Id.* at 75-76.

[6] *Id.* at 24.

[7] *Rollo*, pp. 17-18.

[8] *Id.* at 8.

[9] CA *rollo*, pp. 18-37.

I.

THE TRIAL COURT VIOLATED THE CONSTITUTIONAL PROVISION THAT NO DECISION SHALL BE RENDERED BY ANY COURT WITHOUT EXPRESSING CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [HIM] OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Our Ruling

There is merit in the appeal.

Deliña was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, which has the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefore.[10] Irrefutably, the State bears not only the burden of proving the foregoing elements, but also proving the *corpus delicti* or the body of the crime.[11] The confiscated drug constitutes the very *corpus delicti* of the offense; thus, it is essential that the identity and integrity of the seized drug be established with moral certainty.[12] Therefore, it is imperative that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[13] In order to purge doubt in the handling of seized substances and ensure that rights are safeguarded, law enforcement officers are required to strictly comply with the

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[10] *People v. Sarabia y Reyes*, G.R. No. 243190, August 28, 2019.

[11] *People v. Dumanjug y Loreña*, G.R. No. 235468, July 1, 2019.

[12] *People v. Fulinara y Fabelania,* G.R. No. 237975, June 19, 2019.

[13] *People v. Sembrano y Cruz*, G.R. No. 238829, October 15, 2018.

chain of custody rule laid down under Section 21 of R.A. 9165, *viz.*:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official **who shall be required to sign the copies of the inventory and be given a copy thereof;**

x x x (Emphasis supplied)

Moreover, the Implementing Rules and Regulations (IRR) of R.A. 9165, particularly Section 21 thereof, further provides:

x x x x x x x x x

(a) The apprehending officer/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof:** Provided, that the physical inventory and photograph shall be conducted at the **place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**, in case of warrantless seizures; Provided, further, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly**

preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x (Emphasis supplied)[14]

Stated simply, the foregoing provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.[15]

In *People v. Escaran y Tariman*,[16] the Court explained that:

The phrase **"immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension**. It is only when the same is not practicable that the [IRR] of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three (3) required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses. (Emphasis ours)

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the

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[14] *People v. Sevilla*, G.R. No. 227187, March 4, 2019.

[15] See RA 9165, Art. II, Sec. 21(1) and (2).

[16] G.R. No. 212170, June 19, 2019.

items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for the non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved**. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.

Here, as Deliña correctly pointed out in his Brief, there were several lapses in the buy-bust team's handling of the prohibited drug allegedly seized from him which, when taken collectively, render the standards of chain of custody seriously breached. Upon review, the Court has determined that such lapses must necessarily result in Deliña's acquittal.

First, the police officers who took part in the buy-bust operation failed to mark the confiscated sachets immediately after its confiscation from Deliña. In drug-related cases such as this one, marking is crucial since it serves as the stalling point in the custodial link.[17] It is meant to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence.[18] Moreover, the physical inventory and photograph of the retrieved specimen were not done at the place of the arrest but only at the police station where the three (3) required witnesses were purportedly present. In *People v. Tomawis y Ali*,[19] the Court said that "[t]he presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**." Regrettably, the records do not show that the prosecution made the least effort to justify such deviation

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[17] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019 citing *People v. Coreche y Caber*, 612 Phil. 1238-1253 (2009).

[18] *People v. Honasan y Grafil*, G.R. No. 240922, August 7, 2019.

[19] G.R. No. 228890, April 18, 2018.

from the established rule. Certainly, it is the State, and no other party, which has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs.[20] The Court is not unmindful of the dangers of the job; in fact, in the past, it has held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.[21] However, here, there is hardly any assertion nay proof that extraordinary circumstances that would threaten the safety and security of the apprehending officers and/or the witnesses required by law or of the items seized are present.

Second, Fajardo testified that Logarta was the one who obtained the two (2) heat-sealed transparent plastic sachets containing white crystalline substance from the confidential asset[22] yet, he was the one who marked the same.[23] He further recounted that after marking the request for laboratory examination, he personally delivered the specimen to the crime laboratory. There, he turned over the seized items to a certain PO3 Neil Jaboni (Jaboni) who, in turn, handed them over to PCI Puentespina for testing.[24] For his part, PCI Puentespina testified that after examining the submitted specimen, he indorsed the same to the evidence custodian named PO3 Ariel Magbanua (Magbanua) for safe keeping.[25] Also in *Escaran*, we emphasized that in order to establish an unbroken chain of custody, every person who touched the seized item must describe how and

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[20] *Supra* note 16.

[21] *People v. Lim*, G.R. No. 231989, September 4, 2018; *People v. Mola*, G.R. No. 226481, April 18, 2018.

[22] See TSN dated October 22, 2014.

[23] CA *rollo*, p. 80.

[24] *Id.*

[25] *Id.* at 34.

from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain.[26] In the case at bench, only Fajardo and PCI Puentespina took the witness stand and their bare testimonies merely states the specimen's transfer from one police officer to the next. Their combined narration sorely lacked an explanation as to the sample's condition during the transfers, how each person made sure that the item was not tampered with or substituted, and an indication of the safeguards that were employed to prevent any tampering or substitution. As Deliña correctly pointed out, it was not clearly established how the suspected *shabu* changed hands from: (1) Logarta to Fajardo; (2) Fajardo to Jaboni; (3) Jaboni to PCI Puentespina; and (4) PCI Puentespina to Magbanua.[27] Interestingly, Logarta, Jaboni, and Magbanua were never presented during trial to attest to the condition and manner in which they received and handled the confiscated drug.

Third, the Court finds merit in Deliña's argument that the prosecution's failure to present the confidential asset turned poseur-buyer in court was fatal to its cause. It is worthy to note that said informant was the only witness to the crime of illegal sale. He/She alone approached Deliña, made an offer to purchase, and received the supposed drug thereby consummating the sale. Fajardo, in his testimony, confirmed that he was positioned about 8 to 10 meters away, *viz.*:

Q: Mr. Witness going back to the briefing[,] can you tell the detail who will act as poseur-buyer and as to the specific participation of each of the police officers?
A: With the coordination of our confidential asset to conduct as poseur-buyer.

Q: And how about you, what would be your participation?
A: We act as passersby.

Q: You said "we" can you tell us?
A: Together with [Logarta], Ma'am.

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[26] Citing *People v. Gajo y Buenafe*, G.R. No. 217026, January 22, 2018.

[27] CA *rollo*, pp. 33-34.

x x x x x x x x x

Q: So what happened in the area?
A: In the area at about 8 to 10 meters we conduct as passersby Ma'am with myself and [Logarta].

Q: So the poseur buyer was also there?
A: Yes Ma'am.

Q: So what happened at the time while you were passing by the area?
A: Passers-by [sic] the poseur buyer, all of a suddent [Deliña] arrived, our poseur buyer handed the money to [Deliña] and [Deliña] received the money and gave the suspected shabu to our confidential asset Ma'am.

Q: In that exchange of marked money and suspected shabu, how far were you from the poseur buyer and [Deliña]?
A: 8 to 10 meters Ma'am.

Q: Together with your companion [Logarta]?
A: Yes Ma'am. (Emphasis supplied).[28]

Evidently, in the instant case, the poseur-buyer was the witness competent to prove that the buy-bust actually took place considering that Fajardo, *et al.* were positioned about eight to 10 meters away from Deliña and the poseur-buyer. The Court, in *People v. Guzon,*[29] held that although one of the members of the buy-bust team testified during the trial on the supposed sale, such information was based only on **conjecture**, as may be derived from the supposed actions of the accused and the poseur-buyer, or at most, **hearsay**, being information that was merely relayed by the alleged poseur-buyer. Also, in *People v. Tadepa y Meriquillo*,[30] the Court said that the police officer, who admitted that he was seven to eight meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime. Thus, the absence of neither the poseur-buyer's nor of any eyewitness' testimony on the illegal transaction inevitably weakens the prosecution's evidence.

[28] See TSN dated October 22, 2014, pp. 9-13.

[29] 719 Phil. 441 (2013).

[30] 314 Phil. 231 (1995).

Verily, "when inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction."[31] Admittedly, the Court, in several instances, has affirmed an accused's conviction notwithstanding the non-presentation of the poseur-buyer in the buy-bust operation. Nevertheless, such failure is excusable only when the poseur-buyer's testimony is merely corroborative, there being some other eyewitness who is competent to testify on the sale transaction.[32]

In sum, the Court is constrained to rule that the integrity and evidentiary value of the items purportedly seized from Deliña, which constitute the *corpus delicti* of the crime charged, have been compromised. Hence, his acquittal is perforce in order.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED.** The Decision dated April 12, 2018 of the Court of Appeals, Cebu City in CA-G.R. CEB CR-HC No. 02414 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Bryan Deliña *y* Lim 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 sent to the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED.

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

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[31] *People v. Amin y Ampuan*, 803 Phil. 557 (2017).

[32] *Supra* note 28.

FIRST DIVISION

[G.R. No. 246674. June 30, 2020]

JORGE E. AURO, represented by his heirs, JOMAR O. AURO and MARJORIE O. AURO-GONZALES, *petitioners*, *vs.* **JOHANNA A. YASIS, represented by ACHILLES A. YASIS,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EITHER PARTY MAY APPEAL THE CIVIL ASPECT OF THE DECISION SEPARATE FROM THE JUDGMENT OF ACQUITTAL OF THE DEFENDANT. — As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. x x x Be as it may, either party may appeal the civil aspect of the decision, separate from the judgment of acquittal of the defendant. This is because our jurisdiction recognizes that when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense is deemed instituted as well.

2. CRIMINAL LAW; CIVIL LIABILITY; RESTITUTION AND INDEMNIFICATION, DISTINGUISHED. — Under Article 104 of the RPC, civil liability includes: 1) restitution; 2) reparation of the damage caused; and 3) indemnification of the consequential damages. Restitution means the return or the restoration of a thing or condition back to its original status, wherever or whatever it may be. Unlike indemnification, as when then court orders the offender to pay for damages for the loss incurred by the offended party, in restitution, the offender is forced to give up the thing or condition that he/she had gained back to the situation before he/she became the owner/possessor of the thing or benefited from the condition that had already occurred or happened.

3. ID.; ID.; RESTITUTION; MUST BE MADE WHENEVER POSSIBLE AS DETERMINED BY THE COURT. —

Restitution of the thing or the subject matter of the action instituted must be made whenever possible, with allowance for any deterioration, or diminution of value, as determined by the court. Furthermore, even though the thing may be found in the possession of third parties, who acquired it by lawful means, it may be recovered and its possession may be restored to its original owner or possessor, as the case may be.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; RULES OF PROCEDURE FOR CRIMINAL AND CIVIL ACTIONS INVOLVING THE SAME ACT OR OMISSION; THE EXTINCTION OF THE CRIMINAL ACTION DOES NOT RESULT IN THE EXTINCTION OF THE CORRESPONDING CIVIL ACTION. — [T]he extinction of the criminal action does not result in the extinction of the corresponding civil action. Consistent with this, the Rules require that in judgments of acquittal, the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. The latter may only be extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.

5. CIVIL LAW; CONTRACTS; FORM; DEEDS, CONVEYANCES, ENCUMBRANCES, DISCHARGES, AND OTHER VOLUNTARY INSTRUMENTS WHETHER AFFECTING REGISTERED OR UNREGISTERED LANDS SHOULD BE NOTARIZED IN ORDER TO BE REGISTRABLE. — It is undisputed that the Deed of Sale was not validly notarized by an existing notary public in Quezon City or anywhere in the Philippines in 2005. Well-settled is the rule that deeds, conveyances, encumbrances, discharges, and other voluntary instruments, whether affecting registered or unregistered lands, should be notarized in order to be registrable. Since the enabling document, *i.e.*, the Deed of Sale was not validly notarized, it remains to be a private document that could not affect or cause the transfer of ownership of the tax declaration to the name of Jorge.

APPEARANCES OF COUNSEL

Aquino Law and Notarial Office for petitioners.
Barandon Law Offices 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 the Decision[2] dated September 27, 2018 and the Resolution[3] dated March 15, 2019, both promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 155932 entitled, "*Jorge E. Auro v. Honorable Presiding Judge of Branch 41, RTC Daet, Johanna A. Yasis represented by Achilles A. Yasis, and People of the Philippines*."

The facts, as established by the evidence presented by the parties, are as follows:

Petitioner Jorge E. Auro (Jorge) was charged with the crime of falsification of public document, as defined and penalized under Article 172,[4] in relation to Article 171[5] of the Revised

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

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Myra V. Garcia-Fernandez and Ronaldo Roberto B. Martin, concurring; *id.* at 19-26.

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

[4] Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than [₱5,000.00] shall be imposed upon:
1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

[5] Art. 171. *Falsification of public officer, employee or notary or ecclesiastic minister*. — The penalty of *prision mayor* and a fine not to exceed [₱5,000.00] shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

Penal Code (RPC) before the Municipal Trial Court (MTC) of Mercedes, Camarines Norte. The accusatory portion of the Information reads as follows:

That on or about January 7, 2005 at Brgy. Del Rosario, [M]unicipality of Mercedes, [P]rovince of Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to attain a common purpose, being then private individuals, did, then and there, willfully, unlawfully and feloniously falsify a notarized Deed of Absolute Sale, a public document, by making it appear that private complainant JOHANNA A. YASIS, participated in the said Deed of Absolute Sale as vendor and by affixing her signature as such, that is, accused made it appear that complainant sold her 2.5000 hectares fishpond situated in Brgy. Del Rosario, Mercedes, Camarines Norte, where in truth and in fact said complainant never participated in the preparation, execution or signing thereof, as she was actually residing in the United States of America and has never returned to the Philippines on that particular year (2005), and as a direct consequence thereof, the tax declaration of the complainant was cancelled and in lieu thereof a new declaration was issued in favor of the accused Jorge E. Auro, to the great damage and prejudice of the private complainant.

CONTRARY TO LAW.[6]

Ruling of the MTC

In its Decision dated June 21, 2017, the MTC found Jorge guilty beyond reasonable doubt of the felony of Falsification of Public Document and imposed the penalty of imprisonment

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

[6] *Rollo*, p. 20.

of four months and one day of *arresto mayor* as minimum to three years, six months and 21 days of *prision correccional* as maximum, and to pay a fine of ₱1,000.00. Co-accused Fred Cornelio was acquitted by the lower court for failure of the prosecution to prove his guilt beyond reasonable doubt. With his motion for reconsideration denied by the lower court, Jorge filed his appeal before the Regional Trial Court (RTC).

Ruling of the RTC

Finding that the prosecution failed to present sufficient evidence to prove the genuineness or falsity of the questioned signature on the subject Deed of Sale, the RTC, on January 31, 2018, rendered a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, under the foregoing considerations, judgment is hereby rendered by:
>
> a) setting aside the Judgment appealed from and a new one is entered acquitting the accused-appellant of the crime; and
>
> b) ordering the cancellation of the tax declaration issued in favor of the accused-appellant by virtue of the subject deed (Exhibit "D").
>
> SO ORDERED.[7]

The RTC acquitted Jorge, but ordered the cancellation of the tax declaration issued in his name by virtue of the alleged Deed of Sale. It ruled that while it was established that the notary public who notarized the said Deed of Sale had no existing notarial commission, the prosecution failed to present a handwriting expert to prove the genuineness or falsity of the questioned signature of respondent Johanna A. Yasis (Johanna) in the said Deed of Sale. The RTC opined that an individual could have several ways of affixing his/her signature. Applying the equipoise rule, the trial court ruled that the acquittal of Jorge is warranted.

However, the lower court treated the Deed of Sale as a mere private document that is not registrable, thus, the cancellation of the tax declaration is justified.

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[7] *Id.* at 19-20.

Not contented with the ruling of the trial court, Jorge seasonably filed his appeal with the CA. During the pendency of his appeal, he died and was substituted by herein petitioners as his lawful heirs.

Ruling of the CA

On September 27, 2018, the CA issued the now appealed Decision denying petitioners' appeal, and affirming the ruling of the trial court.

The CA notes that Jorge was not acquitted because there was no evidence against him, but by reason that the evidence for the prosecution and the defense were so evenly balanced as to call for the tilting of the scales in favor of Jorge. It does not necessarily mean that he did not commit the felony charged.

The appellate court pointed out that the cancellation of the tax declaration was related to the felony charged against him because the said tax declaration would not have been issued in Jorge's name without the alleged Deed of Sale executed in his favor. Since the Deed of Sale was defective, it cannot possibly give rise to a change of ownership in the tax declaration in favor of Jorge.

The CA agreed with the findings of the RTC that while there is doubt on whether or not the signature of respondent Johanna A. Yasis (Johanna) in the alleged Deed of Sale was falsified, it is already established that Atty. David S. Eñano, Jr. (Atty. Eñano), who signed the notarial part, was not a commissioned notary officer in Quezon City or anywhere else in the Philippines in 2005. Furthermore, while the said Deed of Sale was allegedly notarized on January 7, 2005, the purported proof of identification from Johanna in the form of a Community Tax Certificate was issued only on January 27, 2005. Further still, Johanna had claimed that she was residing in the United States of America at the time the alleged Deed of Sale was executed, thus, making it impossible that she was present during the time that the same was notarized before Atty. Eñano. Given that the alleged Deed of Sale was not validly notarized, it shall be treated as a mere private document that cannot be registered and give rise to a

transfer of ownership, and, moreover, it cannot be a cause for the issuance of a corresponding tax declaration in favor of Jorge.

Therefore, on the basis of Article 104 of the Revised Penal Code (RPC), and as a consequence of the finding that the enabling document which gave rise to the erroneous issuance of the tax declaration in favor of Jorge was defective, the appellate court deemed it just that the said tax declaration be cancelled as a form of restitution and Johanna be placed in the condition as she was before she had been defrauded.

Hence, this Petition.

The Issue

Petitioners posit the sole assignment of error: "[t]hat the lower court and the CA committed serious error of law in ordering the cancellation of the tax declaration of the petitioner over the subject property as part of its adjudication in the civil aspect of a criminal case for falsification of a public document, such cancellation being a totally different issue should be threshed out in a separate proceeding."[8]

The Court's Ruling

The appeal is without merit.

The civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action

As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case. The reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.[9] Section 21, Article III of the Constitution provides that "[n]o person shall be twice put in

[8] *Rollo*, p. 8.

[9] *People v. Court of Appeals*, 755 Phil. 80, 97 (2015).

jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Be as it may, either party may appeal the civil aspect of the decision, separate from the judgment of acquittal of the defendant.[10] This is because our jurisdiction recognizes that when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense is deemed instituted as well.[11]

In this case, it is Jorge himself, who appealed the civil liability imposed upon him arising from the same act or omission that is the subject of the instant criminal case. Petitioners cannot now, in its appeal, raise into issue the alleged error of the trial court regarding Jorge's civil liability in the criminal case instituted against him and at the same time, deny that the said civil action was ever deemed to be instituted with the criminal action.

In any case, the reservation of the right to institute separately the civil action should have been made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.[12] Failing to do so, the civil action *ex delicto* shall automatically be deemed to be instituted with the present criminal action.

Civil liability of an accused may consist of more than an award of damages in favor of the offended party

Petitioners begrudge the RTC's order, which cancelled the tax declaration issued in the name of Jorge by reason that the alleged Deed of Sale was a mere private document that is not registrable. They argue that there is no basis for the award of

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[10] *Id.* at 98.

[11] REVISED RULES ON CRIMINAL PROCEDURE, Rule 111, Sec. 1 (a).

[12] *Id.*

civil indemnity in favor of Johanna since the act of falsification was not proven by the prosecution. Even assuming *arguendo* that Jorge had been convicted, the civil aspect would merely pertain to the actual, moral, exemplary damages and/or loss of earning capacity that may be due to the offended party.

We disagree.

Under Article 104 of the RPC, civil liability includes: 1) restitution; 2) reparation of the damage caused; and 3) indemnification of the consequential damages. Restitution means the return or the restoration of a thing or condition back to its original status, wherever or whatever it may be. Unlike indemnification, as when the court orders the offender to pay for damages for the loss incurred by the offended party, in restitution, the offender is forced to give up the thing or condition that he/she had gained back to the situation before he/she became the owner/possessor of the thing or benefited from the condition that had already occurred or happened.

Restitution of the thing or the subject matter of the action instituted must be made whenever possible, with allowance for any deterioration, or diminution of value, as determined by the court.[13] Furthermore, even though the thing may be found in the possession of third parties, who acquired it by lawful means, it may be recovered and its possession may be restored to its original owner or possessor, as the case may be.[14]

Acquittal of accused in a criminal case for failure of the prosecution to prove his/her guilt beyond reasonable doubt does not automatically preclude a judgment against him/her on the civil aspect of the case

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties, including the State, which

[13] REVISED PENAL CODE, Art. 105.

[14] *Id.*

have been wronged, must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and the offended party, on the other.[15]

This Court had the occasion to rule that if the acquittal of the accused of the felony or crime charged against him/her is based on reasonable doubt, he/she is not automatically exempt from civil liability, which may be proved by preponderance of evidence only. In this regard, preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[16]

This distinction between civil and criminal proceedings is in accord with the essential principle in law that while a criminal liability carries with it a corresponding civil liability, they are nevertheless separate and distinct. In other words, these two liabilities may co-exist, but their existence is not dependent on each other.[17]

This is supported by the Rules of Court, which provides that the extinction of the criminal action does not result in the extinction of the corresponding civil action.[18] Consistent with this, the Rules require that in judgments of acquittal, the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt.[19] The latter may only be

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[15] *Macapagal-Arroyo v. People*, 808 Phil. 1042, 1079-1080 (2017).

[16] *Castillo v. Salvador*, 740 Phil. 115, 127 (2014), citing *Encinas v. National Bookstore, Inc.*, 485 Phil. 683, 695 (2004).

[17] *Dy v. People*, 792 Phil. 672, 682 (2016).

[18] REVISED RULES ON CRIMINAL PROCEDURE, Rule 111, Sec. 2.

[19] *Id.*, Rule 120, Sec. 2.

extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.[20]

In this case, the CA affirmed the ruling of the RTC regarding the existence of Jorge's civil liability in the criminal case charged against him, despite the fact that he was acquitted to the same, to wit:

> At the outset, the Court notes that [Jorge] was acquitted not because there was no evidence against [Jorge], but because the evidence of the prosecution and the defense were so evenly balanced as to call for the tilting of the scales in favor of [Jorge]. Hence, while the RTC did acquit [Jorge], it did not necessarily mean that he did not commit the felony charged. The RTC only granted him the benefit of doubt under the equipoise doctrine. In other words, the evidence that [Jorge] committed falsification failed to hurdle the test or standard of proof beyond reasonable doubt.[21]

Thus, while the trial court had ruled that the prosecution had failed to prove Jorge's guilt beyond reasonable doubt to the felony of falsification, it (prosecution) had nevertheless presented sufficient preponderance of evidence to establish the invalidity of the tax declaration issued in his name.

It is undisputed that the Deed of Sale was not validly notarized by an existing notary public in Quezon City or anywhere in the Philippines in 2005. Well-settled is the rule that deeds, conveyances, encumbrances, discharges, and other voluntary instruments, whether affecting registered or unregistered lands, should be notarized in order to be registrable.[22] Since the enabling document, *i.e.*, the Deed of Sale was not validly notarized, it remains to be a private document that could not affect or cause the transfer of ownership of the tax declaration to the name of Jorge. Contrary to petitioners' contention, the cancellation of the tax declaration is a necessary and direct consequence of

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[20] *Dy v. People, supra* note 17, at 683.

[21] *Rollo*, p. 24.

[22] Presidential Decree No. 1529, Sec. 112.

the finding that the unnotarized Deed of Sale cannot give rise to any transfer of ownership to Jorge. Petitioners cannot have its cake and eat it too.

Finally, petitioners bewail that they were not afforded due process and were not presented an opportunity to present their evidence to the contrary. Case law states that the touchstone of due process is the opportunity to be heard.[23] "To be heard" does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[24]

In conclusion, while the evidence presented does not establish the fact of the crime with moral certainty, the civil action still prevails for as long as the greater weight of evidence tilts in favor of a finding of liability. This means that while the mind of the court cannot rest easy in penalizing the accused for the commission of the crime, it nevertheless finds that he/she committed or omitted to perform acts which serve as a separate source of obligation.[25]

WHEREFORE, in view of the foregoing, the instant Petition is **DENIED** due to lack of merit. The Decision dated September 27, 2018 and the Resolution dated March 15, 2019 issued by the Court of Appeals in CA-G.R. SP No. 155932 are hereby **AFFIRMED**.

SO ORDERED.

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

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[23] *Cambe v. Office of the Ombudsman*, 802 Phil. 190, 230 (2016).

[24] *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 43 (2013).

[25] *Dy v. People, supra* note 17, at 685.

SECOND DIVISION

[A.C. No. 9152. July 1, 2020]
(Formerly CBD Case No. 05-1430)

ATTY. ROLEX T. SUPLICO and ATTY. DEMAREE J.B. RAVAL, *petitioners*, *vs.* **ATTY. LUIS K. LOKIN, JR. and ATTY. SALVADOR C. HIZON,** *respondents*.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; CONSIDERING THE SERIOUS CONSEQUENCE OF THE DISBARMENT OF A MEMBER OF THE BAR, A CLEAR PREPONDERANT EVIDENCE IS NECESSARY TO JUSTIFY THE IMPOSITION OF THE ADMINISTRATIVE PENALTY. — *In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.* In the present case, x x x the disbarment is unwarranted. Petitioners failed to discharge the burden of proving that respondents indeed committed deceit, fraud or misconduct in violation of Rule 7.03 of Canon 7 of the Code of Professional Responsibility with respect to the distribution of the attorney's fees received by the defunct law firm from the Aerocom case.

APPEARANCES OF COUNSEL

Linus T. Galias for petitioners.
Alma Kristina O. Alobra for respondent Lokin, Jr.
Platon Martinez Flores & Leano for respondent Hizon.

R E S O L U T I O N

INTING, *J.*:

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court filed by Atty. Rolex T. Suplico (Atty. Suplico) and Atty. Demaree J.B. Raval (Atty. Raval) (collectively, petitioners) assailing the Resolution No. XIX-2011-484[2] dated June 26, 2011 of the Board of Governors of the Integrated Bar of the Philippines (IBP) which dismissed the complaint for disbarment filed against Atty. Luis K. Lokin, Jr. (Atty. Lokin) and Atty. Salvador C. Hizon (Atty. Hizon) (collectively, respondents) in CBD Case No. 05-1430.

The Antecedents

Petitioners filed a Complaint[3] for disbarment against their former partners, respondents before the IBP Commission on Bar Discipline (CBD) for alleged violation of Rule 7.03,[4] Canon 7 of the Code of Professional Responsibility and the Lawyer's Oath for the latter's refusal to turnover the respective shares of Atty. Suplico and Atty. Raval from the attorney's fees purportedly amounting to ₱144,831,371.49.[5] The amount, which was the equivalent of 40% of the ₱362,078,428.74 representing the total amount which Aerocom Investors & Managers, Inc. (Aerocom) recovered from the Presidential Commission on Good Government (PCGG) in Civil Case No. 0044 before the Sandiganbayan. Simultaneously, the petitioners filed a criminal case for Estafa against herein respondents.[6]

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[1] *Rollo*, Vol. II. pp. 739-795.

[2] *Id.* at 797-798.

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

[4] Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

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

[6] On July 3, 2007, Branch 167, Regional Trial Court, Pasig City, granted the Motions for Reconsideration which accordingly quashed the Information

Petitioners posited that Aerocom entered into an agreement with Raval Suplico and Lokin, Lawyers to engage their legal services subject to the payment of attorney's fees equivalent to 40% of the award which the Court may grant in favor of Aerocom. Herein parties were former partners in Raval Suplico and Lokin, Lawyers. Petitioners alleged that as a professional partnership, they consensually agreed that 30% of the partnership profits shall be given to Atty. Hizon, and the remaining 70% shall be divided equally among Atty. Raval, Atty. Suplico, and Atty. Lokin.[7]

In response thereto, respondents denied the allegations and interposed that petitioners already received their share in the attorney's fees from the Aerocom case which was divided among the partners based on the extent and nature of their participation in the case. Respondents likewise countered that petitioners were no longer entitled to any further amount from the Aerocom case because the latter already executed quitclaims; that they withdrew their rights in the law firm; that Atty. Suplico executed a quitclaim dated July 8, 2000 effective as early as January 15, 1995;[8] and that their acts caused the dissolution of Raval Suplico and Lokin, Lawyers and was succeeded thereafter by Raval Lokin, Lawyers registered in the names of Atty. Raval, Atty. Lokin, and Atty. Hizon. With respect to Atty. Raval, respondents disputed that he had minimal to no participation in the Aerocorn case because of his engagements outside the law firm.[9] Atty. Lokin insinuated that Atty. Raval also withdrew his rights to the law firm; that their partnership deteriorated because of the latter's incompetence; and that it was Atty. Raval who voluntarily and unilaterally withdrew from the partnership in exchange for their Amberland office space.

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for *Estafa* filed against respondents for lack of probable cause. See the Order dated July 3, 2007 in Criminal Case No. 133450, penned by Judge Agnes Reyes-Carpio, *id.* at 464-469.

[7] *Id.* at 10.

[8] See Release, Waiver and Quitclaim of Atty. Rolex T. Suplico. *id.* at 76.

[9] *Id.* at 47-48, 107.

The Investigating Commissioner's Report and Recommendation

On January 22, 2009, Investigating Commissioner Jose I. De la Rama, Jr. (Investigating Commissioner De la Rama) issued a Commissioner's Report[10] that recommended the dismissal of the disbarment case against respondents:

> WHEREFORE, in view of the foregoing, it is most respectfully recommended that the disbarment case against ATTY. LUIS K. LOKIN, JR. and ATTY. SALVADOR C. HIZON be DISMISSED for lack of merit.
>
> SO ORDERED.[11]

Investigating Commissioner De la Rama ruled out on the existence of a retainer's agreement between the defunct law firm and Aerocorn for the payment of the 40% of whatever amount the latter would recover from the lawsuit, and that there was no basis for the collection. He declared that the records would bear out that petitioners could not produce a copy of the supposed agreement; Aerocom's President, although admitting that he saw a copy thereof, denied that he signed any such agreement and that even the corporate secretary of Aerocom denied that there was a written agreement on the 40% attorney's fees based on the corporate records and files in his possession. Further, he highlighted the failure of Atty. Jessica A. Los Banos (Atty. Los Banos), a former lawyer at the defunct law firm who handled the Aerocom case, to identify in her affidavit the document evidencing the agreement on the attorney's fees and as to her source of the information. Furthermore, he gave credence to the release, waiver and quitclaim executed by petitioner which effectively barred them from their rights to their share in the attorney's fees from the Aerocom case.[12]

Thus, Investigating Commissioner De la Rama concluded that considering the evidence on the retainer's agreement is

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[10] *Id.* at 572-592.

[11] *Id.* at 592.

[12] *Id.* at 582-588.

wanting, petitioners failed to prove deceit, misconduct, and malpractice which would warrant the disbarment of respondents. Hence, he recommended for the dismissal of the complaint.

The IBP Board of Governors Report

In the Resolution No. XVIII-2009-52[13] dated February 19, 2009, the IBP Board of Governors adopted and approved the Report and Recommendation of Investigating Commissioner Dela Rama by dismissing the complaint for disbarment against respondents.[14]

The IBP Board of Governors passed Resolution No. XIX-2011-484[15] dated June 26, 2011 which denied petitioners' Motion for Reconsideration and affirmed Resolution No. XVIII-2009-52.[16]

Our Ruling

In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[17]

In the present case, there is a dearth of evidence on the legal fees agreed upon between the defunct law firm and Aerocom as compensation for the legal services it rendered in the Aerocom case. Petitioners failed to discharge their burden of proving that an agreement on the attorney's fees amounting to 40% of the total recovery award in favor of Aerocom existed; and that

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[13] *Id.* at 570-571.

[14] *Id.* at 570.

[15] *Id.* at 713-714.

[16] *Id.* at 713.

[17] *Alitagtag v. Atty. Garcia*, 451 Phil. 420, 423 (2003), citing *Martin v. Felix, Jr.*, 246 Phil. 113, 133-134 (1988).

there was indeed receipt by the law firm of the alleged amount that should be turned over to petitioners. Even the President[18] and the Corporate Secretary[19] of Aerocom denied petitioners' allegations of an existing agreement.

Aside from petitioners own declarations, the only evidence the petitioners presented to prove the agreement as to the legal fees between Aerocom and the defunct law firm are the affidavit of Atty. Los Banos, and several documents from the Sandiganbayan which pertained to the execution of the judgment in favor of Aerocom. However, as correctly observed by Investigating Commissioner De la Rama, Atty. Los Banos merely indicated in her Affidavit[20] that she learned of the 40% arrangement for legal fees during the time when she was handling the Aerocom case without her indicating how she obtained the information. The court documents with respect to the execution of the recovery award in favor of Aerocom solely pertained to the satisfaction of the judgment and the amount Aerocom recovered from PCGG albeit received by respondent Atty. Lokin[21] as counsel for Aerocom. Contrary to petitioners' assertion, the duty of obtaining evidence with regard to the agreement on the legal fees between Aerocom and their former law firm and the amount paid by Aerocom to respondents belonged to them as complainants and not to the investigating body.

Furthermore, the Court could not turn a blind eye to the Release, Waiver and Quitclaim[22] of Atty. Suplico which he voluntarily executed, and never refuted. This effectively discharged the Raval Suplico and Lokin, Lawyers from any action or obligation arising from Atty. Suplico as a partner reckoned from January 15, 1995. It included the legal fees from the Aerocom case wherein the Writ of Execution was issued

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[18] *Rollo*, Vol. I, pp. 396-397.

[19] *Id.* at 74.

[20] *Id.* at 328-329.

[21] *Id.* at 29-31.

[22] *Id.* at 76.

on January 11, 1999.[23] Atty. Suplico even categorically stated in his quitclaim that he received a valuable consideration from the defunct law firm; thus, he voluntarily released and forever discharged the law partnership from any action or obligation arising from his being a partner.[24] Similarly, Atty. Raval withdrew from the partnership in May 1999[25] and even waived his rights over his share in the attorney's fees from the Aerocom case in exchange for the Amberland office which facts remained unrebutted.[26] As seasoned members of the legal profession, it is but safe to assume that they voluntarily executed their quitclaims and waived their rights to the law partnership with full knowledge of its repercussions.

Thus, the disbarment is unwarranted. Petitioners failed to discharge the burden of proving that respondents indeed committed deceit, fraud or misconduct in violation of Rule 7.03 of Canon 7 of the Code of Professional Responsibility with respect to the distribution of the attorney's fees received by the defunct law firm from the Aerocom case.

WHEREFORE, finding the recommendation of the Integrated Bar of the Philippines to be fully supported by the evidence on record and applicable laws, the Court **RESOLVES** to **DISMISS** the case against respondents Atty. Luis K. Lokin, Jr. and Atty. Salvador C. Hizon and considers the case as **CLOSED** and **TERMINATED**.

SO ORDERED.

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

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[23] *Id.* at 20.

[24] *Id.*

[25] As admitted by Atty. Demaree J.B. Raval in his earlier complaint against Atty. Luis K. Lokin, Jr. which was filed before the IBP CBD dated July 23, 2003 docketed as CBD Case No. 03-1118 for the latter's continued use of "Raval and Lokin, Lawyers" despite its dissolution, *id.* at 371-376.

[26] *Id.* at 75.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[A.C. No. 10890. July 1, 2020]

LETECIA G. SIAO, *complainant*, *vs.* **ATTY. BAYANI S. ATUP,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; DEATH OF A PARTY; THE ONLY REPRESENTATION THAT A COUNSEL CAN UNDERTAKE AFTER HIS CLIENT'S DEATH IS TO INFORM THE COURT WITHIN THIRTY DAYS AFTER THE DEATH OF HIS CLIENT OF SUCH FACT OF DEATH AND TO GIVE THE COURT THE NAMES AND ADDRESSES OF THE DECEASED LITIGANT'S LEGAL REPRESENTATIVES. — The duty of counsel under x x x [Section 16, Rule 3 of the Rules of Court] is two-fold: *first*, the counsel must inform the court within 30 days after the death of his client of such fact of death; and *second*, to give the court the names and addresses of the deceased litigant's legal representative or representatives. This is the only representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other.

2. ID.; ID.; ID.; ID.; THE SUBSTITUTION OF A DECEASED LITIGANT IS NOT AUTOMATIC AS THE LEGAL REPRESENTATIVES IDENTIFIED BY THE COUNSEL ARE REQUIRED TO FIRST APPEAR BEFORE THE COURT, WHICH IN TURN, WILL DETERMINE WHO MAY BE ALLOWED TO BE SUBSTITUTED FOR THE DECEASED PARTY. — In this case, it is undisputed that Atty. Atup filed a Motion for Reconsideration in behalf of his deceased client before the CA in the case of *Cebu South Memorial Garden, et al. v. Letecia Siao, et al.,* docketed as CA-G.R. CV No. 02037, in which he informally notified the CA of his client's death x x x. The Court agrees with the IBP that Atty. Atup continued to represent Gabriel by filing the motion before the CA despite full knowledge of the latter's death on May 31, 2013, in direct violation of Section 16, Rule

3 of the Rules of Court. Evidently, Atty. Atup had failed to properly notify the CA of Gabriel's death within the specified period and to give the CA the names and addresses of Gabriel's legal representatives. Although it is true that Atty. Atup stated in the motion that Gabriel was survived by his heirs, Gilbert Yap and Gabriel Yap, Jr., there was no mention of Gabriel's widow, Mrs. Basilia Yap, or whether an administrator or executor of Gabriel's estate had already been appointed who could be substituted in the case. At this juncture, the Court emphasizes that the substitution of a deceased litigant is not automatic as the legal representative or representatives identified by the counsel are required to first appear before the court, which, in turn, will determine who may be allowed to be substituted for the deceased party.

3. LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDING; THE SOLE ISSUE TO BE RESOLVED THEREIN IS WHETHER THE LAWYER CONCERNED IS MORALLY FIT TO REMAIN A MEMBER OF THE PHILIPPINE BAR. — As for the issue on falsification, it is settled that these allegations should be first established and determined in an appropriate civil or criminal proceeding "for it is only in such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so." Simply put, this disbarment proceeding is not the proper forum to resolve this matter as the sole issue to be addressed in this case is whether Atty. Atup is morally fit to remain a member of the Philippine Bar. Besides, the subject SPA is a notarized document which "has in its favor the presumption of regularity, and to overcome this presumed regularity of its execution, whoever alleges the contrary should present evidence that is clear, convincing and more than merely preponderant." This Letecia failed to do.

APPEARANCES OF COUNSEL

Santiago R. Marravillas for complainant.

RESOLUTION

INTING, *J.*:

This administrative case is rooted on the Complaint[1] dated July 18, 2015 filed by Letecia G. Siao (Letecia) against Atty. Bayani S. Atup (Atty. Atup) before the Court for alleged violations of the Lawyer's Oath and Section 16, Rule 3 of the Rules of Court.

In her Complaint, Letecia alleged that Atty. Atup had appended a falsified Special Power of Attorney (SPA) purportedly executed in 1999 by the latter's client, Gabriel Yap, Sr. (Gabriel), to the Motion for Reconsideration dated November 15, 2013 that he filed before the Court of Appeals (CA) in the case of "*Cebu South Memorial Garden, Gabriel Yap, Sr., et al. v. Letecia Siao, et al.*," docketed as CA-G.R. CV No. 02037.[2] Letecia also asserted that Atty. Atup had failed to formally inform the CA that Gabriel had already passed away within 30 days from such fact of death, in violation of Section 16, Rule 3 of the Rules of Court.[3]

In his defense, Atty. Atup argued that Letecia had failed to substantiate her allegation that the signature of Gabriel appearing on the SPA had been forged. He explained that the variation in Gabriel's signatures as appearing on a contract he signed in 1997 and on the SPA was not sufficient basis to conclude that the SPA was a forgery. Atty. Atup also pointed out that the SPA was a notarized document which enjoyed the presumption of regularity and validity.[4] While Atty. Atup admitted that there was a delay in informing the CA of Gabriel's fact of death, he claimed that such delay did not prejudice Letecia in any way that would warrant a disciplinary sanction against him.[5]

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

[2] *Id.* at 2, 5.

[3] *Id.* at 6.

[4] *Id.* at 261-262.

[5] *Id.* at 264.

The Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation[6] dated March 5, 2018, Investigating Commissioner Jose Villanueva Cabrera (Investigating Commissioner) recommended that Atty. Atup be suspended from the practice of law for a period of one year[7] for having deliberately violated Section 16, Rule 3 of the Rules of Court,[8] *viz.*:

> Based on the foregoing motion for reconsideration, the Respondent is fully aware that his client, Gabriel Yap, Sr. was already dead, having died on May 31, 2013. Despite his knowledge of the fact of death, Respondent still representation in the title of the pleading, the first paragraph of his motion that he is representing a client who was already dead. Respondent even indicated in the signature portion of the pleading that he is appearing as counsel for Gabriel Yap, Sr., a party who was already dead. x x x[9]

Nevertheless, the Investigating Commissioner found no factual and legal bases to hold Atty. Atup liable for malpractice and gross misconduct for the alleged falsification of the subject SPA, given that: (a) the SPA dated March 9, 1999 was a public document that carried with it the presumption of regularity and validity; (b) the mere difference in the signatures of Gabriel appearing on the SPA and other documents did not prove that the SPA was a forgery; and (c) the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline was not the proper forum to investigate and resolve Letecia's allegation that Gabriel's signature on the SPA had been falsified by Atty. Atup. Thus, the Investigating Commissioner recommended the dismissal of these charges against Atty. Atup.[10]

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[6] *Id.* at 362-378.

[7] *Id.* at 378.

[8] *Id.* at 375.

[9] *Id.* at 374.

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

The Resolutions of the IBP Board of Governors

In the Notice of Resolution[11] dated June 29, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to impose against Atty. Atup the penalty of suspension from the practice of law for a period of one year.[12]

However, the IBP Board of Governors later reconsidered its ruling and reduced Atty. Atup's period of suspension from one year to one month, in the absence of bad faith and based on the guidelines, per the Notice of Resolution[13] dated May 28, 2019.

The Court's Ruling

After a careful examination of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors.

Section 16, Rule 3 of the Rules of Court provides:

SEC. 16. *Death of a party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The Court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified

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[11] *Id.* at 360-361.

[12] *Id.* at 360.

[13] *Id.* at 430-431.

period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The duty of counsel under this provision is two-fold: *first*, the counsel must inform the court within 30 days after the death of his client of such fact of death; and *second*, to give the court the names and addresses of the deceased litigant's legal representative or representatives. This is the only representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other.[14]

In this case, it is undisputed that Atty. Atup filed a Motion for Reconsideration[15] in behalf of his deceased client before the CA in the case of *Cebu South Memorial Garden, et al. v. Letecia Siao, et al.*, docketed as CA-G.R CV No. 02037, in which he informally notified the CA of his client's death as quoted below:

> Considering that Gabriel Yap, Sr. has already died as evidenced by his death certificate (Annex C), all interest of the late Gabriel Yap, Sr. by operation of law is conveyed to his heirs by right of succession, which in this case are Gilbert Yap and Gabriel Yap, Jr.
>
> Being the heir and successors-in-interest of the late Gabriel Yap, Sr., the authority put in question is put to rest as the right to prosecute the claim of plaintiff Gabriel Yap, Sr. is now a right of Gilbert Yap.[16]

The Court agrees with the IBP that Atty. Atup continued to represent Gabriel by filing the motion before the CA despite full knowledge of the latter's death on May 31, 2013, in direct violation of Section 16, Rule 3 of the Rules of Court. Evidently,

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[14] *Judge Sumaljag v. Sps. Literato, et al.*, 578 Phil. 48, 56 (2008). Citations omitted.

[15] *Rollo*, pp. 10-27.

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

Atty. Atup had failed to properly notify the CA of Gabriel's death within the specified period and to give the CA the names and addresses of Gabriel's legal representatives. Although it is true that Atty. Atup stated in the motion that Gabriel was survived by his heirs, Gilbert Yap and Gabriel Yap, Jr., there was no mention of Gabriel's widow, Mrs. Basilia Yap, or whether an administrator or executor of Gabriel's estate had already been appointed who could be substituted in the case.

At this juncture, the Court emphasizes that the substitution of a deceased litigant is not automatic as the legal representative or representatives identified by the counsel are required to first appear before the court, which, in turn, will determine who may be allowed to be substituted for the deceased party. To illustrate, in the case of *Judge Sumaljag v. Sps. Literato, et al.*[17] *(Judge Sumaljag)*, the Court ruled that "the lower court and the CA were legally correct in not giving effect to counsel's suggested substitute" as he was not one of those allowed by the Rules to be a substitute.[18] Suffice it to say, the counsel's duty to give the court the names and addresses of the deceased litigant's legal representative or representatives is merely the first step in the proper substitution of parties in a given case.

Interestingly, Atty. Atup cited *Judge Sumaljag* as part of his defense, claiming that in said case, the counsel, too, had belatedly notified the court of the fact of death of his client, but was not found to have violated Section 16, Rule 3 of the Rules of Court.[19] Unfortunately, Atty. Atup's case is markedly different from the circumstances in *Judge Sumaljag* for in that case, the counsel actually filed a notice of death and substitution of party with the court. Moreover, the main issue in *Judge Sumaljag* was not the belated filing of the notice of death but the proper substitution of the deceased litigant. Here, the issue boils down to whether Atty. Atup had effectively informed the CA of his client's death as required by the Rules of Court.

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[17] *Judge Sumaljag v. Sps. Literato, et al.*, *supra* note 14.

[18] *Id.* at 58.

[19] *Rollo*, p. 66.

As for the issue on falsification, it is settled that these allegations should be first established and determined in an appropriate civil or criminal proceeding "for it is only in such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so."[20] Simply put, this disbarment proceeding is not the proper forum to resolve this matter as the sole issue to be addressed in this case is whether Atty. Atup is morally fit to remain a member of the Philippine Bar.[21] Besides, the subject SPA is a notarized document which "has in its favor the presumption of regularity, and to overcome this presumed regularity of its execution, whoever alleges the contrary should present evidence that is clear, convincing and more than merely preponderant."[22] This Letecia failed to do.

Based on these considerations, the Court finds Atty. Atup guilty of violating Canon 1 and Rule 10.03, Canon 10 of the Code of Professional Responsibility which provide, among others, that a lawyer shall "promote respect for law and legal processes," and "observe the rules of procedure and shall not misuse them to defeat the ends of justice." Thus, the Court deems the penalty of suspension from the practice of law for a period of one month to be commensurate with his transgressions.

WHEREFORE, the Court finds respondent Atty. Bayani S. Atup **GUILTY** of violating Canon 1 and Rule 10.03, Canon 10 of the Code of Professional Responsibility, and hereby **SUSPENDS** him from the practice of law for a period of one month. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent Atty. Bayani S. Atup's personal record, and the Office of the Court Administrator

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[20] *Flores-Salado, et al. v. Atty. Villanueva*, 796 Phil. 40, 47 (2016).

[21] *Id.*

[22] *Id.* at 48, citing *Spouses Palada v. Solidbank Corporation, et al.*, 668 Phil. 172, 179 (2011).

and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 219560. July 1, 2020]

JUANDOM PALENCIA *y* DE ASIS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; CONSTITUTIONAL POLICY OF AVOIDANCE; A COURT WILL ONLY PASS UPON THE CONSTITUTIONALITY OF A STATUTE TO THE EXTENT THAT IT IS DIRECTLY AND NECESSARILY INVOLVED IN A JUSTICIABLE CONTROVERSY AND IS ESSENTIAL TO THE PROTECTION OF THE RIGHTS OF THE PARTIES CONCERNED. — A court's power of judicial review, which includes the power to "declare executive and legislative acts void if violative of the Constitution[,]" is provided in Article VIII, Section 1 of the Constitution. x x x Judicial review of the constitutionality of a statute is not limited to an action "for declaratory relief" and may be sought through any of the cognizable actions by courts of law. However, for the court to exercise its power of judicial review, the constitutional issue

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[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

"(a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented." Thus, a court will only pass upon the constitutionality of a statute "to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." This is called the constitutional policy of avoidance.

2. ID.; ID.; ID.; ID.; ID.; A STATUTE'S CONSTITUTIONALITY CAN ONLY BE ASSAILED THROUGH A DIRECT ATTACK AND THE ISSUE OF CONSTITUTIONALITY MUST BE RAISED AT THE EARLIEST OPPORTUNITY EXCEPT IN A CRIMINAL CASE WHEREIN IT MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL. — [T]he issue of a statute's constitutionality can only be assailed through a direct attack, with the purported unconstitutionality pleaded directly before the court. *San Miguel Brewery, Inc. v. Magno* emphasized that a collateral attack—"an attack, made as an incident in another action, whose purpose is to obtain a different relief"—on a presumably valid law is forbidden by public policy. x x x It is x x x well established that a challenge to a statute's constitutionality "must be raised at the earliest opportunity." Nonetheless, *San Miguel Brewery* noted that in a criminal case, the constitutionality of a statute "may be raised at any stage of the proceedings," even on appeal.

3. ID.; ID.; ID.; ID.; ID.; IF THE CONTROVERSY ON THE CONSTITUTIONALITY OF A STATUTE CAN BE SETTLED ON OTHER GROUNDS, THE COURT STAYS ITS HAND FROM RULING ON THE CONSTITUTIONAL ISSUE. — [A] legal presumption exists that an enacted law is valid. Thus, if the controversy on the constitutionality of a statute can be settled on other grounds, this Court stays its hand from ruling on the constitutional issue.

4. ID.; ID.; ID.; ID.; ID.; LIMITATIONS. — The policy of constitutional avoidance finds its genesis in a concurring opinion on the United States case of *Ashwander v. Tennessee Valley Authority*. In his concurrence, Justice Louis Brandeis set forth the seven pillars of limitations of judicial review x x x. These rules of avoidance were then summarized in *Francisco, Jr. v. House of Representatives*, as follows: The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v.*

TVA from different decisions of the United States Supreme Court, can be encapsulated into the following categories: 1. that there be absolute necessity of deciding a case 2. that rules of constitutional law shall be formulated only as required by the facts of the case 3. that judgment may not be sustained on some other ground 4. that there be actual injury sustained by the party by reason of the operation of the statute 5. that the parties are not in *estoppel* 6. that the Court upholds the presumption of constitutionality.

5. ID.; ID.; ID.; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; A JUDICIAL WARRANT IS NEEDED BEFORE A SEARCH AND SEIZURE MAY BE CARRIED OUT, AND WITHOUT IT, THE SEARCH AND SEIZURE WOULD VIOLATE THE CONSTITUTION AND ANY EVIDENCE GATHERED FROM IT SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING; EXCEPTIONS. — The inviolability of a person's right against unreasonable searches and seizures finds its mooring in Article III, Section 2 of the Constitution. x x x The general rule is that a judicial warrant is needed before a search and seizure may be carried out. Without it, the search and seizure would violate the Constitution and any evidence gathered from it "shall be inadmissible for any purpose in any proceeding." Nonetheless, the constitutional prohibition only encompasses *unreasonable* searches and seizures. In fact, this Court has recognized several instances of reasonable warrantless searches and seizures: 1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; 2. Seizure of evidence in "plain view," the elements of which are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent, and (d) "plain view" justified mere seizure of evidence without further search; 3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

4. Consented warrantless search; 5. Customs search; 6. *Stop and Frisk*; and 7. Exigent and Emergency Circumstances.

6. ID.; ID.; ID.; ID.; ID.; WARRANTLESS SEARCH INCIDENTAL TO A LAWFUL ARREST AND STOP AND RISK SEARCH, DISTINGUISHED. — The exceptions of a warrantless search incidental to a lawful arrest and a "stop and frisk" search are often confused. In *Malacat v. Court of Appeals*, this Court explained that those two exceptions "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope." For the first instance to operate, the arrest, as the name suggests, must be established to have been lawful. For an arrest to be deemed lawful, a court of law must have issued a warrant of arrest. Otherwise, the arrest must have fallen within the purview of a lawful warrantless arrest in Rule 113, Section 5 of the Rules of Court. x x x For valid warrantless arrests under both Section 5(a) and (b), it is imperative that the arresting officer had personal knowledge of the offense. The primary difference between the two subsections is that with Section 5(a), the arresting officer personally witnessed the crime, while under Section 5(b), the arresting officer had reason to believe that the person to be arrested committed an offense. Either way, the lawful arrest generally precedes or is substantially contemporaneous with the search. In direct contrast to warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to prevent crime. Such operations are necessary for law enforcement, as underscored in *People v. Cogaed*. Yet, in that same case, this Court warned that this necessity must be balanced with one's right to privacy x x x. To substantiate a warrantless search and seizure, more than one suspicious circumstance is needed. In *Manibog v. People*, this Court, citing Justice Lucas Bersamin's dissent in *Esquillo v. People*, cautioned against warrantless searches based on a single suspicious circumstance. It stressed that there should be "more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity" for a valid stop and frisk search. For this Court to uphold the validity of a stop and frisk search, the arresting officer must have had personal knowledge of facts that would have aroused a reasonable degree of suspicion of an illicit act. *Cogaed* emphasized that the arresting officer's personal observation of suspicious circumstances as basis for the search is necessary, and anything less than their personal

observation is an infringement on the "basic right to security of one's person and effects."

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE PROSECUTION CARRIES THE BURDEN OF PROVING THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT. — Rule 133, Section 2 of the Revised Rules on Evidence requires proof beyond reasonable doubt for an accused's conviction x x x. The requirement of proof beyond reasonable doubt in a criminal case finds its basis in the due process clause and in an accused's presumption of innocence, both enshrined in the Constitution. x x x [T]he prosecution carries the burden of proving the accused's guilt beyond reasonable doubt. Conviction rests on the strength of the prosecution's evidence and not on the weakness of the accused's defense.

8. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — Here, petitioner was charged with illegal possession of dangerous drugs, whose elements are: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug."

9. ID.; ID.; CHAIN OF CUSTODY RULE; SINCE THE SEIZED NARCOTIC IS THE *CORPUS DELICTI* IN DRUG CASES, THE CHAIN OF CUSTODY MUST BE PRESERVED TO ESTABLISH WITH MORAL CERTAINTY THAT THE DRUG PRESENTED AS EVIDENCE IN COURT BE THE SAME DRUG SEIZED FROM AN ACCUSED. — The seized narcotic is the *corpus delicti* in drug cases. Hence, the chain of custody must be preserved to establish with moral certainty that the drug presented as evidence in court be the same drug seized from an accused. The requirement of an unbroken chain of custody was reiterated in *People v. Tanes* x x x. *Mallillin v. People* instructs what comprises sufficient compliance with the chain of custody rule x x x. *People v. Nandi* enumerated the four links that should be established by the prosecution to prove a complete chain of custody x x x.

10. ID.; ID.; ID.; MARKING; PERTAINS TO THE PLACING BY THE APPREHENDING OFFICER OR THE POSEUR-BUYER OF HIS INITIALS AND SIGNATURE ON THE ITEMS SEIZED TO PREVENT THE EVILS OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE. — The first link in the chain is the marking of the illicit drug recovered. *People v. Coreche* stressed the indispensability of marking to prevent the evils of switching, planting, or contamination of evidence. *People v. Sanchez* then emphasized that "marking" pertains to "the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized. Placing identifying marks, such as the apprehending officer's initials and signature, on the seized dangerous drug serves to set apart as evidence the dangerous drugs from other similar items. But more than the apprehending officer's initials or the accused's initials, what really sets the seized drug apart is the apprehending officer's signature. Initials and dates are easy to reproduce, but forging a signature is much harder to accomplish and can be detected by the arresting officer. Here, SI Tagle marked the seized sachet by sticking a masking tape on it, and there wrote petitioner's initials and the date of arrest. However, he did not place his signature on the masking tape. SI Tagle's failure to do so creates doubt, because without his signature, the generic marking of petitioner's initials and date of arrest may as well have been replicated by just about anybody on a piece of masking tape placed on any plastic sachet of *shabu*.

11. ID.; ID.; ID.; THE ACCUSED'S ACQUITTAL IS WARRANTED WHEN THE PROSECUTION FAILS TO ESTABLISH THE IDENTITY OF THE *CORPUS DELICTI* DUE TO SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY. — [O]ther glaring lapses surrounded the first link in the chain. Testimonies from prosecution witnesses conflicted on who actually conducted the inventory, with SI Tagle and PO2 Corsame both claiming to be the one that did it. Furthermore, Astillero, the Department of Justice representative, testified that when the sachet was inventoried after the arrest, it not only carried the marking "JP"-P 4-21-08, but also A D-072-08—the marking Chief Inspector Llena, the forensic chemist, made after testing the substance inside the seized sachet. x x x With the substantial gap in the chain of custody caused by the insufficient marking and the prosecution witnesses' conflicting testimonies, the

prosecution was unable to prove with moral certainty that the sachet supposedly seized from petitioner was the same sachet presented in court. Hence, the prosecution failed to establish the identity of the *corpus delicti*, warranting petitioner's acquittal.

12. ID.; ID.; WHEN MINISCULE AMOUNTS OF NARCOTICS ARE PRESENTED INTO EVIDENCE, COURTS SHOULD EXERCISE HEIGHTENED SCRUTINY, AND SHOULD CONSIDER THE SCALE OF ANTI-NARCOTICS OPERATIONS AND THE GOVERNMENT UNIT INVOLVED WHEN ASSESSING THE PROFFERED EVIDENCE. — *People v. Holgado* directed the courts to exercise heightened scrutiny when minuscule amounts of narcotics are presented into evidence, and for good reason. Behind this lies an inversely proportional relationship: the smaller the amount of narcotics is seized, the higher the probability of tampering and switching will be. x x x Here, petitioner was charged with possessing 0.01 gram of *shabu*, or less than half a grain of rice. The minuscule amount of the seized illegal drug, while not a basis to acquit per se, should have prompted the trial court to strictly scrutinize the prosecution's testimony regarding the seizure. x x x Aside from being vigilant of anti-narcotics operations that only yield tiny amounts of illegal drugs, courts should likewise consider the scale of operations and the government unit involved when assessing the proffered evidence. x x x Here, the National Bureau of Investigation, together with the Philippine Drug Enforcement Agency, investigated a report they had just received about rampant drug selling in Barangay Looc, Dumaguete City. However, despite the planned operation involving two separate government agencies, their efforts only led to a single charge of illegal possession of 0.01 gram of *shabu*. The amount of drugs seized was highly disproportionate to the government resources mobilized for the operation. This should have led the trial court to scrutinize whether planting of evidence occurred, as alleged by the defense, instead of merely relying on the presumption of regularity accorded to the arresting officers. Clearly, there was nothing regular about the Philippine Drug Enforcement Agency and the National Bureau of Investigation conducting a joint operation that only yielded a minuscule amount of illegal drugs. Planned narcotics operations that net minuscule amounts of dangerous drugs are judicially inefficient, taxing the courts' time and resources and swamping us with cases that barely create a ripple in the anti-narcotics

drive. Worse, these cases are focused on the retail end of the drug war, targeting small-time drug users and retailers who more often than not turn to dangerous drugs because of poverty or the lack of any opportunity to better their lives. In *Holgado*, this Court spurred our law enforcers to go beyond and focus their attention and resources toward capturing the big fish—the drug kingpins that supply dangerous drugs—if they are really serious in stomping out our country's narcotics problem for good x x x. Every effort to arrest those with as little as, not even a tenth, but a hundredth of a gram, wastes law enforcement, prosecution, and judicial time. The inequality in our prisons is underscored by the numerous arrests on the retail side. We cannot continue hoping to reduce the drug menace by merely focusing most of our resources on small fry. By combining the full force of the law with our vast government resources, we should be able to successfully target the source of illegal drugs and dismantle its widespread network to finally rid our society of its pernicious effects.

13. ID.; ID.; PHILIPPINE DRUG ENFORCEMENT AGENCY; TAKES THE LEAD IN NARCOTICS-RELATED CASES AND IS TASKED WITH IMPLEMENTING THE NATIONAL DRUG CONTROL STRATEGY FORMULATED BY THE DANGEROUS DRUGS BOARD. — Republic Act No. 9165 created the Philippine Drug Enforcement Agency to be primarily responsible for "the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in this Act." It was thus tasked with implementing the "national drug control strategy" formulated by the Dangerous Drugs Board. With the Philippine Drug Enforcement Agency now the primary agency to enforce and implement the law, Section 68 abolished the offices with similar anti-drug operations in the National Bureau of Investigation, Philippine National Police, and Bureau of Customs. Their functions were transferred to the Philippine Drug Enforcement Agency as the lead agency, with them only providing support or detail services x x x. Thus, the Philippine Drug Enforcement Agency takes the lead in narcotics-related cases. An agency such as the National Bureau of Investigation, with its mandate of investigating crimes and other offenses, generally assists in the case build-up leading to an arrest or provides reinforcement during an operation planned and initiated by the Philippine Drug Enforcement Agency.

APPEARANCES OF COUNSEL

Sedillo and Partners Law Firm for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Courts must strictly scrutinize violations of Republic Act No. 9165 when only minuscule amounts of dangerous drugs were seized from the accused. Additionally, in assessing the prosecution's evidence, courts should include the scale of operations and the government unit involved in an anti-narcotics operation. If the amount of drugs seized is disproportionate to the scale of operations, courts should not readily rely on the presumption of regularity accorded to the arresting and seizing officers.

This Court resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court Judgment[4] finding Juandom Palencia *y* De Asis (Palencia) guilty beyond reasonable doubt of possessing dangerous drugs, punished under Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 4-36.

[2] *Id.* at 37-55. The Decision dated November 25, 2014 in CA-G.R. CR No. 01827 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap of the Special Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 56-58. The Resolution dated June 23, 2015 in CA-G.R. CR No. 01827 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap of the Former Special Nineteenth Division, Court of Appeals, Cebu City.

[4] CA *rollo*, pp. 12-21. The Judgment dated October 24, 2011 and docketed as Criminal Case No. 19032 was penned by Judge Rafael Crescencio C. Tan, Jr.

On April 22, 2008, Palencia was charged with possession of dangerous drugs. The accusatory portion of the Information against him reads:

> That on or about the 21st day of April, 2008, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess one (1) heat-sealed transparent plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride, otherwise known as "SHABU", a dangerous drug.
>
> Contrary to Sec. 11, Art. II of R.A. 9165.[5]

Upon arraignment, Palencia pleaded not guilty to the charge against him. After pre-trial had been terminated, trial soon ensued.[6]

The prosecution evidence showed that on the morning of April 21, 2008, officers of the National Bureau of Investigation received information about the rampant sale of illegal drugs near Chicos in Zone 4, Barangay Looc, Dumaguete City. That same day, a team of law enforcers was formed to conduct an anti-narcotics operation in the tipped site.[7] The team included Special Investigator Nicanor Tagle (SI Tagle) and two Philippine Drug Enforcement Agency agents, Senior Police Officer 1 Allen June Germodo (SPO1 Germodo) and PO2 Glenn Corsame (PO2 Corsame).[8]

At around 10:50 a.m., the team proceeded to Zone 4 with the volunteer assets.[9]

The team began walking along two parallel alleys that led to the beach while PO2 Corsame paused to park his motorcycle.[10] On their way, SI Tagle, SPO1 Germodo, and the assets saw a

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[5] *Rollo*, p. 38.

[6] *Id.* at 39.

[7] *Id.* at 39 and RTC records, p. 11.

[8] *Id.* SPO1 Germodo was sometimes referred to as SPO2 Germodo.

[9] RTC records, p. 11.

[10] TSN, March 2, 2011, p. 5.

man walking toward their direction, his head bowed down as he looked at the plastic sachets he was holding in his left hand. They would later identify the man as Palencia.[11]

When Palencia looked up and saw the officers, he tried to run away, but SI Tagle and SPO1 Germodo caught him and tried to restrain him. Palencia struggled to escape from the officers' grasp and when he was able to free his left hand, he popped the sachets in his hand to his mouth and managed to swallow them. As the struggle continued, however, one of the sachets fell from his mouth and dropped to the ground.[12]

With the rest of the team's help, the officers were able to fully restrain Palencia. SI Tagle then picked up the sachet Palencia dropped. He also informed Palencia of his constitutional rights in both English and Visayan and the reason for his arrest.[13] As SPO1 Germodo handcuffed Palencia, SI Tagle marked the sachet by putting a piece of masking tape[14] on it and writing "JP"-P 4-21-08 on the tape.[15]

The arresting officers moved about eight meters away from the arrest site and positioned themselves near the highway. After about 10 minutes,[16] the seized sachet was inventoried[17] in the presence of Neil Rio (Rio),[18] a news reporter, Ramonito Astillero (Astillero),[19] a representative from the Department of Justice, and Merlindo Tamayo (Tamayo),[20] a barangay kagawad. SPO1 Germodo took pictures.[21]

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[11] RTC records, p. 11.

[12] *Id.* at 11 and *rollo*, p. 40.

[13] *Id.*

[14] TSN, March 16, 2011, p. 9.

[15] RTC records, p. 11.

[16] TSN, March 16, 2011, p. 9.

[17] TSN, March 2, 2011, p. 10.

[18] TSN, April 20, 2011, p. 2.

[19] TSN, March 23, 2011, p. 3.

[20] TSN, May 4, 2011, pp. 2-3.

[21] TSN, March 30, 2011, p. 8.

Rio confirmed that he saw the marked sachet and signed the inventory sheet; however, he admitted that he did not witness the arrest and was only present during the inventory after being called by SPO1 Germodo.[22] Tamayo likewise testified that he did not see the actual arrest but that he only went to the inventory after being informed of the arrest. Nonetheless, he declared that he saw a marked sachet, which was why he signed the inventory sheet.[23] Astillero, meanwhile, testified that he saw a marked sachet during the inventory.[24]

After the inventory, the officers brought Palencia to the National Bureau of Investigation office where PO2 Corsame recorded the arrest.[25] SI Tagle then prepared a transmittal letter and letter request for an examination of the recovered sachet and a drug test on Palencia. Afterward, he brought the documents and the marked sachet to the Philippine National Police Crime Laboratory and handed them to Police Chief Inspector Josephine S. Llena (Chief Inspector Llena).[26]

Upon examination, Chief Inspector Llena reported that the specimen tested positive for shabu. She then resealed the sachet and, on the seal, wrote A D-072-08.[27] Chemistry Report No. D-072-08[28] reads in part:

SPECIMEN SUBMITTED:

A. One (1) heat-sealed transparent plastic sachet with markings "JP-P" 4-21-08 containing 0.01 gram of white crystalline substance.

x x x x x x x x x

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[22] TSN, April 20, 2011, pp. 4-5

[23] TSN, May 4, 2011, pp. 3-5.

[24] TSN, March 23, 2011, p. 6.

[25] TSN, March 2, 2011, pp. 13-14 and RTC records, p. 29.

[26] RTC records, p. 20.

[27] TSN, March 9, 2011, p. 8.

[28] *Id.* at 10.

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of Dangerous Drugs under RA 9165.

FINDINGS:

Qualitative examination conducted on specimen A gave **POSITIVE** result to the tests for **Methamphetamine Hydrochloride**, a dangerous drug under RA 9165.

x x x x x x x x x

CONCLUSION:

Specimen A contains **Methamphetamine Hydrochloride**, a dangerous drug under RA 9165.[29] (Emphasis in the original)

The defense presented Palencia and his sisters, Jessica Guerrero (Guerrero) and Jingle Lugo (Lugo), as its witnesses.

Palencia testified that on the day he was arrested, he and Guerrero were on their way to Zone 3 to sell *"bihag,"* or "the meat of a dead fighting cock." On their way, somebody flagged them down and bought the two pieces of *bihag* they carried for ₱100.00 each.[30]

After the sale, Palencia and Guerrero walked toward the main road on their way home. At that moment, they saw several persons being chased by another group of men who wielded guns. Unable to chase them, one of the armed men, whom Palencia would later discover to be SI Tagle, stopped running and turned on the siblings instead. The officer grabbed Palencia's arm and pointed the gun to his head.[31]

Together with his companions, SI Tagle patted down Palencia and emptied his pockets, where they found his cellphone and the proceeds from the *bihag* sale. Two men held down Palencia while SI Tagle repeatedly punched him in his chest and stomach. After the officer had finished and walked away, his companions handcuffed Palencia.[32]

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[29] RTC records, p. 37.

[30] CA *rollo*, p. 14.

[31] *Id.* at 14 and TSN, July 5, 2011, pp. 5-7.

[32] *Id.*

When SI Tagle returned minutes later, he bent down in front of Palencia as if to pick something up. When he stood, he had a plastic sachet in his hand, which prompted Palencia to shout, "Planting! Planting!"[33]

Palencia denied that he was informed of his constitutional rights during his arrest, or that PO2 Corsame and SPO1 Germodo were with SI Tagle when he was arrested. He likewise denied that an inventory was conducted at the place of his arrest.[34]

Guerrero corroborated her brother's testimony.[35] She added that while her brother was being mauled and handcuffed, she was "crying and trembling," terrified of what was happening.[36]

Guerrero also testified that after her brother had been handcuffed,[37] the men brought him to the side of the road, made him sit on a stool, and investigated him without a lawyer.[38] Afterward, they made him board a car and brought him to the National Bureau of Investigation office.[39]

Lugo testified that Guerrero texted her of Palencia's arrest immediately after it happened. Thus, she went to the National Bureau of Investigation office to check on his brother. When she talked to him, he denied possessing *shabu* and claimed that the officers had mauled him.[40]

Lugo also testified that her brother was later transferred to the police station jail. When she visited him about three days after his arrest, she saw that he had large bruises on his chest. She gave him pain reliever and advised him not to undergo

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[33] *Id.*

[34] *Id.* at 15.

[35] TSN, July 20, 2011, pp. 5-8.

[36] *Id.* at 7.

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

[38] *Id.* at 9 and 17.

[39] *Id.* at 9.

[40] TSN, August 9, 2011, pp. 3-5.

medical examination because this might only encourage the officers to gang up on him once more.[41]

On October 24, 2011, the Regional Trial Court[42] found Palencia guilty beyond reasonable doubt of illegally possessing a dangerous drug.

The Regional Trial Court found that the prosecution was able to establish that Palencia was caught possessing a sachet of *shabu*. It emphasized that the police officers were justified in making a warrantless seizure under the plain view doctrine because Palencia was caught *in flagrante delicto* with what appeared to be a sachet of dangerous drugs.[43]

The Regional Trial Court then brushed aside Palencia's "inherently weak defense" of denial or frame-up, made even weaker with the prosecution witnesses' positive identification of Palencia. It also pointed out that Palencia failed to show that the arresting officers had ill motive to testify against him.[44]

The Regional Trial Court likewise punctuated that the arresting officers enjoyed the presumption of regularity in the performance of their duty. It maintained that they testified in a consistent and straightforward manner, their accounts something that "could have only been described by a person who actually witnessed the event[.]"[45]

The dispositive portion of the Regional Trial Court Judgment read:

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Juandom Palencia y De Asis GUILTY beyond reasonable doubt of the offense of illegal possession of one (1) heat-sealed transparent plastic containing 0.01 gram of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced

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

[42] CA *rollo*, pp. 12-21.

[43] *Id.* at 16-17.

[44] *Id.* at 17.

[45] *Id.* at 18.

to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.01 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

SO ORDERED.[46] (Emphasis in the original)

On November 4, 2011, the Regional Trial Court granted[47] Palencia's Motion for Temporary Liberty[48] under the same bail bond pending his appeal and ordered[49] his release.

Palencia appealed to the Court of Appeals. However, on November 25, 2014, the Court of Appeals denied[50] his appeal.

The Court of Appeals upheld the Regional Trial Court's finding that Palencia was caught *in flagrante delicto* possessing a sachet of *shabu*, making the warrantless arrest and seizure valid.[51]

The Court of Appeals likewise found that the prosecution accounted for all the links in the chain of custody of the seized *shabu*.[52] It ruled that the purported omissions by the arresting officers were minor details that did not cast doubt on the integrity of the drug seized.[53]

The dispositive portion of the Court of Appeals Decision read:

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[46] *Id.* at 20.

[47] RTC records, p. 265. The Order was penned by Judge Rafael Crescencio C. Tan, Jr.

[48] *Id.* at 255-256.

[49] *Id.* at 266.

[50] *Rollo*, pp. 37-55.

[51] *Id.* at 47.

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

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

WHEREFORE, premises considered, the appeal is DENIED. The assailed October 24, 2011 *Decision* of the Regional Trial Court, Branch 30 of Dumaguete City in Criminal Case No. 19032 convicting accused-appellant Juandum *(sic)* Palencia for violation of Section 11, Article II of RA 9165 is hereby AFFIRMED.

SO ORDERED.[54] (Emphasis in the original)

Palencia moved for reconsideration,[55] but the Court of Appeals denied[56] his Motion on June 23, 2015. Hence, Palencia filed this Rule 45 Petition[57] before this Court.

Petitioner questions the constitutionality of Section 21(a) of the Comprehensive Dangerous Drugs Act's Implementing Rules and Regulations for supposedly going beyond[58] the confines of the law. He claims that the implementing rules "trivialized the rigid requirements of the 'chain of custody' rule."[59]

Petitioner also contends that Section 11 of the Comprehensive Dangerous Drugs Act itself violated substantive due process and the equal protection clause because it failed to provide graduated penalties for confiscated drugs weighing less than five grams.[60]

Additionally, petitioner maintains that the sachet supposedly recovered from him was inadmissible in evidence for being a "fruit of the poisoned tree."[61] He insists that the arresting officers failed to inform him of his constitutional rights when he was arrested and taken into custody.[62]

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[54] *Id.* at 55.

[55] CA *rollo*, pp. 117-123.

[56] *Rollo*, pp. 56-58.

[57] *Id.* at 4-36.

[58] *Id.* at 9-13.

[59] *Id.* at 10.

[60] *Id.* at 13-15.

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

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

Finally, petitioner stresses that the integrity and evidentiary value of the seized drug were not preserved as there were numerous gaps in the chain of custody.[63] Among these gaps, he raises the trial court's failure to conduct an ocular inspection of the seized drug.[64]

In its Comment,[65] respondent People of the Philippines, represented by the Office of the Solicitor General, points out that the issues raised by petitioner were the same issues already considered by the lower courts. Further, it states that law and jurisprudence proscribed collateral attacks on the Comprehensive Dangerous Drugs Act and its Implementing Rules and Regulations. It explains that if a judgment can be had on other grounds, the constitutional question should not be resolved.[66]

Respondent likewise states that the issue of the arresting officers' compliance with the chain of custody rule was a factual issue, which made it improper to be raised in a Rule 45 petition.[67] It then maintains that petitioner only objected to the Regional Trial Court's failure to conduct an ocular inspection for the first time on appeal.[68]

In his Reply,[69] petitioner merely restates the arguments in his Petition and does not directly address the points raised by respondent.

The issues for this Court's resolution are:

First, whether or not Section 11 of the Comprehensive Dangerous Drugs Act of 2002 and Section 21(a) of its Implementing Rules and Regulations are invalid for being unconstitutional;

Second, whether or not a valid warrantless search and seizure was made; and

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[63] *Id.* at 23-32.

[64] *Id.* at 30.

[65] *Id.* at 66-77.

[66] *Id.* at 67-69.

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

[68] *Id.* at 74.

[69] *Id.* at 92-104.

Finally, whether or not the prosecution was able to prove the integrity and evidentiary value of the seized *shabu*.

I

A court's power of judicial review, which includes the power to "declare executive and legislative acts void if violative of the Constitution[,]"[70] is provided in Article VIII, Section 1 of the Constitution. It states:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Judicial review of the constitutionality of a statute is not limited to an action "for declaratory relief" and may be sought through any of the cognizable actions by courts of law.[71]

However, for the court to exercise its power of judicial review, the constitutional issue "(a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* presented."[72] Thus, a court will only pass upon the constitutionality of a statute "to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[73] This is called the constitutional policy of avoidance.

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[70] *Angara v. Electoral Commission*, 63 Phil. 139, 139-140 (1936) [Per *J.* Laurel, *En Banc*].

[71] *Planters Products, Inc. v. Fertiphil Corp.*, 572 Phil. 270, 291 (2008) [Per *J.* Reyes, R.T., Third Division].

[72] *Id.* at 291 citing *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[73] *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per *J.* Bengzon, *En Banc*].

Additionally, the issue of a statute's constitutionality can only be assailed through a direct attack, with the purported unconstitutionality pleaded directly before the court.[74] *San Miguel Brewery, Inc. v. Magno*[75] emphasized that a collateral attack—"an attack, made as an incident in another action, whose purpose is to obtain a different relief"[76]—on a presumably valid law is forbidden by public policy,[77] *Tan v. Bausch & Lomb, Inc.*[78] explains:

> Furthermore, the order of the trial court was a patent nullity. In resolving the pending incidents of the motion to transfer and motion to quash, the trial court should not have allowed petitioners to collaterally attack the validity of A.O. Nos. 113-95 and 104-96. We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[79] (Citation omitted)

This was reiterated in *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*,[80] where this Court stated:

> Preliminarily, Vivas' attempt to assail the constitutionality of Section 30 of R.A. No. 7653 constitutes collateral attack on the said provision of law. Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. A collateral attack on a presumably valid law is not permissible. Unless a law or rule is

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[74] *Vivas v. The Monetary Board of Bangko Sentral ng Pilipinas*, 716 Phil. 132, 153 (2013) [Per J. Mendoza, Third Division].

[75] 128 Phil. 328 (1967) [Per J. Angeles, *En Banc*].

[76] *Go v. Echavez*, 765 Phil. 410, 424 (2015) [Per J. Brion, Second Division].

[77] *San Miguel Brewery, Inc. v. Magno*, 128 Phil. 328, 335 (1967) [Per J. Angeles, *En Banc*].

[78] 514 Phil. 307 (2005) [Per J. Corona, Third Division].

[79] *Tan v. Bausch Lomb, Inc.*, 514 Phil. 307, 316 (2005) [Per J. Corona, Third Division].

[80] 716 Phil. 132 (2013) [Per J. Mendoza, Third Division].

annulled in a direct proceeding, the legal presumption of its validity stands.[81] (Citations omitted)

It is likewise well established that a challenge to a statute's constitutionality "must be raised at the earliest opportunity."[82] Nonetheless, *San Miguel Brewery* noted that in a criminal case, the constitutionality of a statute "may be raised at any stage of the proceedings," even on appeal.[83]

Finally, a legal presumption exists that an enacted law is valid.[84] Thus, if the controversy on the constitutionality of a statute can be settled on other grounds, this Court stays its hand from ruling on the constitutional issue.[85] The policy of constitutional avoidance finds its genesis in a concurring opinion on the United States case of *Ashwander v. Tennessee Valley Authority*.[86] In his concurrence, Justice Louis Brandeis set forth the seven pillars of limitations of judicial review:

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."

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[81] *Id.* at 153.

[82] *Philippine National Bank v. Palma*, 503 Phil. 917, 918 (2005) [Per *J.* Panganiban, Third Division].

[83] *San Miguel Brewery, Inc. v. Magno*, 128 Phil. 328, 335 (1967) [Per *J.* Angeles, *En Banc*].

[84] *NAWASA v. Reyes*, 130 Phil. 939, 947 (1968) [Per *J.* Angeles, *En Banc*].

[85] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*] citing ASSOCIATE JUSTICE VICENTE V. MENDOZA, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS 89 (2004).

[86] 297 U.S. 288 (1936).

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it." "It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."

3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

4. The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. In *Fairchild v. Hughes*, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, the challenge of the federal Maternity Act was not entertained, although made by the Commonwealth on behalf of all its citizens.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.

7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[87] (Citations omitted)

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[87] *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347-348 (1936) as cited in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

These rules of avoidance were then summarized in *Francisco, Jr. v. House of Representatives*,[88] as follows:

> The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. TVA* from different decisions of the United States Supreme Court, can be encapsulated into the following categories:
>
> 1. that there be absolute necessity of deciding a case
> 2. that rules of constitutional law shall be formulated only as required by the facts of the case
> 3. that judgment may not be sustained on some other ground
> 4. that there be actual injury sustained by the party by reason of the operation of the statute
> 5. that the parties are not in *estoppel*
> 6. that the Court upholds the presumption of constitutionality.[89] (Emphasis in the original)

Here, it is of no moment that petitioner only raised the issue of constitutionality for the first time on appeal,[90] as it was still properly and timely raised in a direct action. However, delving into the constitutionality of the assailed provisions of the law and implementing rules is not essential to the disposition of the case. It can still be resolved in favor of petitioner on other grounds without resorting to a review of the law.

II

The inviolability of a person's right against unreasonable searches and seizures finds its mooring in Article III, Section 2 of the Constitution. It provides:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable

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[88] 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

[89] *Id.* at 923.

[90] In the prayer in petitioner's Memorandum (RTC records, pp. 228-240) before the Regional Trial Court, he asked to be acquitted due to the prosecution's purported failure to prove his guilt beyond reasonable doubt. He did not put in issue the unconstitutionality of the Comprehensive Dangerous Drugs Act of 2002 and its Implementing Rules and Regulations.

cause to be determined personally by the judge after examination under oath or affirmation of the complainant arid the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The general rule is that a judicial warrant is needed before a search and seizure may be carried out. Without it, the search and seizure would violate the Constitution and any evidence gathered from it "shall be inadmissible for any purpose in any proceeding."[91]

Nonetheless, the constitutional prohibition only encompasses *unreasonable* searches and seizures. In fact, this Court has recognized several instances of reasonable warrantless searches and seizures:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:

   (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
   (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
   (c) the evidence must be immediately apparent, and
   (d) "plain view" justified mere seizure of evidence without further search;

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search;
6. *Stop and Frisk*; and
7. Exigent and Emergency Circumstances.[92] (Emphasis supplied, citations omitted)

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[91] CONST., Art. III, Sec. 3(2).

[92] *People v. Aruta*, 351 Phil. 868, 879-880 (1998) [Per J. Romero, Third Division].

The exceptions of a warrantless search incidental to a lawful arrest and a "stop and frisk" search are often confused. In *Malacat v. Court of Appeals*,[93] this Court explained that those two exceptions "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope."[94]

For the first instance to operate, the arrest, as the name suggests, must be established to have been lawful. For an arrest to be deemed lawful, a court of law must have issued a warrant of arrest. Otherwise, the arrest must have fallen within the purview of a lawful warrantless arrest in Rule 113, Section 5 of the Rules of Court. It states in part:

> 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 temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

For valid warrantless arrests under both Section 5(a) and (b), it is imperative that the arresting officer had personal knowledge of the offense. The primary difference between the two subsections is that with Section 5(a), the arresting officer personally witnessed the crime, while under Section 5(b), the arresting officer had reason to believe that the person to be arrested committed an offense.[95] Either way, the lawful arrest

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[93] 347 Phil. 462 (1997) [Per *J.* Davide, Jr., *En Banc*].

[94] *Id.* at 479-480.

[95] *Sindac v. People*, 794 Phil. 421, 429-430 (2016) [Per *J.* Perlas-Bernabe, First Division].

generally precedes[96] or is substantially contemporaneous[97] with the search.

In direct contrast to warrantless searches incidental to a lawful arrest, stop and frisk searches are conducted to prevent crime. Such operations are necessary for law enforcement, as underscored in *People v. Cogaed*.[98] Yet, in that same case, this Court warned that this necessity must be balanced with one's right to privacy:

> "Stop and frisk" searches (sometimes referred to as Terry searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.
>
> The balance lies in the concept of "suspiciousness" present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.[99] (Citation omitted)

In *Manalili v. Court of Appeals*,[100] police officers responded to a report that drug addicts were roaming the front of Kalookan City Cemetery. There, they saw a man with bloodshot eyes

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[96] *Malacat v. Court of Appeals*, 347 Phil. 462, 480 (1997) [Per *J.* Davide, Jr., *En Banc*]; *People v. Racho*, 640 Phil. 669, 676 (2010) [Per *J.* Nachura, Second Division]; and *Sanchez v. People*, 747 Phil. 552, 569 (2014) [Per *J.* Mendoza, Second Division].

[97] *People v. Tudtud*, 458 Phil. 752, 773 (2003) [Per *J.* Tinga, Second Division].

[98] 740 Phil. 212, 229 (2014) [Per *J.* Leonen, Second Division].

[99] *Id.* at 229-230.

[100] 345 Phil. 632 (1997) [Per *J.* Panganiban, Third division].

who was swaying as he walked,[101] *Manalili* upheld the validity of the warrantless search and seizure, deemed as a stop and frisk search, since the officers' observation and assessment led them to believe that the man was high on drugs and compelled them to investigate and search the man.

Similarly, in *People v. Solayao*,[102] police officers responded to reports that armed men were roaming the streets at night. As the police officers patrolled the streets, they saw a group of drunk men, among them the accused who was clad in a camouflage uniform. Upon seeing the police, the men all fled, but the officers managed to collar the accused, frisk him, and find that he carried an unlicensed firearm.[103] This Court held that the warrantless search and seizure made was valid for being a stop and frisk search, as the rapidly unfolding events did not leave the police officers enough time to apply for a search warrant.

Manalili and *Solayao* both upheld the warrantless searches conducted as valid stop and frisk searches because "the police officers[,] using their senses[,] observed facts that led to the suspicion."[104] Furthermore, the *totality of the circumstances* in each case, as assessed by the police officers, provided ample and genuine reason for them to suspect that something illicit was happening.

To substantiate a warrantless search and seizure, more than one suspicious circumstance is needed. In *Manibog v. People*,[105] this Court, citing Justice Lucas Bersamin's dissent in *Esquillo v. People*,[106] cautioned against warrantless searches based on a single suspicious circumstance. It stressed that there should

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[101] *Id.* at 638.

[102] 330 Phil. 811 (1996) [Per *J.* Romero, Second Division].

[103] *Id.* at 815.

[104] *People v. Cogaed*, 740 Phil. 212, 231 (2014) [Per *J.* Leonen, Second Division].

[105] G.R. No. 211214, March 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65164> [Per *J.* Leonen, Third Division].

[106] 643 Phil. 577 (2010) [Per *J.* Carpio Morales, Third Division].

be "more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity"[107] for a valid stop and frisk search.

For this Court to uphold the validity of a stop and frisk search, the arresting officer must have had personal knowledge of facts that would have aroused a reasonable degree of suspicion of an illicit act. *Cogaed* emphasized that the arresting officer's personal observation of suspicious circumstances as basis for the search is necessary, and anything less than their personal observation is an infringement on the "basic right to security of one's person and effects."[108]

Here, both SI Tagle and SPO1 Germodo testified that in an area notorious for the buying and selling of dangerous drugs, they saw petitioner checking out some plastic sachets in his left hand. They then both testified that when petitioner saw them, he tried to make a run for the other direction and, after getting caught, swallowed the plastic sachets in his hand, save for that one sachet that fell from his mouth.[109] When SI Tagle picked up the sachet, he saw that it contained white crystalline granules which he suspected to be *shabu*.[110] Thus, the totality of circumstances rightfully created a reasonable suspicion in the arresting officers' mind that petitioner was possessing illegal drugs. This justifies the stop and frisk search they conducted on petitioner.

The lower courts erred in designating the warrantless search done as a consequence of an *in flagrante delicto* arrest[111] under Rule 113, Section 5(a) rather than a valid stop and frisk search. However, the seizure remains valid since it fell under the

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[107] *C.J.* Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577, 609 (2010) [Per *J.* Carpio Morales, Third Division].

[108] *People v. Cogaed*, 740 Phil. 212, 232 (2014) [Per *J.* Leonen, Second Division].

[109] TSN, March 16, 2011, pp. 5-6. *See also* TSN, March 20, 2011, p. 6.

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

[111] *Rollo*, pp. 47-48 and CA *rollo*, pp. 16-17.

established exemptions under reasonable warrantless searches and seizures.

Nonetheless, as the records will bear out, the prosecution still failed to prove petitioner's guilt beyond reasonable doubt. His acquittal is inexorable.

III (A)

Rule 133, Section 2 of the Revised Rules on Evidence requires proof beyond reasonable doubt for an accused's conviction:

> SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The requirement of proof beyond reasonable doubt in a criminal case finds its basis in the due process[112] clause and in an accused's presumption of innocence,[113] both enshrined in the Constitution. In *People v. Ganguso*:[114]

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard

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[112] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[113] 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.

[114] 320 Phil. 324 (1995) [Per *J.* Davide, Jr., First Division].

is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[115] (Citations omitted)

Thus, the prosecution carries the burden of proving the accused's guilt beyond reasonable doubt. Conviction rests on the strength of the prosecution's evidence and not on the weakness of the accused's defense.[116]

Here, petitioner was charged with illegal possession of dangerous drugs, whose elements are: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug."[117]

The seized narcotic is the *corpus delicti* in drug cases. Hence, the chain of custody must be preserved to establish with moral certainty that the drug presented as evidence in court be the same drug seized from an accused.[118] The requirement of an unbroken chain of custody was reiterated in *People v. Tanes*:[119]

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[115] *Id.* at 335.

[116] *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

[117] *Anyayahan v. People*, G.R. No. 229787, June 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64228> [Per J. Perlas-Bernabe, Second Division] citing *People v. Bio*, 753 Phil. 730, 736 (2015) [Per J. Del Castillo, Second Division].

[118] *People v. Lorenzo*, 633 Phil. 393, 402-403 (2010) [Per J. Perez, Second Division].

[119] G.R. No. 240596, April 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65152> [Per J. Caguioa, Second Division].

In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. Consequently, compliance with the rule on chain of custody over the seized illegal drugs is crucial in any prosecution that follows a buy-bust operation. The rule is imperative, as it is essential that the prohibited drug recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[120]

Mallillin v. People[121] instructs what comprises sufficient compliance with the chain of custody rule:

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.[122] (Emphasis supplied, citations omitted)

People v. Nandi[123] enumerated the four links that should be established by the prosecution to prove a complete chain of custody:

[F]irst, 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

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[120] *Id.*

[121] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

[122] *Id.* at 587.

[123] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[124] (Emphasis in the original, citation omitted)

The first link in the chain is the marking of the illicit drug recovered. *People v. Coreche*[125] stressed the indispensability of marking to prevent the evils of switching, planting, or contamination of evidence.[126] *People v. Sanchez*[127] then emphasized that "marking" pertains to "the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized."[128]

Placing identifying marks, such as the apprehending officer's initials and signature, on the seized dangerous drug serves to set apart as evidence the dangerous drugs from other similar items. But more than the apprehending officer's initials or the accused's initials, what really sets the seized drug apart is the apprehending officer's signature. Initials and dates are easy to reproduce, but forging a signature is much harder to accomplish and can be detected by the arresting officer.

Here, SI Tagle marked the seized sachet by sticking a masking tape on it, and there wrote petitioner's initials and the date of arrest.[129] However, he did not place his signature on the masking tape.[130]

SI Tagle's failure to do so creates doubt, because without his signature, the generic marking of petitioner's initials and date of arrest may as well have been replicated by just about anybody on a piece of masking tape placed on any plastic sachet of *shabu*.

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[124] *Id.* at 144-145 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[125] 612 Phil. 1238 (2009) [Per J. Carpio, First Division].

[126] *Id.* at 1245.

[127] 590 Phil. 214 (2008) [Per J. Brion, Second Division].

[128] *Id.* at 241.

[129] TSN, March 16, 2011, pp. 9 and 25-26.

[130] *Id.* at 9.

SI Tagle himself admitted the possibility of tampering with his use of a masking tape to mark the seized sachet:

> [Atty. Sedillo] Q Now tell this court why did you use a masking tape and a ball pen instead of using a pentel pen with a small point and have it written on the sachet itself? Why the masking tape where it can be easily removed and replaced? Or is it part of your operational guideline to use a masking tape and not pentel pens on the sachets where it cannot be erased?
> A We have ball pens where it cannot be erased also, we just used the tape as our usual practice.
>
> Q Yes, the ball pen cannot be erased but the masking tape can be easily removed, right
> A Yes, sir.
>
> Q It can be easily removed from the plastic?
> A Yes, sir.
>
> Q It can be?
> A Yes, sir.[131]

Aside from that, other glaring lapses surrounded the first link in the chain. Testimonies from prosecution witnesses conflicted on who actually conducted the inventory, with SI Tagle[132] and PO2 Corsame[133] both claiming to be the one that did it. Furthermore, Astillero, the Department of Justice representative, testified that when the sachet was inventoried after the arrest, it not only carried the marking "JP"-P 4-21-08, but also A D-072-08—the marking Chief Inspector Llena, the forensic chemist, made after testing the substance inside the seized sachet.[134] Astillero testified:

> Court-
>
> Q- During the inventory, when you looked at the sachet, all these markings were already there?

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

[132] *Id.* at 9.

[133] TSN, March 2, 2011, p. 10.

[134] TSN, March 9, 2011, p. 8.

A- Yes sir, the markings were already there. I checked the inventory but I cannot remember how big the evidence was.

Q- These markings were already there?
A- Yes sir, there were already markings.

Q- You did not know who made those markings?
A- I cannot remember who made them.

Q- These markings JP-P 4-21-08, these were already in the sachet?
A- Yes, they were already there but the size of the evidence, I cannot remember.

Q- How about these markings A D-072-08, these were already there?
A- Yes sir.

Q- These markings A D-072-08 were also there already on the sachet?
A- Yes, it was already attached.[135]

With the substantial gap in the chain of custody caused by the insufficient marking and the prosecution witnesses' conflicting testimonies, the prosecution was unable to prove with moral certainty that the sachet supposedly seized from petitioner was the same sachet presented in court. Hence, the prosecution failed to establish the identity of the *corpus delicti*, warranting petitioner's acquittal.

III (B)

People v. Holgado[136] directed the courts to exercise heightened scrutiny when minuscule amounts of narcotics are presented into evidence, and for good reason. Behind this lies an inversely proportional relationship: the smaller the amount of narcotics is seized, the higher the probability of tampering and switching will be. Thus, this Court held:

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details

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[135] TSN, March 23, 2011, pp. 8-9.

[136] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered.[137]

Here, petitioner was charged with possessing 0.01 gram of *shabu*, or less than half a grain of rice. The minuscule amount of the seized illegal drug, while not a basis to acquit per se, should have prompted the trial court to strictly scrutinize the prosecution's testimony regarding the seizure.

The arresting officers testified that while they were trying to restrain petitioner, he managed to swallow the sachets in his hand except for one sachet that fell to the ground and was picked up by SI Tagle.[138] However, when SI Tagle was asked by the defense why he failed to retrieve the swallowed sachets, the arresting officer claimed that it was "impractical" to wait for petitioner to defecate the sachets, further noting that the single sachet of shabu he retrieved was enough evidence.[139]

On the other hand, petitioner testified that the seized sachet was merely planted on him by SI Tagle. This was corroborated by Guerrero:

Q So since the NBI officers only retrieved a cell phone and [the] proceeds of the sale of the "bihag", tell this court what happened thereafter?

A The one armed person walked away going outside.

Q Now, tell this court what happened to that person, to that armed person?

A Minutes later, he came back and when he was already near Juandom, he picked up something.

Q And what was that something and where did he pick up that something?

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[137] *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

[138] RTC records, p. 11.

[139] TSN, March 16, 2011, pp. 23-24.

A He just pretended to pick up something and said, "Here it is, here it is."

Q And did you have an occasion to see what he said, "Here it is, here it is?"
A What he said was it was shabu.

Q So after that incident where that officer who left and came back later and pretending to pick up something and said, "Here it is, here it is," and said that it was shabu, can you tell this court what was the reaction of your brother Juandom Palencia?
A Juandom was shouting saying, "Planting, planting."[140]

Between the arresting officers' failure to substantiate their claim that petitioner swallowed several sachets of *shabu* on one hand, and petitioner's corroborated testimony of planting on the other, the trial court should not have quickly applied the presumption of regularity in the performance of the arresting officers' official duty and discredited the defense.

Testimony as fantastic as a single accused who was being restrained by two officers, but still managed to swallow several sachets of *shabu*, engenders disbelief for being contrary to human experience. Thus, it was incumbent upon the prosecution to prove its assertion beyond reasonable doubt. The easiest way to do this would have been to retrieve the swallowed sachets after they had left petitioner's body, but the prosecution failed to give a satisfactory answer why the arresting officers opted against it, only asserting that retrieval would have been impractical.

Aside from being vigilant of anti-narcotics operations that only yield tiny amounts of illegal drugs, courts should likewise consider the scale of operations and the government unit involved when assessing the proffered evidence.

Republic Act No. 9165 created the Philippine Drug Enforcement Agency to be primarily responsible for "the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential

[140] TSN, July 20, 2011, pp. 7-8.

chemical as provided in this Act."[141] It was thus tasked with implementing the "national drug control strategy"[142] formulated by the Dangerous Drugs Board.

With the Philippine Drug Enforcement Agency now the primary agency to enforce and implement the law, Section 68 abolished the offices with similar anti-drug operations in the National Bureau of Investigation, Philippine National Police, and Bureau of Customs. Their functions were transferred to the Philippine Drug Enforcement Agency as the lead agency, with them only providing support or detail services:

> Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully, operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

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[141] Republic Act No. 9165 (2002), Sec. 82 provides:

> SECTION 82. *Creation of the Philippine Drug Enforcement Agency (PDEA).* — To carry out the provisions of this Act, the PDEA, which serves as the implementing arm of the Board, and shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in this Act.

[142] Republic Act No. 9165 (2002), Sec. 84(a) provides:

> SECTION 84. *Powers and Duties of the PDEA.* — The PDEA shall: (a) Implement or cause the efficient and effective implementation of the national drug control strategy formulated by the Board thereby carrying out a national drug campaign program which shall include drug law enforcement, control and prevention campaign with the assistance of concerned government agencies[.]

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the, provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same; to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

Thus, the Philippine Drug Enforcement Agency takes the lead in narcotics-related cases. An agency such as the National Bureau of Investigation, with its mandate of investigating crimes and other offenses,[143] generally assists in the case build-up leading to an arrest or provides reinforcement during an operation planned and initiated by the Philippine Drug Enforcement Agency.

In pursuit of its primary role of providing investigative and technical assistance, the National Bureau of Investigation has been allotted vast resources, which it uses not only in anti-narcotics operations, but also in investigating other crimes and offenses as public interest may require. Hence, it is not expected to be active in the daily operations of the anti-narcotics drive, as that is the Philippine Drug Enforcement Agency's mandate. Instead, its assistance is generally reserved for special cases that will create a considerable impact on the drive to eradicate illegal drugs once and for all.

Here, the National Bureau of Investigation, together with the Philippine Drug Enforcement Agency, investigated a report they had just received about rampant drug selling in Barangay Looc, Dumaguete City. However, despite the planned operation involving two separate government agencies, their efforts only

[143] Republic Act No. 157 (1947), Sec. 1(a).

led to a single charge of illegal possession of 0.01 gram of *shabu*.

The amount of drugs seized was highly disproportionate to the government resources mobilized for the operation. This should have led the trial court to scrutinize whether planting of evidence occurred, as alleged by the defense, instead of merely relying on the presumption of regularity accorded to the arresting officers. Clearly, there was nothing regular about the Philippine Drug Enforcement Agency and the National Bureau of Investigation conducting a joint operation that only yielded a minuscule amount of illegal drugs.

Planned narcotics operations that net minuscule amounts of dangerous drugs are judicially inefficient, taxing the courts' time and resources and swamping us with cases that barely create a ripple in the anti-narcotics drive. Worse, these cases are focused on the retail end of the drug war, targeting small-time drug users and retailers who more often than not turn to dangerous drugs because of poverty or the lack of any opportunity to better their lives.

In *Holgado*, this Court spurred our law enforcers to go beyond and focus their attention and resources toward capturing the big fish—the drug kingpins that supply dangerous drugs—if they are really serious in stomping out our country's narcotics problem for good:

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug

menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[144]

Every effort to arrest those with as little as, not even a tenth, but a hundredth of a gram, wastes law enforcement, prosecution, and judicial time. The inequality in our prisons is underscored by the numerous arrests on the retail side. We cannot continue hoping to reduce the drug menace by merely focusing most of our resources on small fry. By combining the full force of the law with our vast government resources, we should be able to successfully target the source of illegal drugs and dismantle its widespread network to finally rid our society of its pernicious effects.

WHEREFORE, the Court of Appeals' November 25, 2014 Decision and June 23, 2015 Resolution in CA-G.R. CR No. 01827 are **REVERSED** and **SET ASIDE**. Petitioner Juandom Palencia *y* De Asis is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. The Regional Trial Court is ordered to **RELEASE** his bail bond.

For their information, copies of this Decision shall also be furnished to the Philippine Drug Enforcement Agency and the National Bureau of Investigation.

The Regional Trial Court is also directed to turn over the seized sachet of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.

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

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[144] *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per *J.* Leonen, Third Division].

THIRD DIVISION

[G.R. No. 227725. July 1, 2020]

SPOUSES RUTH DIZON DEVISFRUTO and ALLAN DEVISFRUTO, *petitioners, vs.* **MAXIMA L. GREENFELL,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TRUSTS; IMPLIED TRUST; CREATED WHEN A PROPERTY IS SOLD TO ONE PARTY BUT PAID BY ANOTHER FOR THE PURPOSE OF HAVING BENEFICIAL INTEREST IN SAID PROPERTY. — The Civil Code provides that a trust is created when a property is sold to one party but paid for by another for the purpose of having beneficial interest in said property x x x. Based on the evidence presented, both the Court of Appeals and the Regional Trial Court determined that the legal estate over the properties was granted to petitioner Ruth while the price was paid by respondent. Further, they found that the purpose of this arrangement was for respondent to have beneficial interest over the property. This Court sees no cogent reason to revisit these conclusions.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PARTIES MAY NOT RAISE ISSUES FOR THE FIRST TIME ON APPEAL, FOR TO ALLOW ONE PARTY TO DO SO WOULD VIOLATE THE OTHER PARTY'S RIGHT TO DUE PROCESS. — As a general rule, issues may not be raised for the first time on appeal. In *Metropolitan Bank & Trust Co. v. G & P Builders, Inc.*, this Court explained the principle behind this bar: Generally, parties may not raise issues for the first time on appeal. To allow one party to do so would violate the other party's right to due process, which is contrary to the principle of equity and fair play: Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule. An exception exists when the consideration

and resolution of the issue is "essential and indispensable in order to arrive at a just decision in the case." More precisely, this court laid down the exceptions in *Trinidad v. Acapulco* x x x. Petitioners did not raise the distinction between express and implied trusts before the Court of Appeals. Instead, they relied mainly on the premise that respondent gratuitously gave the property to petitioner Ruth x x x. In this case, petitioners have not sufficiently explained why this Court should make an exception and consider this issue for the first time, on appeal.

3. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; DONATIONS OF PURCHASE MONEY MUST FOLLOW THE FORMAL REQUIREMENTS MANDATED BY LAW. — [T]he parties admit that respondent supplied the purchase money for the properties. Thus, assuming that neither an implied nor an express trust was created, the facts, as presented by petitioners, require the application of the laws on donation. If, as insisted by petitioners, the purchase money for the properties was gratuitously given to them, the law relevant to this transaction would be Article 748 of the Civil Code, which requires that donations of personal property exceeding ₱5000.00 must be in writing x x x. In *Carinan v. Spouses Cueto*, where it was argued that the respondent therein had gratuitously paid the purchase money for property as a donation, this Court noted that donations of purchase money must follow the formal requirements mandated by law x x x. Although petitioners repeatedly insisted that the purchase money for the properties was gratuitously given, it appears that they did not, at any stage, present evidence that this donation complied with the formal requirements under Article 748 of the Civil Code.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Roel Romero for respondent.

D E C I S I O N

LEONEN, *J.*:

This Court resolves the Petition for Review on *Certiorari*[1] questioning the Court of Appeals Decision and Resolution in CA-G.R. SP No. 136663.

On October 18, 2011, Maxima Greenfell (Greenfell) filed before the Municipal Circuit Trial Court a Complaint for Reconveyance and Damages[2] against Spouses Ruth Dizon Devisfruto and Allan Devisfruto (the Devisfruto Spouses), and impleaded as defendant the Office of the Municipal Assessor of Botolan, Zambales.

In her Complaint, Greenfell asserted that she was a natural-born Filipino citizen who later became an Australian citizen. She alleged that prior to reacquiring Filipino citizenship, she financed the purchase of a house and two (2) lots located in Tampo, Botolan, Zambales, from Spouses Dante and Erna Magisa (the Magisa Spouses). The lots were registered in the name of her niece, Ruth Dizon Devisfruto (Ruth). Deeds of sale were executed by which the Magisa Spouses sold the properties to Ruth for ₱20,000.00 and ₱25,000.00, respectively.[3]

Thereafter, the Devisfruto Spouses possessed the properties. Ruth declared herself the owner, as shown in Tax Declaration Nos. 021-0464R and 021-0659R. The properties were subsequently consolidated as one under Tax Declaration No. 021-0842. In April 2009, after reacquiring her Philippine citizenship by virtue of Republic Act No. 9225, Greenfell demanded that the properties be transferred to her name. When Ruth refused to comply, Greenfell filed the Complaint before the Municipal Circuit Trial Court.[4]

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[1] *Rollo*, pp. 13-33.

[2] *Id.* at 63-67.

[3] *Id.* at 36; and 63-64.

[4] *Id.* at 65.

In its Decision,[5] the Municipal Circuit Trial Court decided in favor of Greenfell. It pointed out that in the Devisfruto Spouses' Answer, they admitted to Greenfell providing the purchase money for the property.[6] Thus, it found that a purchase money resulting trust under Article 1448 of the Civil Code existed.[7] The Municipal Circuit Trial Court held that the parties' intent was to give legal title over the properties to Ruth because Greenfell believed she was precluded from owning realty after she became an Australian citizen.[8] Hence, the Devisfruto Spouses were merely the depository of a legal title who were obligated to convey the property when called upon by Greenfell.[9]

The dispositive portion of the Municipal Circuit Trial Court Decision read:

> WHEREFORE, judgment is rendered in favor of plaintiff. Defendants are directed to:
>
> (1) Reconvey to plaintiff the properties subject of the Deed of Absolute [o]f [a] Portion [o]f [a] Parcel [of] Land dated August 09, 1999 and the Deed [o]f Absolute Sale [o]f [a] House [a]nd [a] Parcel of Land [d]ated April 29, 2002; and
>
> (2) Pay plaintiff Php30000.00 by way of attorney's fee and Php2825.00 as costs.
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> SO ORDERED.[10]

The Devisfruto Spouses appealed to the Regional Trial Court, which affirmed the Municipal Circuit Trial Court in a Decision dated July 18, 2013.[11]

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[5] *Id.* at 140-149. The June 28, 2013 Decision was penned by Acting Presiding Judge Ildefonso F. Recitis of the Municipal Circuit Trial Court of Botolan, Zambales.

[6] *Id.* at 142.

[7] *Id.* at 148.

[8] *Id.* at 146.

[9] *Id.* at 148.

[10] *Id.* at 149.

[11] *Id.* at 158-162. The Decision was penned by Judge Marifi P. Chua of the Regional Trial Court of Iba, Zambales, Branch 70.

Thus, they filed a Petition for Review under Rule 42 of the Rules of Court before the Court of Appeals.[12]

The Court of Appeals[13] dismissed their Petition. It agreed that a trust had been created, considering that Greenfell had provided the purchase money for the properties on the condition that the Spouses Devisfruto surrender them to her upon her re-acquisition of Philippine citizenship. It held that the execution of the deeds of sale in Ruth's name did not weaken the trust, as what was crucial was the intention to create a trust, which derives its strength from the confidence reposed on another. It ruled that the intention to create an implied trust was attested to by the properties' former owner, Dante Magisa—a disinterested party who testified that the parties had an agreement where Ruth was obligated to transfer the titles to Greenfell once permitted by law.[14] The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, the instant petition for review is **DENIED**. The July 18, 2013 Decision of the Regional Trial Court, Branch 70, Iba, Zambales in Civil Case No. RTC-3535-I is hereby **AFFIRMED**.
>
> **SO ORDERED.**[15] (Emphasis in the original)

The Devisfruto Spouses filed a motion for reconsideration, which the Court of Appeals denied.[16]

Thus, they filed this Petition for Review on *Certiorari*.[17]

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[12] *Id.* at 35.

[13] *Id.* at 35-44. The Decision was penned by Associate Justice Pedro Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (Now a Member of this Court) of the Eleventh Division, Court of Appeals, Manila.

[14] *Id.* at 42-43. The Resolution was penned by Associate Justice Pedro Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (Now a Member of this Court) of the Eleventh Division, Court of Appeals, Manila.

[15] *Id.* at 43.

[16] *Id.* at 46-47.

[17] *Id.* at 13-33.

Petitioners claim that there was no legal or factual basis to find that the parties had created a trust.[18] They said that assuming a trust had been created, it was an express trust, which cannot be proven by parole evidence. They assert that testimonial evidence is insufficient to prove express trusts and since Greenfell did not present any documentary proof of an express trust, no trust had been established.[19]

Petitioners argue further that the properties had been given gratuitously to them. They allege that respondent gave the properties to Ruth because she is her favorite niece, and claim that respondent only filed a case after their relationship turned sour. They insist that it was not unlikely for respondent to gratuitously give the property to Ruth, as she has the financial capacity to assist less fortunate relatives. They claim that respondent even admitted to giving them a monthly allowance of more than ₱20,000.00 from 1999 onwards.[20]

In her Comment,[21] respondent argues that the issue in this case involves the ownership of the subject properties. She asserts that the best person to identify the current owner of the property would be its original owner, Dante O. Magisa, who testified that the person who bought his property was respondent, through her niece, Ruth. Respondent points out that this finding of the lower courts is supported by the evidence on record.[22]

The issues for resolution are:

First, whether or not the Court of Appeals erred in finding that an implied trust had been created by the parties; and

Second, whether or not the Court of Appeals erred in not finding that the properties were given gratuitously to petitioners.

The Petition is denied.

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[18] *Id.* at 19.

[19] *Id.* at 20-22.

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

[21] *Id.* at 183-185.

[22] *Id.* at 184.

The Civil Code provides that a trust is created when a property is sold to one party but paid for by another for the purpose of having beneficial interest in said property:

> ARTICLE 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

Based on the evidence presented, both the Court of Appeals[23] and the Regional Trial Court[24] determined that the legal estate over the properties was granted to petitioner Ruth while the price was paid by respondent. Further, they found that the purpose of this arrangement was for respondent to have beneficial interest over the property. This Court sees no cogent reason to revisit these conclusions.

Petitioners assert that Article 1448 of the Civil Code is inapplicable to this case because, assuming a trust was created, it was an express trust and not an implied one. They base this position on respondent's testimony, saying that she designated petitioner Ruth to represent her in the purchase of the properties, and agreed that Ruth would register the properties in her name, although it would be returned to her.

Petitioners claim this showed that both parties verbally agreed to the properties being registered in Ruth's name at first and subsequently reconveyed to respondent upon her return. Petitioners maintain that any verbal expression of intention pertaining to the elements of a trust removes a transaction from the ambit of an implied trust. Thus, they surmise that because respondent testified that there was a "verbal understanding and agreement that [Ruth] will represent [Greenfell] in the purchase of properties. . . as the money will be sent by [Greenfell], but

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[23] *Id.* at 35-44.

[24] *Id.* at 158-162.

the properties will be registered for the time being in [Ruth's] name and she will return the same to [Greenfell],"[25] any trust created was an express trust and not an implied one.

This argument cannot be sustained.

As a general rule, issues may not be raised for the first time on appeal. In *Metropolitan Bank & Trust Co. v. G & P Builders, Inc.*,[26] this Court explained the principle behind this bar:

> Generally, parties may not raise issues for the first time on appeal. To allow one party to do so would violate the other party's right to due process, which is contrary to the principle of equity and fair play:
>
> > Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule. (Citation omitted)
>
> An exception exists when the consideration and resolution of the issue is "essential and indispensable in order to arrive at a just decision in the case." More precisely, this court laid down the exceptions in *Trinidad v. Acapulco*:
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> > Indeed, the doctrine that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below but ventilated for the first time only in a motion for reconsideration or on appeal, is subject to exceptions, such as when:
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> > > (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically

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[25] *Id.* at 20.

[26] 773 Phil. 289 (2015) [Per J. Leonen, Second Division].

> assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. . .[27] (Citations omitted)

Petitioners did not raise the distinction between express and implied trusts before the Court of Appeals. Instead, they relied mainly on the premise that respondent gratuitously gave the property to petitioner Ruth:

> 28. It is inferable from respondent Maxima's testimony that her noble desire was to share her blessings to her unfortunate relatives in the Philippines by providing them financial assistance and helping them acquire suitable dwelling places[.] To the petitioners' mind, the purchase of a residential lot and the execution of the deed of sale. . . with petitioner Ruth as the buyer and in the latter's name are consistent with their claim that the subject properties were intended for them and not merely to constitute them as trustees thereof. In so carrying out what the petitioners conceived, they took possession of the said properties, occupied the same and paid real property taxes thereon[.] In fact, the respondent was one of the material witnesses who signed the April 29, 2011 deed of sale... It was only when their relationship soured that the respondent sought to get the properties on the theory of implied trust[.]
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> 29. In order to establish a trust in real property by parol evidence, the proof should be as fully convincing as if the act giving rise to the trust obligation were proven by an authentic document[.] A trust cannot be established upon testimony consisting in large part of insecure surmises based on ancient hearsay[.]
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> 30. In De Leon v. Molo-Peckson[,] the Supreme Court categorically stated that "a trust must be proven by clear, satisfactory and convincing evidence. It cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations."
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> 31. The fact that the respondent allowed nine (9) to lapse years (sic) from the execution of the deed of sale before questioning

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[27] *Id.* at 317-318.

petitioners' ownership over the questioned properties renders the filing of the instant complaint dubious.

32. Although Article 1457 of the Civil Code allows an implied trust to be proven by oral evidence, trustworthy oral evidence is required to prove an implied trust because the same can be easily fabricated.[28]

In this case, petitioners have not sufficiently explained why this Court should make an exception and consider this issue for the first time, on appeal.

As to the second issue, the parties admit that respondent supplied the purchase money for the properties. Thus, assuming that neither an implied nor an express trust was created, the facts, as presented by petitioners, require the application of the laws on donation. If, as insisted by petitioners, the purchase money for the properties was gratuitously given to them, the law relevant to this transaction would be Article 748 of the Civil Code, which requires that donations of personal property exceeding ₱5000.00 must be in writing:

ARTICLE 748. The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void.

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.

In *Carinan v. Spouses Cueto*,[29] where it was argued that the respondent therein had gratuitously paid the purchase money for property as a donation, this Court noted that donations of purchase money must follow the formal requirements mandated by law:

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[28] *Id.* at 54-55.

[29] 745 Phil. 186 (2014) [Per *J.* Reyes, Third Division].

In order to sufficiently substantiate her claim that the money paid by the respondents was actually a donation, Esperanza should have also submitted in court a copy of their written contract evincing such agreement. Article 748 of the New Civil Code (NCC), which applies to donations of money, is explicit on this point as it reads:

> Art. 748. *The donation of a movable may be made orally or in writing.* —
>
> An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.
>
> If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.

As the Court ruled in *Moreño-Lentfer v. Wolff*, a donation must comply with the mandatory formal requirements set forth by law for its validity. When the subject of donation is purchase money, Article 748 of the NCC is applicable. Accordingly, the donation of money as well as its acceptance should be in writing. Otherwise, the donation is invalid for non-compliance with the formal requisites prescribed by law.[30] (Citations omitted)

Although petitioners repeatedly insisted that the purchase money for the properties was gratuitously given, it appears that they did not, at any stage, present evidence that this donation complied with the formal requirements under Article 748 of the Civil Code. Thus, this Court sees no reason to consider this argument any further.

WHEREFORE, the Petition is **DENIED** for having shown no reversible error in the assailed Decision and Resolution. The Court of Appeals Decision and Resolution in CA-G.R. SP No. 136663 are **AFFIRMED**.

SO ORDERED.

G*esmundo, Hernando*,[*] *Carandang*, and *Gaerlan, JJ.*, concur.

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[30] *Id.* at 193-194.

[*] Designated additional Member per Raffle dated June 29, 2020.

THIRD DIVISION

[G.R. No. 231452. July 1, 2020]

SPOUSES ATTY. TOMAS HOFER and DR. BERNARDITA R. HOFER, *petitioners*, *vs.* **NELSON YU,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR ANNULMENT OF JUDGMENT; NATURE; REQUIREMENTS THAT MUST BE COMPLIED WITH FOR THE PETITION TO PROSPER, ENUMERATED AND EXPLAINED. — A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. x x x Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, a petitioner must comply with the statutory requirements as set forth under Rule 47. These are: (1) the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner; (2) the grounds for action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction; (3) the action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be raised before it is barred by laches or estoppel; and (4) the petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be. The judgment may be annulled on the ground of extrinsic or collateral fraud. A person who is not a party to the judgment may sue for its annulment provided he can prove that the same was obtained through fraud or collusion and that he would be adversely affected thereby. The other ground for annulment of judgments or final orders and resolutions is lack of jurisdiction on the part of the court which adjudicated the case. This refers to either lack of jurisdiction over the person

of the defending party or over the subject matter of the claim. Case law, however, recognizes a third ground — denial of due process of law. Due process requires that those with interest in the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny a person their due process rights while at the same time be considered acting within their jurisdiction. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.

2. CIVIL LAW; LACHES, DEFINED AND EXPLAINED; LACHES HAS NOT BARRED PETITIONERS' ACTION FOR ANNULMENT OF JUDGMENT. — Laches is defined as the failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand. Each case must be determined according to its particular circumstances. Its application is controlled by equitable considerations. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result. In the present case, contrary to the findings of the CA, We find that laches has not barred petitioners' action for annulment of judgment. There is no evidence to show that Tomas had actual knowledge of the execution of the Amended Compromise Agreement nor had he received a copy of the Amended Decision. He only knew of the aforesaid Amended Compromise Agreement sometime in March 2009, when he learned that their conjugal properties, which were previously attached but were released from attachment upon the execution of the judicially approved Compromise Agreement, were the subject of sale. Upon receiving a copy of the registration of sale, he immediately filed a motion to set aside the Amended Decision, writ of execution, public auction sale and to declare void the corresponding certificate of sale. Then he filed his petition for annulment of judgment on November 11, 2009. His silence and inaction could also not be considered as estoppel since he believed in good faith that their case had already been terminated upon the execution

of the first Compromise Agreement which had already been judicially approved by the RTC. Hence, the action to annul the Amended Decision is not barred by laches.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT BASED ON A COMPROMISE AGREEMENT, CONCEPT OF; THE PARTIES MAY EXECUTE AN AMENDED COMPROMISE AGREEMENT AS LONG AS ALL THE REQUIREMENTS PROVIDED BY THE LAW ON CONTRACTS ARE COMPLIED WITH. — It is settled that a judgment on compromise is a judgment on the merits. It has the effect of *res judicata* and is immediately final and executory unless set aside because of falsity or vices of consent. A judicially approved compromise agreement ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through a writ of execution. Thus, even after the judgment has become final, the court retains its jurisdiction to execute and enforce it. There is a difference between the jurisdiction of the court to execute the judgment and its jurisdiction to amend, modify or alter the same. The former continues even after the judgment has become final for the purpose of enforcement of judgment; the latter is terminated when the judgment becomes final. For after the judgment has becomes final, facts and circumstances may transpire which can render the execution unjust or impossible. x x x [T]he parties are not precluded nor prohibited from executing an amended compromise agreement when there has been no execution of the first judicially approved compromise. However, the validity of the agreement is determined by compliance with the requisites and principles of contracts. As provided by the law on contracts, a valid compromise must have the following elements: (1) consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.

4. ID.; ID.; ID.; ID.; AN AMENDED COMPROMISE AGREEMENT IS NOT VALID WHERE IT WAS EXECUTED WITHOUT THE CONSENT AND PARTICIPATION OF ONE OF THE PARTIES THERETO AND IN VIOLATION OF HIS RIGHT TO DUE PROCESS; THE WIFE CANNOT DISPOSE OF ANY PROPERTY BELONGING TO THE CONJUGAL PARTNERSHIP WITHOUT THE CONFORMITY OF THE HUSBAND. — To be valid, an amendment to the compromise

agreement must be with the concurrence and consent of all the parties involved. In the present case, the Amended Compromise Agreement was executed only between respondent Yu and Bernardita, but without the consent and participation of Tomas. There was no proof to show that Bernardita was authorized by Tomas to enter into the Amended Compromise Agreement in his behalf. Thus, being executed without the authority of Tomas, an indispensable party to the case, the Amended Compromise Agreement is not a valid compromise and cannot supersede the previously approved Compromise Agreement. Clearly, it was erroneous for the RTC to approve the Amended Compromise Agreement executed in 2005 which was executed without the consent of Tomas and in violation of his right to due process. x x x [T]he wife cannot dispose of any property belonging to the conjugal partnership without the conformity of the husband. Thus, the trial court erred when it approved the Amended Compromise Agreement which was entered only by Bernardita and respondent, as the same could not bind the conjugal properties of both spouses. x x x [T]he present law specifically requires the written consent of the other spouse or authority of the court for the disposition or encumbrance of the conjugal property, without which the disposition or encumbrance shall be void. Thus, even on the supposition that the wife Bernardita encumbered her respective share in the property, such encumbrance is still void for the right of the husband or the wife to one-half of the conjugal assets does not vest until liquidation of the conjugal partnership. All told, the Amended Compromise Agreement entered into by Bernardita with respondent over the conjugal properties of the spouses was void for having been executed without the participation and consent of Tomas. Therefore, the trial court erred in approving the Amended Compromise Agreement. Accordingly, the CA should have granted the petition for annulment of judgment filed by petitioners.

APPEARANCES OF COUNSEL

Aparente De Lumen & Associates Law Firm for petitioners.

Law Firm of Miguel Baliao & Associates for private respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated October 27, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 03264-MIN, which dismissed the Petition for Annulment of Judgment under Rule 47 of the Rules of Court (Rules) filed by petitioner Spouses Atty. Tomas Hofer (Tomas) and Dr. Bernardita R. Hofer (Bernardita; collectively, petitioners) seeking to nullify the Amended Decision[3] dated February 23, 2004 and Order[4] dated September 17, 2009 of the Regional Trial Court (RTC) of General Santos City, Branch 22 in Civil Case No. 5550. Petitioners likewise assail the Resolution[5] dated February 17, 2017 of the CA denying their motion for reconsideration.

On February 28, 1995, respondent Nelson Yu (Yu) filed a Complaint for Sum of Money and Damages with application for the issuance of preliminary attachment against herein petitioners. The case was docketed as Civil Case No. 5550.[6]

On March 6, 1995, the RTC issued a Writ of Preliminary Attachment. As a result, the following conjugal properties of petitioners were levied, to wit:

a) A parcel of land (Lot 3 Block 4 of the subdivision plan psd-11-013996) being a portion of Lot 25, Pls 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 185 square meters more or less, and covered by Transfer [C]ertificate of Title No. T-48484;

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[1] *Rollo*, pp. 3-16.

[2] Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos; *id.* at 18-34.

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

[4] CA *rollo*, pp. 89-99.

[5] *Rollo*, pp. 38-42.

[6] *Id.* at 5.

b) A parcel of land (Lot 8 Block 1 of subdivision plan psd-11-013996) being a portion of Lot 25, Pls 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 200 square meters more or less, and covered by Transfer Certificate of Title No. T-48447;

c) A parcel of land (Lot 1 Block 10 of the subdivision plan psd-11-013996) being a portion of Lot 25, Pls 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 298 square meters, and covered by Transfer Certificate of Title No. T-48402;

d) A parcel of land (Lot 1 Block 6 of the subdivision plan psd-11-013996) being a portion of Lot 25, Pls 209-D situated in the Barrio of Lagao, General Santos City, containing an area of 248 square meters more or less, and covered by Transfer [C]ertificate of Title No. T-48386;

e) A parcel of land known as Lot 30, GSS-11-030-D, situated in Tambler, General Santos City, containing an area of 4076 square meters more or less, and covered by Transfer Certificate of Title No. T-60285.

f) A parcel of land (lot 24-B Psd-11-009020 being a portion of Lot 24, Gss-11-030-D; Tambler Group Settlement Survey LRC CAD) situated in the Barrio of Tambler, General Santos City, containing an area of 5,000 square meters more or less, and covered by Transfer Certificate of Title No. T-19829.[7]

On April 17, 1995, petitioners filed their Answer alleging that respondent had no cause of action against them since they do not have any obligation to him as the subject check issued was without authority.[8]

On August 18, 1995, before the case could be tried on the merits, petitioners and respondent, assisted by their counsels, executed a Compromise Agreement[9] which contained the following stipulations:

1. That the plaintiff and the defendants admit and agree that the latter's total obligations due to the former (plaintiff) which is

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[7] *Id.*

[8] *Id.* at 6.

[9] *Id.* at 19.

the subject matter of this case in the amount of ₱1,500,000.00, Philippine Currency;

2. That the property which is the subject of payment is worth ₱1,600,000.00, Philippine Currency;

3. That in total payment of said amount, the defendants hereby convey, transfer and cede in favor of plaintiff a parcel of land owned by them and described as follows:

A parcel of land, Lot 102, Cad. Lot No. 12060-PT situated in the Bo. of Kalubihan, Municipality of Talamban, City of Cebu, Island of Visayas, with an area of SEVEN HUNDRED NINETY TWO (792) Square meters, more or less, as under Tax Declaration No. 94GR-02-019-15613 in the name of Spouses Thomas & Bernardita R. Hofer.

x x x x x x x x x

4. That the plaintiff shall pay the defendants the amount of ONE HUNDRED THOUSAND (₱100,000.00) PESOS representing excess of the property's valuation over defendants' total obligations;

5. That the plaintiff hereby agrees that all expenses, capital gains tax, documentary stamp tax and other fees and charges in the transfer and registration of the land in its *(sic)* shall be borne by him;

6. That with this Compromise Agreement, the parties have mutually withdrawn whatever claims and counterclaims they may have against the other arising from this case.[10]

In a Decision[11] dated August 22, 1995, the RTC approved the Compromise Agreement and adopted its stipulations. The Decision became final and executory.

On May 29, 2003, after the lapse of almost eight years, respondent Yu and Bernardita executed an Amended Compromise Agreement[12] without the knowledge and participation of Tomas, which stipulated the following:

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[10] *Id.*

[11] *Id.* at 53-54.

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

1. The defendants agree that the plaintiffs shall be relieved from accepting their Talamban Cebu City real property;
2. That in exchange thereof, they agree to hold in trust an amount of ONE MILLION FIVE HUNDRED THOUSAND (₱1,500,000.00) PESOS that shall come from the proceeds of the sale of their properties which were levied (pursuant to an order of attachment in this case), and which sale is to become due on or before December 30, 2004, but which is subject to a six months extension, should any such sale fail to materialize; provided, however, no such failure is attributable to the defendants;
3. That the subject properties which are due for sale are as follows:
    a) Transfer Certificate of Title No. T-19829
    b) Transfer Certificate of Title No. T-60285
    c) Transfer Certificate of Title No. T-48484
    d) Transfer Certificate of Title No. T-48425
    e) Transfer Certificate of Title No. T-48447
    f) Transfer Certificate of Title No. T-48421
    g) Transfer Certificate of Title No. T-48386
    h) Transfer Certificate of Title No. T-48402
4. That on or before the day of sale or transfer of the aforementioned properties, the plaintiff agrees to cause the discharge or lifting of the levy on attachment thereon which are more particularly identified in Entries Nos. 193265 and 193268;
5. That pursuant to the aforementioned purposes, the defendants shall from time to time inform and apprise the plaintiff of whatever transaction (affecting the sale or disposition of subject properties), and that in the event of any such transfer, sale or conveyance thereof, that they shall immediately notify the plaintiff of such fact in order for the latter to cause the discharge of the levy on attachment as aforementioned, and thereafter to immediately deliver the amount of One Million Five Hundred Thousand (₱1,500,000.00) Pesos which they shall hold in trust for the plaintiff, thru the undersigned counsel, who is hereby empowered to received said amount for the plaintiff.[13]

Acting on the Amended Compromise Agreement, the RTC directed the respective counsels of Yu and petitioners to submit a joint manifestation on whether the parties were duly assisted when the amended agreement was executed.[14]

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[13] *Id.* at 52.

[14] *Id.* at 21.

On October 8, 2003, petitioners' counsel, Atty. Samuel R. Matunog, manifested that he had not received information from his clients as to the nature, substance and details of the Amended Compromise Agreement. Thus, he averred that he cannot state for the record that he has rendered due assistance to petitioners in the execution of the alleged Amended Compromise Agreement.

The parties submitted for the court's approval the terms and conditions of their Amended Compromise Agreement. On February 23, 2004, the RTC rendered an Amended Decision[15] approving the Amended Compromise Agreement stating that:

> Finding the foregoing to be not contrary to law, public order, public policy, morals or good customs and in accordance with Article 6 of the New Civil Code, the same is hereby approved as the decision in this case. The decision dated August 22, 1995 is amended accordingly.
>
> SO ORDERED.[16]

Atty. Matunog received a copy of the Amended Decision by registered mail on February 23, 2004.[17]

On August 25, 2005, respondent Yu filed a Motion for Issuance of Writ of Execution.[18] On September 12, 2005, the RTC issued an Order[19] directing the issuance of a writ of execution which was issued two days after. Petitioner's counsel, Atty. Samuel Matunog, received a copy of the said order on September 21, 2005 by registered mail. On October 20, 2005, all the properties subject of the Amended Compromise Agreement were sold at public auction with respondent being the highest bidder. On December 28, 2006, the Sheriff's Certificate of Sale[20] was issued. The Sheriff's Certificate of Sale was registered in the Property Registry on January 4, 2007.

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[15] *Supra* note 3.

[16] *Rollo*, p. 52.

[17] *Id.* at 79.

[18] CA *rollo*, pp. 274-276.

[19] *Id.* at 277.

[20] *Id.* at 497-498.

On March 10, 2008, respondent Yu filed several Motions to Direct the Register of Deeds of General Santos City to:

1) annotate Sheriff's Certificate of Sale on TCT No. T-9336[1] in the name of Victor Joy G. Cabading;
2) direct the Branch Sheriff to issue Final Certificate of Sale on the Properties Covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 and T-93361;
3) direct the Defendants and Victor Joy G. Cabading to Surrender the Owner's Duplicate Copies of TCT Nos. T-60285 and T-93361;
4) direct the Register of Deeds to annotate the Corresponding Sheriff's Certificate of Sale on TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs and T-93361 in the name of Victor Joy G. Cabading;
5) direct the Register of Deeds of General Santos City to cancel TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs & T-93361 in the name of Victory Joy G. Cabading and in lieu thereof, New Certificates be issued in favor of the plaintiff, herein respondent; and
6) for issuance of Writ of Possession and Demolition affecting the properties covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361.[21]

On March 16, 2009, petitioners filed a Comment with Motion to Set Aside the Amended Decision, Writ of Execution, Public Auction Sale and to Declare Void the Corresponding Certificate of Sale.[22] Tomas claimed that he was denied due process and that through deceitful machinations and false representations, his wife was inveigled into signing the Amended Compromise Agreement without any counsel.[23]

Subsequently, the RTC issued an Order[24] dated September 17, 2009 partly granting the Motions of respondent Yu. The RTC ruled in this wise:

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

[22] *Rollo*, p. 22.

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

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

WHEREFORE, premises considered, the court hereby grants plaintiff's Motions to Direct the Register of Deeds of General Santos City to Annotate Sheriff's Certificate of Sale on TCT No. T-93361 in the name of Victor Joy G. Cabading, to Direct the Branch Clerk Sheriff to Issue Final Certificate of Sale on the Properties Covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361, to Direct the Defendants and Victor Joy G. Cabading to Surrender the Owner's Duplicate Copies of TCT Nos. *(sic)* T-60285 & T-93361, to Direct the Register of Deeds to Annotate the Corresponding Sheriff's Certificate of Sale on TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361, and for Issuance of Writ of Possession and Demolition Affecting the Properties Covered by TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 & T-93361 except his Motion to Direct the Register of Deeds of General Santos City to Cancel TCT Nos. T-19829, T-48421, T-48425, T-48447, T-48484, T-60285 in the name of the plaintiffs & T-93361 in the name of Victor Joy G. Cabading and in lieu thereof, New Certificates be issued in Favor of Plaintiff which is premature.[25]

Aggrieved, on November 11, 2009, petitioners filed a Petition for Annulment of Judgment and Final Order with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[26] before the CA. Petitioners claimed that the Amended Decision dated February 23, 2004 and Order dated September 17, 2009 were null and void on the ground that the trial court had no jurisdiction to amend the original Decision dated August 22, 1995 which had long become final and executory upon its rendition, it being a judgment on compromise. Petitioners further averred that the Amended Compromise Agreement, which was the basis of the Amended Decision, was without the authority and consent of petitioner Tomas, hence, it could not bind the conjugal properties of the spouses.[27]

In a Resolution[28] dated November 17, 2009, the CA gave due course to the petition and granted the prayer for a temporary restraining order.

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[25] *Id.* at 23.

[26] CA *rollo*, pp. 2-13.

[27] *Id.* at 3.

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

On December 3, 2009, respondent Yu filed his Answer with Affirmative Defense and Compulsory Counterclaim with *Ex Parte* Motion to Dissolve Temporary Restraining Order/ Preliminary Injunction and Opposition thereto.[29] He alleged that the RTC had jurisdiction by estoppel to render the Amended Decision and petitioners' claim was already abandoned and barred by laches.[30]

Pending resolution of the petition, the CA issued a preliminary injunction[31] in favor of petitioners. Respondent, in his Answer, averred that the RTC had jurisdiction by estoppel to render the Amended Decision and that the claims of petitioners were already abandoned and barred by laches. On September 24, 2015, the CA declared that the petition for relief from judgment is submitted for decision without the memorandum from the parties.[32]

In the herein assailed Decision[33] dated October 27, 2016, the CA dismissed the petition for annulment of judgment for lack of merit. The CA held that an action for annulment of judgment may only be availed of when the following concur: (1) the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner; (2) the ground for annulment are based on either extrinsic fraud, lack of jurisdiction or lack of due process; and (3) the suit is filed within the reglementary period — within four years from discovery of extrinsic fraud and before the action is barred by laches or estoppel if premised on lack of jurisdiction.[34]

The CA ruled that petitioners' petition for annulment of judgment was already barred by laches. An action for annulment of judgment anchored on the trial court's lack of jurisdiction

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[29] *Id.* at 78-86.

[30] *Id.* at 80.

[31] *Id.* at 3.

[32] *Rollo*, p. 27.

[33] *Supra* note 2.

[34] *Rollo*, p. 30.

must be filed by the party before laches had set in.[35] The CA held that petitioners have constructive notice of the Amended Decision which was registered and inscribed on one of their titles, T-48386, as Entry No. 520249 on June 9, 2005. The CA ruled that under the doctrine of "constructive notice," the registration of a voluntary or involuntary instrument in the office of the Register of Deeds operates as a notice to the whole world and effectively bind third persons, including the owners of the land.[36]

The CA further noted that the Amended Decision was rendered on February 23, 2004, however, petitioners did not seek any judicial relief to impugn the issuance of the said judgment. It was only after nearly five years or on March 16, 2009 that petitioners filed with the RTC their Comment with Motion to Set Aside the Amended Decision, Writ of Execution and Public Auction Sale, in which case, the CA ruled that laches has set in.[37]

Hence, petitioners filed this petition.

Petitioners contend that the CA erred in holding that their action for annulment of judgment is barred by laches. According to petitioners, laches is not obtaining in the instant case since the Amended Decision was a void judgment for having been issued long after the Compromise Agreement had become final and executory and after the court has lost its jurisdiction over the case. Petitioners assert that the principle of immutability of final judgment is applicable in this case.[38]

Petitioners further claim that the Amended Compromise Agreement was executed without the knowledge and consent of Tomas and the consent of Bernardita was vitiated when respondent Yu's counsel inveigled her into agreeing to change the original Compromise Agreement.[39] Tomas, upon learning about the Amended Compromise Agreement in March 2009

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[35] *Id.*

[36] *Id.* at 32.

[37] *Id.* at 32-33.

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

[39] *Id.* at 9.

which affected their conjugal property, immediately filed a Comment with Motion to Set Aside the Amended Decision, Writ of Execution, Public Auction Sale and to Declare Void the Corresponding Certificate of Sale. Hence, petitioners contend that the trial court erred in approving the Amended Compromise Agreement when it had no jurisdiction to amend the original Decision dated August 22, 1995.[40]

In the Comment[41] filed by respondent Yu, he maintains that the Amended Compromise Agreement was voluntarily and freely executed between him and Bernardita in order to fully resolve all the issues between the parties arising from the implementation of the original Compromise Agreement. Respondent claims that petitioners are in estoppel from questioning the validity of the Amended Compromise Agreement and the Amended Decision, and from questioning the jurisdiction of the RTC in rendering the Amended Decision, because as shown in the records, their counsel received copy of the Amended Decision and petitioners themselves received a copy of the Amended Decision on March 25, 2004 by registered mail and they did not timely question the Amended Compromise Agreement.[42] Also respondent claims that the RTC has jurisdiction to render an Amended Decision based on an Amended Compromise Agreement considering that the original Compromise Agreement has not been fully executed or implemented.[43]

During the pendency of the case, Bernardita died on March 27, 2016.

Issues

The issues to be resolved in this petition are: (1) whether the CA erred in ruling that petitioners' action for annulment of judgment was already barred by laches; and (2) whether there exists any ground to annul the Amended Decision.

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[40] *Id.*

[41] *Id.* at 78-91.

[42] *Id.* at 78.

[43] *Id.* at 80.

Ruling of the Court

The petition is meritorious.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud.[44]

Sections 2 and 3 of Rule 47 of the Rules provide for the grounds for annulment of judgment and the period for filing of such action, to wit:

> Section 2. Grounds for annulment. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.
>
> Section 3. Period for filing action. — If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel.

Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, a petitioner must comply with the statutory requirements as set forth under Rule 47.[45] These are: (1) the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner; (2) the grounds for action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction; (3) the action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be raised before it is barred by laches or estoppel; and (4) the petition must be verified, and should allege

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[44] *Aquino v. Tangkengco*, 793 Phil. 715, 721 (2016), citing *Dare Adventure Farm Corporation v. Court of Appeals*, 695 Phil. 681, 688 (2012).

[45] See *Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Co.*, 725 Phil. 19, 33-37 (2014).

with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[46]

The judgment may be annulled on the ground of extrinsic or collateral fraud. A person who is not a party to the judgment may sue for its annulment provided he can prove that the same was obtained through fraud or collusion and that he would be adversely affected thereby.[47] The other ground for annulment of judgments or final orders and resolutions is lack of jurisdiction on the part of the court which adjudicated the case. This refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.[48]

Case law, however, recognizes a third ground — denial of due process of law.[49] Due process requires that those with interest in the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny a person their due process rights while at the same time be considered acting within their jurisdiction.[50] Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.[51] The records would show that Tomas has not participated in the execution of the Amended Compromise Agreement, nor was he notified or his consent given to the said Amended Compromise Agreement. Without Tomas' consent and acquiescence, the amendment or modification of the terms of the parties' judicially approved compromise is not valid. Here, we find that the Amended Decision should be nullified based on an Amended Compromise Agreement that

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[46] *Id.*

[47] Regalado, *Remedial Law Compendium*, Vol. I, Eighth Revised Edition, p. 567.

[48] *Id.* at 569.

[49] *Baclaran Marketing Corporation v. Nieva*, 809 Phil. 92, 102 (2017).

[50] *Arrieta v. Arrieta*, G.R. No. 234808, November 19, 2018.

[51] *Id.*

violates petitioner Tomas' right to due process as it was executed without his knowledge, participation and consent.

In denying the petition for annulment of judgment, the CA held that the action is barred by laches. Laches is defined as the failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it.[52] There is no absolute rule as to what constitutes laches or staleness of demand. Each case must be determined according to its particular circumstances.[53] Its application is controlled by equitable considerations. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.[54]

In the present case, contrary to the findings of the CA, We find that laches has not barred petitioners' action for annulment of judgment. There is no evidence to show that Tomas had actual knowledge of the execution of the Amended Compromise Agreement nor had he received a copy of the Amended Decision. He only knew of the aforesaid Amended Compromise Agreement sometime in March 2009, when he learned that their conjugal properties, which were previously attached but were released from attachment upon the execution of the judicially approved Compromise Agreement, were the subject of sale.[55] Upon receiving a copy of the registration of sale, he immediately filed a motion to set aside the Amended Decision, writ of execution, public auction sale and to declare void the corresponding certificate of sale. Then he filed his petition for annulment of judgment on November 11, 2009. His silence and inaction could also not be considered as estoppel since he believed in good faith that

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[52] *Pangasinan v. Disonglo-Almazora*, 762 Phil. 492, 502-503 (2015).

[53] *Insurance of the Philippine Islands Corporation v. Sps. Gregorio*, 658 Phil. 36, 42 (2011).

[54] *Id.*

[55] *Rollo*, p. 9.

their case had already been terminated upon the execution of the first Compromise Agreement which had already been judicially approved by the RTC. Hence, the action to annul the Amended Decision is not barred by laches.

After having ruled that petitioners' action is not barred, We proceed to determine whether there exists a ground to annul the Amended Decision of the trial court. To emphasize, an earlier Decision was already issued on August 22, 1995 which was based on the parties' Compromise Agreement. Pursuant to the provisions of the Compromise Agreement, petitioners convey, transfer and cede in favor of respondent Yu the property known as *Talamban property* under Tax Declaration No. 94GR-02-019-15613 valued at ₱1,600,000.00 as payment of their total obligation of ₱1,500,000.00 to respondent Yu, with the latter obligating himself to pay ₱100,000.00 to petitioners representing the excess of the value of the subject property over petitioners' obligation. The parties agree to mutually withdraw whatever claims and counterclaims they have against the other arising from the subject case.[56]

The agreement of the parties was in the nature of *dacion en pago* or dation in payment. It is a mode of extinguishing an existing obligation by the delivery and transmission of ownership of a thing by the debtor to the creditor as an equivalent of the performance of the obligation.[57] Consequently, the execution of the Compromise Agreement effectively extinguished petitioners' monetary obligation to the respondent who is even obligated to return the subject parcel of land, as expressed below:

> 3. That in total payment of said amount, the **defendants hereby convey, transfer and cede in favor of plaintiff a parcel of land owned by them** and described as follows:
>
> A parcel of land, Lot 102, Cad. Lot No. 12060-PT situated in the Bo. of Kalubihan, Municipality of Talamban, City of Cebu, Island of Visayas, with an area of SEVEN HUNDRED NINETY TWO (792) Square meters, more or less, as under Tax Declaration No. 94-GR-

[56] *Id.* at 53-54.

[57] *PNB v. Tan Dee*, 727 Phil. 473, 485 (2014).

02-019-15613 in the name of Spouses Thomas & Bernardita R. Hofer.[58] (Emphasis supplied)

We now proceed to rule on whether a judgment based on a compromise agreement can be amended by another compromise agreement. It is settled that a judgment on compromise is a judgment on the merits.[59] It has the effect of *res judicata* and is immediately final and executory unless set aside because of falsity or vices of consent.[60] A judicially approved compromise agreement ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through a writ of execution. Thus, even after the judgment has become final, the court retains its jurisdiction to execute and enforce it. There is a difference between the jurisdiction of the court to execute the judgment and its jurisdiction to amend, modify or alter the same. The former continues even after the judgment has become final for the purpose of enforcement of judgment; the latter is terminated when the judgment becomes final.[61] For after the judgment has becomes final, facts and circumstances may transpire which can render the execution unjust or impossible.

On May 29, 2003, respondent Yu and Bernardita executed an Amended Compromise Agreement modifying the terms of their previous agreement and agreed that respondent shall be relieved from accepting the Talamban Cebu City real property and that in exchange thereof, petitioners shall hold in trust the amount of ₱1,500,000.00 that shall come from the proceeds of their properties which were levied and previously attached by the court, in effect modifying their previous agreement and converting it into a monetary obligation.[62]

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[58] *Rollo*, p. 19.

[59] *Gadrinab v. Salamanca*, 736 Phil. 279, 283 (2014).

[60] *Id.*

[61] Riano, W.B., *Fundamentals of Civil Procedure* (2005 ed.), p. 173.

[62] *Rollo*, pp. 20-21.

This Court has previously cited several relevant cases which rule that there is no prohibition for the parties to enter into a compromise agreement after a final judgment. In *Magbanua v. Uy*:[63]

Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties. To be binding, the compromise must be shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment. Furthermore, it must not be contrary to law, morals, good customs and public policy.[64] (Emphasis supplied)

Thus, the parties are not precluded nor prohibited from executing an amended compromise agreement when there has been no execution of the first judicially approved compromise. However, the validity of the agreement is determined by compliance with the requisites and principles of contracts. As provided by the law on contracts, a valid compromise must have the following elements: (1) consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established.[65]

To be valid, an amendment to the compromise agreement must be with the concurrence and consent of all the parties involved. In the present case, the Amended Compromise Agreement was executed only between respondent Yu and Bernardita, but without the consent and participation of Tomas. There was no proof to show that Bernardita was authorized by Tomas to enter into the Amended Compromise Agreement in his behalf. Thus, being executed without the authority of Tomas, an indispensable party to the case, the Amended Compromise Agreement is not a valid compromise and cannot supersede the previously approved Compromise Agreement. Clearly, it was erroneous for the RTC to approve the Amended Compromise

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[63] 497 Phil. 511, 515 (2005).

[64] *Id.*

[65] *Rollo*, pp. 194-195.

Agreement executed in 2005 which was executed without the consent of Tomas and in violation of his right to due process.

It is significant to point out at this juncture that the parties had already agreed that the Talamban, Cebu City property valued at ₱1,600,000.00 was transferred and ceded to the respondent as payment of petitioners' obligation, with respondent paying petitioners ₱100,000.00, the excess value of the property over the amount of their obligation. Hence, it is improper to allow the amendment of their judicially approved Compromise Agreement, which would, in effect, subject the previously levied properties to sale without the consent and knowledge of Tomas, one of the indispensable parties to the case.

We now discuss the authority of the wife to execute a contract dealing with conjugal property during the marriage. Under Article 172 of the New Civil Code, the wife cannot bind the conjugal partnership without the husband's consent except in cases provided by law. In the case of *Abalos v. Macatangay, Jr.*,[66] the Court held that the husband, even if he is statutorily designated as administrator of the conjugal partnership, cannot validly alienate or encumber any real property of the conjugal partnership without the wife's consent. Similarly, the wife cannot dispose of any property belonging to the conjugal partnership without the conformity of the husband. Thus, the trial court erred when it approved the Amended Compromise Agreement which was entered only by Bernardita and respondent, as the same could not bind the conjugal properties of both spouses.[67]

Even under Article 124 of the Family Code, it is required that any disposition or encumbrance of the conjugal property must have the written consent of the other spouse; otherwise, such disposition is void.[68] The new law provides that the administration of the conjugal partnership is now a joint undertaking of the husband and the wife. In all instances, the present law specifically requires the written consent of the

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[66] 482 Phil. 877 (2004).

[67] *Id.* at 890.

[68] *Hapitan v. Sps. Blacer*, 778 Phil. 42, 58 (2016).

other spouse or authority of the court for the disposition or encumbrance of the conjugal property, without which the disposition or encumbrance shall be void.

Thus, even on the supposition that the wife Bernardita encumbered her respective share in the property, such encumbrance is still void for the right of the husband or the wife to one-half of the conjugal assets does not vest until liquidation of the conjugal partnership.[69]

All told, the Amended Compromise Agreement entered into by Bernardita with respondent over the conjugal properties of the spouses was void for having been executed without the participation and consent of Tomas. Therefore, the trial court erred in approving the Amended Compromise Agreement. Accordingly, the CA should have granted the petition for annulment of judgment filed by petitioners.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED.** Accordingly, the Decision dated October 27, 2016 and the Resolution dated February 17, 2017 of the Court of Appeals in CA-G.R. SP No. 03264-MIN denying the petition for annulment of judgment filed by petitioners Spouses Atty. Tomas Hofer and Dr. Bernardita R. Hofer are **REVERSED** and **SET ASIDE**. The Amended Decision dated February 23, 2004 and the Order dated September 17, 2009 of the Regional Trial Court of General Santos City, Branch 22 in Civil Case No. 5550 are **ANNULLED** and **SET ASIDE**.

SO ORDERED.

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

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[69] *Abalos v. Macatangay, Jr., supra* note 66 at 890-891.

SECOND DIVISION

[G.R. No. 234260. July 1, 2020]

TEODORO C. LINSANGAN, *petitioner*, *vs.* **OFFICE OF THE OMBUDSMAN and LEONARDO O. ORIG,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCIES; THE MERE SIGNATURE OF THE HEAD OF AGENCY IN A CERTIFICATION WITHOUT ANYTHING MORE CANNOT BE CONSIDERED A PRESUMPTION OF LIABILITY, FOR LIABILITY DEPENDS UPON THE WRONG COMMITTED AND NOT SOLELY BY REASON OF BEING THE HEAD OF THE GOVERNMENT AGENCY. — In this case, the fact that petitioner is the head of the Register of Deeds of Nueva Ecija does not automatically make him the party ultimately liable for the negligence of his subordinates. He cannot be held liable just because he was the authority who signed the certification in question and that the employees/officers who processed and prepared the same were under his supervision. Being the head of his agency, it must be noted that petitioner is practically responsible for the whole province of Nueva Ecija. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine or countercheck each and every document that passes his office. Though not impossible, it would be improbable and impractical for him to check every detail and personally conduct a physical inspection of the titles subject of his certification. Certainly, petitioner has the right to rely mainly on the designations, recommendations, and certifications of his subordinates signing the documents. The Court has consistently held that every person who signs or initials documents in the course of transit through standards operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation. In fact, mere signature of the petitioner in the certification in question without anything more cannot be considered as presumption of liability. Liability depends upon the wrong

committed and not solely by reason of being the head of the government agency.

2. ID.; ID.; PUBLIC OFFICERS; NOT EVERY MISTAKE COMMITTED BY A PUBLIC OFFICER IS ACTIONABLE ABSENT ANY CLEAR SHOWING THAT IT IS MOTIVATED BY MALICE OR GROSS NEGLIGENCE AMOUNTING TO BAD FAITH. — Assuming, for the nonce, that petitioner committed a mistake in not ensuring that the certification was correct, it is settled that not every mistake committed by a public officer [is] actionable absent any clear showing that [it was] motivated by malice or gross negligence amounting to bad faith. In petitioner's case, there is no showing that he was motivated by malice or gross negligence amounting to bad faith. Moreover, there was no showing that petitioner was motivated by bad faith in failing to verify the correctness of his certification.

APPEARANCES OF COUNSEL

Romeo A. Sadornas for petitioner.

D E C I S I O N

INTING, *J.*:

As a public official, he cannot be expected to "personally examine every single detail, painstakingly trace every step from inception, and investigate the motive of every person involved in a transaction before affixing his signature as the final approving authority."[1]

This is a Petition[2] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[3] dated April 7, 2017 and the Resolution[4] dated August 17, 2017 of the Court of Appeals in CA-G.R. SP No. 140439.

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[1] *Nicolas v. Desierto*, 488 Phil. 158, 160 (2004).

[2] *Rollo*. pp. 10-27.

[3] *Id.* at 30-38; penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring.

[4] *Id.* at 49-52.

The CA affirmed the Decision[5] dated January 9, 2015 of the Office of the Ombudsman (Ombudsman), which found Atty. Teodoro C. Linsangan (petitioner) guilty of Gross Neglect of Duty and imposed the penalty of dismissal from the service.

The Antecedents

On July 31, 2008, Leonardo O. Orig (Orig) and his sister-in-law, Lourdes P. Francisco, went to the Registry of Deeds of Cabanatuan City to verify the existence of three Original Certificates of Title (OCT) with Nos. 19327, 19062, and 16947, as well as Transfer Certificate of Title (TCT) No. 13764. Orig's request for verification did not yield positive results and despite demands, no positive feedback came from the Registry of Deeds.[6]

Soon after, they went back to the Registry of Deeds where Orig was issued a certification signed by petitioner, the then Registrar of Deeds, verified by Vault Keeper Emilio De Guzman (De Guzman) and checked by the Officer-in-Charge of the Records Section, Marlon B. Romero (Romero). The Certification[7] stated that OCT Nos. 19327, 19062, and 16947, and TCT No. 13764 could not be located despite diligent efforts. They were recorded severely mutilated and torn beyond recognition as per inventory dated 1982.[8]

Unconvinced, Orig personally verified the existence of the certificates of title by checking the list of lost and missing titles in the custody of Romero. When they could not find the title numbers of the certificates of title they were looking for, Romero allegedly inserted the title numbers on the list. In his Reply, Orig attached the machine copies of OCT Nos. 19062 and 19327. He claimed that the existence of the certificates of title in the files of the Register of Deeds proved that the certification issued by petitioner was false and his issuance thereof constitutes gross negligence.[9]

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[5] *Id.* at 64-71.

[6] *Id.* at 31.

[7] *Id.* at 56.

[8] *Id.* at 31.

[9] *Id.* at 32.

In his defense, petitioner averred that he assumed office only on October 1, 1986, and he was not yet the Registrar of Deeds when the inventory of lost titles was prepared.[10]

In a letter dated March 11, 2013, the Acting Registrar of Deeds for the Province of Nueva Ecija, Atty. Fidel G. Ortaleza, revealed that petitioner was already dismissed from service since April 25, 2012 after being found guilty of grave misconduct in a separate case filed against him.[11] Meanwhile, in his rejoinder, petitioner stated that he has retired from the service on January 6, 2013, but he admitted that the certification issued to Orig contained an erroneous fact. He blamed De Guzman and Romero for the error. He defended that when the infractions consist in the reliance in good faith, albeit misplaced, by a head of office on a subordinate upon whom the primary responsibility rests, absent a clear case of conspiracy, the head of the office should not be held liable.[12]

Ruling of the Ombudsman

In the Decision[13] dated January 9, 2015, the Ombudsman found petitioner guilty of gross neglect of duty, and meted out the penalty of dismissal from the service.[14] It ruled that the nature of petitioner's duties required him to examine and verify with greater detail the documents which he is made to approve.[15] Unfortunately for petitioner, he failed to do his duties when he merely relied on the representations of his subordinates without checking and verifying the documents. As a public servant, petitioner must be aware that he is bound by virtue of his office to exercise prudence, caution, and attention in the discharge of his duties.[16] In falling short of this mandate, the Ombudsman found petitioner guilty of gross neglect of duty, thus:

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[10] *Id.* at 66.

[11] *Id.*

[12] *Id.* at 67.

[13] *Id.* at 64-71.

[14] *Id.* at 69.

[15] *Id.* at 68.

[16] *Id.*

WHEREFORE, respondents Atty. Teodoro C. Linsangan, Registrar of Deeds, and Marlon B. Romero, OIC, Records Sections, both of the Office of the Registry of Deeds, Cabanatuan City, Nueva Ecija, are hereby found GUILTY of *Gross Neglect of Duty*, and are hereby meted with the penalty of DISMISSAL FROM THE SERVICE, with forfeiture of all retirement benefits, cancellation of civil service eligibility, and with prejudice to re-employment in any branch or instrumentality of the government, including any government-owned or controlled corporation.

Since the penalty of Dismissal can no longer be enforced against respondents Linsangan and Romero, the penalty shall be converted into a FINE in an amount equivalent to their respective last salaries for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their respective retirement benefits, accrued leave credits, or any receivable from their respective offices, with the corresponding accessory penalties of forfeiture of all retirement benefits, cancellation of civil service eligibility, and with prejudice to re-employment in any branch or instrumentality of government, including any government-owned or controlled corporation.

Respondents Emilio De Guzman, Vault Keeper, and Lorna De Jesus, Bindery Helper, also of the Office of the Registry of Deeds, Cabanatuan City, Nueva Ecija, are hereby found GUILTY of Simple Neglect of Duty, and are hereby meted with the penalty of SUSPENSION from the government for one (1) month without pay.

SO ORDERED.[17]

Ruling of the CA

In the Decision promulgated on April 7, 2017, the CA affirmed the decision of the Ombudsman insofar as petitioner is concerned. The CA ruled that petitioner's contention that he merely relied on the signatures of his subordinates appearing in the certification cannot exculpate him of his liability.[18] Thus:

WHEREFORE, the Petition for Review is DENIED for lack of merit. The Decision dated 9 January 2015 of the Ombudsman in OMB-L-A-12-0089-G, in so far as petitioner Teodoro C. Linsangan is concerned, is AFFIRMED[.]

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[17] *Id.* at 69-70. Italics in the original.

[18] *Id.* at 36.

SO ORDERED.[19]

Petitioner then filed a Motion for Reconsideration[20] of the CA's Decision dated April 7, 2017. However, in the Resolution[21] dated August 17, 2017, the CA denied the motion. It reiterated that: (1) petitioner's duties required him to examine and verify with greater detail the documents which he is made to approve;[22] (2) his execution of the certification pertaining to the non-existence of the subject certificates of title showed that petitioner willfully and knowingly attested to the truth and veracity of the facts contained therein;[23] and (3) if he had only exercised reasonable diligence, he would have known that these certificates of title were not in the list of missing or mutilated titles prepared in 1982.[24] For petitioner's failure to exert any effort to verify if the titles were indeed in the files of his agency, there was clearly gross neglect of duty on his part.[25]

Issues

Hence, this petition raising the following issues for the Court's consideration:

1. WHETHER THERE IS GROSS NEGLIGENCE ON PETITIONER'S PART;
2. WHETHER THE PENALTY IMPOSED WAS TOO HARSH;
3. WHETHER THE COMPLAINT AGAINST PETITIONER SHOULD BE DISMISSED CONSIDERING THAT ORIG, THE COMPLAINANT, HAS NO PERSONAL INTEREST ON THE MATTER; AND
4. WHETHER PETITIONER'S CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF THE CASE WAS VIOLATED.

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[19] *Id.* at 38.

[20] *Id.* at 39-48.

[21] *Id.* at 49-52.

[22] *Id.* at 49.

[23] *Id.*

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

[25] *Id.* at 50.

Petitioner asserted that the primary responsibility to make a verification whether a title is intact, missing or misplaced, rests upon his subordinates, De Guzman and Romero. As the head of the Registry of Deeds, he merely relied on them in good faith since they themselves signed the certification in their individual capacities.[26] To him, the penalty imposed by the Ombudsman was too severe and not commensurate to his infractions.[27] Petitioner, likewise, asserted that Orig has no interest on the certificates of title in question since the Certification dated August 22, 2008 was issued to his sister-in-law and not to him. He merely accompanied her and, therefore, he has no legal standing to file this administrative case.[28] Lastly, petitioner pointed out that the complaint was filed with the Land Registration Authority (LRA) on November 14, 2008 and was later filed with the Ombudsman on July 10, 2012.[29] He claimed that the duration of investigation before the LRA and the proceedings before the Ombudsman which covered almost six years violated his right to the speedy disposition of his case.[30]

In its Comment,[31] the Ombudsman maintained that petitioner cannot simply blame his subordinates for the erroneous statement in his certification. He should have checked and verified the supporting documents before giving his imprimatur thereto. Petitioner's reliance on the representations of his subordinates, coupled by his failure to check and verify the supporting documents necessary before the issuance of the certification, demonstrate his administrative guilt for gross neglect of duty.[32]

The Court's Ruling

The petition has merit.

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[26] *Id.* at 17.

[27] *Id.* at 22.

[28] *Id.* at 23.

[29] *Id.* at 24.

[30] *Id.* at 25.

[31] *Id.* at 117-130.

[32] *Id.* at 121.

Contrary to the ruling of the CA, the Court holds that petitioner can invoke the protective mantle of the doctrine laid down in *Arias v. Sandiganbayan*[33] (*Arias*). The CA presumed petitioner's liability in view of his position as the head of the Registry of Deeds of Nueva Ecija. It held that petitioner should have exercised a higher degree of circumspection and, necessarily, go beyond or countercheck the works of his subordinates.

The Court does not agree with the CA.

Arias teaches that heads of office could rely to a reasonable extent to their subordinates The ratio, which is applicable here, was explained in the following manner:

> **We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority**.
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> x x x x x x x x x
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> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. **All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations**. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are

[33] 259 Phil. 794 (1989).

hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.[34] (Emphasis supplied; italics in the original.)

In *Nicolas v. Desierto*[35] (*Nicolas*), Wilfred A. Nicolas (petitioner Nicolas) was charged with gross neglect of duty following the release of a cargo apprehended by the Economic Intelligence and Investigation Bureau. Apparently, petitioner Nicolas ordered the release of the cargo upon the recommendation of Deputy Commissioner J. Francisco Arriola (Arriola), then Chief of the Special Operations Group. It was Arriola who informed him that the duties and taxes on the shipment had already been paid, and who submitted to him copies of the Bureau of Customs payment receipts. It was also Arriola who had prepared the Notice of Withdrawal for petitioner Nicolas' signature which gave way to the release of the cargo to the consignee.[36]

The Court noted in *Nicolas* that while petitioner Nicolas did order the release of the cargo, he did so in good faith as there was no intimation that he had foreknowledge of any irregularity about the cargo.[37] The negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence. While Arriola might have been negligent in accepting the spurious documents, such fact does not automatically imply that petitioner Nicolas was also negligent. As a matter of course, petitioner Nicolas relied on Arriola's recommendation. He is not mandated or even expected to verify personally from the Bureau of Customs — or from wherever else it originated — each receipt or document that appears on its face to have been regularly issued or executed.[38]

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[34] *Id.* at 801-802.

[35] 488 Phil. 158 (2004).

[36] *Id.* at 169.

[37] *Id.* at 170.

[38] *Id.* at 171. Citations omitted.

More recently, in *Miralles v. Commission on Audit*,[39] the Court found that the Commission on Audit (COA)'s refusal to apply the *Arias doctrine* as arbitrary because the refusal stood on highly speculative grounds. First, the COA made no definitive finding about Orestes S. Miralles (petitioner Miralles) having been aware of the illegal activities involving the loan applications committed by his subordinates in the area under his responsibility. Second, the affidavit considered by COA did not at all show that the petitioner Miralles had been aware of any activity as to have been prompted to go beyond the recommendations of his subordinates, and to inquire more deeply into the borrowers' applications and supporting documents. Under the circumstances, the Court said that petitioner Miralles should have instead been presumed to have acted in the regular performance of his official duty because no evidence had been presented to show his having acted in bad faith and with gross negligence.[40]

In this case, the fact that petitioner is the head of the Register of Deeds of Nueva Ecija does not automatically make him the party ultimately liable for the negligence of his subordinates. He cannot be held liable just because he was the authority who signed the certification in question and that the employees/officers who processed and prepared the same were under his supervision.[41] Being the head of his agency, it must be noted that petitioner is practically responsible for the whole province of Nueva Ecija. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine or countercheck each and every document that passes his office. Though not impossible, it would be improbable and impractical for him to check every detail and personally conduct a physical inspection of the titles subject of his certification. Certainly, petitioner has the right

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[39] 818 Phil. 380 (2017).

[40] *Id.* at 404, citing *Albert v. Chairman Gangan*, 406 Phil. 231, 246 (2001).

[41] *Joson III v. Commission on Audit*, G.R. No. 223762, November 7, 2017, 844 SCRA 220, 239, citing *Salva v. Caragues*, 540 Phil. 279, 286 (2006).

to rely mainly on the designations, recommendations, and certifications of his subordinates signing the documents.

The Court has consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation.[42] In fact, mere signature of the petitioner in the certification in question without anything more cannot be considered as a presumption of liability.[43] Liability depends upon the wrong committed and not solely by reason of being the head of the government agency.[44]

Assuming, for the nonce, that petitioner committed a mistake in not ensuring that the certification was correct, it is settled that not every mistake committed by a public officer are actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. In petitioner's case, there is no showing that he was motivated by malice or gross negligence amounting to bad faith. Moreover, there was no showing that petitioner was motivated by bad faith in failing to verify the correctness of his certification.

In light of the above conclusions, the Court finds no need to further discuss the other issues raised by petitioner.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED.** The assailed Decision dated April 7, 2017 and the Resolution dated August 17, 2017 of the Court of Appeals in CA-G.R. SP No. 140439 are **REVERSED AND SET ASIDE**.

SO ORDERED.

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

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[42] *Id.*, citing *Albert v. Chairman Gangan*, 406 Phil. 231, 243 (2001).

[43] *Id.* at 240, citing *Gov. Garcia, Jr. v. Office of the Ombudsman, et al.*, 744 Phil. 445, 455 (2014).

[44] *Id.*, citing *Albert v. Chairman Gangan*, 406 Phil. 231, 246 (2001).

[*] Designated additional member as per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 237130. July 1, 2020]

ADEX R. MACAHILAS, *petitioner, vs.* **BSM CREW SERVICE CENTRE PHILS., INC., *ET AL.*,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); FOR AN ILLNESS TO BE COMPENSABLE, IT MUST BE SHOWN THAT THE INJURY OR ILLNESS WAS WORK-RELATED, AND THAT IT EXISTED DURING THE TERM OF THE SEAFARER'S EMPLOYMENT CONTRACT; A REASONABLE CONNECTION BETWEEN THE NATURE OF WORK ON BOARD THE VESSEL AND THE ILLNESS CONTRACTED OR AGGRAVATED MUST STILL BE SHOWN IN ORDER FOR THE ILLNESS TO BE COMPENSABLE; APPENDICITIS ENJOYS THE PRESUMPTION THAT IT IS WORK-RELATED. — Section 20(A) of the POEA-SEC provides two elements that must concur for an illness to be compensable: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. From the facts, Macahilas manifested symptoms on board the vessel and was repatriated for perforated appendicitis. Hence, it becomes relevant to determine if this illness is work-related. Section 32-A of the POEA-SEC provides a list of occupational illnesses with conditions to be observed for compensability. Illnesses not listed therein are disputably presumed work-related. Appendicitis is not a listed illness under the POEA-SEC but enjoys the presumption that it is work-related. However, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must still be shown in order for the illness to be compensable. On record, Macahilas was diagnosed by the physician on board the vessel to be suffering from acute appendicitis. It is a severe and sudden case of appendicitis or the inflammation of the appendix. The symptoms tend to develop quickly over the course

of one to two days. This illness can be diagnosed when a person already manifests the symptoms and is further physically examined, particularly, in the abdomen area, or conducting of blood tests, urine test or imaging test of the abdomen. As the onset of acute appendicitis can be unexpected, it is likely that Macahilas did not have said illness or was undetected when he was redeployed. In fact, he was declared fit to work in his PEME. It was only four months into his employment contract or on December 29, 2013 that he manifested symptoms of acute appendicitis, particularly, stomach pain, chills and nausea. Considering that Macahilas manifested symptoms while working on board the vessel, logically, his illness was contracted or aggravated on board the vessel.

2. ID.; ID.; ID.; IT IS ENOUGH THAT THE WORK HAS CONTRIBUTED, EVEN IN A SMALL DEGREE, TO THE DEVELOPMENT OF THE ILLNESS SINCE STRICT PROOF OF CAUSATION IS NOT REQUIRED; ONLY REASONABLE PROOF OF WORK-CONNECTION AND NOT DIRECT CAUSAL RELATION IS REQUIRED TO ESTABLISH COMPENSABILITY. — Aside from the disputable presumption of work-relatedness of appendicitis, Macahilas was able to establish the causal connection between his work and his illness. We have held that "it is enough that the work has contributed, even in a small degree, to the development of the disease[illness] since strict proof of causation is not required. Only reasonable proof of work-connection and not direct causal relation is required to establish compensability." The explanations of Macahilas, coupled with his undisputed claims on limited food options on board the vessel and that his work was strenuous and entailed exposure to hazardous chemicals, reasonably establish the work-relatedness of his illness. Anent the diagnosis for fistula and hernia, We find the same to be work-related.

3. ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN MUST ISSUE WITHIN THE 120/240 DAY PERIOD A FINAL, CONCLUSIVE AND DEFINITE ASSESSMENT, WHICH CLEARLY STATE WHETHER THE SEAFARER IS FIT TO WORK OR THE EXACT DISABILITY RATING, OR WHETHER SUCH ILLNESS IS WORK-RELATED, AND WITHOUT ANY FURTHER CONDITION OR TREATMENT; NOT COMPLIED WITH; PETITIONER

IS ENTITLED TO US$60,000.00 PERMANENT AND TOTAL DISABILITY BENEFITS FOR FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ISSUE A TIMELY, FINAL AND DEFINITIVE ASSESSMENT WITHIN THE MANDATED PERIOD. — As to how much benefits should be paid to Macahilas, We find BSM liable for US$60,000.00 representing permanent and total disability benefits for failure of the company-designated physician to issue a final and definitive assessment within the 120/240-day mandated period. A final, conclusive and definite assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law. In view of the foregoing, We cannot consider as valid and final an assessment merely stating that the illness of a seafarer is not work-related. Even with said assessment, the company-designated physician is bound to timely issue a fit to work assessment or disability grading. Here, the fitness assessment was issued 419 days after Macahilas's repatriation. Facts also show that Macahilas's illness was assessed as not work-related on the same day of his medical repatriation on January 17, 2014. Records show that Macahilas must still undergo further examination of his condition. He was even under the care of the company-designated physician thereafter and was subjected to a second surgical operation for hernia in view of the infection from his first surgery in Mexico. Clearly, the not-work-related assessment issued by BSM's physicians is arbitrary.

4. ID.; ID.; ID.; THE DISABILITY BENEFITS GRANTED TO THE SEAFARER ARE NOT ENTIRELY DEPENDENT ON THE NUMBER OF TREATMENT LAPSED DAYS, BUT ALSO REQUIRE THAT THE COMPANY-DESIGNATED PHYSICIAN MAKES A TIMELY, FINAL AND DEFINITIVE DETERMINATION OF THE FITNESS OF A SEAFARER TO SEA DUTY SUBJECT TO THE PERIODS PRESCRIBED BY LAW. — We are not unmindful that the extent of a seafarer's disability (whether total or partial) is determined, not by the number of days that he could not

work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his or her wages. Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. However, it is equally important that the company-designated physician make a final and definitive determination of the fitness of a seafarer for sea duty **subject to the periods prescribed by law**. The Court emphasizes that a timely, final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.

5. ID.; ID.; ID.; SEAFARER'S CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS, RULES; THE SEAFARER'S MEDICAL CONDITION IS DEEMED TOTAL AND PERMANENT WHERE THE EMPLOYER FAILS TO OBSERVE THE MANDATORY PERIOD FOR ISSUANCE OF A DEFINITIVE ASSESSMENT. — We find it necessary to repeat and emphasize the following rules governing a claim for total and permanent disability benefits by a seafarer: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and **4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.** From the foregoing guidelines, We find that there is failure on the part of BSM to observe the mandatory period for issuance of a definitive assessment. Macahilas's medical condition is deemed total and permanent.

6. ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES AMOUNTING TO 10% OF THE MONETARY AWARD, PROPER. — [W]e likewise order payment of attorney's fees amounting to 10% of the monetary award in accordance with Article 2208(2) of the Civil Code of the Philippines, since petitioner was compelled to litigate to satisfy his claim for disability benefits.

APPEARANCES OF COUNSEL

Tolentino & Bautista Law Offices for petitioner.
Del Rosario & Del Rosario Law Offices for *respondents.*

D E C I S I O N

CARANDANG, *J.*:

The instant petition[1] under Rule 45 of the Rules of Court assails the Decision[2] dated August 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146261, dismissing the complaint for payment of permanent and total disability benefits filed by petitioner Adex Macahilas (Macahilas) against respondents BSM Crew Service Centre Phils., Inc. (BSM) and its foreign employer Bernhard Schulte Shipmanagement (Deutschland) GMBH & Co. KG, and Narcissus L. Duran.

Macahilas worked for BSM under several employment contracts. On August 30, 2013, Macahilas commenced his 8-month contract[3] with BSM as Third Engineer on board APL Canada. His employment was covered by a Collective Bargaining Agreement (CBA) called Verdi/ITF Berlin IMES IBI CBA.[4]

As third engineer, Macahilas worked inside the ship's engine room as he was responsible for operating and maintaining the

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[1] *Rollo*, pp. 31-63.

[2] Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Renato C. Francisco; *id.* at 13-24.

[3] *Id.* at 469-470.

[4] *Id.* at 471-493.

ship's engine and other mechanical systems and equipment, such as the boilers, fuel, main and auxiliary engines, condensate and feed systems. He worked in confined vessel spaces, and was exposed to injurious and harmful chemicals, dust, fumes/emissions, and other irritant agents. Macahilas claims that his work also entailed strenuous lifting, pushing, and moving of equipment and materials on board the ship.[5]

On December 29, 2013, while on board APL Canada, Macahilas experienced abdominal pain, vomiting, and chills. Oral medications given on board did not help improve his conditions. As a result, Macahilas was referred for admission in a hospital in Mexico, where he was diagnosed with Phase IV Appendicitis. Macahilas underwent appendectomy, but his wound was infected.[6] On January 17, 2014, he was medically repatriated to the Philippines for further treatment of his wound infection. On examination, the company-designated physician opined that his appendicitis was not work-related because "in most cases [said condition] results from blockage of the appendix usually by a fecalith, causing inflammation x x x."[7] Despite said finding, Macahilas was treated for the infection with weekly follow-ups. In April 2014, his wound totally healed but after a CT-scan exam, Macahilas's incisional hernia increased in size. In December 2014, Macahilas underwent a hernia repair with mesh and was later discharged. He was advised to have follow-ups with the company-designated physician. Over a year since Macahilas's medical repatriation, or on March 12, 2015, he was declared fit to work.[8]

Macahilas complained of pricking pains in his lower abdomen area where he was operated. He went to see his personal physician, who assessed that he was unfit to resume work as seafarer, and that his illness was work-aggravated/related. With his assessment, Macahilas claimed permanent and total disability benefits from BSM. The parties failed to agree on the

[5] *Id.* at 37

[6] *Id.* at 207.

[7] *Id.* at 574.

[8] *Id.* at 72.

compensability of Macahilas's illness, which constrained him to file a labor complaint with the National Labor Relations Commission (NLRC).[9]

In a Decision[10] dated November 27, 2017, the Labor Arbiter (LA) awarded permanent and total disability benefits to Macahilas. The LA held that although Macahilas was immediately subjected to medical examination upon his repatriation, no final report had been issued on Macahilas's appendicitis. The assessment stating that his condition was "not work-related" was merely a private communication from the company-designated physician to BSM. There was no indication that Macahilas had been informed of this medical opinion. Since his medical repatriation, Macahilas had been under treatment for 419 days and no final assessment had been issued within the mandated 240-day period. In the course of further management of his conditions due to his appendectomy, Macahilas was also found to have incisional hernia. Macahilas's diagnosis of hernia is a listed occupational illness under the Philippine Overseas Employment Agency — Standard Employment Contract (POEA-SEC). Hence, said condition is a compensable illness. Contrary to the opinion of the company-designated physician, the LA held that Macahilas's appendicitis was work-aggravated/related. The appendicitis may have been caused or aggravated by food provided onboard the vessel or the nature of his work. Finally, since Macahilas's final medical assessment was issued beyond the 240-day period, he was deemed entitled to permanent and total disability benefits amounting to US$60,000.00 in accordance with the POEA-SEC and not the CBA because his conditions did not arise from an accident as required under the CBA. He was, likewise, awarded attorney's fees amounting to US$6,000.00.[11]

BSM appealed the findings of the LA with the NLRC. In the Decision[12] dated February 29, 2016, the NLRC affirmed the

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

[10] *Id.* at 370-386.

[11] *Id.* at 73.

[12] *Id.* at 206-216.

ruling of the LA holding that Macahilas was entitled to payment of permanent and total disability benefits under the POEA-SEC and attorney's fees.[13]

BSM then filed a Petition for *Certiorari*[14] with the CA. In the Decision[15] dated August 31, 2017, the CA reversed and set aside the Decision of the NLRC. The CA held that appendicitis is not one of the occupational diseases listed under Section 32-A of the POEA-SEC. While there is a disputable presumption that an illness acquired on board is work-related, the seafarer must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. The CA held that Macahilas failed to prove this connection. The assessment of his physician, issued after a one-time consultation, did not provide an explanation how Macahilas's work caused or aggravated his appendicitis. Other than the allegations of stressful work conditions and unhealthy diet on board the vessel, there was no credible medical evidence to support that his appendicitis was work-related.[16]

Anent the issuance of the medical certificate[17] in March 2015, the same was issued for Macahilas's hernia. While Section 32-A of the POEA-SEC lists hernia as an occupational disease, the same must be proven to be immediately preceded by undue, or severe strain arising out of and in the course of employment, among other conditions.[18] The CA held that Macahilas's hernia

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[13] *Id.* at 215.

[14] *Id.* at 160-204.

[15] *Id.* at 13-26.

[16] *Id.* at 76-81.

[17] *Id.* at 521.

[18] Section 32-A. OCCUPATIONAL DISEASES

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

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and

did not arise out of or in the course of his employment because his incisional hernia was generated during the appendectomy. The CA held that Macahilas's conditions of hernia and appendicitis were not work related. In fact, after repatriation, his appendicitis was immediately assessed not to be work related for which he was declared fit to work on March 12, 2014, well-within the 120-day period.[19]

Unsatisfied with the CA ruling, Macahilas filed the instant petition with this Court. He reiterates that there is a causal connection between his work and illnesses, particularly, the diagnosis of appendicitis, fistula and hernia. Macahilas points out that appendicitis, although not a listed occupational illness under the POEA-SEC, enjoys a disputable presumption of work-relatedness. To establish the probable work-connection of the illness, he described his strenuous working conditions and diet on board the vessel and his tasks as third engineer which he claims caused said illness or at least aggravated a pre-existing condition. In the same vein, Macahilas's other illness of hernia, which is a listed occupational illness under the POEA-SEC, was also caused or aggravated by his work environment. Macahilas stresses that he was asymptomatic before boarding the vessel and was declared fit to work in his Pre-Employment Medical Examination (PEME). Having experienced symptoms onboard the vessel, it logically follows that: his strenuous work on the vessel resulted in or aggravated his conditions. The company failed to dispute the work-relatedness of his appendicitis

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under such other factors necessary to contract it; and

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

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

x x x x x x x x x

19. Hernia. All of the following conditions must be met:

a. The hernia should be of recent origin;

b. Its appearance was accompanied by pain, discoloration and evidence of the tearing of the tissues;

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment, a protrusion of mass should appear in the area immediately following the alleged strain.

[19] *Id.* at 76-81.

by simply relying on its physician's assessment stating that it was not work-related. BSM is also estopped from assailing the work-illness connection of his appendicitis and hernia because the company shouldered his medical costs. Moreover, Macahilas argues that he was unable to perform his customary work as third engineer for more than 120 or 240 days because he had been under treatment for at least 418 days. Despite the issuance of the fit to work assessment, the fact remains that his condition is deemed permanent and total for his inability to resume his customary work for a period of 120 days. Finally, Macahilas argues that the CA erred in deleting the award of attorney's fees. Article 2208 of the Civil Code of the Philippines entitles him to payment of attorney's fees because he was compelled to litigate his interests.[20]

BSM, in its Comment,[21] argues that Macahilas's conditions are not work-related. First, he was repatriated for perforated appendicitis only, which was immediately assessed as not work-related by the company-designated physicians. Appendicitis is not even a listed occupational illness under the POEA-SEC. BSM emphasizes that it is incumbent on Macahilas to prove by substantial evidence that his illness was caused or aggravated by his employment. His arguments are mere insinuations and cannot even be corroborated by the single and belated assessment of his personal physician. BSM further argues that the assessment of the company-designated physician is more credible because its doctors have a more extensive knowledge of Macahilas's medical conditions. The fact that the company undertook to continue Macahilas's medical treatment after repatriation does not mean that they admit that his illness is work-related. It is very clear that Macahilas's illness was assessed by the company-designated physician as not work-related and he was declared, later on, as fit-to-work. Finally, awarding permanent and total disability benefits is not based on the measure of time. Although Macahilas was unable to return to work within 120 days from repatriation or that a fit-to-work assessment was issued beyond

[20] *Id.* at 43-52.

[21] *Id.* at 101-131.

240 days, this cannot mean that Macahilas's disability is permanent and total. It is the assessment of the doctor that is the measure of the degree of disability suffered by the seafarer. Once the company-designated physician has recommended a disability impediment grading within the 240-day period, the same is considered conclusive. In this case, the company-designated physician issued a "not work-related" assessment within 120 or 240 days.[22]

Ruling of the Court

Section 20(A) of the POEA-SEC provides two elements that must concur for an illness to be compensable: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. From the facts, Macahilas manifested symptoms on board the vessel and was repatriated for perforated appendicitis. Hence, it becomes relevant to determine if this illness is work-related.

Section 32-A of the POEA-SEC provides a list of occupational illnesses with conditions to be observed for compensability. Illnesses not listed therein are disputably presumed work-related.[23] Appendicitis is not a listed illness under the POEA-SEC but enjoys the presumption that it is work-related. However, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must still be shown in order for the illness to be compensable.[24]

On record, Macahilas was diagnosed by the physician on board the vessel to be suffering from acute appendicitis.[25] It is a severe and sudden case of appendicitis[26] or the inflammation

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[22] *Id.* at 117-129.

[23] Section 20(A)(4) of the POEA-SEC.

[24] *Romana v. Magsaysay Maritime Corporation,* 816 Phil. 194 (2017).

[25] *Rollo*, p. 500.

[26] Acute appendicitis, <https://www.healthline.com/health/appendicitis#acute>, citing Acute Appendicitis, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC156475/> (visited June 22, 2020).

of the appendix.[27] The symptoms tend to develop quickly over the course of one to two days.[28] This illness can be diagnosed when a person already manifests the symptoms and is further physically examined, particularly, in the abdomen area,[29] or conducting of blood tests, urine test or imaging test of the abdomen.[30] As the onset of acute appendicitis can be unexpected, it is likely that Macahilas did not have said illness or was undetected when he was redeployed. In fact, he was declared fit to work in his PEME. It was only four months into his employment contract or on December 29, 2013 that he manifested symptoms of acute appendicitis, particularly, stomach pain, chills and nausea.[31] Considering that Macahilas manifested symptoms while working on board the vessel, logically, his illness was contracted or aggravated on board the vessel.

In an attempt to show that Macahilas's illness is not work-related, BSM emphasizes the company-designated physicians' medical opinion that the probable cause of Macahilas's illness is "due to the blockage of the appendix, usually a fecalith, causing inflammation."[32] There was no explanation how the blockage by a fecalith or stool could not have developed due to Macahilas's work. Macahilas, on the other hand, explained that blockage by a fecalith could have been due to the limited food options on board the vessel, such as frozen and processed meat, canned goods, and other preservative foods that are not easily digested.[33] He also explained that his duties as third engineer exposed him

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[27] Appendicitis. Overview, <https://www.mayoclinic.org/diseases/conditions/appendicitis/symptoms-causes/syc-20369543> (visited June 19, 2020).

[28] *Supra* note 25.

[29] Acute Appendicitis, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC156475/> (visited June 22, 2020).

[30] Diagnosis, <https://www.mayoclinic.org/diseases-conditions/appendicitis/diagnosis-treatment/drc-20369549> (visited June 19, 2020).

[31] What are the symptoms of appendicitis?, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/appendicitis> (visited June 19, 2020).

[32] *Rollo*, p. 574.

[33] *Id.* at 813.

to hazardous chemicals, smoke emissions, combustion in the engine room, which could have weakened his immune system and increased his susceptibility to infectious virus or bacteria.[34] John Hopkins Medicine states that various infections such as virus, bacteria, or parasites in the digestive tract could lead to the inflammation of the appendix.[35] Clearly, there is risk of contracting the illness by Macahilas's working condition.

Aside from the disputable presumption of work-relatedness of appendicitis, Macahilas was able to establish the causal connection between his work and his illness. We have held that "it is enough that the work has contributed, even in a small degree, to the development of the disease[illness] since strict proof of causation is not required. Only reasonable proof of work-connection and not direct causal relation is required to establish compensability."[36] The explanations of Macahilas, coupled with his undisputed claims on limited food options on board the vessel and that his work was strenuous and entailed exposure to hazardous chemicals, reasonably establish the work-relatedness of his illness.

Anent the diagnosis for fistula and hernia, We find the same to be work-related. The CT-scan results of Macahilas's abdomen area showed that said conditions were located at the surgical/incisional site.[37] Fistula is defined as "an abnormal connection between two body parts, such as an organ or blood vessel and another structure. Fistulas are usually the result of an injury or surgery."[38] Incisional hernia, on the other hand, "occurs at or in close proximity to a surgical incision through which intestine,

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[34] *Id.*

[35] What causes appendicitis? <https://www.hopkinsmedicine.org/health/conditions-and-diseases/appendicitis> (visited June 19, 2020).

[36] *De Leon v. Maunlad Trans, Inc. Seacrest Associates,* 805 Phil. 531, 541 (2017); *DOHLE-PIDLMAN Manning Agency, Inc. v. Heirs of Andres G. Gazzingan,* 760 Phil. 861 (2015).

[37] *Id.* at 513-514.

[38] Definition taken from <https://medlineplus.gov/ency/article/002365.htm> (visited September 10, 2019).

organ or other tissue protrudes. Incisional hernias result from a weakening of the abdominal muscle due to a surgical incision."[39] Thus, the subsequent conditions of Macahilas clearly resulted from the surgery for appendicitis in a hospital in Mexico, where he was brought by his employer.

As to how much benefits should be paid to Macahilas, We find BSM liable for US$60,000.00 representing permanent and total disability benefits for failure of the company-designated physician to issue a final and definitive assessment within the 120/240-day mandated period.[40] A final, conclusive and definite assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment.[41] It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.[42] In view of the foregoing, We cannot consider as valid and final an assessment merely stating that the illness of a seafarer is not work-related. Even with said assessment, the company-designated physician is bound to timely issue a fit to work assessment or disability grading. Here, the fitness assessment was issued 419 days after Macahilas's repatriation. Facts also show that Macahilas's illness was assessed as not work-related on the same day of his medical repatriation on January 17, 2014. Records[43] show that Macahilas must still undergo further examination of his condition. He was

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[39] Definition taken from <https://www.hopkinsmedicine.org/health/conditions-and-diseases/hernias/incisional-hernia> (visited September 10, 2019).

[40] LABOR CODE OF THE PHILIPPINES, Article 192(2) [renumbered Article 198(b)]; Implementing Rules and Regulations of the Labor Code of the Philippines, Rule X, Section 2; *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,* 765 Phil. 363 (2015).

[41] *Jebsens Maritime, Inc. v. Mirasol,* G.R. No. 213874, June 19, 2019.

[42] *Id.*

[43] *Rollo*, p. 573.

even under the care of the company-designated physician thereafter and was subjected to a second surgical operation for hernia in view of the infection from his first surgery in Mexico. Clearly, the not-work-related assessment issued by BSM's physicians is arbitrary.

We are not unmindful that the extent of a seafarer's disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his or her wages.[44] Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days.[45] However, it is equally important that the company-designated physician make a final and definitive determination of the fitness of a seafarer for sea duty **subject to the periods prescribed by law**.[46] The Court emphasizes that a timely, 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.[47] Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[48] We find it necessary to repeat and emphasize the following rules governing a claim for total and permanent disability benefits by a seafarer:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

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[44] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,* 765 Phil. 341, 358-359 (2015).

[45] *Id.* at 363.

[46] *Id.*

[47] *Orient Hope Agencies, Inc. v. Jara,* G.R. No. 204307, June 6, 2018.

[48] *Id.*

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. **If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.**[49]

From the foregoing guidelines, We find that there is failure on the part of BSM to observe the mandatory period for issuance of a definitive assessment. Macahilas's medical condition is deemed total and permanent.

Finally, We likewise order payment of attorney's fees amounting to 10% of the monetary award in accordance with Article 2208(2)[50] of the Civil Code of the Philippines, since petitioner was compelled to litigate to satisfy his claim for disability benefits.

WHEREFORE, the petition is **GRANTED.** The Decision dated August 31, 2017 of the Court of Appeals in CA-G.R. SP No. 146261 is **REVERSED** and **SET ASIDE.** Respondents BSM Service Centre Phils., Inc., *et al.* are **ORDERED** to jointly and solidarily pay petitioner Adex R. Macahilas permanent and total disability benefits amounting to US$60,000.00 and attorney's fees amounting to US$6,000.00.

SO ORDERED.

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

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[49] *Id.*

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

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(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

THIRD DIVISION

[G.R. No. 238640. July 1, 2020]

PROCESO CRUZ, TERESITA CRUZ, HENRY CRUZ, and SERAFIN CRUZ, *petitioners*, *vs.* **COURT OF APPEALS, and JOVITA M. CRUZ, MANUEL M. CRUZ, substituted by his legal heirs, namely: KALAYAAN LLANES-CRUZ, CRISPIN LLANES-CRUZ, and ANGELO LLANES-CRUZ,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65; PROPER REMEDY TO QUESTION THE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION OF THE METROPOLITAN TRIAL COURT (MeTC). — In the present case, petitioners assail the Decision of the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court. It is true that the proper remedy of a party aggrieved by a decision of the CA is to file a petition for review on *certiorari* under Rule 45, since it is a continuation of the appeal process. However, in this case, We are reviewing not the merits of the case but the jurisdiction of the MeTC in including in its disposition a property not subject of the complaint for unlawful detainer. Thus, to question the grave abuse of discretion amounting to lack or excess of jurisdiction of the MeTC, the petitioners can file a petition for *certiorari* under Rule 65 to question the Decision of the CA.

2. ID.; COURTS; JURISDICTION, DEFINED AND EXPLAINED; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT, NOT BY THE ALLEGATIONS TESTIFIED OR PROVED DURING TRIAL; THE SUBJECT PROPERTY NOT BEING MENTIONED IN THE COMPLAINT, THE MeTC HAS NO JURISDICTION TO INCLUDE THE SAME IN ITS DISPOSITION; NEITHER CAN A NON-PARTY IN THE UNLAWFUL DETAINER CASE BE PREJUDICED BY THE SAME DISPOSITION. — Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. Thus,

in order that the court have the power to adjudicate or dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action. To stress, jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint. This cannot be acquired by waiver or enlarged by the omission or consent of the parties. Further, lack of jurisdiction over the subject matter can be raised at any time, even on appeal, and the Court may consider the same *motu proprio*. x x x [T]here is nothing in the complaint to show that petitioner Serafin's possession of the Antonio property was initially legal and that upon termination of the latter's right to possess the property, he still remained in the premises thereby depriving the respondents to enjoy the same. While respondents alleged during trial in the MeTC that petitioner Serafin failed to pay his monthly rent and that because of this, respondents demanded petitioner Serafin to vacate the Antonio property, the said allegations do not appear in the four corners of the complaint. Jurisdiction of the MeTC over the subject matter, *i.e.* the Antonio property, is determined by the allegations in the complaint, not by the allegations testified or proved during the trial. As there is nothing about the Antonio property in the Complaint for Unlawful Detainer, the MeTC has no jurisdiction to include the same in its disposition. The fact that the Antonio property was owned by respondents and was mentioned as the residence of the respondents does not mean that the MeTC has acquired jurisdiction over the said property. Further, the fact that respondents possess a certificate of title does not automatically give them unbridled authority to immediately wrest possession from petitioner Serafin. Also, petitioner Serafin, not being a party in the unlawful detainer case, cannot be prejudiced by any disposition by the MeTC, especially when the Antonio property is not even included in the Complaint. It should be noted that due process dictates that a person cannot be prejudiced by any proceeding to which he was a stranger.

APPEARANCES OF COUNSEL

Fernandez & Associates Law Firm for petitioners.
EDC Law Office for private respondents.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated July 10, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 132966 affirming the Decision dated July 16, 2013 of the Regional Trial Court (RTC) of Manila, Branch 173 in Civil Case No. 12-129926, which in turn affirmed the Decision dated February 11, 2013 of the Metropolitan Trial Court (MeTC) of Manila, Branch 29 in Civil Case No. 178543-CV granting the Complaint for Unlawful Detainer[3] filed by Jovita M. Cruz (Jovita) and Manuel M. Cruz (collectively, respondents).[4]

Facts of the Case

Respondents claim that they are the registered owners of two parcels of land situated at No. 1236-1240 Antonio Street, Sampaloc, Manila covered by Transfer Certificate of Title (TCT) No. 125110 (Antonio property) and No. 1232 Asturias Street, Sampaloc, Manila covered by TCT No. 125109 (Asturias property).[5]

Respondents acquired the Antonio property by virtue of a Deed of Conveyance executed by respondents' mother, Maria Mesina. The Antonio property is a three-door apartment as found by the MeTC and adopted in the Decision[6] of the CA. Unit 1236 was leased to petitioner Serafin Cruz (Serafin) for a monthly rent of ₱10,000.00. Serafin defaulted on the payment of lease rentals for occupying the Antonio property.[7]

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[1] *Rollo*, pp. 3-17.

[2] Penned by Associate Justice Carmelita Salandanan Manahan, with the concurrence of Associate Justices Elihu A. Ybañez and Socorro B. Inting; *id.* at 19-28.

[3] *Id.* at 20, 31-37.

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

[5] *Id.* at 20.

[6] *Supra* note 2.

[7] *Rollo*, p. 20.

The Asturias property was formerly owned by Domingo Cruz and Catalina Mesina. Upon their death, the Asturias property was transferred to Leocadia Cruz (Leocadia), Regina M. Cruz (Regina), and Ladislao M. Cruz (Ladislao). Thereafter, Leocadia, Regina, and Ladislao sold the Asturias property to Maria Mesina and the same was covered by TCT No. 97567[8] registered under the latter's name. In turn, respondents, together with Francisco M. Cruz and Zenaida C. Cruz, acquired the property by virtue of a Deed of Conveyance executed by Maria Mesina in accordance with a Decision[9] of the Court of First Instance in Civil Case No. 98074.

Respondents alleged that petitioners Proceso Cruz and Henry Cruz possessed the Asturias property by mere tolerance of respondents and their mother, Maria Mesina.[10]

Sometime in 2003, respondent Jovita was diagnosed with end stage renal disease. In order to sustain her medical bills and her hemodialysis, respondents decided to sell the Asturias property and demanded petitioners to vacate the Asturias property immediately.[11] Further, petitioner Serafin defaulted in paying his monthly rent. As such, respondents also demanded Serafin to vacate the Antonio property.[12] Petitioners, however, refused to vacate the subject properties. Thus, respondents sent a Notice to Vacate[13] to petitioners Proceso and Henry. For failure of petitioners Proceso and Henry to vacate the Asturias property, respondents filed a Complaint for Unlawful Detainer.[14] Interestingly, the complaint for unlawful detainer only covers the Asturias property. The allegations of the complaint states as follows:

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[8] *Id.* at 40.

[9] Penned by Judge Pedro D. Cenzon; *id.* at 42-43.

[10] *Id.* at 33.

[11] *Id.* at 33.

[12] *Id.* at 20.

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

[14] *Id.* at 31-35.

3. Plaintiffs are the legitimate and surviving compulsory heirs of the late spouses Domingo Cruz and Maria Mesina, who both died intestate on 19 March 1944 and 23 March 1989, respectively, and in whose name, along with their deceased brother and sister, Francisco M. Cruz and Zenaida C. Cruz, a parcel of land with improvements situated at No. 1232 Asturias Street, Sampaloc, Manila is registered under Transfer Certificate of Title No. 125109 issued on 10 March 1977 by the Registry of Deeds for the Metro Manila District No. 1 x x x.

4. The subject property was inherited by Leocadia Cruz, Regina M. Cruz (deceased) and Ladislao M. Cruz (deceased) from their parents, the late spouses Domingo Cruz and Catalina Mesina.

5. During their lifetime, the aforenamed Leocadia Cruz, Regina M. Cruz (deceased) and Ladislao M. Cruz (deceased) sold the subject property to Maria Mesina and was registered in her name under Transfer Certificate of Title No. 97567 x x x.

6. In turn, plaintiffs [herein respondents] acquired the aforedescribed property from their deceased mother, Maria Mesina, by virtue of a Deed of Conveyance dated 22 November 1975 in accordance with the Decision rendered by the then Court of First Instance of Manila, Branch XL, in Civil Case No. 98074 entitled "*Sps. Dr. Virgilio W. Cabral, et al., versus Maria Mesina*" x x x.

7. Defendant Teresita Cruz-Carlos no longer occupied the premises and through the mere tolerance of plaintiffs as well as their late mother, defendants Proceso and Henry Cruz and their families, were allowed to continue occupying the said property temporarily on condition that they would vacate the same upon demand.

x x x x x x x x x

9. The aforementioned demand to vacate was repeated several times more, the last of which were separate letters of plaintiffs' counsel dated 23 January 2004 x x x.[15]

After the institution of the ejectment complaint, respondents sold the Asturias and Antonio properties to the spouses Rudy and Modesta Velasco (Spouses Velasco). Thus, presently, the properties are covered by TCT Nos. 268854 and 268853 under the name of the Spouses Velasco.[16]

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[15] *Id.* at 32-33.

[16] *Id.* at 20.

Petitioners Proceso, Henry, and Teresita Cruz (Teresita) repudiate the claim of ownership of the respondents. They countered that they are the legitimate heirs of the registered owner of the subject properties. As such, they filed an action for annulment of title and reconveyance.[17]

On February 11, 2013, the MeTC rendered its Decision in favor of the respondents and ordered petitioners to vacate both the Asturias and Antonio properties,[18] thus:

> WHEREFORE, judgment is hereby rendered ordering the [petitioners] PROCESO CRUZ, TERESITA C. CRUZ, HENRY CRUZ AND SERAFIN CRUZ, and all persons claiming rights under them, to vacate the subject lots situated at No. 1236-1240 Antonio Street, Sampaloc Manila and No. 1232 Asturias Street, Sampaloc Manila and to surrender the possession thereof to [respondents].
>
> Further, [petitioners] are ordered to pay [respondents]:
>
> a. the amount of ₱10,000.00 per month (insofar as [petitioner] Serafin Cruz) and ₱20,000.00 per month (jointly and severally insofar as [petitioners] Proceso Cruz, Henry Cruz and Teresita Cruz) as reasonable compensation for their use and occupation of the subject premises from June 2004 (the date of filing of the complaint) until the same is vacated.
>
> b. the amount of ₱10,000.00 as and for attorney's fees; and
>
> c. the costs of suit.
>
> SO ORDERED.[19] (Emphasis omitted)

Petitioners appealed the Decision of the MeTC. On July 16, 2013, the RTC rendered a Decision denying the appeal and affirming the Decision of the MeTC.[20] Thereafter, petitioners filed a Petition for Review under Rule 42 before the CA assailing the MeTC and the RTC Decisions. Petitioners alleged before the CA that the RTC erred in deciding the ejectment case against

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[17] *Id.* at 21.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 8.

Serafin since he was not a party to the ejectment case and that the Antonio property was not the subject matter of the ejectment case. On July 10, 2017, the CA denied the petition and affirmed the MeTC and RTC rulings.[21] Thus, petitioners come before Us through a Petition for *Certiorari*[22] under Rule 65 of the Rules of Court arguing that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Decisions of the RTC and MeTC despite the latter's lack of jurisdiction over the Antonio property.

Petitioners' Arguments

Petitioners argued that the subject matter of the complaint for unlawful detainer only refers to one parcel of land, the lot covered by TCT No. 125109 or the Asturias property, and the Antonio property is not included in the complaint. Thus, the ejectment case only pertains to the possession of the Asturias property. Since the possession of the Antonio property is not an issue, the latter should not be included in the dispositive portion of the Decision. Further, petitioner Serafin was not a party in the ejectment case, however, the Decision of the MeTC mistakenly included him and the Antonio property.[23]

Therefore, absent any reference to the Antonio property in the complaint for unlawful detainer, the MeTC could not have acquired jurisdiction over the subject property. Any order directing petitioners to vacate the premises of the Antonio property, while the same is not included in the complaint, would be in excess of the court's jurisdiction, hence null and void.[24]

Respondents' Arguments

Respondents, on the other hand, argue that petitioners availed of the wrong remedy to question the Decision of the CA. Since the petition seeks the review of the Decision of the CA, petitioners should have filed a Petition for Review on *Certiorari* under

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[21] *Id.* at 26-27.

[22] *Id.* at 3-17.

[23] *Id.* at 9-16.

[24] *Id.*

Rule 45 of the Rules of Court and not a petition under Rule 65. In any case, even if the technical rules are set aside, the petition must be dismissed for lack of merit. Respondents claimed that the arguments of petitioners that the unlawful detainer case did not cover the Antonio property have been rejected by the courts *a quo*. Nevertheless, while the complaint only mentions the Asturias property, it is specifically mentioned that respondents owned and occupied the Antonio property.[25]

Issue

Whether the MeTC has jurisdiction to include in its disposition the Antonio property which is not mentioned in the Complaint for Unlawful Detainer.

Ruling of the Court

The petition is granted.

At the outset, the propriety of the ejectment of petitioners Proceso, Henry, and Teresita from the Asturias property has already been settled for failure of the petitioners Proceso, Henry, and Teresita to assail their ejectment from the Asturias property. In fact, the petition for *certiorari* only questions the inclusion of the Antonio property as a subject of the unlawful detainer case. As petitioners stated in their petition:

> 35. On the propriety of the judgment thus rendered by the court *a quo*, the issue must be resolved taking into mind that the Antonio property was not specifically mentioned in the complaint. The fact that the judgment included the said property in its Decision, particularly in the decretal portion of which, shall not affect the said property and **shall not have any bearing whatsoever with respect to the right adjudicated in favor of the [respondents] involving the Asturias property**.[26] (Emphasis supplied)

Since petitioners do not question their eviction from the Asturias property, the only controversy in the present case is whether the MeTC has the jurisdiction to order petitioner Serafin to vacate the Antonio property.

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[25] *Id.* at 67-74.

[26] *Id.* at 12.

A petition for certiorari under Rule 65 is the proper remedy to question the MeTC's lack of jurisdiction.

In the present case, petitioners assail the Decision of the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court. It is true that the proper remedy of a party aggrieved by a decision of the CA is to file a petition for review on *certiorari* under Rule 45, since it is a continuation of the appeal process.[27] However, in this case, We are reviewing not the merits of the case but the jurisdiction of the MeTC in including in its disposition a property not subject of the complaint for unlawful detainer. Thus, to question the grave abuse of discretion amounting to lack or excess of jurisdiction of the MeTC, the petitioners can file a petition for *certiorari* under Rule 65 to question the Decision of the CA.

The MeTC has no jurisdiction to include the Antonio property in its disposition, since the same is not a subject matter of the ejectment case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. Thus, in order that the court have the power to adjudicate or dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[28] To stress, jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint.[29] This cannot be acquired by waiver or enlarged by the omission or consent of the parties.[30] Further, lack of jurisdiction over the subject matter can be raised at any time, even on appeal, and the Court

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[27] *Mercado v. Valley Mountain Mines Exploration, Inc.*, 667 Phil. 13, 51 (2011).

[28] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015).

[29] *Spouses Santiago v. Northbay Knitting, Inc.*, 820 Phil. 157 (2017).

[30] *Tumpag v. Tumpag*, 744 Phil. 423, 433 (2014).

may consider the same *motu proprio*. In this case, petitioners had emphatically raised the MeTC's lack of jurisdiction over the Antonio property before the RTC and the CA.

It is sufficiently settled that in a complaint for unlawful detainer, the complaint must show on its face, without resort to parol evidence, the jurisdictional facts to establish unlawful detainer, to wit:

a. that initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;
b. eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
c. thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
d. within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[31]

Here, there is nothing in the complaint to show that petitioner Serafin's possession of the Antonio property was initially legal and that upon termination of the latter's right to possess the property, he still remained in the premises thereby depriving the respondents to enjoy the same. While respondents alleged during trial in the MeTC that petitioner Serafin failed to pay his monthly rent and that because of this, respondents demanded petitioner Serafin to vacate the Antonio property, the said allegations do not appear in the four corners of the complaint. Jurisdiction of the MeTC over the subject matter, *i.e.*, the Antonio property, is determined by the allegations in the complaint, not by the allegations testified or proved during the trial. As there is nothing about the Antonio property in the Complaint for Unlawful Detainer, the MeTC has no jurisdiction to include the same in its disposition.

The fact that the Antonio property was owned by respondents and was mentioned as the residence of the respondents does

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[31] *Spouses Santiago v. Northbay Knitting, Inc., supra* note 29.

not mean that the MeTC has acquired jurisdiction over the said property. Further, the fact that respondents possess a certificate of title does not automatically give them unbridled authority to immediately wrest possession from petitioner Serafin.[32]

Also, petitioner Serafin, not being a party in the unlawful detainer case, cannot be prejudiced by any disposition by the MeTC, especially when the Antonio property is not even included in the Complaint. It should be noted that due process dictates that a person cannot be prejudiced by any proceeding to which he was a stranger.[33]

WHEREFORE, the instant petition is **GRANTED.** The Decision dated July 10, 2017 of the Court of Appeals in CA-G.R. SP No. 132966 is **REVERSED** and **SET ASIDE**. Accordingly, the dispositive portion of the Decision dated February 11, 2013 of the Metropolitan Trial Court in Civil Case No. 178543 should read as follows:

> WHEREFORE, judgment is hereby rendered ordering the defendants PROCESO CRUZ, TERESITA C. CRUZ AND HENRY CRUZ, and all persons claiming rights under them, to vacate the subject lot situated at No. 1232 Asturias Street, Sampaloc Manila and to surrender the possession thereof to plaintiffs.
>
> Further, defendants PROCESO CRUZ, TERESITA C. CRUZ AND HENRY CRUZ are ordered to pay plaintiffs, jointly and severally, the following:
>
> a. the amount of ₱20,000.00 per month as reasonable compensation for their use and occupation of the lot located at No. 1232 Asturias Street, Sampaloc Manila from June 2004 (the date of filing of the complaint) until the same is vacated.
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> b. the amount of ₱10,000.00 as and for attorney's fees; and

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[32] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

[33] *Dare Adventure Farm Corp. v. Court of Appeals*, 695 Phil. 681, 690 (2012).

c. the costs of suit.

SO ORDERED.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 238933. July 1, 2020]

JOEY RONTOS CLEMENTE, *petitioner*, *vs.* **STATUS MARITIME CORPORATION, BEKS GEMI ISLETMECILIGI VE TICARET A.S., and/or LOMA B. AGUIMAN,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; WHEN THERE IS NO POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY-DESIGNATED PHYSICIAN, THE EVALUATION OF THE SEAFARER'S CHOSEN PHYSICIAN IS CONSIDERED BY LAW AS BINDING BETWEEN THE PARTIES. — Section 20(A) of the POEA Standard Employment Contract provides the rule on the liability of the employer in cases where seafarers incur injuries or illnesses during the term of contract. x x x *Kestrel Shipping Co., Inc. v. Munar* synthesized the rules and the period for determining a seafarer's disability for the purpose of granting disability benefits x x x. The periods prescribed under the POEA Standard Employment Contract are mandatory and must be strictly

observed. A window of three days is given for the company-designated physician to examine the seafarer because within this period, "it would be fairly manageable for the physician to identify whether the disease . . . was contracted during the term of [their] employment or that [their] working conditions increased the risk of contracting the ailment." At the same time, this shortened period is meant to protect the employers from unscrupulous claims. x x x The conduct of the post-employment medical examination is a reciprocal obligation shared by the seafarer and the employer. The seafarer is "obliged to submit to an examination within three (3) working days from his or her arrival, and the employer is correspondingly obliged 'to conduct a meaningful and timely examination of the seafarer.'" This post-employment medical examination is primarily conducted by the company-designated physician. However, to be reliable, the assessment or findings of the company-designated physician must be "complete and definite to give the proper disability benefits to seafarers." x x x When the employer refuses to comply with its obligation to have the seafarer examined, the seafarer may rely on the medical findings of his or her chosen physician. x x x In this case, petitioner went to the respondents immediately after arriving in the Philippines. However, when he requested a medical diagnosis of his condition, the respondents refused to subject him to a post-employment medical examination. This compelled petitioner to go to a physician of his choice. x x x The law clearly states that the company-designated physician should be the doctor who will diagnose the condition of the seafarer after repatriation. The post-employment medical examination presumes that the company-designated physician will conduct a thorough, final, and definitive assessment of the seafarer's medical condition. Dr. Sevarajah's diagnosis cannot be considered compliance with this requirement. x x x When there is no post-employment medical examination by a company-designated physician, the evaluation of the chosen physician is considered by law as binding between the parties. Respondents' refusal to submit petitioner to a medical examination is a contravention of their responsibility under the POEA Standard Employment Contract.

2. ID.; ID.; ID.; INTENTIONAL CONCEALMENT OF A PRE-EXISTING ILLNESS OR INJURY IS A GROUND FOR

DISQUALIFICATION FOR COMPENSATION AND BENEFITS. — Section 20 (E) of the POEA Standard Employment Contract states that "[a] seafarer who knowingly conceals a pre-existing illness or condition" is disqualified from claiming compensation and benefits. x x x Petitioner knowingly concealed his history of shoulder dislocation from the respondents. x x x Knowing that he had this recurring condition, petitioner should have disclosed this fact during his pre-employment medical examination. x x x [P]etitioner cannot bank on the fact that he was cleared during the pre-employment medical examination. As jurisprudence has settled, this examination is not exploratory in nature and employers are not burdened to discover any and all pre-existing medical condition of the seafarer during its conduct. Pre-employment medical examinations are only summary examinations. They only determine whether seafarers are fit to work and does not reflect a comprehensive, in-depth description of the health of an applicant. This is precisely why Section 20 (E) mandates the seafarer to disclose his or her medical history during the pre-employment medical examination. x x x Intentional concealment of a pre-existing illness or injury is a ground for disqualification for compensation and benefits under the POEA Standard Employment Contract. While our laws give ample protection to our seafarers, this protection does not condone fraud and dishonesty. Petitioner cannot feign ignorance and downplay the concealment of his medical condition. Clearly, petitioner knew that he had a recurring shoulder dislocation. He never denied this fact. Hence, his disability claim must be denied.

APPEARANCES OF COUNSEL

Bantog and Andaya Law Offices for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

For this Court's resolution is a Petition for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals which affirmed the decisions of the National Labor Relations Commission and Labor Arbiter, disqualifying Joey Rontos Clemente from claiming disability benefits under the POEA Standard Employment Contract.

On August 7, 2015, Joey Rontos Clemente (Clemente) was hired by Status Maritime Corporation (Status Maritime) as a fitter on behalf of Beks Gemi Isletmeciligi Ve Ticaret A.S. and its owner, Loma B. Aguiman.[4] The terms of employment were as follows:

Duration of Contract:	9+3 MONTHS UPON MUTUAL CONSENT OF BOTH PARTIES
Position:	FITTER
Basic Monthly Salary:	US$735.20
Fixed Overtime/103 Hrs. Monthly:	US$546.40
Hours of Work:	48 HOURS/WEEK
Leave Pay:	US$171.55
Leave Subject:	US$100.80
Owner's Bonus/Extra O.T. Over and Above 103 Hrs.:	US$264.05
Point of Hire:	MANILA, PHILIPPINES

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[1] *Rollo*, pp. 3-26.

[2] *Id.* at 32-42. The Decision dated February 13, 2018 in CA-G.R. SP No. 151058 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Magdangal M. De Leon (Chairperson) and Rodil V. Zalameda of the Sixth Division, Court of Appeals, Manila.

[3] *Id.* at 44-45. The Resolution dated May 2, 2018 in CA-G.R. SP No. 151058 was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Magdangal M. De Leon (Chairperson) and Rodil V. Zalameda of the Sixth Division, Court of Appeals, Manila.

[4] *Id.* at 33.

O.T./Hour:	US$5.30
CBA, if any:	NONE[5]

Before boarding the vessel, Clemente underwent pre-employment medical examination and was declared fit to work.[6]

On March 25, 2016, Clemente's shoulder snapped and was dislocated while he was allegedly lifting a heavy object. He was repatriated and recommended for surgical repair after being diagnosed with recurrent left shoulder dislocation.[7]

Immediately after repatriation, Clemente reported to Status Maritime, which referred him to the company designated physician who advised him to undergo MRI. However, Status Maritime later disapproved the procedure and rejected Clemente's sickness allowance claim.[8]

Clemente then consulted Dr. Misael Ticman (Dr. Ticman). After undergoing MRI, Clemente was diagnosed with "Rotator cuff tear (Supraspinatus), left shoulder." Dr. Ticman concluded that his condition is a permanent disability and declared him "unfit to work" as a seafarer.[9]

On June 16, 2016, Clemente filed a complaint for permanent total disability before the Labor Arbiter.[10] He claimed disability benefits amounting to US$60,000.00, as well as ₱1,000,000.00 for moral damages, ₱200,000.00 for exemplary damages, and attorney's fees.[11]

For its part, Status Maritime maintained that Clemente is not entitled to disability benefits because he fraudulently concealed his history of shoulder dislocation.[12]

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[5] *Id.*

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

[7] *Id.* at 34.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 9.

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

Status Maritime alleged that Clemente disclosed to his crewmates that he had shoulder dislocations twice in the past. According to Ken Steven Lachica (Lachica), one of Clemente's crewmates, he was playing billiards with Clemente when the latter asked for help as he could not move his left shoulder. Jose Lancheta (Lancheta) also claimed that when the therapist came to relocate Clemente's shoulder, he told him about having shoulder dislocations even before boarding the vessel. Volkan Jose (Jose) likewise testified that Clemente told him about his history of shoulder dislocation.[13]

Status Maritime further claimed that Clemente admitted it was his third episode of shoulder dislocation when he was diagnosed by Dr. Ruben Raj Selvarajah (Dr. Selvarajah) abroad. Hence, when Clemente was repatriated, Status Maritime discontinued his treatment after discovering the fraudulent concealment. Moreover, Status Maritime maintained that Clemente's injury is not work-related.[14]

The Labor Arbiter dismissed the complaint and ruled that Clemente is not entitled to disability benefits.[15] The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered DISMISSING the complaint for disability benefits for lack of merit.
>
> All other claims are likewise dismissed for lack of merit.
>
> SO ORDERED.[16] (Emphasis in the original)

The Labor Arbiter found that Clemente's injury was not work-related because it was acquired before the duration of the contract as evidenced by Clemente's medical records which stated that he suffered the same injury twice — in June and July 2015.[17]

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[13] *Id.* at 35.

[14] *Id.*

[15] *Id.* at 35-36.

[16] *Id.* at 36.

[17] *Id.* at 35.

Moreover, the Labor Arbiter reasoned that Clemente failed to show how the nature of his work aggravated or contributed to his injury. Even assuming that his injury is compensable under POEA Standard Employment Contract, Clemente was still disqualified from claiming disability benefits because he failed to disclose his medical history during the pre-employment medical examination.[18]

Upon appeal, the National Labor Relations Commission affirmed the ruling of the Labor Arbiter, thus:

> **WHEREFORE**, premises considered, the appeal is denied for lack of merit. The assailed Decision of Labor Arbiter Norberto D. Enriquez dated October 12, 2016 is **AFFIRMED**.
>
> **SO ORDERED**.[19] (Emphasis in the original)

Clemente appealed to the Court of Appeals, arguing that the National Labor Relations Commission committed grave abuse of discretion in rejecting his claim for disability benefits. He contended that Status Maritime cannot claim he was unfit to work prior to the contract when it had the opportunity to detect his shoulder injury but failed to do so.[20]

The Court of Appeals upheld the ruling of the labor tribunals,[21] thus:

> **WHEREFORE**, premises considered, the petition is **DISMISSED**. The Decision dated 31 January 2017 and the Resolution dated 31 March 2017 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 01-000075-17 are **AFFIRMED**.
>
> **SO ORDERED**.[22] (Emphasis in the original)

It ruled that Clemente's willful concealment of his medical history disqualified him from claiming disability benefits

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[18] *Id.* at 36.

[19] *Id.*

[20] *Id.* at 38.

[21] *Id.* at 32-42.

[22] *Id.* at 42.

pursuant to Section 20 (E) of the POEA Standard Employment Contract.[23]

The Court of Appeals found that when Clemente underwent pre-employment medical examination, he misrepresented that he was not aware that he was suffering from any illness. However, when he was diagnosed abroad, he admitted to Dr. Selvarajah that it was already his third time to sustain left shoulder dislocation and that two episodes occurred before he boarded the vessel.[24] This medical report was corroborated by Clemente's crewmates.[25] On the other hand, Clemente did not refute that he concealed his condition during his pre-employment medical examination and that he suffered shoulder dislocation prior to embarkation.[26]

Moreover, the Court of Appeals ruled that even if Clemente did not conceal his medical history, he still cannot claim disability benefits because his injury was not work-related.[27] While his condition manifested onboard, Clemente failed to show the connection of his injury to the nature of his work as a fitter.[28] Since Clemente failed to present substantial evidence that his work condition caused or aggravated his injury, the Court of Appeals ruled that the lower tribunals did not commit grave abuse of discretion in denying him disability benefits.[29]

Clemente moved for reconsideration of the Decision, but it was denied.[30] Thus, he filed this Petition for Review.[31]

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

[24] *Id.* at 39.

[25] *Id.*

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

[27] *Id.* at 40.

[28] *Id.* at 41.

[29] *Id.*

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

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

Petitioner Clemente argues that he did not willfully conceal his medical condition during his pre-employment medical examination. He claims that he merely forgot to disclose his medical history and, being a layman without medical background, thought there was no need to disclose this information.[32]

Petitioner further contends that his medical condition should have been detected during the pre-employment medical examination because it is an apparent and external injury.[33] He claims respondents are estopped because they had all the opportunity to screen him for the injury.[34]

Moreover, petitioner avers that the Court of Appeals erred in solely relying on the findings of the foreign physician and unverified testimonies of his co-workers.[35]

Petitioner questions the lack of diagnosis by a company-designated physician, stressing that the POEA Standard Employment Contract mandates that a company-designated physician must make their own determination as to the medical condition of a seafarer upon repatriation.[36] He argues that failure to make a personal determination renders the assessment invalid.[37]

He points out that, Dr. Selvarajah, a foreign doctor, was not a company-designated physician and, therefore, "not qualified to make conclusive findings"[38] for respondents. He avers that the company-designated physician must be a doctor who examines the seafarer after repatriation.[39] Moreover, Dr.

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[32] *Id.* at 12.

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

[34] *Id.* at 13-14.

[35] *Id.* at 14.

[36] *Id.*

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

[38] *Id.* at 18.

[39] *Id.*

Selvarajah's task was merely to give emergency medical attention and not to determine the nature and extent of his injury.[40]

Petitioner maintains that the failure of a company-designated physician to give a definite medical finding after the period set under the POEA Standard Employment Contract renders the disability permanent and total.[41]

Lastly, petitioner claims that he is entitled to moral and exemplary damages, as well as attorney's fees, because the respondents grossly breached their duty to grant him disability benefits.[42]

In their Comment,[43] respondents argue that petitioner is not entitled to disability benefits because he is guilty of medical concealment.[44] Citing Section 20 (E) of the POEA Standard Employment Contract, respondents aver that petitioner's failure to disclose his previous shoulder dislocation constitutes fraudulent misrepresentation which disqualifies him from any compensation or benefit.[45]

In his pre-employment medical examination, petitioner categorically denied that he had shoulder dislocations in the past. Respondents claim this concealment exempts them from any obligation for the subsequent manifestation of the injury.[46]

Moreover, respondents stress that petitioner failed to refute their evidence and deny his previous episodes of shoulder dislocation.[47] They claim that petitioner likewise cannot capitalize on his pre-employment medical examination clearance because

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[40] *Id.* at 20.

[41] *Id.* at 21.

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

[43] *Id.* at 54-75.

[44] *Id.* at 60.

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

[46] *Id.* at 63.

[47] *Id.*

it is possible that his injury was not apparent at the time he was examined, making it difficult to detect. Further, they argue that it is the seafarers' duty to disclose their medical history.[48]

Respondents also argue that petitioner did not establish that his injury was work related.[49] They point out that petitioner's claim that he was lifting a heavy object when his shoulder snapped is baseless. They claim that petitioner neither identified the time and place of the incident nor the object he was lifting. To support this, Respondents presented an engine logbook showing that on the day of the incident, there was no pump or compeller maintenance, which is usually done by a fitter.[50] They posit that petitioner's shoulder injury occurred during a billiard game,[51] and an injury during an off-duty incident should not be compensable because it is not work-related.[52]

Moreover, respondents contend that petitioner is not entitled to damages and attorney's fees as they did not act in bad faith in rejecting his disability claim.[53]

In his Reply,[54] petitioner reiterates that there is no fraudulent misrepresentation on his part.[55] He adds that there is a presumption of fitness which was uncontroverted by evidence.[56] He refers to respondents' verified undertaking during the issuance of a license to engage Filipino seafarers, which states that it shall "deploy only technically qualified and medical fit applicants."[57]

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[48] *Id.*

[49] *Id.* at 64.

[50] *Id.*

[51] *Id.* at 66.

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

[53] *Id.* at 70.

[54] *Id.* at 79-92.

[55] *Id.* at 79.

[56] *Id.* at 80.

[57] *Id.* citing Book II, Rule II, Sec. 1 (f-1) of the POEA Rules and Regulations, which provides:

Moreover, petitioner argues that, at the very least, his nature of employment had contributed to the aggravation of his shoulder injury.[58] Work-relatedness is apparent in the nature of his job as a fitter which requires manual work. In fact, he claims his injury occurred while he was working and carrying a heavy object. Assuming his injury is not work-related, petitioner avers that he is still entitled to disability benefits because his injury occurred during the effectivity of the contract and the POEA Standard Employment Contract does not specify that the injury or illness be work-related for it to be compensable.[59]

The sole issue for this Court's resolution is whether or not petitioner is entitled to permanent and total disability benefits. Subsumed under this issue are the following:

(1) Whether or not the respondents complied with their obligation of referral to a company-designated physician; and

(2) Whether or not petitioner is disqualified from claiming disability benefits due to fraudulent concealment.

I

Section 20 (A) of the POEA Standard Employment Contract provides the rule on the liability of the employer in cases where seafarers incur injuries or illnesses during the term of contract. The provision reads:

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:

SECTION 1. *Requirements for the issuance of license*. — Every applicant for license to operate a private employment agency shall submit a written application letter together with the following requirements:

x x x x x x x x x

f. a verified undertaking stating that the applicant:

1. Shall select only medically and technically qualified applicants[.]

[58] *Id.* at 81.

[59] *Id.* at 82.

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

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

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

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.[60]

Kestrel Shipping Co., Inc. v. Munar[61] synthesized the rules and the period for determining a seafarer's disability for the purpose of granting disability benefits, thus:

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.
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> x x x x x x x x x
>
> [A] temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because

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[60] POEA Memo. Circ. No. 010-10, Sec. 20 (A).

[61] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717 (2013) [Per *J.* Reyes, First Division].

the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.[62] (Citation omitted)

The periods prescribed under the POEA Standard Employment Contract are mandatory and must be strictly observed. A window of three days is given for the company-designated physician to examine the seafarer because within this period, "it would be fairly manageable for the physician to identify whether the disease . . . was contracted during the term of [their] employment or that [their] working conditions increased the risk of contracting the ailment."[63] At the same time, this shortened period is meant to protect the employers from unscrupulous claims. In *Manota v. Avantgarde Shipping Corp.*:

Moreover, the post-employment medical examination within 3 days from . . . arrival is required in order to ascertain [the seafarer's] physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[64] (Citations omitted)

The conduct of the post-employment medical examination is a reciprocal obligation shared by the seafarer and the employer. The seafarer is "obliged to submit to an examination within three (3) working days from his or her arrival, and the employer is correspondingly obliged 'to conduct a meaningful and timely examination of the seafarer.'"[65]

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[62] *Id.* at 734.

[63] *Manota v. Avantgarde Shipping Corp.*, 715 Phil. 54, 64 (2013) [Per J. Peralta, Third Division].

[64] *Id.* at 65.

[65] *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64089> [Per J. Leonen, Third Division].

This post-employment medical examination is primarily conducted by the company-designated physician.[66] However, to be reliable, the assessment or findings of the company-designated physician must be "complete and definite to give the proper disability benefits to seafarers." Furthermore:

> A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[67] (Citation omitted)

When the employer refuses to comply with its obligation to have the seafarer examined, the seafarer may rely on the medical findings of his or her chosen physician.[68] Thus:

> The Court has in the past, under unique circumstances, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician. In *Philippine Transmarine Carriers, Inc. v. NLRC*, we affirmed the grant by the CA and by the NLRC of disability benefits to a claimant, based on the recommendation of a physician not designated by the employer. The "claimant consulted a physician of his choice when the company-designated physician refused to examine him." In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, we reinstated the NLRC's decision, affirmatory of that of the labor arbiter, which awarded sickness wages to the petitioner therein even if his disability had been assessed by the Philippine General Hospital, not by a company-designated hospital. Similar to the case at bar, the seafarer in Cabuyoc initially sought medical assistance from the respondent employer but it refused to extend him help.[69] (Citation omitted)

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[66] *Orient Hope Agencies, Inc. v. Jara*, G.R. No. 204307, June 6, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64210> [Per *J.* Leonen, Third Division].

[67] *Id.*

[68] *Ebuenga v. Southfield Agencies, Inc.*, G.R. No. 208396, March 14, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64089> [Per *J.* Leonen, Third Division].

[69] *Id.*, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1-18 (2012) [Per *J.* Brion, Second Division].

In *Dionio v. ND Shipping Agency and Allied Services, Inc.*,[70] this Court ruled that between a "non-existent medical assessment of a company-designated physician. . . and the medical assessment of [the seafarer's] physicians of choice, the latter evidently stands."[71]

> As respondents refused to answer the medical treatment of Gil upon his repatriation, contrary to the provisions of the POEA-SEC, Gil was never examined by the company-designated physician. *A fortiori*, respondents could not present any medical report prepared by the company-designated physician on the medical condition of Gil. They could not state whether Gil was fit to return to work or the specific grading of his disability.
>
> x x x x x x x x x
>
> . . . Absent the company-designated physician's medical assessment, respondents could only present unsupported allegations and suppositions regarding Gil's medical condition.
>
> On the other hand, as respondents completely ignored the medical needs of Gil upon his repatriation, he had no choice but to seek medical attention from other physicians at his own expense[.]
>
> x x x x x x x x x
>
> Between the non-existent medical assessment of a company-designated physician of respondents and the medical assessment of Gil's physicians of choice, the latter evidently stands. Respondents were obliged to refer Gil to a company-designated physician and shoulder the medical expenses, but they reneged on their responsibility and simply ignore the plight of their seafarer.[72] (Citations omitted)

In this case, petitioner went to the respondents immediately after arriving in the Philippines. However, when he requested a medical diagnosis of his condition, the respondents refused to subject him to a post-employment medical examination. This compelled petitioner to go to a physician of his choice.

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[70] *Dionio v. ND Shipping Agency and Allied Services, Inc.*, G.R. No. 231096, August 15, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64626> [Per J. Gesmundo, Third Division].

[71] *Id.*

[72] *Id.*

Respondents insist that the foreign doctor's assessment is sufficient compliance with the law and that it should be deemed the company-designated physician's diagnosis. We disagree.

The law clearly states that the company-designated physician should be the doctor who will diagnose the condition of the seafarer after repatriation. The post-employment medical examination presumes that the company-designated physician will conduct a thorough, final, and definitive assessment of the seafarer's medical condition.

Dr. Sevarajah's diagnosis cannot be considered compliance with this requirement. A strict reading of the POEA Standard Employment Contract requires that the company-designated physician be the one to diagnose the seafarer upon repatriation. Even if the rules are applied liberally, the assessment of Dr. Sevarajah cannot be considered thorough, final, and definitive as it was merely for an urgent medical care. In Dr. Sevarajah's medical report, there is no showing that he conducted tests to arrive at a proper diagnosis. In fact, he even recommended for petitioner undergo further tests to determine the extent of the injury.[73]

Moreover, Dr. Severajah's report explicitly states that it is "not meant for any medicolegal proceedings, [that it should] not be used as a reference in any court hearing and [that it] does not support any compensation claim."[74] The provisional nature of Dr. Sevarajah's diagnosis is further supported by his act of recommending that petitioner see an orthopedic surgeon for further assessment.[75]

On the other hand, petitioner's chosen physician, an orthopedic surgeon, diagnosed petitioner with rotator cuff tear in his left shoulder after an MRI scan.[76] Dr. Ticman's disability report states:

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

[74] *Id.* at 50.

[75] *Id.* at 49.

[76] *Id.* at 52.

x x x x x x x x x

Physical examination
– conscious, coherent, ambulatory
– stable vital signs
– (+) tenderness on [range of motion], left shoulder
– (+) limitation on motion, left shoulder
– (+) Apprehension test, left shoulder

Diagnosis
Rotator Cuff Tear (Supraspinatus), Left Shoulder

DISABILITY RATING

Based on the history and physical examination on the patient, in spite of the medications given the symptoms persist the prognosis is not good. I am therefore recommending ***Permanent Disability*** and that he is **unfit** to work as a seaman in any capacity.[77] (Emphasis in the original)

When there is no post-employment medical examination by a company-designated physician, the evaluation of the chosen physician is considered by law as binding between the parties. Respondents' refusal to submit petitioner to a medical examination is a contravention of their responsibility under the POEA Standard Employment Contract. Thus, the permanent disability rating of Dr. Ticman stands.

II

However, petitioner's benefits claim must be denied due to fraudulent concealment.

Section 20 (E) of the POEA Standard Employment Contract states that "[a] seafarer who knowingly conceals a pre-existing illness or condition" is disqualified from claiming compensation and benefits. The provision reads:

SECTION 20. *Compensation and Benefits*. —

x x x x x x x x x

[77] *Id.*

E. A seafarer who **knowingly conceals** a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for **misrepresentation and shall be disqualified from any compensation and benefits**. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.[78] (Emphasis supplied)

In *Philman Marine Agency, Inc. v. Cabanban*,[79] it was ruled that the seafarer's failure to disclose any illness or injury that they have knowledge of disqualifies them from claiming disability benefits. In that case, the seafarer filed a claim for disability benefits after being diagnosed with hypertension while onboard the vessel. He asserted that since his pre-employment medical examination was exploratory and showed that he was in good health prior to the employment, his subsequent diagnosis proves that his illness occurred during his employment.

In rejecting the compensation claim, the Court in *Philman* held that the seafarer concealed that he suffered from hypertension and was taking anti-hypertensive medication prior to his employment, which disqualified him from compensation under the POEA Standard Employment Contract.

Second, although Dr. Ranjan of the Fujairah Port Clinic diagnosed Armando with hypertension, Armando did not reveal in his PEME that he had been suffering from this condition and had been taking anti-hypertensive medications for five years. As the petitioners correctly argued, Armando's concealment of this vital information in his PEME disqualifies him from claiming disability benefits pursuant to Section 20-E of the POEA-SEC[.]

x x x x x x x x x

We need not belabor this point as a plain reading of the above provision shows that the seafarer's concealment of a pre-existing medical condition disqualifies him from claiming disability benefits. We note that Dr. Ranjan of the Fujairah Port Clinic stated in his report that Armando was a "known case of HT, on atenolol 50 mg OD [for five years]." The import of this statement cannot be disregarded

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[78] POEA Memo. Circ. No. 010-10, Sec. 20 (B) (E).

[79] 715 Phil. 454 (2013) [Per J. Brion, Second Division].

as it directly points to Armando's willful concealment; it also shows that Armando did not acquire hypertension during his employment and is therefore not work-related.[80]

Moreover, the Court in *Philman* ruled that the seafarer cannot capitalize on his clearance in the pre-employment medical examination because it was not exhaustive. Employers are not burdened to discover any and all pre-existing medical conditions of the seafarer, thus:

> Contrary to Armando's contention, the PEME is not sufficiently exhaustive so as to excuse his non-disclosure of his pre-existing hypertension. The PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition and is just enough for the employer to determine his fitness for the nature of the work for which he is to be employed.[81] (Citations omitted)

In *Ayungo v. Beamko Shipmanagement Corporation*,[82] this Court likewise ruled that a seafarer is disqualified from claiming disability benefits for non-disclosure of previous medical illness.

> As for Ayungo's Hypertension, suffice it to state that he did not disclose that he had been suffering from the same and/or had been actually taking medications therefor (*i.e.*, Lifezar) during his PEME. As the records would show, the existence of Ayungo's Hypertension was only revealed after his repatriation, as reflected in the Medical Report dated March 26, 2008 and reinforced by subsequent medical reports issued by MMC. To the Court's mind, Ayungo's non-disclosure constitutes fraudulent misrepresentation which, pursuant to Section 20(E) of the 2000 POEA-SEC, disqualifies him from claiming any disability benefits from his employer.[83] (Citations omitted)

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[80] *Id.* at 479-480.

[81] *Id.* at 480.

[82] *Ayungo v. Beamko Shipmanagement Corp.*, G.R. No. 203161, February 26, 2014, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56522> [Per *J.* Perlas-Bernabe, Third Division].

[83] *Id.*

Similarly, in *Status Maritime Corp. v. Spouses Delalamon*,[84] this Court held that the pre-employment medical examination does not preclude the employers from rejecting disability claims if it was shown that the seafarer willfully concealed his or her medical history.

> The fact that Margarito passed his PEME cannot excuse his willful concealment nor can it preclude the petitioners from rejecting his disability claims. PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "fit to work" at sea or "fit for sea service" and it does not state the real state of health of an applicant. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment.
>
> Thus, for knowingly concealing his diabetes during the PEME, Margarito committed fraudulent misrepresentation which under the POEA-SEC unconditionally barred his right to receive any disability compensation or illness benefit.[85]

Nevertheless, the Court in *Deocariza v. Fleet Management Services*[86] resolved that Section 20 (E) places the burden on the employer to prove the concealment of a pre-existing illness or medical condition to disqualify seafarers from compensation.

> The Court, however, finds the foregoing conclusion anchored on pure speculation. At the outset, it bears to point out that Section 20 (E) of the 2010 POEA-SEC speaks of an instance where an employer is absolved from liability when a seafarer suffers a work-related injury or illness on account of the latter's willful concealment or misrepresentation of a pre-existing condition or illness. Thus, the

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[84] *Status Maritime Corp. v. Spouses Delalamon*, 740 Phil. 175 (2014) [Per *J.* Reyes, First Division].

[85] *Id.* at 194-195.

[86] *Deocariza v. Fleet Management Services Philippines, Inc.*, G.R. No. 229955, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64445> [Per *J.* Perlas-Bernabe, Second Division].

burden is on the employer to prove such concealment of a pre-existing illness or condition on the part of the seafarer to be discharged from any liability. In this regard, an illness shall be considered as pre-existing if prior to the processing of the POEA contract, any of the following conditions is present, namely: (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.***[87] (Emphasis supplied)

In this case, petitioner denies that he knowingly concealed his medical history. He argues that respondents' failure to discover his shoulder injury during the examination precludes them from rejecting his compensation claim. Moreover, petitioner contends that the testimony of his workmates may not be given credence for not being verified.

We reject petitioner's arguments.

Petitioner knowingly concealed his history of shoulder dislocation from the respondents. As resolved by the labor tribunals and the Court of Appeals, petitioner had two instances of left shoulder dislocation prior to his employment — once in June 2015 and another in July 2015. Knowing that he had this recurring condition, petitioner should have disclosed this fact during his pre-employment medical examination. This non-disclosure is apparent in his medical certificate, wherein he answered "no" to the question "Is applicant suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for service. . .?"[88]

Moreover, petitioner cannot bank on the fact that he was cleared during the pre-employment medical examination. As jurisprudence has settled, this examination is not exploratory in nature and employers are not burdened to discover any and all pre-existing medical condition of the seafarer during its conduct. Pre-employment medical examinations are only

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[87] *Id.*

[88] *Rollo*, p. 47.

summary examinations. They only determine whether seafarers are fit to work and does not reflect a comprehensive, in-depth description of the health of an applicant. This is precisely why Section 20 (E) mandates the seafarer to disclose his or her medical history during the pre-employment medical examination.

Further, petitioner contends that the affidavits of his co-workers should not be given credence as they were unverified. This contention must fail. Article 227 of the Labor Code provides that labor tribunals are not bound by technical rules of evidence and they may use all reasonable means to ascertain the facts of the case without regard to technicalities of law and procedure.[89] Thus, the testimonies of petitioner's crewmates may be accepted as evidence before the labor tribunals.

Further, respondents were able to present evidence that petitioner did not perform any job at the day of the incident. The engine logbook shows that there was no pump or compeller maintenance on that day. This coincides with the testimony of petitioner's co-workers that they were playing billiards when petitioner's shoulder injury occurred.

Intentional concealment of a pre-existing illness or injury is a ground for disqualification for compensation and benefits

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[89] LABOR CODE, Art. 227 provides:

ARTICLE 227. *Technical Rules Not Binding and Prior Resort to Amicable Settlement*. — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

under the POEA Standard Employment Contract. While our laws give ample protection to our seafarers, this protection does not condone fraud and dishonesty. Petitioner cannot feign ignorance and downplay the concealment of his medical condition. Clearly, petitioner knew that he had a recurring shoulder dislocation. He never denied this fact. Hence, his disability claim must be denied.

WHEREFORE, the Petition for Review is **DENIED.** The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 151058 are **AFFIRMED**.

SO ORDERED.

Gesmundo, Carandang, Lazaro-Javier,[*] and *Gaerlan, JJ.*, concur.

[*] Designated additional Member per Raffle dated June 8, 2020.

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ACTIONS

***Action in rem* —** A petition for correction is an action *in rem*; a decision therein binds not only the parties themselves but the whole world, as well; an *in rem* proceeding entails publication as a jurisdictional requirement to give notice to and bring the whole world as a party into the case. (Republic *vs.* Felix, *a.k.a.* Shirley Mintas Felix, G.R. No. 203371, June 30, 2020) p. 665

***Criminal actions* —** The extinction of the criminal action does not result in the extinction of the corresponding civil action; consistent with this, the Rules require that in judgments of acquittal, the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt; the latter may only be extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (Auro, represented by his heirs, Jomar O. Auro, *et al*. *vs.* Yasis, represented by Achilles A. Yasis, G.R. No. 246674, June 30, 2020) p. 800

ADMINISTRATIVE LAW

***Doctrine of exhaustion of administrative remedies* —** The doctrine may be waived as in *Soto v. Jareno*: failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court; we have repeatedly stressed this in a long line of decisions; the only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss; if not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it. (Republic *vs.* Felix, *a.k.a.* Shirley Mintas Felix, G.R. No. 203371, June 30, 2020) p. 665

— Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative

processes available before seeking the courts' intervention; the administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction; failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court; however, failure to observe the doctrine of exhaustion of administrative remedies does not affect the court's jurisdiction. (*Id.*)

Signature of head of agency — The mere signature of the head of agency in a certification without anything more cannot be considered a presumption of liability, for liability depends upon the wrong committed and not solely by reason of being the head of the government agency. (Linsangan *vs.* Office of the Ombudsman, *et al.*, G.R. No. 234260, July 1, 2020) p. 900

AGENCY

Contract of — As to the issue of an irrevocable power of attorney, a power of attorney is basically a written document whereby the authority of the principal conferred upon his agent is not to be extended by implication beyond the natural and ordinary significance of the terms in which that authority has been given; the attorney has only such authority as the principal has chosen to confer upon him, and one dealing with him must ascertain at his own risk whether his acts will bind the principal. (Santamaria *vs.* Atty. Tolentino, A.C. No. 12006, June 29, 2020) p. 558

AGGRAVATING CIRCUMSTANCES

Dwelling — For abuse of superior strength to be properly appreciated as a qualifying circumstance, it must be shown that the advantage of superior strength was purposely and consciously sought by the assailant. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

— To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked; however, as none of the

prosecution witnesses saw how the killing was perpetrated, abuse of superior strength cannot be appreciated in this case. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

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Defense of — While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak; at any rate, even if the defense of the accused may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

ALIBI AND DENIAL

Defenses of — Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case; it is also axiomatic that positive testimony prevails over negative testimony. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3 (e) — Anent the last element, in order to hold a person liable for violation of Section 3 (e), RA 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions. (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

— In order to hold a person liable under Section 3(e) of RA 3019, the following elements must concur, to wit: (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.*)

— Under the third element, the crime may be committed through "manifest partiality," "evident bad faith," or "gross inexcusable negligence"; as already held by this Court, Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence; there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another; "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

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Factual findings of administrative or quasi-judicial agencies **—** It is well-established that an administrative agency's findings of fact are entitled to respect and deference; as the recognized specialist in the field assigned to it, the administrative agency can resolve issues in its field "with more expertise and dispatch than can be expected from the legislature or the courts of justice." (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

Factual findings of the Court of Appeals **—** As a rule, the factual findings of the Court of Appeals are binding on the Court, except in the following cases: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

Factual findings of the trial court — 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. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

Petition for review on certiorari to the Supreme Court under Rule 45 — As a rule, only questions of law may be raised in and resolved by the Court in a Rule 45 petition; the Court is precluded from inquiring into the veracity of the CA's factual findings especially when supported by substantial evidence; the findings of fact of the CA are final, binding, and conclusive upon us except when they are contrary to those of the administrative body exercising quasi-judicial functions from which the action originated. (Samillano vs. Valdez Security and Investigation Agency, Inc./Emma V. Licuanan, G.R. No. 239396, June 23, 2020) p. 440

— It is not this Court's task to go over the proofs presented below to ascertain if they were weighed correctly; however, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the Ombudsman are contradictory. (National Bureau of Investigation *vs.* Najera, G.R. No. 237522, June 30, 2020) p. 748

Points of law, issues, theories and arguments — Settled is the rule that no questions will be entertained on appeal unless they have been raised below; points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal; basic considerations of due process impel this rule; an exception exists when the consideration and resolution of the issue is "essential and indispensable in order to arrive at a just decision in the case." (Spouses Devisfruto *vs.* Greenfell, G.R. No. 227725, July 1, 2020) p. 867

— Whether or not respondent's eye ailment is compensable is essentially a factual matter which this Court cannot review in a Rule 45 petition as it is not a trier of fact. (Pacific Ocean Manning, Inc., *et al. vs.* Langam, G.R. No. 246125, June 23, 2020) p. 518

Rules on — As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case; the reason is that a judgment of acquittal is immediately final and executory, and the prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated. (Auro, represented by his heirs, Jomar O. Auro, *et al*. *vs.* Yasis, represented by Achilles A. Yasis, G.R. No. 246674, June 30, 2020) p. 800

— Either party may appeal the civil aspect of the decision, separate from the judgment of acquittal of the defendant; this is because our jurisdiction recognizes that when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense is deemed instituted as well. (*Id.*)

ATTORNEYS

Attorney's lien — A lawyer is entitled to a lien over funds, documents and papers of his client which have lawfully come into his possession; under Canon 16, Rule 16.03 of the CPR, he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client." (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

— Section 37, Rule 138 of the Rules of Court provides for attorney's retaining lien; the attorney's retaining lien applies not only to the balance of the account between the attorney and his/her client, but also to the funds and documents, such as certificates of title of the land, of the client which may come into the attorney's possession in the course of his/her employment. (*Id.*)

***Code of Professional Responsibility* —** Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes; a lawyer, to the best of his ability, is expected to respect and abide by the law, and thus, avoid any act or omission that is contrary to the same; Rule 1.01 of the Code states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct; it instructs that as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. (Bondoc, represented by Conrad H. Bautista *vs.* Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

***Disbarment* —** Disbarment is the most severe form of disciplinary sanction given to a lawyer; this Honorable Court has repeatedly held in various cases that contrary to the penalty that complainant is seeking to be imposed against respondent, the power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons. (Santamaria *vs.* Atty. Tolentino, A.C. No. 12006, June 29, 2020) p. 558

— In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof; considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty. (Suplico, *et al. vs.* Lokin, Jr., A.C. No. 9152 [Formerly CBC Case No. 05-1430], July 1, 2020) p. 812

— The sole issue to be resolved therein is whether the lawyer concerned is morally fit to remain a member of the Philippine Bar. (Siao *vs.* Atup, A.C. No. 10890, July 1, 2020) p. 819

***Disbarment proceedings* —** A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of

its officers; the issue to be determined is whether a member of the bar is still fit to continue to be an officer of the court in the dispensation of justice. (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

Duties — A lawyer is obliged to hold in trust money of his client that may come to his possession; as trustee of such funds, he is bound to keep them separate and apart from his own; money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand; failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. (Bondoc, represented by Conrad H. Bautista *vs.* Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

— Lawyers, as vanguards of the justice system, must uphold the Constitution and promote respect for the legal processes; as officers of the Court, they must not abuse or misuse Court processes so as to frustrate and impede the execution of a judgment; lawyers have the utmost duty to exert every effort to assist in the speedy and efficient administration of justice. (David *vs.* Atty. Rongcal, *et al.*, A.C. No. 12103, June 23, 2020) p. 31

— Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code; public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. (Bondoc, represented by Conrad H. Bautista *vs.* Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

— Respondent lawyers cannot hide under the guise of advocating the rights of their client; as members of the bar, their obligations to the society, to the court and to the legal profession take precedence over their obligations to their clients; the CPR is structured in such a manner that in serving their clients, the lawyers must ensure that their conduct reflect the values and norms of the legal profession which includes their observance and compliance with judicial process and court procedures.

(David *vs*. Atty. Rongcal, *et al*., A.C. No. 12103, June 23, 2020) p. 31

— Respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. (Bondoc, represented by Conrad H. Bautista *vs*. Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

— This Court has consistently held that any money or property collected for the client coming into the lawyer's possession should be promptly declared and reported to him or her. (Spouses Cuña, Sr. *vs*. Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

— Under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased"; Sections 16 and 17, Rule 3 of the Rules of Court provide: The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the intervening death of the lawyer's client. (Santamaria *vs.* Atty. Tolentino, A.C. No. 12006, June 29, 2020) p. 558

— Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client. (Bondoc, represented by Conrad H. Bautista *vs.* Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

***Lawyer's Oath* —** The Lawyer's Oath requires every lawyer to "delay no man for money or malice" and to act "according to the best of his or her knowledge and discretion, with all good fidelity as well to the courts as to his or her clients"; a lawyer is duty-bound to serve his client with competence, and to attend to his client's

cause with diligence, care and devotion; this is because a lawyer owes fidelity to his client's cause and must always be mindful of the trust and confidence reposed on him. (Bondoc, represented by Conrad H. Bautista *vs.* Atty. Licudine, A.C. No. 12768, June 23, 2020) p. 45

Liability of — As to respondent's failure to file an Appellee's Brief, this Court believes and so holds that he is liable for neglect of duty under Rule 18.03 of the CPR which provides that: Rule 18.03 A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. (Santamaria *vs.* Atty. Tolentino, A.C. No. 12006, June 29, 2020) p. 558

— Filing of frivolous motions which unduly delayed the execution of a decision that had long been final and executory, is a blatant disregard of the precepts of judicial process, and a clear defiance of the lawyer's sworn duty under the lawyer's oath to obey the legal orders of a duly constituted authority and to "delay no man for money or malice." (David *vs.* Atty. Rongcal, *et al*., A.C. No. 12103, June 23, 2020) p. 31

— For failure to return complainant's money, non-payment of Integrated Bar of the Philippines membership dues, and noncompliance with the mandatory continuing legal education, the Court imposes the penalty of three-year suspension from the practice of law; respondent is also ordered to pay a fine and return complainant's money with interest at the legal rate of 12% *per annum*. (In re: Petition for the Disbarment of Atty. Estrella O. Laysa, *et al. vs.* Atty. Laysa, A.C. No. 7936, June 30, 2020) p. 609

— His attitude of disobeying the orders of the IBP manifests his clear lack of respect to the institution and its established rules and regulations; the IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers; for his behavior, respondent violated Canon 11 of the CPR. (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

— While there is no express prohibition on the filing of supplemental motions for reconsideration, piecemeal filings thereof is a manifestation of respondent's intent to delay the instant proceedings and his propensity to ignore basic rules of procedure, which are, first and foremost, designed to expedite the resolution of cases pending in courts. (*Id.*)

Practice of law **—** DAR Memorandum Circular No. 12-09 (DAR-MC 12-09), or the DAR Manual on Legal Assistance, lays down the procedure to be observed by trial attorneys of the DAR in "the acceptance for representation of judicial and quasi-judicial cases and in the handling of agrarian law implementation (ALI) cases." (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

BILL OF RIGHTS

Right to be informed of the nature and cause of the accusation **—** The hornbook doctrine in our jurisdiction is that an accused cannot be convicted of an offense, unless it is *clearly* charged in the complaint or information; constitutionally, he has a right to be informed of the nature and cause of the accusation against him; to convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

BOARD OF INVESTMENTS

Functions and powers **—** Executive Order No. 226 empowers the Board of Governors of the Board of Investments to, among others, process and approve applications for registration; the quasi-judicial power to assess and approve applications for registration was bestowed exclusively on the Board of Governors, owing to its expertise over which industries need the added boost of investments and its in-depth knowledge on the requirements for registration. (National Federation of HOG Farmers, Inc.,

represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al*., G.R. No. 205835, June 23, 2020) p. 172

BUREAU OF INTERNAL REVENUE (BIR)

***Authority to examine books, paper, record, or other data of taxpayers* —** The BOC, on the other hand, is authorized to audit or examine all books, records, and documents of importers necessary or relevant for the purpose of collecting the proper duties and taxes; since there are no taxes or duties involved in this case, the BIR and the BOC likewise have no power and authority to open and examine the books of accounts of the Big 3. (The Commission on Audit, represented by its Chairman, *et al*. *vs*. Hon. Pampilo, Jr., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

— With respect to the BIR, its Commissioner is authorized to examine books, paper, record, or other data of taxpayers but only to ascertain the correctness of any return, or in making a return when none was made, or in determining the liability of any person for any internal revenue tax, or in collecting such liability, or evaluating the person's tax compliance. (*Id.*)

CANCELLATION AND CORRECTION OF ENTRIES IN CIVIL REGISTRY

***Indispensable parties* —** All persons who stand to be affected by a substantial correction of an entry in the civil registrar must be impleaded as indispensable parties; failure to do so renders all proceedings subsequent to the filing of the complaint including the judgment ineffectual; this requirement hinges on the fact that the books making up the civil register and all documents relating thereto may only be the facts therein contained. (Republic *vs.* Timario, G.R. No. 234251, June 30, 2020) p. 739

— In cases where publication may be deemed to cure one's failure to implead indispensable parties in a petition for correction of substantial entries in the birth certificate,

special circumstances must be present to justify the non-inclusion of indispensable parties, such as when earnest efforts were made by petitioners bringing to court all possible interested parties; the interested parties themselves initiated the corrections proceedings; there was no actual or presumptive awareness of the existence of the interested parties; or when the party was inadvertently left out. (*Id.*)

CERTIORARI

Petition for — Filing a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure was not the correct remedy, as petitioners could have availed of a "plain, speedy, and adequate remedy" that is, an appeal to the Office of the President. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al*., G.R. No. 205835, June 23, 2020) p. 172

— It is true that the proper remedy of a party aggrieved by a decision of the CA is to file a petition for review on *certiorari* under Rule 45, since it is a continuation of the appeal process; however, in this case, We are reviewing not the merits of the case but the jurisdiction of the MeTC in including in its disposition a property not subject of the complaint for unlawful detainer; to question the grave abuse of discretion amounting to lack or excess of jurisdiction of the MeTC, the petitioners can file a petition for *certiorari* under Rule 65 to question the Decision of the CA. (Cruz, *et al*. *vs.* Court of Appeals, *et al*., G.R. No. 238640, July 1, 2020) p. 927

— Under Rule 65, Section 4 of the Rules of Court, a petition for *certiorari* should be filed within 60 days of notice of the assailed order or resolution. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al*. *vs*. Board of Investments, *et al*., G.R. No. 205835, June 23, 2020) p. 172

CIVIL LIABILITY

***Restitution* —** Restitution of the thing or the subject matter of the action instituted must be made whenever possible, with allowance for any deterioration, or diminution of value, as determined by the court; even though the thing may be found in the possession of third parties, who acquired it by lawful means, it may be recovered and its possession may be restored to its original owner or possessor, as the case may be. (Auro, represented by his heirs, Jomar O. Auro, *et al*. *vs.* Yasis, represented by Achilles A. Yasis, G.R. No. 246674, June 30, 2020) p. 800

***Restitution distinguished from indemnification* —** Under Article 104 of the RPC, civil liability includes: 1) restitution; 2) reparation of the damage caused; and 3) indemnification of the consequential damages; restitution means the return or the restoration of a thing or condition back to its original status, wherever or whatever it may be; unlike indemnification, as when then court orders the offender to pay for damages for the loss incurred by the offended party, in restitution, the offender is forced to give up the thing or condition that he/she had gained back to the situation before he/she became the owner/ possessor of the thing or benefited from the condition that had already occurred or happened. (Auro, represented by his heirs, Jomar O. Auro, *et al*. *vs*. Yasis, represented by Achilles A. Yasis, G.R. No. 246674, June 30, 2020) p. 800

CLERICAL ERROR LAW (R.A. NO. 9048)

***Jurisdiction* —** Even with the advent of R.A. No. 9048 as amended by R.A. No. 10172, the regional trial courts are not divested of their jurisdiction to hear and decide petitions for correction of entries. (Republic *vs.* Felix, *a.k.a*. Shirley Mintas Felix, G.R. No. 203371, June 30, 2020) p. 665

CLERKS OF COURT

Liability of — Clerks of court, whose functions are vital to the prompt and sound administration of justice, cannot

be allowed to overstep their powers and responsibilities. (Begay *vs.* Atty. Saguyod, Clerk of Court VI, Regional Trial Court, Branch 67, Paniqui, Tarlac, A.M. No. P-17-3652, June 23, 2020) p. 59

— The mere presence of the clerk of court at the implementation of the writ alone is highly questionable, as the sheriff was already present at the time of the implementation of the writ; the conduct required of court personnel must be beyond reproach and must always be free from suspicion that may taint the judiciary. (*Id.*)

2002 Revised Manual for Clerks of Court — Only in the absence of the branch sheriff that a clerk of court may function as an *ex officio* sheriff to implement writs coming from the branches of the court; a branch clerk of court oversteps the bounds of propriety required of him as an employee of the court when he oversees the enforcement of the writ in an intimidating manner. (Begay *vs.* Atty. Saguyod, Clerk of Court VI, Regional Trial Court, Branch 67, Paniqui, Tarlac, A.M. No. P-17-3652, June 23, 2020) p. 59

COMMISSION ON AUDIT (COA)

Jurisdiction — The case of the Big 3 would not fall under the audit jurisdiction of COA; they are not public entities nor are they non-governmental entities receiving financial aid from the government. (The Commission on Audit, represented by its Chairman, *et al. vs.* Hon. Pampilo, Jr., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

Powers — In recognition of such constitutional empowerment of the COA, the Court has generally sustained COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce; only when the COA has clearly acted without or in excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions; for this purpose, grave abuse of discretion means that there is on the part

of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism. (Gregorio *vs.* Commission on Audit, *et al.*, G.R. No. 240778, June 30, 2020) p. 758

— The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties by granting it "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (*Id.*)

COMPETITION LAW

***Application of* —** Goods or services are said to be in the same relevant market if both factors are present: (1) a reasonable interchangeability of the offerings to consumers; and (2) a significant cross-elasticity of demand, such that a price change in one party's goods or services will lead to a price change in the other party's goods or services. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

— In *Gios-Samar, Inc. v. Department of Transportation*, even claims of monopolization or abuse of dominant positions in competition law were not treated as fact, and had to be substantiated. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

***Chain of custody* —** *People v. Holgado* directed the courts to exercise heightened scrutiny when minuscule amounts of narcotics are presented into evidence, and for good reason; behind this lies an inversely proportional

relationship: the smaller the amount of narcotics is seized, the higher the probability of tampering and switching will be. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

— *People v. Sanchez* then emphasized that "marking" pertains to "the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized"; placing identifying marks, such as the apprehending officer's initials and signature, on the seized dangerous drug serves to set apart as evidence the dangerous drugs from other similar items. (*Id.*)

— 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) a representative from the media and the Department of Justice and any elected public official (e) who shall be required to sign the inventory and be given copies thereof. (Llamado *vs.* People, G.R. No. 243375, June 30, 2020) p. 772

— The confiscated drug constitutes the very *corpus delicti* of the offense; thus, it is essential that the identity and integrity of the seized drug be established with moral certainty; it is imperative that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt; in order to purge doubt in the handling of seized substances and ensure that rights are safeguarded, law enforcement officers are required to strictly comply with the chain of custody rule laid down under Section 21 of R.A. 9165. (People *vs.* Deliña, G.R. No. 243578, June 30, 2020) p. 787

— The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. (*Id.*)

— The seized narcotic is the *corpus delicti* in drug cases; the chain of custody must be preserved to establish with moral certainty that the drug presented as evidence in court be the same drug seized from an accused. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

***Existence of corpus delicti* —**The existence of the *corpus delicti* is essential to a judgment of conviction; the identity of the dangerous drug must be clearly established; the prosecution witnesses also consistently testified that they arrested three (3) persons and conducted marking, inventory and documentation through photographs at the place where the buy-bust took place. (People *vs.* Meneses, G.R. No. 233533, June 30, 2020) p. 724

***Illegal possession of dangerous drugs* —** Section 5, Article II of R.A. 9165, which has the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefore. (People *vs.* Deliña, G.R. No. 243578, June 30, 2020) p. 787

— To secure a conviction for illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. 9165, the prosecution must establish the following: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. (Llamado *vs.* People, G.R. No. 243375, June 30, 2020) p. 772

***Illegal possession of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs* —** The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Sec. 12 are the following: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. (Llamado *vs.* People, G.R. No. 243375, June 30, 2020) p. 772

Illegal possession of prohibited drugs — Elements are: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug." (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

Illegal sale of dangerous drugs — The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller; as long as a police officer or civilian asset went through the operation as a buyer, whose offer was accepted by the appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. (People *vs.* Meneses., G.R. No. 233533, June 30, 2020) p. 724

— Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefore; in the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. (*Id.*)

CONSPIRACY

Existence of — Conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest. (People *vs.* Casabuena, *et al.*, G.R. No. 246580, June 23, 2020) p. 531

— Under Article 8, paragraph 2 of the Revised Penal Code, the following are the elements of conspiracy: (1) two (2) or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of a felony was decided upon. (*Id.*)

CONTRACTS

***Notarization of* —** Well-settled is the rule that deeds, conveyances, encumbrances, discharges, and other voluntary instruments, whether affecting registered or unregistered lands, should be notarized in order to be registrable; since the enabling document, *i.e.*, the Deed of Sale was not validly notarized, it remains to be a private document that could not affect or cause the transfer of ownership of the tax declaration to the name of Jorge. (Auro, represented by his heirs, Jomar O. Auro, *et al*. *vs.* Yasis, represented by Achilles A. Yasis, G.R. No. 246674, June 30, 2020) p. 800

CORPORATIONS

***Directors, officers, or employees of* —** The corporation's directors, officers, or employees are generally not personally liable for the obligations of the corporation; to hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

Doctrine of piercing the veil of corporate fiction — To hold a director or officer personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director or officer must be established clearly and convincingly. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

***Separate personality* —** In *Bank of Commerce v. Nite*, the general rule is that a corporation is invested by law with a personality separate and distinct from the persons composing it; the obligations of a corporation, acting through its directors, officers, and employees, are its

own sole liabilities. (Total Petroleum Philippines Corporation *vs.* Lim, *et al*., G.R. No. 203566, June 23, 2020) p. 142

CORPUS DELICTI

Elements — *Corpus delicti* is the body, foundation or substance of a crime; it refers to the fact of the commission of the crime, not to the physical body of the deceased; because *corpus delicti* may be proven by circumstantial evidence, it is not necessary for the prosecution to present direct evidence to prove the *corpus delicti*. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

— The prosecution must present the following elements: (a) that a certain result or fact has been established, *i.e.*, that a man has died; and (b) that some person is criminally responsible for it. (*Id.*)

COURT PERSONNEL

Liability of — In *Boston Finance and Investment Corp. v. Gonzalez*, on what rule shall govern court personnel, to wit: fundamentally, the setting of parameters pertaining to the discipline of all court personnel, including judges and justices, clearly fall within the sole prerogative of the Court; the Supreme Court's exclusive authority to set these parameters is based on no other than the 1987 Constitution, which provides: ARTICLE VIII, Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof. (Begay *vs.* Atty. Saguyod, Clerk of Court VI, Regional Trial Court, Branch 67, Paniqui, Tarlac, A.M. No. P-17-3652, June 23, 2020) p. 59

— The Court has repeatedly stressed that it will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus, tainting its image in the eyes of the public; the Court cannot countenance any act or omission which diminishes or tends to diminish the faith of the people in the Judiciary. (*Id.*)

***Hierarchy of* —** Direct resort to the Supreme Court will not be entertained unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the availment of the extraordinary remedy of the writ of *certiorari*, calling for the exercise of its primary jurisdiction. (In Re: In the Matter of the Issuance of A *Writ of Habeas Corpus* of inmates Raymundo Reyes and Vincent B. Evangelista, duly represented by Atty. Rubee Ruth C. Cagasca-Evangelista, in her capacity as wife of Vincent B. Evangelista and counsel of both inmates *vs.* BuCor Chief Gerald Bantag, in his capacity as Director General of Bureau of Corrections of New Bilibid Prison, *et al*., G.R. No. 251954, June 10, 2020)

— This Court has concurrent jurisdiction, along with the CA and the trial courts, to issue a writ of *habeas corpus*; however, mere concurrency of jurisdiction does not afford parties absolute freedom to choose the court with which the petition shall be filed; petitioners should be directed by the hierarchy of courts; after all, the hierarchy of courts "serves as a general determinant of the appropriate forum for petitions for the extraordinary writs(*Id.*)

CRIMINAL PROCEDURE

***Prejudicial question* —** For it to suspend the criminal action, it must appear not only that the civil case involves facts intimately related to those upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. (Mathay, *et al. vs.* People, *et al.*, G.R. No. 218964, June 30, 2020) p. 701

— The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal; it is a question based on a fact distinct and separate from the crime, but so intimately connected with it that its ascertainment determines the guilt or innocence of the accused. (*Id.*)

DAMAGES

Actual damages — Article 2199 of the Civil Code provides that one is entitled to actual damages for such pecuniary loss suffered as duly proved. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

Crimes resulting to victim's death — The award of damages must also be modified in conformity with *People v. Jugueta*, where the Court laid down the rule that in crimes where the death of the victim resulted and the penalty is divisible, such as in homicide, the damages awarded should be ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

Exemplary damages — On exemplary damages, Article 2229 of the *Civil Code* provides that exemplary or corrective damages may be imposed, by way of example or correction for the public good, in addition to either moral, temperate, liquidated, or compensatory damages. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

Liquidated damages — As for liquidated damages, Article 2226 of the *Civil Code* states "liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof." (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

DECLARATION OF PRINCIPLES AND STATE POLICIES

Foreign investments — The State imposes certain conditions and restrictions on foreign investments operating within the Philippine jurisdiction; for instance, no foreign enterprise is allowed to venture into the mass media industry; this absolute restriction also extends to the use of natural resources found in the archipelagic waters, territorial sea, and exclusive economic zone of the Philippines. (National Federation of HOG Farmers, Inc.,

represented by Mr. Daniel P. Javellana, *et al*. *vs*. Board of Investments, *et al*., G.R. No. 205835, June 23, 2020) p. 172

— While foreign participation is absolutely prohibited in some industries, the Constitution allows foreign participation in certain industries, such as advertising, public utilities, educational institutions, ownership of private lands, and the exploration, development, and utilization of natural resources. (*Id.*)

DECLARATORY RELIEF

***Petition for* —** A petition for declaratory relief is an action instituted by a person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder. (The Commission on Audit, represented by its Chairman, *et al*. *vs*. Hon. Pampilo, Jr., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

— It must be filed before the breach or violation of the statute, deed or contract to which it refers; otherwise, the court can no longer assume jurisdiction over the action; the only issue that may be raised in such an action is the question of construction or validity of provisions in an instrument or statute." (*Id.*)

DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION AND DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

***Distinguished* —** The doctrine of primary administrative jurisdiction is often interchanged with the doctrine of exhaustion of administrative remedies, as both doctrines capitalize on an administrative agency's acknowledged expertise over its field of specialization; the doctrine of exhaustion of administrative remedies is a form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the

case; this doctrine assumes that the matter is within the court's jurisdiction, or the court exercises concurrent jurisdiction with the administrative agency; however, in its discretion, the court deems the case not justiciable or declines to exercise jurisdiction; under the doctrine of primary administrative jurisdiction, jurisdiction lies exclusively with the administrative agency to act on a quasi-judicial matter; hence, the court has no alternative but to dismiss a case for lack of jurisdiction. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

DOWNSTREAM OIL INDUSTRY DEREGULATION ACT OF 1998 (R.A. NO. 8479)

***DOE-DOJ Task Force* —** In *Cong. Garcia v. Hon. Corona*, the Court made it clear that it is the DOE-DOJ Task Force which has the power to investigate and cause the prosecution of violators; it ruled that: Article 186 of the RPC, as amended, punishes as a felony the creation of monopolies and combinations in restraint of trade. (The Commission on Audit, represented by its Chairman, *et al*. *vs*. Hon. Pampilo, Jr., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

— The remedy against the perceived failure of the Oil Deregulation Law to combat cartelization is not to declare it invalid, but to set in motion its anti-trust safeguards under Sections 11, 12, and 13. (*Id.*)

EMINENT DOMAIN OR EXPROPRIATION

***Action for* —** The expropriation case requires the resolution of the following issues, *viz.*: as threshold issue, the determination of the public purpose of the expropriation proceedings, the alleged right, if any, of PNR to lease out the affected properties and collect rentals from the lessees concerned *vis-à-vis* the alleged right of the owners to demand the turnover to them of the rental collections.

(Forfom Development Corporation *vs.* Philippine National Railways, G.R. No. 227432, June 30, 2020) p. 716

Just compensation **—** As aptly ruled by the RTC-SAC and the CA, the appropriate formulae are LV = (CNI x 0.90) + (MV x 0.10) in addition to LV = (CNI x 0.90) + (MV x 0.10), in the absence of Comparable Sales; this is in line with DAR A.O. No. 5 (1998) which outlines the basic formula in determining just compensation. (Land Bank of the Philippines *vs.* Spouses Nasser, G.R. No. 215234, June 23, 2020) p. 227

— Just compensation in expropriation cases is defined as the full and fair equivalent of the property taken from its owner by the expropriator; the Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss; the word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. (*Id.*)

EMPLOYMENT, TERMINATION OF

Abandonment **—** Abandonment is defined as the "deliberate and unjustified refusal of an employee to resume his employment" and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 297] if the Labor Code on the ground of neglect of duty. (Samillano *vs.* Valdez Security and Investigation Agency, Inc./Emma V. Licuanan, G.R. No. 239396, June 23, 2020) p. 440

Illegal dismissal **—** Jurisprudence teaches us that in illegal dismissal cases, it is imperative that the employee first establishes by substantial evidence that he was dismissed from the service; if there is no dismissal, then there can be no question as to the legality or illegality thereof. (Samillano *vs.* Valdez Security and Investigation Agency, Inc./Emma V. Licuanan, G.R. No. 239396, June 23, 2020) p. 440

— Time and again, we have held that where the parties failed to prove the presence of either the dismissal of the employee or the abandonment of his work, the remedy is to reinstate such employee without payment of backwages. (*Id.*)

***Management prerogative* —** Known as placement "on floating or reserved status," this industry practice does not constitute dismissal, as the assignments primarily depend on the contracts entered into by the agency with third parties and is a valid exercise of management prerogative provided it is carried out in good faith. (Samillano *vs.* Valdez Security and Investigation Agency, Inc./Emma V. Licuanan, G.R. No. 239396, June 23, 2020) p. 440

ESTAFA

***Commission of* —** As explained in *People v. Dejolde*, Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed if the amount involved is over ₱40,000.00 but does not exceed ₱1,200,000.00. (People *vs.* David, G.R. No. 233089, June 29, 2020) p. 573

***Estafa by means of deceit* —** The elements of *Estafa* under paragraph 2 (a), Article 315 of the RPC are as follows: (1) there must be a false pretense, fraudulent acts or fraudulent means; (2) such false pretense, fraudulent acts or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent acts or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage. (People *vs.* David, G.R. No. 233089, June 29, 2020) p. 573

ESTOPPEL

***Principle of* —** Estoppel arises when one, by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to

exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. (Total Petroleum Philippines Corporation *vs.* Lim, *et al.*, G.R. No. 203566, June 23, 2020) p. 142

— The doctrine of estoppel is based upon the grounds of public policy, fair dealing, and good faith, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. (*Id.*)

EVIDENCE

***Burden of proof* —** A criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense; once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was, in fact, committed or that the accused could not have committed or did not commit the imputed crime or, at the very least, by casting doubt on the guilt of the accused. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— Elementary is the rule that one who alleges a fact has the burden of proving it since mere allegation is not evidence. (Abillar *vs.* People's Television Network, Inc. (PTNI) as represented by The Office of the Network General Manager, G.R. No. 235820, June 23, 2020) p. 430

— In every criminal case, the task of the prosecution is always two-fold: (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being

likewise clearly ascertained. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. (*Id.*)

— The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence; requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

— The court is not called upon to speculate on who committed the crime and how it was committed, as its task is confined in resolving whether the prosecution has adduced sufficient evidence to prove that the crime alleged in the information was committed and that the accused-appellant is the culprit thereof. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt; this rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

— Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest not on the weakness of the defense, but on the strength of the prosecution; the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for

the prosecution; the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence; should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be absolved of the crime charged. (Villarosa *vs.* People, G.R. Nos. 233155-63, June 23, 2020) p. 270

Circumstantial evidence — *Almojuela v. People* reiterated the following guidelines that the courts must observe when faced with circumstantial evidence in deciding criminal cases: a. circumstantial evidence should be acted upon with caution; b. all the essential facts must be consistent with the hypothesis of guilt; c. the facts must exclude every other theory but that of the guilt of the accused; and d. the facts must establish with certainty the guilt of the accused so as to convince beyond reasonable doubt that the accused was the perpetrator of the offense. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

— Circumstantial evidence may be characterized as that evidence that proves a fact or series of facts from which the facts in issue may be established by inference; it is not a weaker form of evidence *vis-a-vis* direct evidence, as case law has consistently recognized that it may even surpass the latter in weight and probative force. (*Id.*)

— The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test and not a quantitative one; the proven circumstances 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. (*Id.*)

— 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.*)

— Under Section 4, Rule 133 of the Revised Rules on Evidence, 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. (*Id.*)

***Public documents* —** In *People v. Banzales*, the Court ruled that a POEA certification is a public document issued by a public officer in the performance of official duty; hence, it is *prima facie* evidence of the facts stated therein pursuant to Section 23 of Rule 132 of the Rules of Court; further, public documents are entitled to a presumption of regularity. (People *vs*. David, G.R. No. 233089, June 29, 2020) p. 573

***Rules on* —** It bears emphasis that while the rules of evidence are not controlling in administrative bodies in the adjudication of cases, the evidence presented before them must at least have a modicum of admissibility for it to be given some probative value. (National Bureau of Investigation *vs.* Najera, G.R. No. 237522, June 30, 2020) p. 748

***Substantial evidence* —** In administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions; substantial evidence Is relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Office of the Court Administrator *vs.* Hon. Marilyn B. Lagura-Yap, Former Presiding Judge, Branch 28, Regional Trial Court, Mandaue City, Cebu (Now Associate Justice of the Court of Appeals), A.M. No. RTJ-12-2337, June 23, 2020)

— In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction; while the law does not require absolute certainty, the evidence presented by the prosecution must produce in

the mind of the Court a moral certainty of the accused's guilt; when there is even a scintilla of doubt, the Court must acquit. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. (National Bureau of Investigation *vs.* Najera, G.R. No. 237522, June 30, 2020) p. 748

Weight and sufficiency of — Rule 133, Section 2 of the Revised Rules on Evidence requires proof beyond reasonable doubt for an accused's conviction; the requirement of proof beyond reasonable doubt in a criminal case finds its basis in the due process clause and in an accused's presumption of innocence, both enshrined in the Constitution. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

— 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. (People *vs.* Juare, *et al.*, G.R. No. 234519, June 22, 2020)

FALSIFICATION OF PUBLIC DOCUMENTS

Elements — The elements of falsification of public documents under Article 171(4) of the RPC are: (a) The offender makes in a document untruthful statements in a narration of facts; (b) The offender has a legal obligation to disclose the truth of the facts narrated; (c) The facts narrated by the offender are absolutely false; and (d) The perversion of truth in the narration of facts was made with the wrongful intent to injure a third person. (Mathay, *et al. vs.* People, *et al.*, G.R. No. 218964, June 30, 2020) p. 701

FOREIGN INVESTMENT ACT OF 1991 (R.A. NO. 7042)

Application of — "Agriculture/agribusiness and fishery" was included in the Board of Investments' 2010 Investment Priorities Plan; the Department of Agriculture likewise recommended its continued inclusion in the 2011 Investment Priorities Plan and lobbied for the retention of feeds in the lists; likewise, the 2011 Investment Priorities Plan listed agriculture/agribusiness and fishery as one of the 13 "priority investment areas that were identified to support the current priority programs of the government." (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

— Republic Act No. 7042, or the Foreign Investments Act of 1991, declares that as much as 100% foreign ownership in domestic enterprises maybe allowed, except for areas or industries included in the negative list. (*Id.*)

HOMICIDE

Commission of — Under Article 249 of the Revised Penal Code, homicide is defined as follows: Art. 249. Homicide. - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

INTERVENTION

Action for — As regards the issue of intervention, Section 1, Rule 19 of the Rules of Court requires that: (1) the movant must have a legal interest in the matter being litigated; (2) the intervention must not unduly delay or prejudice the adjudication of the rights of the parties; and (3) the claim of the intervenor must not be capable of being properly decided in a separate proceeding. (The Commission on Audit, represented by its Chairman, *et al. vs.* Hon. Pampilo, Jr., in his capacity as Presiding

Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

— Jurisprudence mandates that legal interest must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. (*Id.*)

— The right to intervene, however, is not an absolute right as the granting of a motion to intervene is addressed to the sound discretion of the court and may only be allowed if the movant is able to satisfy all the requirements. (*Id.*)

JUDGES

***Duties* —** Heavy caseload, voluminous records, death of family members and being understaffed are not sufficient to exonerate a judge from liability for failure to decide cases within the mandatory period; reasonable extensions of time needed to decide cases must first be requested from the court; a judge cannot by himself/herself choose to prolong the period for deciding cases beyond that authorized by law. (Office of the Court Administrator *vs.* Hon. Marilyn B. Lagura-Yap, Former Presiding Judge, Branch 28, Regional Trial Court, Mandaue City, Cebu (Now Associate Justice of the Court of Appeals), A.M. No. RTJ-12-2337, June 23, 2020)

— In *Office of the Court Administrator v. Lopez, et al.*, the Court reminded "judges to decide cases with dispatch" and "that the failure of a judge to decide a case within the required period is not excusable and constitutes gross inefficiency, and non-observance of this rule is a ground for administrative sanction against the defaulting judge." (*Id.*)

***Gross inefficiency* —** It is settled that failure to decide or resolve cases within the reglementary period constitutes gross inefficiency. (Re: Result of the Judicial Audit Conducted in Branch 49, Regional Trial Court, Puerto Princesa City, Palawan, A.M. No. 19-12-293-RTC, June 30, 2020)

***Period to decide a case* —** No less than the Constitution, specifically Section 15 (1) of Article VIII, mandates lower court judges to decide a case within the reglementary period of ninety (90) days; the Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise directs judges to administer justice without delay and dispose of the courts' business promptly within the period prescribed by law; rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. (Re: Result of the Judicial Audit Conducted in Branch 49, Regional Trial Court, Puerto Princesa City, Palawan, A.M. No. 19-12-293-RTC, June 30, 2020)

— Plea of heavy workload, lack of personnel, and failing medical condition are not justifications for the delay or non-performance; a reasonable extension of time to resolve cases may be requested from the Court, if unable to resolve cases within the reglementary period. (*Id.*)

— Supreme Court Administrative Circular No. 13-87 provides: . . . 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15, of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts; thus, all cases or matters must be decided or resolved within twelve (12) months from date of submission by all lower collegiate courts while all other lower courts are given a period of three (3) months to do so. (Office of the Court Administrator *vs.* Hon. Marilyn B. Lagura-Yap, Former Presiding Judge, Branch 28, Regional Trial Court, Mandaue City, Cebu (Now Associate Justice of the Court of Appeals), A.M. No. RTJ-12-2337, June 23, 2020)

— The Constitution expressly provides that all lower courts should decide or resolve cases or matters within three (3) months from the date of submission; Section 5, Canon 6 of the New Code of Judicial Conduct likewise provides: Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. (*Id.*)

JUDGMENTS

***Annulment* —** A petition for annulment of judgment cannot be casually dismissed based on a blanket invocation of the presumption of regularity in the performance of official duties, for where the official act is irregular on its face, the presumption cannot arise; the petition for annulment of judgment is partly granted in case at bar. (Carreon *vs.* Aguillon, G.R. No. 240108, June 29, 2020) p. 598

— A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. (Spouses Hofer *vs.* Yu, G.R. No. 231452, July 1, 2020) p. 878

— Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, a petitioner must comply with the statutory requirements as set forth under Rule 47; these are: (1) the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner; (2) the grounds for action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction; (3) the action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be raised before it is barred by laches or estoppel; and (4) the petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be. (*Id.*)

— The judgment may be annulled on the ground of extrinsic or collateral fraud; a person who is not a party to the judgment may sue for its annulment provided he can prove that the same was obtained through fraud or collusion and that he would be adversely affected thereby; the other ground for annulment of judgments or final orders

and resolutions is lack of jurisdiction on the part of the court which adjudicated the case; this refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim; case law, however, recognizes a third ground — denial of due process of law. (*Id.*)

Final and executory judgments — Even after the judgment has become final, the court retains its jurisdiction to execute and enforce it; there is a difference between the jurisdiction of the court to execute the judgment and its jurisdiction to amend, modify or alter the same; the former continues even after the judgment has become final for the purpose of enforcement of judgment; the latter is terminated when the judgment becomes final; for after the judgment has become final, facts and circumstances may transpire which can render the execution unjust or impossible. (*Id.*)

Judgment based on a compromise agreement — As provided by the law on contracts, a valid compromise must have the following elements: (1) consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established. (Spouses Hofer *vs.* Yu, G.R. No. 231452, July 1, 2020)

— It is settled that a judgment on compromise is a judgment on the merits; it has the effect of *res judicata* and is immediately final and executory unless set aside because of falsity or vices of consent; a judicially approved compromise agreement ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through a writ of execution. (Spouses Hofer *vs.* Yu, G.R. No. 231452, July 1, 2020) p. 878

— To be valid, an amendment to the compromise agreement must be with the concurrence and consent of all the parties involved. (*Id.*)

JUDICIAL DEPARTMENT

Constitutional policy of avoidance — A court will only pass upon the constitutionality of a statute "to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned"; this is called the constitutional policy of avoidance. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

— The issue of a statute's constitutionality can only be assailed through a direct attack, with the purported unconstitutionality pleaded directly before the court; in *San Miguel Brewery, Inc. v. Magno* emphasized that a collateral attack "an attack, made as an incident in another action, whose purpose is to obtain a different relief" on a presumably valid law is forbidden by public policy. (*Id.*)

— The legal presumption exists that an enacted law is valid*;* thus, if the controversy on the constitutionality of a statute can be settled on other grounds, this Court stays its hand from ruling on the constitutional issue. (*Id.*)

— The policy of constitutional avoidance finds its genesis in a concurring opinion on the United States case of *Ashwander v. Tennessee Valley Authority*; in his concurrence, Justice Louis Brandeis set forth the seven pillars of limitations of judicial review; these rules of avoidance were then summarized in *Francisco, Jr. v. House of Representatives*, as follows: the foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. TVA* from different decisions of the United States Supreme Court, can be encapsulated into the following categories: 1. that there be absolute necessity of deciding a case; 2. that rules of constitutional law shall be formulated only as required by the facts of the case; 3. that judgment may not be sustained on some other ground; 4. that there be actual injury sustained by the party by reason of the operation of the statute; 5. that the parties are not in *estoppel;* 6. that the Court upholds the presumption of constitutionality. (*Id.*)

Power of judicial review — A court's power of judicial review, which includes the power to "declare executive and legislative acts void if violative of the Constitution," is provided in Article VIII, Section 1 of the Constitution; judicial review of the constitutionality of a statute is not limited to an action "for declaratory relief" and may be sought through any of the cognizable actions by courts of law; however, for the court to exercise its power of judicial review, the constitutional issue "(a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented." (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

JUDICIAL REVIEW

***Locus standi* —** A personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged; the term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

***Requisites* —** A controversy is deemed justiciable if the following requisites are present: (1) an actual case or controversy over legal rights which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality was raised at the earliest opportunity; and (4) the constitutionality is essential to the disposition of the case or its *lis mota*. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

JURISDICTION

***Principle of* —** It is settled that jurisdiction over the main case embraces all incidental matters arising therefrom and connected therewith under the doctrine of ancillary jurisdiction; demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (Republic *vs.* Felix, *a.k.a*. Shirley Mintas Felix, G.R. No. 203371, June 30, 2020) p. 665

Jurisdiction over the subject matter — Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case; in order that the court may have the power to adjudicate or dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter; thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action. (Cruz, *et al*. *vs*. Court of Appeals, *et al*., G.R. No. 238640, July 1, 2020) p. 927

— Jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint; this cannot be acquired by waiver or enlarged by the omission or consent of the parties; lack of jurisdiction over the subject matter can be raised at any time, even on appeal, and the Court may consider the same *motu proprio*. (*Id.*)

JUSTIFYING CIRCUMSTANCES

***Self-defense* —** As correctly observed by the appellate court, the number of wounds of the victim belies the accused's claims of self-defense; in determining the reasonable necessity of the means employed, the courts may look at and consider the number of wounds inflicted; large number of wounds inflicted on the victim can indicate a determined

effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor. (Labosta *vs.* People, G.R. No. 243926, June 23, 2020) p. 506

— To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. (*Id.*)

LACHES

Principle of — Laches is defined as the failure or neglect for an unreasonable or unexplained length of time to do that which by exercising due diligence, could or should have been done earlier warranting a presumption that he has abandoned his right or declined to assert it. (Spouses Hofer *vs.* Yu, G.R. No. 231452, July 1, 2020) p. 878

— There is no absolute rule as to what constitutes laches or staleness of demand; each case must be determined according to its particular circumstances; its application is controlled by equitable considerations; it is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result. (*Id.*)

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment in large scale — As to the offense of Illegal recruitment in large scale, the Court is aware that the penalties in Section 7 of RA 8042 has been amended by Section 6 of RA10022. (People *vs.* David, G.R. No. 233089, June 29, 2020) p. 573

— Illegal recruitment in large scale under Section 6(m) of RA 8042 is committed where the accused-appellant failed to reimburse the expenses incurred by the private complainants for the processing of their employment

abroad, after they were not deployed, without the complainants' fault. (*Id.*)

— Illegal recruitment may be undertaken by either non-license or license holders; non-license holders are liable by the simple act of engaging in recruitment and placement activities, while license holders may also be held liable for committing the acts prohibited under Section 6 of RA 8042. (*Id.*)

MODES OF ACQUIRING OWNERSHIP

Donation — Donations of purchase money must follow the formal requirements mandated by law. (Spouses Devisfruto *vs.* Greenfell, G.R. No. 227725, July 1, 2020) p. 867

MOTION FOR RECONSIDERATION

Second motion for reconsideration — A second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect. (Carreon *vs.* Aguillon, G.R. No. 240108, June 29, 2020) p. 598

— The prohibition on the filing of a second motion for reconsideration found in Section 2, Rule 52 of the Rules did not come into play; evidently, what the Rules seek to proscribe is a second motion for reconsideration, which essentially repeats or reiterates the same arguments already passed upon by the tribunal, when it resolved the first motion for reconsideration filed by the same party; if the issues had already been passed upon and there is no substantial argument raised, then the finality and immutability of a judgment should not be obviated. (*Id.*)

— The Rules are explicit that a second motion for reconsideration shall not be allowed; Section 2, Rule 52 of the Rules provides that: Section 2. *Second motion for reconsideration*. - No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained; case law explains that "the rule rests on the basic tenet of immutability of judgments which evokes that at some point, a decision must become final and

executory and, consequently, all litigations must come to an end." (*Id.*)

NOTARIES PUBLIC

***Duties* —** A notary public is no longer obligated to go beyond the contents of the document where the same was executed freely and voluntarily by the parties; respondent has complied with his duty in the notarization of the irrevocable power of attorney. (Santamaria *vs.* Atty. Tolentino, A.C. No. 12006, June 29, 2020) p. 558

OMNIBUS INVESTMENTS CODE (E.O. NO. 226)

***Application of* —** Under Article 36 of the Omnibus Investments Code, an order or decision of the Board of Governors over applications for registration under the investment priorities plan can be appealed to the Office of the President within 30 days from its promulgation. (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

— Unlike an appeal to the Office of the President under Article 7(4), which may only be availed by the investor or registered enterprise, an appeal under Article 36 does not contain a similar limitation; it may be availed even by one not a party to a case, so long as legal interest may be proven. (*Id.*)

PARENS PATRIAE

***Doctrine of* —** Under the doctrine of *parens patriae* (father of his country), the judiciary, as an agency of the State, has the supreme power and authority to intervene and to provide protection to persons *non sui juris* — those who because of their age or incapacity are unable to care and fend for themselves; in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, this Court even went further and ruled that "Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and

overwhelmed by business pursuits." (The Commission on Audit, represented by its Chairman, *et al. vs.* Hon. Pampilo, Jr., in his capacity as Presiding Judge of the Regional Trial Court, Manila, Branch 26, *et al.*, G.R. No. 188760, June 30, 2020) p. 631

PARTIES

Death of a party — The duty of counsel under Section 16, Rule 3 of the Rules of Court] is two-fold: *first*, the counsel must inform the court within 30 days after the death of his client of such fact of death; and *second*, to give the court the names and addresses of the deceased litigant's legal representative or representatives; this is the only representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other. (Siao *vs.* Atup, A.C. No. 10890, July 1, 2020) p. 819

— The substitution of a deceased litigant is not automatic as the legal representative or representatives identified by the counsel are required to first appear before the court, which, in turn, will determine who may be allowed to be substituted for the deceased party. (*Id.*)

Real party in interest — For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties: first, "the party bringing suit must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests." (National Federation of HOG Farmers, Inc., represented by Mr. Daniel P. Javellana, *et al. vs.* Board of Investments, *et al.*, G.R. No. 205835, June 23, 2020) p. 172

PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA)

Duties — It was thus tasked with implementing the "national drug control strategy" formulated by the Dangerous Drugs

Board; with the Philippine Drug Enforcement Agency now the primary agency to enforce and implement the law, Section 68 abolished the offices with similar anti-drug operations in the National Bureau of Investigation, Philippine National Police, and Bureau of Customs; their functions were transferred to the Philippine Drug Enforcement Agency as the lead agency, with them only providing support or detail services. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

— Republic Act No. 9165 created the Philippine Drug Enforcement Agency to be primarily responsible for "the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in this Act." (*Id*.)

— The Philippine Drug Enforcement Agency takes the lead in narcotics-related cases; an agency such as the National Bureau of Investigation, with its mandate of investigating crimes and other offenses, generally assists in the case build-up leading to an arrest or provides reinforcement during an operation planned and initiated by the Philippine Drug Enforcement Agency. (*Id*.)

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

***Application of* —** An illness shall be considered as pre-existing if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. (Rillera *vs.* United Philippine Lines, Inc. and/or Belships Management (Singapore) Pte., Ltd., G.R. No. 235336, June 23, 2020)

— Employment contracts or CBAs may enlarge the minimum requirements of the POEA-SEC to make them more favorable and beneficial to the employees; however, in case of insufficiency in the terms and conditions of the

employment contract or CBA, which renders the seafarer unqualified or unable to claim benefits therein, the POEA-SEC operates to fill the gaps in order to raise the seafarers' benefits to the minimum. (Magsaysay Maritime Corporation, *et al. vs.* Heirs of Fritz D. Buenaflor represented by Honorata G. Buenaflor, G.R. No. 227447, June 23, 2020) p. 253

— In the recent case of *Lerona v. Sea Power Shipping Enterprises, Inc., et al.*, the Court denied a seafarer's claim for disability on ground of concealment, *viz*: the Court had on many occasions disqualified seafarers from claiming disability benefits on account of fraudulent misrepresentation arising from their concealment of a pre-existing medical condition. (Rillera *vs.* United Philippine Lines, Inc. and/or Belships Management (Singapore) Pte., Ltd., G.R. No. 235336, June 23, 2020)

— Section 20 (E) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2012, provides: a seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified for any compensation and benefits. (*Id.*)

— The employment of seafarers is governed by the contracts they sign at the time of their engagement; so long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties; while the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract. (*Id.*)

— The PEME is nothing more than a summary examination of the seafarer's physiological condition; it merely determines whether one is "*fit to work*" at sea or "*fit for sea service*" and it does not state the real state of health of an applicant; the "*fit to work*" declaration in the PEME

cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. (*Id.*)

— The terms and conditions of a seafarer's employment, including claims for death and disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein; the POEA Memorandum Circular No. 10, Series of 2010, entitled 'Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships,' which provides the minimum requirements acceptable to the POEA for the employment of Filipino seafarers on board ocean-going vessels, is deemed integrated into the employment contract. (Magsaysay Maritime Corporation, *et al. vs.* Heirs of Fritz D. Buenaflor represented by Honorata G. Buenaflor, G.R. No. 227447, June 23, 2020) p. 253

Compensation and benefits for injury or illness — The entitlement to disability benefits of a seafarer who suffers illness or injury during the term of his contract is governed by Section 20 (B) (6) of the POEA-SEC; injury or illness is compensable when it is work-related AND when it existed during the term of the seafarer's employment contract; under Section 32 (A) of the POEA-SEC, the compensability of the occupational disease and the resulting disability is determined by the fulfillment of these conditions: (1) the seafarer's work must involve the risks described; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer. (Pacific Ocean Manning, Inc., *et al. vs.* Langam, G.R. No. 246125, June 23, 2020) p. 518

— Time and again, the Court has enunciated that the seafarer has the right to seek the opinion of other doctors but this is on the presumption that the company-designated physician had already issued a final certification as to

his fitness or disability and he disagreed with it; this is not obtaining in this case as there was yet no final assessment from the company-designated physician as to respondent's fitness or unfitness to resume his duties as a seafarer or final disability grading of respondent's illness. (*Id.*)

Compensable injury or illness — "It is enough that the work has contributed, even in a small degree, to the development of the disease [illness] since strict proof of causation is not required; only reasonable proof of work-connection and not direct causal relation is required to establish compensability." (Macahilas *vs.* BSM Crew Service Centre Phils., Inc., *et al.*, G.R. No. 237130, July 1, 2020) p. 911

— Section 20(A) of the POEA-SEC provides two elements that must concur for an illness to be compensable: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. (*Id.***)**

***Death compensation* —** Sec. 20 (B)(1)(4) of the POEA-SEC provides for compensation for work-related illnesses and deaths which may not occur under the circumstances specified, but existed during the term of the seafarer's contract; in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract. (Magsaysay Maritime Corporation, *et al. vs.* Heirs of Fritz D. Buenaflor represented by Honorata G. Buenaflor, G.R. No. 227447, June 23, 2020) p. 253

Disability benefits — Section 20 (E) of the POEA Standard Employment Contract states that "a seafarer who knowingly conceals a pre-existing illness or condition" is disqualified from claiming compensation and benefits; as jurisprudence has settled, this examination is not exploratory in nature and employers are not burdened to discover any and all pre-existing medical condition of the seafarer during its conduct; pre-employment medical examinations are only summary examinations; they only

determine whether seafarers are fit to work and does not reflect a comprehensive, in-depth description of the health of an applicant; this is precisely why Section 20 (E) mandates the seafarer to disclose his or her medical history during the pre-employment medical examination. (Clemente *vs.* Status Maritime Corporation, *et al.*, G.R. No. 238933, July 1, 2020) p. 938

— The disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days, but also require that the company-designated physician makes a timely, final and definitive determination of the fitness of a seafarer to sea duty subject to the periods prescribed by law. (Macahilas *vs.* BSM Crew Service Centre Phils., Inc., *et al.*, G.R. No. 237130, July 1, 2020) p. 911

— The seafarer's medical condition is deemed total and permanent where the employer fails to observe the mandatory period for issuance of a definitive assessment. (*Id.*)

***Occupational disease* —** Section 32. a. Occupational diseases; for an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. the seafarer's work must involve the risks described herein; 2. the disease was contracted as a result of the seafarer's exposure to the described risks; 3. the disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. there was no notorious negligence on the part of the seafarer. (Rillera *vs.* United Philippine Lines, Inc. and/or Belships Management (Singapore) Pte., Ltd., G.R. No. 235336, June 23, 2020)

***Total and permanent disability benefits* —** We have held in *Marlow Navigation Philippines, Inc. v. Osias* that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; the 120-day treatment period may be extended when there exists sufficient justification such as when further medical treatment is required or when the seafarer is uncooperative.

(Pacific Ocean Manning, Inc., *et al. vs.* Langam, G.R. No. 246125, June 23, 2020) p. 518

***Work-related illness* —** A work-related illness, on the other hand, pertains to any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of the POEA-SEC, which are compensable if the conditions stated therein are satisfied; this, however, does not mean that only those listed in Section 32-A are compensable; under Section 20(A)(4) of the POEA-SEC, those illnesses not listed in Section 32-A are disputably presumed as work-related. (Magsaysay Maritime Corporation, *et al. vs.* Heirs of Fritz D. Buenaflor represented by Honorata G. Buenaflor, G.R. No. 227447, June 23, 2020) p. 253

PLEADINGS

***Affirmative defense* —** While it is true that by raising the affirmative defense of prescription, a defendant hypothetically admits the material allegations in the complaint, said hypothetical admission and any ruling on the basis thereof, extends only to the specific affirmative defense raised. (Selerio, *et al. vs.* Bancasan, G.R. No. 222442, June 23, 2020) p. 237

PRESCRIPTION

***Prescription of actions* —** Article 1144 of the Civil Code provides that an action based on a written contract must be brought within 10 years from the time the right of action accrues; a cause of action based on a written contract accrues when the right of the plaintiff is violated. (Selerio, *et al. vs.* Bancasan, G.R. No. 222442, June 23, 2020) p. 237

— Article 1155 states that "the prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor"; jurisprudence holds that an interruption of the prescriptive period wipes out the period

that has elapsed, sets the same running anew, and creates a fresh period for the filing of an action. (*Id*.)

PRESUMPTIONS

***Disputable presumptions* —** Being a notarized document, it carries in its favor the presumption of regularity; while the Court is aware that as a rule, clear and convincing evidence is needed to overcome its recitals, it bears stressing, however, that the required quantum of proof in disbarment proceedings is substantial evidence; in the absence of substantial evidence that complainants did not understand the contents of the SPA, or that they did not execute the same freely and voluntarily, it is presumed regular on its face with respect to its execution, including the recitals stated therein. (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

— The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty or (2) that they were inspired by any improper motive. (People *vs.* Meneses, G.R. No. 233533, June 30, 2020) p. 724

***Presumption of regularity in the performance of official duties* —** Time and again, we have held that bad faith does not simply connote bad judgment or negligence; it purports breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong; the existence of bad faith must be shown by clear and convincing evidence for the law always presumes good faith; accordingly, absent proof to the contrary, GM Caluag should be presumed to have acted with regularity and good faith in the performance of his duties. (Abillar *vs.* People's Television Network, Inc. (PTNI) as represented by The Office of the Network General Manager, G.R. No. 235820, June 23, 2020) p. 430

PUBLIC OFFICERS AND EMPLOYEES

Misconduct — Misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers; misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present. (Begay *vs.* Atty. Saguyod, Clerk of Court VI, Regional Trial Court, Branch 67, Paniqui, Tarlac, A.M. No. P-17-3652, June 23, 2020) p. 59

Mistakes committed by public officers — Not every mistake committed by a public officer is actionable absent any clear showing that it is motivated by malice or gross negligence amounting to bad faith. (Linsangan *vs.* Office of the Ombudsman, *et al.*, G.R. No. 234260, July 1, 2020) p. 900

Private practice of profession — Section 7(b)(2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees, provides that government officials or employees are prohibited from engaging in private practice of their profession; along the same lines, Memorandum Circular No. 17, series of 1986 (MC 17-86), provides that no government officer or employee shall engage in any private business, profession, or undertaking unless authorized in writing by their respective department heads: the authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules. (Spouses Cuña, Sr. *vs.* Atty. Elona, A.C. No. 5314, June 23, 2020) p. 1

Retirement — Jurisprudence defines retirement as the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former; when a public officer or employee retires from the civil service, he, in effect, withdraws "from office, public station, occupation or

public duty." (Abillar *vs.* People's Television Network, Inc. (PTNI) as represented by The Office of the Network General Manager, G.R. No. 235820, June 23, 2020) p. 430

QUALIFIED THEFT

***Elements* —** The elements of qualified theft, committed with grave abuse of confidence, are: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; 6. That it be done with grave abuse of confidence. (Mathay, *et al. vs.* People, *et al.*, G.R. No. 218964, June 30, 2020) p. 701

RAPE

***Commission of* —** In *People v. Tulagan*, the Court ruled that "force, threat or intimidation" is the element of rape under Article 266-A(1)(a) of the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. (People *vs.* Briones, G.R. No. 240217, June 23, 2020) p. 452

— In the event where the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, *Tulagan* directs that the accused should still be prosecuted and penalized pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. (*Id.*)

— It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose

which the accused had in mind. (People *vs*. Briones, G.R. No. 240217, June 23, 2020) p. 452

***Sweetheart defense* —** Time and again, the Court has held that in rape, the "*sweetheart*" defense must be proven by compelling evidence: *first*, that the accused and the victim were lovers; and, *second*, that she consented to the alleged sexual relations; the second is as important as the first, because this Court has held often enough that love is not a license for lust. (*Id.*)

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. (People *vs.* Casabuena, *et al*., G.R. No. 246580, June 23, 2020) p. 531

— It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery; or that two (2) or more persons are killed; or that aside from the homicide, rape, intentional mutilation, or usurpation of authority is committed by reason or on occasion of the crime; it is irrelevant if the victim of homicide is one of the robbers; once a homicide is committed by reason or on occasion of the robbery, the felony committed is robbery with homicide. (*Id.*)

— The killing, however, may occur before, during, or after the robbery; it is only the result obtained, without reference to the circumstances, causes, or modes or persons intervening in the commission of the crime, that has to be taken into consideration. (*Id.*)

***Elements* —** To sustain a conviction for robbery with homicide under Article 294, paragraph 1 of the Revised Penal Code, the prosecution must prove the following elements: 1. The taking of personal property is committed with violence or intimidation against persons; 2. The property taken belongs to another; 3. The taking is with the intent to gain or *animo lucrandi*; and 4. By reason or on occasion

of the robbery, homicide is committed. (People *vs.* Casabuena, *et al.*, G.R. No. 246580, June 23, 2020) p. 531

SALES

Contract of — In *Beltran v. Spouses Cangayda, Jr.*, the Court held: a contract of sale is consensual in nature and is perfected upon the concurrence of its essential requisites, thus: the essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. (Selerio, *et al. vs.* Bancasan, G.R. No. 222442, June 23, 2020) p. 237

SEARCHES AND SEIZURES

Constitutionality of — The inviolability of a person's right against unreasonable searches and seizures finds its mooring in Article III, Section 2 of the Constitution; the general rule is that a judicial warrant is needed before a search and seizure may be carried out; without it, the search and seizure would violate the Constitution and any evidence gathered from it "shall be inadmissible for any purpose in any proceeding." (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

Warrantless arrest — For valid warrantless arrests under both Section 5(a) and (b), it is imperative that the arresting officer had personal knowledge of the offense; the primary difference between the two subsections is that with Section 5(a), the arresting officer personally witnessed the crime, while under Section 5(b), the arresting officer had reason to believe that the person to be arrested committed an offense; either way, the lawful arrest generally precedes or is substantially contemporaneous with the search. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

Warrantless searches and seizures — In *Manibog v. People*, this Court, citing Justice Lucas Bersamin's dissent in *Esquillo v. People*, cautioned against warrantless searches based on a single suspicious circumstance; it stressed that there should be "more than one seemingly innocent

activity, which, taken together, warranted a reasonable inference of criminal activity" for a valid stop and frisk search; for this Court to uphold the validity of a stop and frisk search, the arresting officer must have had personal knowledge of facts that would have aroused a reasonable degree of suspicion of an illicit act. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

— The constitutional prohibition only encompasses *unreasonable* searches and seizures; this Court has recognized several instances of reasonable warrantless searches and seizures: 1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; 2. Seizure of evidence in "plain view," the elements of which are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent, and (d) "plain view" justified mere seizure of evidence without further search; 3. Search of a moving vehicle; highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity; 4. Consented warrantless search; 5. Customs search; 6. *Stop and Frisk*; and 7. Exigent and Emergency Circumstances. (*Id.*)

Warrantless search incidental to a lawful arrest and stop and risk search, distinguished — The exceptions of a warrantless search incidental to a lawful arrest and a "stop and frisk" search are often confused; in *Malacat v. Court of Appeals*, this Court explained that those two exceptions "differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope"; for the first instance to operate, the arrest, as the name suggests, must be established to have been lawful; for an arrest to be deemed lawful, a court

of law must have issued a warrant of arrest; otherwise, the arrest must have fallen within the purview of a lawful warrantless arrest in Rule 113, Section 5 of the Rules of Court. (Palencia *vs.* People, G.R. No. 219560, July 1, 2020) p. 827

STATUTES

***Interpretation of* —** Fundamental is the principle in statutory construction that where the law does not distinguish, the courts should not distinguish; *ubi lex non distinguit, nec nos distinguere debemus.* (People *vs.* Casabuena, *et al*., G.R. No. 246580, June 23, 2020) p. 531

— Fundamental is the principle that qualifying words restrict or modify only the words or phrases to which they are immediately associated; the legislature would not have deliberately used different modifying phrases within the same paragraph if it intended similar treatment for the accessory crimes. (*Id.*)

SUMMONS

***Service of* —** It bears to note that defective service of summons negates the Court's jurisdiction and is thus recognized as a ground for an action for annulment of judgment. (Carreon *vs.* Aguillon, G.R. No. 240108, June 29, 2020) p. 598

TRUST

Implied trust — The Civil Code provides that a trust is created when a property is sold to one party but paid for by another for the purpose of having beneficial interest in said property. (Spouses Devisfruto *vs.* Greenfell, G.R. No. 227725, July 1, 2020) p. 867

UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS)

***Application of* —** The violation transpired in 2007 when the Uniform Rules on Administrative Cases in the Civil Service (URACCS) was still effective; the URACCS

classified simple misconduct as a less grave offense with the corresponding penalty of suspension for one month and one day to six months for the first offense. (National Bureau of Investigation *vs.* Najera, G.R. No. 237522, June 30, 2020) p. 748

UNJUST ENRICHMENT

***Principle of* —** Literally means "as much as he deserves"; under this principle a person may recover a reasonable value of the thing he delivered or the service he rendered; the principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it; the principle of *quantum meruit* is predicated on equity. (Gregorio *vs.* Commission on Audit, *et al.,* G.R. No. 240778, June 30, 2020) p. 758

WITNESSES

***Credibility of* —** A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same; an ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity; the constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— Although appellant has also pointed out some inconsistencies in the witnesses' testimonies, such are insignificant and do not affect the credibility of their entire testimonies; minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrator of the crime. (People *vs.* Bacares, G.R. No. 243024, June 30, 2020) p. 490

— Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the

testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimonies in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable receptivity on the part of the trial courts to lend credence to the testimonies of said victims; this is in consideration of not only the offended parties' relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. (People *vs.* Briones, G.R. No. 240217, June 23, 2020) p. 452

— In *People v. Dela Cruz*, the Court reiterated the rule that the "findings of the trial court on the credibility of witnesses deserve great weight;" moreover, the "factual findings of the trial court and its observation as to the testimonies of the witnesses are accorded great respect if not conclusive effect." (People *vs.* David, G.R. No. 233089, June 29, 2020) p. 573

— It is a well-settled rule that factual findings of the trial court involving the credibility of witnesses are accorded utmost respect since trial courts have first-hand account on the witnesses' manner of testifying in court and their demeanor during trial; the Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he is in the best position to determine the issue of credibility. (People *vs.* PO1 Lumikid, G.R. No. 242695, June 23, 2020) p. 467

— No woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. (People *vs.* Briones, G.R. No. 240217, June 23, 2020) p. 452

— Settled is the rule 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, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. (*Id.*)

— Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. (People *vs.* Meneses, G.R. No. 233533, June 30, 2020) p. 724

— The defenses of denial, frame-up and extortion, like *alibi*, have been invariably viewed by the courts with disfavor for they can easily be concocted and are common and standard defense ploys in most cases involving violation of the Dangerous Drugs Act; as evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed. (*Id.*)

— The testimony of a single, trustworthy and credible witness could be sufficient to convict an accused; this is because witnesses' accounts are weighed, not numbered; "the

testimony of a sole witness, if found convincing and credible by the trial court, is sufficient to support a finding of guilt beyond reasonable doubt; corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate." (Labosta *vs.* People, G.R. No. 243926, June 23, 2020) p. 506

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