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PHILIPPINES

FOR THE PERIOD

JULY 6 - 8, 2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 203348. July 6, 2020]

PASTORA GANANCIAL, *petitioner*, *vs.* **BETTY CABUGAO,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; AN IRREGULAR NOTARIZATION WILL NOT INVALIDATE AN ALREADY PERFECTED MORTGAGE AGREEMENT AS THIS WOULD ONLY DEPRECIATE THE EVIDENTIARY VALUE OF THE SAID WRITTEN DEED FROM A PUBLIC DOCUMENT TO A PRIVATE ONE.—** Errors in, or even absence of, notarization on a deed of mortgage will not invalidate an already perfected mortgage agreement. If anything, these would only depreciate the evidentiary value of the said written deed, as the same would be demoted from a public document to a private one.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOIDABLE CONTRACTS; VITIATION OF CONSENT BY MEANS OF FRAUD IS A GROUND FOR THE ANNULMENT OF A VOIDABLE CONTRACT, AND NOT FOR THE NULLIFICATION OF A VOID CONTRACT.—** Ganancial had alleged that fraud invalidated her consent to the mortgage. While she had worded her arguments as an attack on

the existence of the mortgage, vitiation of consent by means of fraud is a ground for the *annulment* of a *voidable* contract, and not for the *nullification* of a *void* contract. Having raised lack of consent on the ground of fraud in her complaint for "declaration of document as null and void plus damages," her case is practically devoid of any factual basis.

3. **ID.; ID.; ID.; ID.; FRAUD ALLEGED TO HAVE VITIATED CONSENT MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE.—** Even if the present case is one for annulment of contract, the fraud alleged to have vitiated Ganancial's consent to the mortgage must still be proven by clear and convincing evidence. *Clear and Convincing Evidence* is less than proof beyond reasonable doubt but greater than preponderance of evidence. The degree of believability upon an imputation of fraud in a civil case is higher than that of an ordinary civil case, the latter generally requiring only a preponderance of evidence to meet the required burden of proof. The burden of proof rests on the party alleging fraud.

4. **ID.; ID.; VOID CONTRACTS; ABSOLUTE SIMULATION; VOIDS A CONTRACT BECAUSE IN ABSOLUTE SIMULATION, THERE APPEARS A COLORABLE CONTRACT BUT THERE ACTUALLY IS NONE, AS THE PARTIES THERETO HAVE NEVER INTENDED TO BE BOUND BY IT.—** Under Article 1409 of the Civil Code, absolute simulation voids a contract. In absolute simulation, there appears a colorable contract but there actually is none, as the parties thereto have never intended to be bound by it. In determining the true nature of a contract, the primary test is the intention of the parties. Such intention is determinable not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties. The totality of the circumstances negates the contention that the Deed of Mortgage was absolutely simulated.

5. **ID.; MORTGAGE; REQUISITES.—** [C]ontracts, in general, require no form to exist. Article 2085 of the Civil Code specifies the elements of valid contracts of mortgage: (1) That they be constituted to secure the fulfillment of a principal obligation; (2) That the x x x mortgagor be the absolute owner of the thing x x x mortgaged; (3) That the persons constituting the x x x mortgage have the free disposal of their property, and in

the absence thereof, that they be legally authorized for the purpose. Article 2125 of the same law adds a fourth requirement, the absence of which, however, shall not affect the validity of the agreement between the mortgagor and the mortgagee x x x.

6. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDGMENTS OR ORDERS; COURT JUDGMENTS OR ORDERS THAT FALL SHORT OF THE CONSTITUTIONAL MANDATE OF CLEARLY AND DISTINCTLY STATING THE FACTS AND THE LAW ON WHICH THEY ARE BASED ARE NULLIFIED AND STRUCK DOWN AS VOID.— Article VIII, Section 14 of the Constitution provides that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," and that "[n]o petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor." Rule 36, Section 1 of the Rules of Court embraced this constitutional mandate, directing that "[a] judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court." The grant of moral damages, exemplary damages, attorney's fees, and litigation costs has basic reliance upon the x x x provisions of the Civil Code x x x. Jurisprudence likewise lays out the elementary precepts in awarding damages. x x x Strangely enough, none of the x x x Civil Code provisions, pieces of jurisprudence, or similar legal references were even slightly alluded to by the RTC to justify the monetary awards. Immediately after its outright conclusion of Ganancial's bad faith and without further disquisitions, the RTC jumped to its final verdict favoring Cabugao and awarding the latter moral damages, exemplary damages, attorney's fees, and reimbursement of litigation expenses in the dispositive portion of its May 17, 2006 Joint Decision. x x x In fine, there was no clear and distinct citation of the RTC's factual and legal bases as regards its positive grant of damages in favor of Cabugao, or any discussion as to how Ganancial was liable therefor. Court judgments, decisions, orders, or other issuances that fall short of the mandate of Article VIII, Section 14 of the Constitution are nullified and struck down as void. The Court shall do so in this case, and only insofar as the

award of damages is concerned, as its disposition is the portion plagued by the constitutional infirmity. The rule is to remand the case to the court *a quo* for the re-issuance of the defective judgment and its rectification. The Court, however, finds the impracticality of the norm and resolves to completely adjudicate on the case at this point, as the full records are already at hand and considering the age of this case in the dockets.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO PURE QUESTIONS OF LAW; EXCEPTIONS.— The issue of whether Ganancial was in bad faith or whether Cabugao is entitled to reimbursement of attorney's fees and litigation costs is essentially a question of fact. A question of fact requires this Court to review the truth or falsity of the allegations of the parties, which includes assessment of the probative value of the evidence presented, or when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties. As petitions for review on *certiorari* under Rule 45 of the Rules of Court are limited to pure questions of law, the Court is generally not bound to rule on the soundness of the trial court's appreciation of evidence meriting the award of damages in favor of Cabugao. There is, however, good cause to consider the instant case an exception to the rule that only questions of law may be entertained in a Rule 45 petition. *Medina v. Asistio, Jr.* lists ten exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence

on record. Some of these exempting circumstances are present here. Thus, the Court is compelled to review the relevant evidence in view of the RTC's conclusion of bad faith against Ganancial that has apparent ground on speculations, surmises or conjectures, with no citation of specific evidence on which such findings are based.

8. CIVIL LAW; DAMAGES; MORAL DAMAGES; A ROBOTIC ALLEGATION THAT ONE SUFFERED ANXIETY AND SLEEPLESS NIGHTS, OR A SEEMINGLY HAPHAZARD CONVERSION OF THESE DISTURBED FEELINGS INTO SOME PECUNIARY EQUIVALENT, WITHOUT MORE, WILL NOT AUTOMATICALLY ENTITLE A PARTY TO MORAL DAMAGES.— [The] minimum standards for a grant of moral damages are not at all extractable from Cabugao's declarations in open court. x x x [The] statements were the only tangible proof in the records in support of Cabugao's claim for damages. The RTC readily acceded to her monetary pleas and granted her a total of ₱100,000.00 as moral damages, ₱20,000.00 as exemplary damages, and a full ₱30,000.00 as attorney's fees and litigation expenses, all attributed to and payable by Ganancial. We, however, find these judicial awards legally unsound. A robotic allegation that one "suffered anxiety and sleepless nights," or a seemingly haphazard conversion of these disturbed feelings into some pecuniary equivalent, without more, will not automatically entitle a party to moral damages. On the other hand, Ganancial's refusal to pay her indebtedness was grounded on her firm belief that the subject Deed of Mortgage was fake. She was unwavering in her claim that she had a sound cause against Cabugao, and the honesty in her legal pursuit is reflected in the consistency of her allegations throughout the proceedings. To the Court, Ganancial's actuations as testified to by Cabugao cannot be seen as being motivated by a corrupt purpose, some moral obliquity and conscious doing of a wrong, or a breach of known duty through some other motive or interest or ill will that partakes of the nature of fraud to merit an award of moral damages. As the evidence on record militates against Cabugao's claim for moral damages, a grant of exemplary damages is necessarily uncalled for. Article 2234 of the Civil Code is already clear in requiring a prior determination of entitlement to moral, temperate, or compensatory damages before the Court may consider the question of whether or not exemplary damages should be awarded.

9. ID.; ID.; ATTORNEY'S FEES AND LITIGATION EXPENSES; AN ADVERSE DECISION DOES NOT *IPSO FACTO* JUSTIFY THE AWARD THEREOF TO THE WINNING PARTY.— With respect to the RTC's initial award of attorney's fees and reimbursement of litigation costs, an adverse decision does not *ipso facto* justify the award thereof to the winning party. *"J" Marketing Corporation v. Sia, Jr.* has ruled that "no attorney's fees and litigation expenses can automatically be recovered even [if a party wins], as it is not the fact of winning alone that entitles recovery of such items, but rather the attendance of special circumstances – the enumerated exceptions in Article 2208 of the New Civil Code." Needless to state, Cabugao failed to demonstrate that her legal victory against Ganancial qualified under any of the instances under Article 2208 of the Civil Code.

10. REMEDIAL LAW; RULES OF PROCEDURE; THE COURT MAY RELAX THE STRICT APPLICATION OF THE RULES OF PROCEDURE IF A STRICT APPLICATION WILL FRUSTRATE RATHER THAN SERVE THE BROADER INTERESTS OF JUSTICE UNDER THE PREVAILING CIRCUMSTANCES OF THE CASE.— Substantial justice trumps over procedural rigidities. If a strict application of the rules of procedure will frustrate rather than serve the broader interests of justice under the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction. As declared in *Alonso v. Villamor,* "[t]echnicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities." Litigants cannot relish in their legal winnings which they are clearly underserving of under the law by scoring undue advantage over the procedural mistakes of the opponent.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Francis Melville B. Tinio for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the November 29, 2011 Decision[2] and the September 4, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 88212.

The Antecedents

Pastora Ganancial (Ganancial) owed Betty Cabugao (Cabugao) the amount of ₱130,000.00, agreed to be payable within three years. To guarantee her indebtedness, Ganancial entrusted to Cabugao the Transfer Certificate of Title (TCT) No. 168803 and Tax Declaration No. 641, both covering a 397-square-meter parcel of land located in Balangobong, Binalonan, Pangasinan, which Ganancial owns in her name.

The transaction later turned sour and ended in the parties' respective lawsuits against each other before the Regional Trial Court (RTC), Branches 45 and 48 of Urdaneta City, Pangasinan. On October 2, 2001, Cabugao filed a case for foreclosure of real estate mortgage against Ganancial, docketed as Civil Case No. U-7397 with Branch 45. On October 8, 2001, the latter, in turn, filed against the former a complaint for declaration of the deed of mortgage as null and void, with damages docketed as Civil Case No. U-7406 with Branch 48. These cases were eventually ordered consolidated before Branch 45.

Cabugao alleged that on March 4, 1998, Ganancial executed a Deed of Mortgage[4] over the subject property as collateral for her loan. Despite the lapse of three years from the date of the

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[1] *Rollo*, pp. 14-35.

[2] *Id.* at 37-49; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Magdangal M. De Leon and Angelita A. Gacutan.

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

[4] Records (Civil Case No. U-7397), p. 53.

mortgage and repeated demands, Ganancial failed and refused to pay the amount she owed Cabugao. A final demand having proved futile, Cabugao sought the judicial foreclosure of the real estate mortgage, plus interest, and the award of attorney's fees and litigation expenses.

For her part, Ganancial assailed the authenticity of the Deed of Mortgage. While she entrusted TCT No. 168803 with Cabugao, Ganancial averred that she never executed the supposed Deed of Mortgage nor appeared for its notarization. Cabugao allegedly required Ganancial and her children to affix their signatures on a blank bond paper, which Cabugao filled out only later. Ganancial learned of the existence of the Deed of Mortgage for the first time during her confrontation with Cabugao before the *barangay* captain regarding her unpaid debt and where Cabugao threatened to foreclose the subject property. Ganancial thus prayed for the declaration of the Deed of Mortgage as null and void and claimed moral damages, exemplary damages, litigation expenses, and costs of suit.

Ruling of the Regional Trial Court

The RTC ruled in favor of Cabugao. It declared that Ganancial's contentions against the authenticity of the notarized Deed of Mortgage were not proven by clear and convincing evidence. It also noted that the names of Ganancial and her children were so well-placed on the Deed of Mortgage for the court to believe that they merely signed a blank bond paper. There being a finding of bad faith, the RTC also held Ganancial liable for moral damages, exemplary damages, attorney's fees, and litigation costs. The May 17, 2006 RTC Joint Decision[5] disposed of the consolidated cases in the following tenor:

WHEREFORE, PREMISES CONSIDERED, the Court renders judgment, as follows:

IN CIVIL CASE NO. U-7397:

1). The Court orders the sale of the property in the name of the defendant, Pastora Ganancial, covered by Transfer Certificate of Title

[5] CA *rollo*, pp. 41-52; penned by Presiding Judge Joven F. Costales.

No. 168803 and Tax Declaration No. 641 and to pay to the plaintiff BETTY [C]ABUGAO the mortgage debt plus legal interest, attorney's fees, litigation expenses, damages and other expenses; and

2). The Court orders the defendant PASTORA GANANCIAL to pay the plaintiff Betty Cabugao the sum of ₱130,000.00 including legal interest from the time the money was taken by the former from the latter; the amount of ₱50,000.00 as moral damages and ₱20,000.00 as attorney's fees.

IN CIVIL CASE NO. U-7406:

1). The Court orders the DISMISSAL of this case, for lack of merit; and

2). Further, orders the plaintiff, Pastora Ganancial[,] to pay the defendant Betty Cabugao the amount of ₱50,000.00 as moral damages; ₱20,000.00 as exemplary damages and ₱10,000.00 as litigation expenses.

SO ORDERED.[6]

Ganancial appealed[7] to the CA, stating that the RTC gravely erred in ruling in favor of Cabugao despite the glaring irregularities of the Deed of Mortgage. The dates of the Deed of Mortgage and its notarization were dissimilar, the former having been executed on March 4, 1998 and the latter on January 15, 2001.[8] Ganancial pointed out that the Office of the Clerk of Court of the RTC of Urdaneta City certified that the notarial entry under Doc. No. 430, Page No. 87, Book No. LXXXIII, Series of 2001 pertained to a deed of sale of a motor vehicle and not to the Deed of Mortgage. Ganancial also noted that different typewriters were used in the preparation of the Deed of Mortgage.

Ruling of the Court of Appeals

The CA denied Ganancial's appeal. It concurred with the disposition of the RTC that forgery or falsification cannot be

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

[7] *Id.* at 25-40.

[8] *Id.* at 36.

presumed and must be proved with clear, positive, and convincing evidence by the party who alleges the same. The CA found that Ganancial failed in discharging such burden of proof, especially that the deed in issue was a notarized document. The CA also ruled that mere irregularities in the notarization do not affect the genuineness and due execution of the document. Affirming the RTC in its assailed November 29, 2011 Decision, the CA thus held:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Accordingly, the assailed Decision dated 17 May 2006 of the court *a quo* is hereby **AFFIRMED *in toto***.
>
> **SO ORDERED.**[9]

After the CA found no compelling reason to reverse itself and denied her Motion for Reconsideration[10] in its September 4, 2012 Resolution,[11] Ganancial proceeds to this Court.

Errors Assigned

Ganancial raises the following errors for this Court's review:

I

WHETHER THE [CA] ERRED IN AFFIRMING THE DECISION OF THE [RTC] FAVORING BETTY CABUGAO DESPITE THE GLARING IRREGULARITY OF THE QUESTIONED DEED OF MORTGAGE.

II

WHETHER THE [CA] ERRED IN AFFIRMING THE DECISION OF THE [RTC]'S AWARDING OF MORAL AND EXEMPLARY DAMAGES, LITIGATION EXPENSES AND ATTORNEY'S FEES IN FAVOR OF BETTY CABUGAO WITHOUT CITING THE BASIS THEREOF.[12]

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[9] *Rollo*, p. 48.

[10] *Id.* at 81-85.

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

[12] *Id.* at 21.

The Court's Ruling

The appeal is meritorious in part.

Mere formal infirmities in the notarization of the instrument will not invalidate the mortgage

Ganancial reiterates that she and her two sons were made to sign a blank piece of paper as acknowledgment of her indebtedness to Cabugao, and that thereafter, the latter supplied the particulars of the mortgage on the same piece of paper. The following circumstances allegedly attest to the spuriousness of the Deed of Mortgage: the document was supposedly executed and notarized on March 4, 1998, but was entered in a 2001 notarial book by a notary public whose notarial commission ended in 2001; that the entry indicated in the notarial register actually pertained to a deed of sale of a motor vehicle; that different typewriters were used in typing the contents of the Deed of Mortgage and its notarization; and that the acknowledgment was written on the back of the document, despite the considerable space allotted and remaining below the Deed of Mortgage. In fine, Ganancial assails the validity of the mortgage and not merely its notarial irregularities.

We do not find for Ganancial.

The CA was already on-point in citing *Camcam v. Court of Appeals*[13] as regards the issue on the notarization of the Deed of Mortgage, which We echo:

> [A]n irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence. The irregular notarization — or, for that matter, the lack of notarization — does not thus necessarily affect the validity of the contract reflected in the document.[14] (Citation omitted)

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[13] 588 Phil. 452 (2008).

[14] *Id.* at 462.

Errors in, or even absence of, notarization on a deed of mortgage will not invalidate an already perfected mortgage agreement. If anything, these would only depreciate the evidentiary value of the said written deed, as the same would be demoted from a public document to a private one.

It bears noting that Ganancial had alleged that fraud invalidated her consent to the mortgage. While she had worded her arguments as an attack on the existence of the mortgage, vitiation of consent by means of fraud is a ground for the *annulment* of a *voidable* contract, and not for the *nullification* of a *void* contract. Having raised lack of consent on the ground of fraud in her complaint for "declaration of document as null and void plus damages,"[15] her case is practically devoid of any factual basis.

Even if the present case is one for annulment of contract, the fraud alleged to have vitiated Ganancial's consent to the mortgage must still be proven by clear and convincing evidence. *Clear and convincing evidence* is less than proof beyond reasonable doubt but greater than preponderance of evidence. The degree of believability upon an imputation of fraud in a civil case is higher than that of an ordinary civil case, the latter generally requiring only a preponderance of evidence to meet the required burden of proof. The burden of proof rests on the party alleging fraud.[16]

Ganancial failed in this regard. Again, the CA succinctly declared so as follows:

> In the instant case, the appellant miserably failed to discharge this burden. A careful and judicious examination of the records on hand reveals that the evidence presented by the appellant is too weak to convince Us that the subject document was fabricated or falsified.
>
> Apart from the testimonies of the appellant and her children, which We found to be self-serving, there is nothing on record which bolsters

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[15] Records (Civil Case No. U-7406), pp. 1-4.

[16] *Riguer v. Mateo*, 811 Phil. 538, 547 (2017), citing *Tankeh v. Development Bank of the Philippines*, 720 Phil. 641 (2013).

her stance. It must be stressed that the deed in question is a notarized document. Jurisprudential rule dictates that to successfully impugn a notarized document, the party concerned must present a strong, complete and conclusive proof of its falsity, lest the validity thereof must be sustained in full force and effect. Sadly in this case, the appellant failed to support her claim.[17] (Citations omitted.)

Even assuming that Ganancial's complaint for the declaration of nullity of the Deed of Mortgage was truly grounded on its nonexistence or absolute simulation, it would still have no basis in fact and in law.

Under Article 1409 of the Civil Code, absolute simulation voids a contract.[18] In absolute simulation, there appears a colorable contract but there actually is none, as the parties thereto have never intended to be bound by it. In determining the true nature of a contract, the primary test is the intention of the parties. Such intention is determinable not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[19]

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[17] *Rollo*, p. 46.

[18] Civil Code, Article 1409 provides:

Article 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
(2) Those which are absolutely simulated or fictitious;
(3) Those whose cause or object did not exist at the time of the transaction;
(4) Those whose object is outside the commerce of men;
(5) Those which contemplate an impossible service;
(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
(7) Those expressly prohibited or declared void by law.
These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived. (Emphasis supplied.)

[19] *Clemente v. Court of Appeals*, 771 Phil. 113, 124-125 (2015), citing *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*, 673 Phil. 188 (2011); *Lopez v. Lopez*, 620 Phil. 368 (2009); and *Ramos v. Heirs of Honorio Ramos, Sr.*, 431 Phil. 337 (2002).

The totality of the circumstances negates the contention that the Deed of Mortgage was absolutely simulated. Ganancial, having absolute ownership and full disposal of the property in issue, admittedly conveyed TCT No. 168803 to secure her indebtedness to Cabugao in the amount of ₱130,000.00. Their agreement was reduced into writing as a Deed of Mortgage, and Ganancial's stand that the signatures thereon were manipulated does not convince. As aptly noted by the RTC, the signatures of Ganancial and her children appear exactly above their typewritten names, lending weak support to the claim that they had been made to sign a blank piece of paper that Cabugao later completed as a Deed of Mortgage.[20] There is also the undisputed presumption of regularity enjoyed by notarized contracts, and the mere fact that two public documents are covered by the same notarial entry neither identifies with sufficient definiteness which one of them was fake, nor does it determine if any of them was spurious in the first place. It is also a settled fact that the mortgage in issue was properly registered and annotated on TCT No. 168803.

Moreover, contracts, in general, require no form to exist. Article 2085 of the Civil Code specifies the elements of valid contracts of mortgage:

> (1) That they be constituted to secure the fulfillment of a principal obligation;
>
> (2) That the x x x mortgagor be the absolute owner of the thing x x x mortgaged;
>
> (3) That the persons constituting the x x x mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Article 2125 of the same law adds a fourth requirement, the absence of which, however, shall not affect the validity of the agreement between the mortgagor and the mortgagee:

> Art. 2125. In addition to the requisites stated in [A]rticle 2085, it is indispensable, in order that a mortgage may be validly constituted,

[20] CA *rollo*, p. 50.

that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

Unfortunately for Ganancial, her contract of mortgage with Cabugao is already fully compliant with the foregoing provisions, as earlier discussed. The notarization issues are rendered irrelevant. All of the foregoing leads to the inevitable conclusion that their mortgage contract was perfected, valid, and effective, and Ganancial and Cabugao were far from having absolutely no intention to be bound thereunder.

Basis for the award of damages must be clearly and distinctly set out in the judgment

Ganancial argues before Us that the RTC awarded moral and exemplary damages in favor of Cabugao by simply concluding without due discussion that there was bad faith on Ganancial's part. The latter also asserts that while attorney's fees and litigation expenses may be awarded when the court deems them just and equitable, any conclusion to that effect must be borne out by the findings of facts and law that the award was reasonable under the circumstances.

We side with Ganancial on this issue.

The main *ratio* of the RTC's Joint Decision declared:

> It would be perplexing and bewildering to believe that Betty Cabugao, who was at most, a professional and a retired nurse, would just let Pastora Ganancial [sign] a blank coupon bond. A careful scrutiny of the deed of mortgage would tend to show that the name of Pastora Ganancial and that of her children were well-placed in the deed of mortgage although the notarization or [acknowledgment] is located at the back of the document.
>
> The Court would not believe that the person of Betty Cabugao, who is a professional, a retired nurse at that, would just let another who is indebted to her in the amount of ₱130,000.00 to have a blank coupon bond signed instead of going to a lawyer to make the appropriate document to secure the big amount she lent. Nonetheless, it is admitted by Pastora Ganancial and her children-signatories that the latter received

a certain amount of ₱100,000.00 that was why they signed a blank coupon [bond], if it is true that it was blank, although it was refuted by Betty Cabugao.

The contention of Pastora Ganancial that the deed of mortgage is fake, fabricated and not genuine is not borne by any evidence. That one who alleges such things shall be the one to prove [them].

In the case of [*Mendezona v. Ozamiz*], 376 SCRA 482, the Supreme Court held that:

> "x x x. In other words, whosoever alleges the fraud or invalidity of a notarized document has the burden of proving the same by evidence that is clear, convincing and more than merely preponderant. Therefore, with this well-recognized statutory presumption, the burden fell upon the respondents to prove their allegations attacking the validity and due execution of the said Deed of Absolute Sale. Respondents failed to discharge that burden; hence, the presumption in favor of the said deed stands. But more importantly, that notarized deed shows on its face that the consideration of One Million Forty Thousand Pesos (₱1,040,000.00) was acknowledged to have been received by Carmen [Ozamiz]."

Under the same above-cited case, the Supreme Court ruled further that:

> "x x x. It is significant to note that the Deed of Absolute Sale dated April 28, 1989 is a notarized document duly acknowledged before a notary public. As such, [it has] in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon [it with] respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face."

There is bad faith on the part of Pastora Ganancial. There being bad faith, she is liable for moral damages as enunciated in the case of *China Airlines, Ltd. vs. Court of Appeals*, 406 SCRA 113.[21] (Emphasis supplied.)

We find this ruling of the trial court grossly noncompliant with the law.

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

Article VIII, Section 14 of the Constitution provides that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," and that "[n]o petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor." Rule 36, Section 1 of the Rules of Court embraced this constitutional mandate, directing that "[a] judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court."

The grant of moral damages, exemplary damages, attorney's fees, and litigation costs has basic reliance upon the following provisions of the Civil Code:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act [or] omission.

Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Article 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Article 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.
x x x

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;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

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

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

Jurisprudence likewise lays out the elementary precepts in awarding damages.

Arco Pulp and Paper Co., Inc. v. Lim[22] instructs that moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the party from whom

[22] 737 Phil. 133 (2014).

they are claimed acted fraudulently or in bad faith or in wanton disregard of his/her contractual obligations.[23]

As regards the assessment of exemplary damages, *Tankeh v. Development Bank of the Philippines*[24] declared that the wrongful act must be accompanied by bad faith, and the award therefor would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[25] Also known as "punitive," "vindictive," or "corrective" damages, exemplary damages serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[26]

Per *Benedicto v. Villaflores*,[27] attorney's fees represent the reasonable compensation paid to a lawyer by his/her client for the legal services he/she has rendered to the latter. They may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party in the instances specified in Article 2208 of the Civil Code.

Strangely enough, none of the foregoing Civil Code provisions, pieces of jurisprudence, or similar legal references were even slightly alluded to by the RTC to justify the monetary awards.

Immediately after its outright conclusion of Ganancial's bad faith and without further disquisitions, the RTC jumped to its final verdict favoring Cabugao and awarding the latter moral damages, exemplary damages, attorney's fees, and reimbursement of litigation expenses in the dispositive portion of its May 17, 2006 Joint Decision. While the trial court did mention *China Airlines, Ltd. v. Court of Appeals*[28] *(China*

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[23] *Id.* at 147-148.

[24] *Supra* note 16.

[25] *Id.* at 693, citing *Cervantes v. Court of Appeals*, 363 Phil. 399 (1999).

[26] *Id.* at 692-693, citing *People v. Rante*, G.R. No. 184809, March 29, 2010, 617 SCRA 115.

[27] 646 Phil. 733, 741-742 (2010).

[28] 453 Phil. 959 (2003).

Airlines, Ltd.), it completely neglected to correlate the same to the facts of the case. A further probe into the said *China Airlines, Ltd.* case reveals that its ruling is not at all parallel to the dispositions by the RTC. In *China Airlines, Ltd.*, bad faith did not obtain against the petitioner therein, and the Court withheld the award of moral and exemplary damages as well as attorney's fees. In fine, there was no clear and distinct citation of the RTC's factual and legal bases as regards its positive grant of damages in favor of Cabugao, or any discussion as to how Ganancial was liable therefor.

Court judgments, decisions, orders, or other issuances that fall short of the mandate of Article VIII, Section 14 of the Constitution are nullified and struck down as void.[29] The Court shall do so in this case, and only insofar as the award of damages is concerned, as its disposition is the portion plagued by the constitutional infirmity.

The rule is to remand the case to the court *a quo* for the re-issuance of the defective judgment and its rectification. The Court, however, finds the impracticality of the norm and resolves to completely adjudicate on the case at this point, as the full records are already at hand[30] and considering the age of this case in the dockets.

The issue of whether Ganancial was in bad faith or whether Cabugao is entitled to reimbursement of attorney's fees and litigation costs is essentially a question of fact. A question of fact requires this Court to review the truth or falsity of the allegations of the parties, which includes assessment of the probative value of the evidence presented, or when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[31] As

[29] *Yao v. Court of Appeals*, 398 Phil. 86, 106 (2000).

[30] The Court found occasion to resolve cases in like manner in *People v. Escober*, 241 Phil. 578 (1988) and *People v. Banayo*, 214 Phil. 639 (1984).

[31] *Pascual v. Burgos*, 776 Phil. 167, 183 (2016), citing *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277 (2014) and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784 (2011).

petitions for review on *certiorari* under Rule 45 of the Rules of Court are limited to pure questions of law, the Court is generally not bound to rule on the soundness of the trial court's appreciation of evidence meriting the award of damages in favor of Cabugao.

There is, however, good cause to consider the instant case an exception to the rule that only questions of law may be entertained in a Rule 45 petition. *Medina v. Asistio, Jr.*[32] lists ten exceptions:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[33] (Citations omitted.)

Some of these exempting circumstances are present here. Thus, the Court is compelled to review the relevant evidence in view of the RTC's conclusion of bad faith against Ganancial that has apparent ground on speculations, surmises or conjectures, with no citation of specific evidence on which such findings are based.

Withal, and upon careful reevaluation of established facts on record, this Court overturns the RTC's award of damages in favor of Cabugao and the CA's affirmation thereof.

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[32] 269 Phil. 225 (1990).

[33] *Id.* at 232.

Francisco v. Ferrer, Jr.[34] explains the determination of propriety of moral damages:

> The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. **It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive.** Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. It must be shown that the proximate cause thereof was the unlawful act or omission of the x x x petitioners.[35] (Emphasis supplied, citations omitted)

These minimum standards for a grant of moral damages are not at all extractable from Cabugao's declarations in open court. We reproduce the same in pertinent part:[36]

ATTY. TINIO:

x x x x x x x x x

Q Did the defendant pay her obligation, Madam Witness?
A No, sir.

Q What do you mean, no sir, Madam Witness?
A She failed to pay me, sir.

Q When the defendant failed to pay you what did you do, Madam Witness?
A I made repeated oral demands to the defendant, Pastora Ganancial, but still she refused to pay her obligation, sir.

Q After making repeated oral demands to the defendant Pastora Ganancial what else did you do, Madam Witness?
A I went to see a lawyer, sir.

Q When you went to see a lawyer what did your lawyer do?
A My lawyer sent a demand letter to Pastora Ganancial to pay within 15 days, sir.

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[34] 405 Phil. 741 (2001).

[35] *Id.* at 749.

[36] TSN, June 5, 2003, pp. 11-13.

Q When your lawyer sent the demand letter did the defendant comply [with] the demand?
A No, sir.

Q So what did your lawyer do when the defendant failed to make good of her promise?
A We filed this case for foreclosure of mortgage, sir.

Q [Were] there any fees involved when you engaged the services of a lawyer?
A I paid ₱30,000.00 for his attorney's fees plus ₱1,000.00 appearance fee for every hearing, sir.

Q How about damages suffered by you, Madam Witness?
A Yes, sir, I suffered anxiety and sleepless nights.

Q If you will quantify that to an amount of money how much will that be?
A ₱100,000.00, sir.

These statements were the only tangible proof in the records in support of Cabugao's claim for damages. The RTC readily acceded to her monetary pleas and granted her a total of ₱100,000.00 as moral damages, ₱20,000.00 as exemplary damages, and a full ₱30,000.00 as attorney's fees and litigation expenses, all attributed to and payable by Ganancial. We, however, find these judicial awards legally unsound.

A robotic allegation that one "suffered anxiety and sleepless nights," or a seemingly haphazard conversion of these disturbed feelings into some pecuniary equivalent, without more, will not automatically entitle a party to moral damages. On the other hand, Ganancial's refusal to pay her indebtedness was grounded on her firm belief that the subject Deed of Mortgage was fake. She was unwavering in her claim that she had a sound cause against Cabugao, and the honesty in her legal pursuit is reflected in the consistency of her allegations throughout the proceedings. To the Court, Ganancial's actuations as testified to by Cabugao cannot be seen as being motivated by a corrupt purpose, some moral obliquity and conscious doing of a wrong, or a breach of known duty through some other motive or interest or ill will that partakes of the nature of fraud[37] to merit an award of moral damages.

[37] See *Adriano v. Lasala*, 719 Phil. 408, 419-420 (2013).

As the evidence on record militates against Cabugao's claim for moral damages, a grant of exemplary damages is necessarily uncalled for. Article 2234 of the Civil Code is already clear in requiring a prior determination of entitlement to moral, temperate, or compensatory damages before the Court may consider the question of whether or not exemplary damages should be awarded.

With respect to the RTC's initial award of attorney's fees and reimbursement of litigation costs, an adverse decision does not *ipso facto* justify the award thereof to the winning party.[38] *"J" Marketing Corporation v. Sia, Jr.*[39] has ruled that "no attorney's fees and litigation expenses can automatically be recovered even [if a party wins], as it is not the fact of winning alone that entitles recovery of such items, but rather the attendance of special circumstances — the enumerated exceptions in Article 2208 of the New Civil Code."[40] Needless to state, Cabugao failed to demonstrate that her legal victory against Ganancial qualified under any of the instances under Article 2208 of the Civil Code.

Substantial justice trumps over procedural rigidities. If a strict application of the rules of procedure will frustrate rather than serve the broader interests of justice under the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.[41] As declared in *Alonso v. Villamor*,[42] "[t]echnicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief

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[38] *"J" Marketing Corporation v. Sia, Jr.*, 349 Phil. 513, 518 (1998).

[39] *Id.*

[40] *Id.*

[41] *Curammeng v. People*, 799 Phil. 575, 581 (2016), citing *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, 700 Phil. 575, 581 (2012).

[42] 16 Phil. 315 (1910).

enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."[43] Litigants cannot relish in their legal winnings which they are clearly undeserving of under the law by scoring undue advantage over the procedural mistakes of the opponent.

WHEREFORE, the appeal is **GRANTED in PART**. The assailed November 29, 2011 Decision and the September 4, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 88212 are **AFFIRMED with MODIFICATION**, in that the award of moral damages, exemplary damages, attorney's fees, and reimbursement of litigation expenses as originally granted by the Regional Trial Court, Branch 45 of Urdaneta City, Pangasinan in favor of respondent Betty Cabugao is **DELETED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204555. July 6, 2020]

PEDRITO R. PARAYDAY and JAIME REBOSO, *petitioners, vs.* **SHOGUN SHIPPING CO., INC.,**[1] *respondent.*

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[43] *Id.* at 322.

[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

[1] Properly referred to as Shogun Ships, Inc. *See* Articles of Incorporation (*Rollo,* pp. 187-201).

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT CANNOT BE ENTERTAINED; EXCEPTIONS; CONFLICT BETWEEN THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC ON ONE HAND, AND THOSE OF THE COURT OF APPEALS ON THE OTHER HAND.— At the outset, as to whether or not petitioners were regular employees of Shogun Ships, or whether or not an employer-employee relationship existed between petitioners and Shogun Ships, are essentially questions of fact which, as a rule, cannot be entertained in a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases. However, where, like in the instant case, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on one hand, and those of the CA, on the other hand, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case. Thus, this Court shall take cognizance of and resolve the factual issues involved in this case.

2. ID.; ID.; PARTIES; A CORPORATION NOT IMPLEADED IN A SUIT CANNOT BE A SUBJECT TO THE COURT'S PROCESS OF PIERCING THE VEIL OF ITS CORPORATE FICTION.— [P]etitioners contend that they were employed by Oceanview as far back as 1996/1997. Sometime in 2003, Oceanview supposedly changed its corporate name to Shogun Ships, herein respondent. Petitioners would thus make it appear that Oceanview and Shogun Ships are one and the same entity. x x x [Under] the general doctrine of separate juridical personality — a corporation has a legal personality separate and distinct from that of its stockholders and other corporations to which it may be connected. [I]t is a well-established rule in labor proceedings that the Labor Arbiter, or this Court for that matter, cannot acquire jurisdiction over the person of the respondent until he/she is validly served with summons, or that he/she voluntarily appears in court. x x x [T]his Court also held that "the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority

of the court by way of service of summons or what passes as such service." Otherwise stated, the doctrine will only come into play once the court has already acquired jurisdiction over the corporation. Only then would it be allowed to present evidence for or against piercing the veil of corporate fiction. Thus, if the Labor Arbiter or the NLRC in this case have not acquired jurisdiction over the corporation, it would be improper for this Court to pierce the corporate veil as this would offend the corporation's right to due process. In this case, it bears noting that Oceanview was never impleaded as a party respondent and was never validly served with summons. Nor was Oceanview represented by any authorized representative during the proceedings before the Labor Arbiter or the NLRC. It was merely dragged to the case by mere reference of its name in petitioners' *Sama-Samang Sinumpaang Salaysay*.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST.—** [B]efore a determination of legality or illegality of petitioners' dismissal can be had, the existence of an employment relationship between petitioners and Shogun Ships must be first established. x x x [I]n determining the existence of an employer-employee relationship, this Court has time and again applied the "four-fold test" which has the following elements, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power to discipline and dismiss; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.

4. **ID.; ID.; ID.; EVIDENCE REQUIRED TO PROVE EMPLOYER-EMPLOYEE RELATIONSHIP IS SUBSTANTIAL EVIDENCE.—** While it has been held that no particular form of evidence is required to prove [employer-employee] relationship, or that any competent and relevant evidence to prove the relationship may be admitted, this Court believes that a finding of such relationship must still rest on substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." This is in accordance with the oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence.

5. **ID.; ID.; ID.; CONTROL TEST; IT CALLS MERELY FOR THE EXISTENCE OF THE RIGHT TO CONTROL THE**

MANNER OF DOING THE WORK AND NOT THE ACTUAL EXERCISE OF THE RIGHT.— [T]he control test calls merely for the existence of the right to control the manner of doing the work and not the actual exercise of the right. Thus, in *Dy Keh Beng v. International Labor and Marine Union of the Philippines*, this Court held that an employer's power of control, particularly over personnel working under the employer, is deemed inferred, more so when said personnel are working at the employer's establishment: x x x [C]onsidering that petitioners were working on the barges alongside regular employees of Shogun Ships and that they were taking orders from its engineers as to the required specifications on how the barges of Shogun Ships should be repaired, which respondent herein failed to deny, it may be thus logically inferred that Shogun Ships, to some degree, exercised control or had the right to control the work of petitioners.

6. ID.; ID.; THE REGULAR EMPLOYMENT STATUS OF A PERSON IS DEFINED AND PRESCRIBED BY LAW.— Article 295 of the Labor Code "provides for two (2) types of regular employees, namely: *(a)* those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and *(b)* those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category)." The regular employment status of a person is defined and prescribed by law and not by what the parties say it should be.

7. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL WARRANTS REINSTATEMENT AND PAYMENT OF BACKWAGES.— It is an established principle that the dismissal of an employee is justified where there was a just cause and the employee was afforded due process prior to dismissal. The burden of proof to establish these twin requirements is on the employer, who must present clear, accurate, consistent, and convincing evidence to that effect. Here, respondent was unable to discharge the burden of proof required to establish petitioners' dismissal from employment was legal and valid. The records also fail to show that respondent afforded petitioners due process prior to their dismissal, as in fact, they were merely verbally dismissed, and thus, were not served notices informing them of the grounds for which their dismissal was

sought. Clearly, petitioners' dismissal was not carried out in accordance with law and was, therefore, illegal. In view of petitioners' illegal dismissal, reinstatement and payment of backwages must necessarily be made. Petitioners' backwages must be computed from the time they were unjustly dismissed from employment on May 1, 2008 up to actual reinstatement.

8. ID.; APPEAL FROM THE LABOR ARBITER'S DECISION; APPEAL; PARTIES WHO DO NOT APPEAL FROM A JUDGMENT CAN NO LONGER SEEK MODIFICATION OR REVERSAL OF THE SAME.— This Court is aware that the Labor Arbiter, in his April 27, 2009 Decision, which was affirmed by the NLRC, denied petitioners' claims for underpayment of wages and benefits. Petitioners' claims for damages and attorney's fees were similarly denied for lack of merit. x x x [N]otwithstanding the above findings, the records would bear that petitioners did not appeal from the April 27, 2009 Decision of the Labor Arbiter. It was only before this Court that petitioners resurrected their claims for underpayment of wages and benefits, including damages and attorney's fees. Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's decision, provides: ART. 229 (223) *Appeal*. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x [P]arties who do not appeal from a judgment can no longer seek modification or reversal of the same. x x x Since the April 27, 2009 Decision of the Labor Arbiter, insofar as the unappealed portion of the said Decision is concerned, is already final and executory against the petitioners, respondents have already acquired vested rights by virtue of said judgment."[J]ust as the losing party has the privilege to file an appeal within the prescribed period, the winner also has the correlative right to enjoy the finality of the decision."

APPEARANCES OF COUNSEL

The Law Firm of Velandrez and Associates for petitioners.
De Leon and Desiderio for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[2] assails the May 11, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 112075, which set aside the August 28, 2009 Decision[4] and October 27, 2009 Resolution[5] of the National Labor Relations Commission (NLRC) declaring herein petitioners Pedrito R. Parayday (Parayday) and Jaime Reboso (Reboso) to have been illegally dismissed from employment. In a November 19, 2012 Resolution,[6] the CA refused to reconsider its earlier Decision.

Antecedent Facts

This case stemmed from a complaint[7] for illegal dismissal and regularization, underpayment of wages, overtime pay, rest day pay, holiday pay, holiday premium, service incentive leave (SIL), thirteenth (13th) month pay, and night shift differential pay, and claims for moral and exemplary damages, and attorney's fees filed by Parayday and Reboso against respondent Shogun Shipping Co., Inc.[8] (Shogun Ships), and Vicente R. Cordero (Cordero) and Antonio "Nonie" C. Raymundo (Raymundo), President and Vice-President, respectively, of Shogun Ships.

Petitioners Parayday and Reboso alleged that they were employed sometime in October 1996 and March 1997,

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

[3] *Id.* at 61-74; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez.

[4] *Id.* at 107-117; penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

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

[6] *Id.* at 365.

[7] CA *rollo*, pp. 88-89 and 91.

[8] See note 1.

respectively, as fitters/welders by Oceanview/VRC Lighterage Co., Inc., and VRC/Oceanview Shipbuilders Co., Inc. (collectively referred to as "Oceanview"), corporations engaged in the business of ship building. As fitters/welders, petitioners' duties and responsibilities included, among others, assembling, welding, fitting, and installing materials or components using electrical welding equipment, and/or repairing and securing parts and assemblies of Oceanview barges.[9] In support of their allegation that they were employees of Oceanview, petitioners presented a copy of Parayday's Oceanview Identification Card (ID),[10] and Certificate of Employment (COE) dated February 5, 2001.[11]

Sometime in 2003, Oceanview changed its corporate name to "Shogun Ships Inc.," herein respondent. Shogun Ships maintained the same line of business, and retained in its employ Oceanview employees, such as petitioners.

In the course of their employment with Oceanview and later with Shogun Ships, petitioners worked for seven days every week, and were paid a daily salary of Three Hundred Fifty Pesos (₱350.00) until their separation from employment with Shogun Ships sometime in May 2008. Petitioners alleged that Shogun Ships furnished to them handwritten payslips or Time Keeper's Reports which indicated their names, the hours and days worked, and the amount of compensation received by them in a given workweek.[12] Petitioners further alleged that Shogun Ships failed to pay them their overtime pay, holiday pay, and premium pay despite having rendered work during holidays, Sundays, and rest days. Shogun Ships likewise did not pay petitioners their SIL and 13th month pay.

Sometime in May 2006, petitioners were assigned to Lamao, Limay, Bataan to do a welding job on one of the barges of

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[9] CA *rollo*, p. 84.

[10] *Id.* at 173.

[11] *Id.* at 90.

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

Shogun Ships, M/T Daniela Natividad. On May 11, 2006, an explosion occurred which caused petitioners to sustain third degree burns on certain parts of their bodies. Petitioners were then hospitalized from May 11, 2006 until June 6, 2006. Although medical expenses were borne by Shogun Ships, petitioners were not paid their salaries while on hospital confinement. It was only on June 7, 2006, or after petitioners were discharged from the hospital, that Shogun Ships resumed payment of their salaries until the first week of August 2006. Thereafter, Shogun Ships discontinued providing petitioners financial assistance for payment of their medical expenses.

Petitioners alleged that subsequently the management of Shogun Ships verbally dismissed them from service effective May 1, 2008 due to lack of work as fitters/welders.

On its part, respondent denied outright that petitioners were engaged by Shogun Ships as regular employees. In support of its claim that no employer-employee relationship existed between Shogun Ships and petitioners, respondent pointed out that Shogun Ships, which is a corporation engaged in the business of domestic cargo shipping, was only incorporated sometime in November 2002,[13] several years after petitioners were engaged by Oceanview as its fitters/welders in 1996/1997. Anent petitioners' allegation of change of corporate name of Oceanview to Shogun Ships, respondent maintained that there was no such change of corporate name and that Oceanview was a separate and distinct entity from Shogun Ships.

Respondent alleged that, at best, petitioners were helpers brought in by regular employees of Shogun Ships on certain occasions when repairs were needed to be done on its barges. Respondent clarified that the regular employees of Shogun Ships occasionally called in their friends and nearby neighbors, such as petitioners, who were seeking temporary work as helpers until such time the needed repairs on the barges were carried out or completed. Shogun Ships compensated them for services rendered since the work done by these helpers were for the

[13] *Id.* at 124-128.

necessary repairs of its barges. Shogun Ships, however, did not engage them on a regular basis since their work on the barges was merely temporary or occasional. Moreover, Shogun Ships already had in its employ regular employees for its technical, mechanical, and electrical needs. Concomitantly, helpers were free to seek employment elsewhere at any given time.

To lend credence to respondent's claim that petitioners were merely occasionally engaged by employees of Shogun Ships with the view of helping petitioners earn additional income, respondent presented the sworn statements and affidavits[14] of Lito C. Panao and Virgilio Soriano, Jr., Shogun Ships' Vessel Materials Coordinator and Warehouseman, respectively.

Sometime in 2008, the regular employees of Shogun Ships ceased calling helpers to work on the repairs of the barges since they could already be completed without the helpers' assistance. It was during this time that petitioners started demanding work from Shogun Ships, which the latter could not provide as there was no work to be done on the barges.

Ruling of the Labor Arbiter

On April 27, 2009, Labor Arbiter Eduardo G. Magno promulgated a Decision,[15] the dispositive portion of which states:

WHEREFORE, Respondent Shogun Ships Co., Inc. is hereby ordered to reinstate complainants Pedrito R. Parayday and Jaime Reboso to their former position without loss of seniority rights with full backwages from time of dismissal until fully reinstated.

The computation of backwages from date of dismissal until date of this decision is as follows:

PEDRITO R. PARAYDAY	-₱108,150.00 and
JAIME REBOSO	-₱108,150.00

The claims for underpayment of wages and benefit are hereby denied for lack of factual basis.

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

[15] *Id.* at 54-58.

The claim for damages and attorney's fees are likewise denied for lack of factual basis.

SO ORDERED.[16]

The Labor Arbiter held that petitioners were regular employees of Shogun Ships considering that they: (1) performed tasks necessary and desirable to its business; and (2) rendered more than one year of service at the time of their dismissal from employment. On the issue of illegal dismissal, the Labor Arbiter ruled in favor of petitioners and held that respondent failed to prove that petitioners were dismissed for just or authorized cause and that they were afforded procedural due process. In computing the amount of petitioners' backwages, the Labor Arbiter took into consideration petitioners' years of service not only with Shogun Ships, but also with its predecessor, Oceanview.

Ruling of the National Labor Relations Commission

In its appeal[17] to the NLRC, respondent averred that the Labor Arbiter committed serious error amounting to grave abuse of discretion in finding that petitioners were regular employees of Shogun Ships, and that petitioners were illegally dismissed from employment. Respondent mainly contended that using the four-fold test, petitioners cannot be considered as employees of Shogun Ships. Respondent also argued that the Labor Arbiter erred in ruling that Shogun Ships is one and the same entity as Oceanview, since Shogun Ships, unlike Oceanview which is engaged in ship building, is engaged in the business of domestic cargo shipping. Respondent added that the petitioners' functions as fitters/welders cannot be regarded as necessary and desirable to the business of cargo shipping as its barges are not consistently in a state of disrepair. As petitioners are not employees of Shogun Ships, respondent insisted that no dismissal ever took place, much more any illegal dismissal.

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[16] *Id.* at 57-58.

[17] *Id.* at 174-193.

In its August 28, 2009 Decision,[18] the NLRC dismissed the appeal and affirmed the findings of the Labor Arbiter that petitioners were regular employees of Shogun Ships and that they were illegally dismissed from employment. The dispositive of the Decision states, as follows:

> **WHEREFORE**, premises considered, the appeal from the Decision dated April 27, 2009 is hereby DISMISSED for lack of merit.
>
> **SO ORDERED.**[19]

The NLRC took note of petitioners' allegations that after the May 11, 2006 explosion, they continued to render their services to Shogun Ships and even reported back for work in August 2006, which respondent did not categorically deny in its pleadings. Thus, even when their date of engagement with Shogun Ships was counted from the date of the incident, it would appear that petitioners have already rendered more than one year of service with Shogun Ships when they were purportedly dismissed from employment on May 1, 2008. On this premise, the NLRC held that the repeated and continuing need of petitioners' services as fitters/welders was sufficient evidence of the necessity if not indispensability of their functions, thus making them regular employees of Shogun Ships.

The NLRC also did not lend credence to the affidavits of Lito C. Panao and Virgilio Soriano, Jr. for the reason that they were biased witnesses.

On the issue of illegal dismissal, the NLRC affirmed the findings of the Labor Arbiter and held that respondent failed to prove that petitioners were dismissed for just or authorized cause.

Ruling of the Court of Appeals

Aggrieved, respondent filed a Petition for *Certiorari*[20] (with Prayer for the Issuance of a Writ of Preliminary Injunction

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[18] *Rollo*, pp. 107-117.

[19] *Id.* at 116.

[20] CA *rollo*, pp. 3-30.

and/or Temporary Restraining Order) before the CA ascribing upon the NLRC grave abuse of discretion amounting to lack or in excess of jurisdiction when it held that petitioners were employees of Shogun Ships and that they were illegally dismissed from employment.

In their Comment[21] to respondent's Petition for *Certiorari*, petitioners averred that the application of the four-fold test proved that they were employees of Shogun Ships. Petitioners also contended that their employment arrangement with Shogun Ships, *i.e.*, on a "per need" basis, was formulated to prevent them from acquiring regular employment status. Petitioners also harped on the supposed insufficiency of documentary evidence furnished by respondent which merely consisted of a copy of Shogun Ships' Certificate of Incorporation. Petitioners also claimed reinstatement and payment of their backwages and other monetary claims, including damages and attorney's fees.

In compliance with its July 8, 2010 Resolution,[22] the parties filed their respective memoranda[23] with the CA.

On May 11, 2012, the CA rendered its assailed Decision[24] granting respondent's Petition for *Certiorari* and setting aside the August 28, 2009 Decision and October 27, 2009 Resolution of the NLRC. The dispositive portion of the May 11, 2012 Decision reads as follows:

> **WHEREFORE**, the petition is GRANTED. [sic] Setting aside the NLRC's Decision dated August 28, 2009 and Resolution dated October 27, 2009, the complaint for illegal dismissal and other money claims is consequently dismissed.
>
> **SO ORDERED.**[25]

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[21] *Id.* at 236-272.

[22] *Id.* at 273.

[23] *Id.* at 281-316.

[24] *Rollo*, pp. 61-74.

[25] *Id.* at 74.

The CA concluded that petitioners failed to adduce substantial evidence to prove the existence of an employer-employee relationship between them and Shogun Ships. Considering the same, the CA held that there was no dismissal to speak of, much more any illegal dismissal.

While it took note of petitioners' Time Keeper's Reports which supposedly indicated that they have been reporting for work for seven days a week, the CA gave them no credence considering petitioners' failure to establish their genuineness and due execution. The CA also found that the records of the case were bereft of evidence which would prove that petitioners were continuously employed by Shogun Ships.

Additionally, the CA held that petitioners failed to prove that Oceanview were one and the same entity as Shogun Ships. The appellate court explained in this wise, *viz*.:

> We have to stress, at this point, that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. We cannot assume that the above-named companies are one and the same. Neither are we prepared to "pierce the veil of corporate fiction" as said doctrine comes into play "only during the trial of the case after the court has already acquired jurisdiction over the corporation," matters which are not present here. Worse, to apply such doctrine, it is important that the obtaining facts be properly pleaded and proved, *i.e.*, after conducting a hearing during a full-blown trial, a matter which equally is not true here. Besides, the piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice.[26] (Citations omitted)

Petitioners filed a motion for reconsideration[27] but the CA denied the same in its November 19, 2012 Resolution.[28] Hence, the instant Petition.

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[26] *Id.* at 73.

[27] CA *rollo*, pp. 347-360.

[28] *Rollo*, p. 406.

Issues

Petitioners raised the following issues for resolution:

I

THE [CA] SERIOUSLY ERRED IN FINDING THE TIME KEEPER'S REPORTS SUBMITTED BY THE PETITIONERS AS INSUFFICIENT EVIDENCE OF ESTABLISHING THEIR CONTINUOUS EMPLOYMENT WITH THE RESPONDENTS ON THE GROUND THAT THEIR GENUINENESS AND DUE EXECUTION WERE NOT ESTABLISHED.

II

THE [CA] SERIOUSLY ERRED IN RELYING ON THE BARE ASSERTION OF THE RESPONDENTS THAT PETITIONERS WERE MERELY "OCCASIONALLY CALLED IN" TO SERVE AS HELPERS.

III

THE [CA] SERIOUSLY ERRED IN AVOIDING TO PIERCE THE CORPORATE VEIL, ALLEGING A FULL[-]BLOWN TRIAL HAS TO BE HAD, NOTWITHSTANDING THAT IT WAS PROPERLY PLEADED AND PROVED BY THE PETITIONERS.

IV

THE [CA] ERRED IN ENTERTAINING AND GRANTING RESPONDENTS' PETITION FOR CERTIORARI UNDER RULE 65.

[V]

THE [CA] SERIOUSLY ERRED IN IGNORING THE NOTICE OF CHANGE OF COUNSEL WHEN IT RECOGNIZED THE COUNSEL WHO HAS NO AUTHORITY FROM PETITIONERS.

For brevity and clarity, the issues of the instant case may be simplified as follows: (1) whether petitioners were regular employees of Shogun Ships; and (2) whether petitioners were validly dismissed from employment.

Our Ruling

The Court grants the Petition.

Preliminary Matters

The issue of whether or not an employer-employee relationship existed between petitioners and Shogun Ships is essentially a question of fact.

At the outset, as to whether or not petitioners were regular employees of Shogun Ships, or whether or not an employer-employee relationship existed between petitioners and Shogun Ships, are essentially questions of fact[29] which, as a rule, cannot be entertained in a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court. Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[30] However, where, like in the instant case, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on one hand, and those of the CA, on the other hand, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case.[31] Thus, this Court shall take cognizance of and resolve the factual issues involved in this case.

Shogun Ships and Oceanview are two separate and distinct entities.

As a preliminary to a determination of the first issue, *i.e.*, whether petitioners were regular employees of Shogun Ships, petitioners contend that they were employed by Oceanview as far back as 1996/1997. Sometime in 2003, Oceanview supposedly changed its corporate name to Shogun Ships, herein respondent. Petitioners would thus make it appear that Oceanview and Shogun Ships are one and the same entity, which conveniently makes them employees of Shogun Ships since 1996/1997, or for a period of 11 years until they were dismissed from

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[29] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).

[30] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 74-75 (2006).

[31] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 790 (2015).

employment on May 1, 2008. Along the same lines, the Labor Arbiter, in his Decision, categorically held that Oceanview is the predecessor of Shogun Ships.

Notably, the contention of petitioners would support the conclusion that an employer-employee relationship indeed existed between petitioners and Shogun Ships based on the following premises: (1) that petitioners were engaged as fitters/welders by Shogun Ships through Oceanview; and (2) that petitioners were rendering their services to Oceanview, now Shogun Ships, as early as 1996/1997 or for a period of 11 years until their dismissal from employment on May 1, 2008.

In its Decision, the CA held that it cannot assume that Oceanview and Shogun Ships are one and the same since the two corporations have personalities that are separate and distinct from each other and, as such, must be taken distinctly and separately from one another. Moreover, the CA refused to apply the doctrine of piercing the veil of corporate fiction in the absence of a full-blown trial where facts pertaining thereto are properly pleaded and proved, and for lack of jurisdiction over Oceanview.

Petitioners, in asking this Court to treat Oceanview and Shogun Ships as one entity, insisted that the obtaining facts which would justify the application of piercing the veil of corporate fiction, *i.e.*, that Oceanview changed its corporate name to Shogun Ships, have been properly pleaded and proved by petitioners during the proceedings before the Labor Arbiter and the NLRC.

The records, however, are bereft of evidence which would show that Shogun Ships was formerly known as Oceanview or that Oceanview changed its corporate name to Shogun Ships.

Other than their bare allegations, petitioners could have presented before the labor tribunals Oceanview's amended Articles of Incorporation indicating that it changed its name to Shogun Ships, which petitioners, however, failed to do in this case. Nor did petitioners present any evidence which would show Oceanview's corporate affiliation with Shogun Ships, *i.e.*, that Oceanview was indeed the predecessor of Shogun Ships. What is clear is that Shogun Ships was only incorporated in

2002, several years after petitioners were supposedly engaged by Oceanview in 1996/1997.

Considering the foregoing premises, this Court is inclined to agree with the respondent and the CA that Shogun Ships and Oceanview are indeed two separate and distinct corporate entities. This Court will thus apply the general doctrine of separate juridical personality — that a corporation has a legal personality separate and distinct from that of its stockholders and other corporations to which it may be connected.[32]

Moreover, it is a well-established rule in labor proceedings that the Labor Arbiter, or this Court for that matter, cannot acquire jurisdiction over the person of the respondent until he/she is validly served with summons, or that he/she voluntarily appears in court.[33] In this connection, this Court already ruled in *Kukan International Corporation v. Reyes*[34] that compliance with the modes of acquiring jurisdiction over the person of the defendant or respondent cannot be dispensed with in applying the doctrine of piercing the veil of corporate fiction, thus:

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, **a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. x x x[35] (Emphasis supplied, citation omitted)

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[32] *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 964 (1996).

[33] *Dimson v. Chua*, 801 Phil. 778, 787 (2016).

[34] 646 Phil. 210 (2010).

[35] *Id.* at 234.

Moreover, this Court also held that "the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service."[36]

Otherwise stated, the above doctrine will only come into play once the court has already acquired jurisdiction over the corporation. Only then would it be allowed to present evidence for or against piercing the veil of corporate fiction. Thus, if the Labor Arbiter or the NLRC in this case have not acquired jurisdiction over the corporation, it would be improper for this Court to pierce the corporate veil as this would offend the corporation's right to due process.[37] In this case, it bears noting that Oceanview was never impleaded as a party respondent and was never validly served with summons. Nor was Oceanview represented by any authorized representative during the proceedings before the Labor Arbiter or the NLRC. It was merely dragged to the case by mere reference of its name in petitioners' *Sama-Samang Sinumpaang Salaysay*.[38]

Accordingly, this Court agrees with the CA that there was no full-blown trial as to the propriety of applying the said doctrine for the reason that Oceanview was never validly impleaded as a party respondent in the instant illegal dismissal case. Considering that this Court has not acquired jurisdiction over Oceanview, precisely because it was not properly impleaded herein as a party respondent, application of the said doctrine would be unwarranted.

On the issue of the existence of an employer-employee relationship

The proper resolution of this case necessarily hinges upon the existence of an employer-employee relationship. Necessarily,

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[36] *Id.*

[37] *Pacific Rehouse Corporation v. Court of Appeals*, 730 Phil. 325, 344 (2014).

[38] CA *rollo*, pp. 84-87.

therefore, before a determination of legality or illegality of petitioners' dismissal can be had, the existence of an employment relationship between petitioners and Shogun Ships must be first established. *Sy v. Court of Appeals*[39] is instructive, *viz.*:

> Three issues are to be resolved: (1) Whether or not an employer-employee relationship existed between petitioners and respondent Sahot; (2) Whether or not there was valid dismissal; and (3) Whether or not respondent Sahot is entitled to separation pay.
>
> Crucial to the resolution of this case is the determination of the first issue. Before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. (Citation omitted)

This Court, in *Palomado v. National Labor Relations Commission*,[40] also held in this wise:

> An indispensable precondition of illegal dismissal is the prior existence of an employer-employee relationship; in this case, since it was established that there was no such relationship between petitioner and private respondent Tan, therefore the allegation of illegal dismissal does not have any leg to stand on. The claims for backwages, separation pay and other benefits must likewise fail.

It is thus first incumbent upon this Court to resolve whether petitioners were indeed employees of Shogun Ships. Without such fact of an employment relationship being established, as in this case where respondent has denied outright such fact, then it would be futile on the part of this Court to determine the legality or illegality of petitioners' dismissal.

Test in determining the existence of an employer-employee relationship

Both the Labor Arbiter and the NLRC ruled that petitioners were employees of Shogun Ships considering that their tasks as fitters/welders were necessary and desirable to its business of cargo shipping, and that both petitioners have been rendering their services to Shogun Ships for more than one year. In

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[39] 446 Phil. 404, 413 (2003).

[40] 327 Phil. 472, 489 (1996).

concluding that no employer-employee relationship existed between petitioners and Shogun Ships, the CA, on its part, applied the four-fold test in this wise:

> In determining the existence of an employer-employee relationship, the Supreme Court has invariably adhered to the four-fold test, *viz.*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," considered to be the most important element.
>
> In this case, private respondents miserably failed to adduce substantial evidence to prove the existence of any of the aforementioned elements.[41]

To be clear, in determining the existence of an employer-employee relationship, this Court has time and again applied the "four-fold test" which has the following elements, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power to discipline and dismiss; and (d) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.[42]

By holding that petitioners were employees of Shogun Ships pursuant to their functions and years of service with it, the Labor Arbiter and the NLRC appeared to have invariably applied Article 295 (formerly Article 280) of the Labor Code, as amended, which states:

> Art. 295 (280). *Regular and Casual employment*. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, **an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer**, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the

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[41] *Rollo*, pp. 70-71.

[42] *David v. Macasio*, 738 Phil. 293, 307 (2014).

engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

From the foregoing recitals, Article 295 of the Labor Code merely distinguishes between certain kinds of employees, particularly, regular and casual employees, for purposes of determining their rights to certain benefits, such as to join or form a union, or to security of tenure.[43]

Moreover, an employer-employee relationship may cover peripheral or core activities of the employer's business. Thus, while a worker's task is not directly related, or necessary and desirable to the business of the employer, this does not mean, however, that no employer-employee relationship exists between the worker and the employer. Accordingly, the determination of the existence of an employer-employee relationship is defined by law according to the facts of each case, regardless of the nature of the activities involved.[44]

Article 295 should, therefore, not be used as a criterion to determine the existence of an employer-employee relationship. More importantly, the same provision does not apply where the existence of an employment relationship is in dispute.[45]

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[43] *Abante Jr. v. Lamadrid Bearing & Parts Corporation*, 474 Phil. 415, 427 (2004).

[44] *Philippine Fuji Xerox Corp. v. National Labor Relations Commission*, 324 Phil. 553, 561 (1996).

[45] *Coca-Cola Bottlers Phils., Inc. v. National Labor Relations Commission*, 366 Phil. 581, 590 (1999), citing *Singer Sewing Machine Company v. Drilon*, 271 Phil. 282, 291 (1991). *See* also *Purefoods Corporation (now San Miguel Purefoods Co., Inc.) v. National Labor Relations Commission*, 592 Phil. 144, 150-151 (2008).

The CA was therefore correct in applying the four-fold test in determining petitioners' employment status with Shogun Ships.

Petitioners are regular employees of Shogun Ships

"In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However [as mentioned above], before a case for illegal dismissal can prosper, an employer-employee relationship must first be established."[46]

In this jurisdiction, each party must prove his affirmative allegation. Since petitioners' case against respondents was premised on the existence of an employment relationship between them and Shogun Ships, petitioners must prove by their own evidence that such an employer-employee relationship indeed existed.[47] While it has been held that no particular form of evidence is required to prove such relationship, or that any competent and relevant evidence to prove the relationship may be admitted,[48] this Court believes that a finding of such relationship must still rest on substantial evidence,[49] or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[50] This is in accordance with the oft-repeated rule that in labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence.[51]

In proving their employment relationship with Shogun Ships, petitioners presented the following documentary evidence: (1)

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[46] *Lopez v. Bodega City*, 558 Phil. 666, 674 (2007).

[47] *Reyes v. Glaucoma Research Foundation, Inc.*, *supra* note 31 at 789.

[48] *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014).

[49] *Javier v. Fly Ace Corporation*, 682 Phil. 359, 369 (2012). *See* also *Reyes v. Glaucoma Research Foundation, Inc.*, *supra* note 31 at 790.

[50] *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).

[51] *Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017).

photocopy of Parayday's Oceanview ID;[52] (2) photocopy of Parayday's COE dated February 5, 2001 issued by "Oceanview Shipbuilding Co., Inc.";[53] and (3) photocopy of handwritten payslips or Time Keeper's Reports.[54]

Significantly, Parayday's Oceanview ID and COE provides no evidentiary value that petitioners were indeed employees of Shogun Ships. A perusal thereof clearly shows that the same was issued by Oceanview, and not Shogun Ships. The documents presented do not even make reference to Shogun Ships. As Shogun Ships has a distinct juridical personality from Oceanview, as discussed above, the Court is not inclined to conclude that said documents came from, or were issued by Shogun Ships. Save for herein petitioner Reboso, the ID and COE, at best, only demonstrate the employment relationship of petitioner Parayday with Oceanview, which, significantly, ceased in February 2001.

The CA did not also consider the Time Keeper's Reports as one of such proofs that petitioners were employees of Shogun Ships since the genuineness and due execution of the said reports were unverifiable.

We agree. While the reports may show petitioners' inclusion in the employer's payroll which may serve as a badge of regular employment, we are inclined to agree with the respondent that these reports were uncorroborated and could have been easily concocted or fabricated to suit the personal interest and purpose of petitioners. Notably, neither of the petitioners attested to the genuineness of the document, nor that the same were executed or signed in their presence. Petitioners did not even disclose the maker of the records, or that the signature appearing thereon is genuine.[55]

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[52] CA *rollo*, p. 173.

[53] *Id.* at 90.

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

[55] RULES OF COURT, Rule 132, Sec. 20.

In *Uichico v. National Labor Relations Commission*,[56] this Court held that:

> It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. x x x (Citations omitted)

Even if the records were admissible, they would not suffice to show petitioners' employment status with Shogun Ships. The reports presented by petitioners made no reference to Shogun Ships or Oceanview, or to any employer for that matter. These documents do not even indicate the years during which they were issued to petitioners. As correctly held by the CA, these reports cannot be considered as sufficient evidence to show that petitioners were engaged by Shogun Ships since 1996/ 1997.

Considering the foregoing premises, this Court is constrained to reexamine the facts of the instant case based on the allegations and sworn statements presented by the parties.

In its Decision, the CA found that petitioners failed to establish their employment relationship with Shogun Ships.

This Court disagrees.

The application of the four-fold test in this case shows that an employer-employee relationship did exist between petitioners and Shogun Ships.

While this Court cannot give credence to petitioners' allegations that they were engaged by Shogun Ships through Oceanview as early as 1996/1997 for reasons already stated above, it is worth noting that respondent have not categorically denied that sometime in May 2006, petitioners were engaged,

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[56] 339 Phil. 242, 250-251 (1997).

or at the least, were permitted by herein respondent to work on repairs on one of the barges of Shogun Ships, M/T Daniela Natividad. Respondent did not also deny that petitioners worked for Shogun Ships until they were supposedly verbally dismissed from employment on May 1, 2008. Notably, respondent even admitted that petitioners were called in to do repairs on the barges of Shogun Ships.

Significantly, respondent have not denied that petitioners were duly compensated for any work done by them on the barges. Respondent even categorically admitted that Shogun Ships provided petitioners financial assistance when they were hospitalized from May 11, 2006 until June 6, 2006. Respondent also have not disproved the allegation of petitioners that Shogun Ships continued to pay petitioners' salaries after they were discharged from hospitalization on June 7, 2006.

Respondent also have not categorically denied that petitioners were verbally dismissed on May 1, 2008, as in fact, respondent's allegations, *i.e.*, that petitioners' *"work to repair was only done when there is work available for them. Once the repair was done, petitioners were paid for work done, and it ends there"*[57] corroborated petitioners' claims that cessation of their services was determined by Shogun Ships.

All told, the fact that the aforesaid allegations of petitioners were not controverted by herein respondent lends credence to petitioners' assertions that Shogun Ships: (1) engaged them as its employees; (2) paid their salaries for services rendered; and (3) had ultimate discretion to dismiss their services after the needed repairs on the barges were carried out. It is worth noting that Rule 8, Section 11, of the Rules of Court, which supplements the NLRC Rules of Procedure,[58] provides that allegations which are not specifically denied are deemed admitted.[59]

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[57] *Rollo*, p. 427.

[58] 2011 NLRC RULES OF PROCEDURE, AS AMENDED, Rule 1, Sec. 3.

[59] *Traders Royal Bank v. National Labor Relations Commission*, 378 Phil. 1081, 1087 (1999).

As regards Shogun Ship's power of control over petitioners, respondent contended that Shogun Ships did not direct the manner and method in which petitioners do their work. It bears emphasis, however, that the control test calls merely for the existence of the right to control the manner of doing the work and not the actual exercise of the right.[60] Thus, in *Dy Keh Beng v. International Labor and Marine Union of the Philippines*,[61] this Court held that an employer's power of control, particularly over personnel working under the employer, is deemed inferred, more so when said personnel are working at the employer's establishment:

> Petitioner contends that the private respondents "did not meet the control test in the light of the x x x definition of the terms employer and employee, because there was no evidence to show that petitioner had the right to direct the manner and method of respondent's work." Moreover, it is argued that petitioner's evidence showed that "Solano worked on a *pakiaw* basis" and that he stayed in the establishment only when there was work.
>
> While this Court upholds the control test under which an employer-employee relationship exists "where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means to be used in reaching such end," it finds no merit with petitioner's arguments as stated above. It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right. Considering the finding by the Hearing Examiner that the establishment of Dy Keh Beng is "engaged in the manufacture of baskets known as *kaing*," it is natural to expect that those working under Dy would have to observe, among others, Dy's requirements of size and quality of the *kaing*. Some control would necessarily be exercised by Dy as the making of the *kaing* would be subject to Dy's specifications. Parenthetically, since the work on the baskets is done at Dy's establishments, it can be inferred that the proprietor Dy could easily exercise control on the men he employed.

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[60] *Dy Keh Beng v. International Labor and Marine Union of the Philippines*, 179 Phil. 131, 137 (1979).

[61] *Id.* at 136-137.

Clearly, considering that petitioners were working on the barges alongside regular employees of Shogun Ships and that they were taking orders from its engineers as to the required specifications on how the barges of Shogun Ships should be repaired, which respondent herein failed to deny, it may be thus logically inferred that Shogun Ships, to some degree, exercised control or had the right to control the work of petitioners.

We now go to the next issue: Did petitioners attain regular employment status?

Respondent maintains that petitioners cannot be placed in the same category as regular employees of Shogun Ships considering that they were merely called in occasionally by its regular employees, or on a "as per need" basis, and that their engagement as welders was dependent on the availability of the work needed on the repairs of the barges. In support of these allegations, respondent presented the sworn statements of Mr. Panao and Mr. Soriano, Jr., regular employees of Shogun Ships. Moreover, respondent insisted that petitioners' functions as fitters/welders cannot be regarded as those which are necessary and desirable to the business of cargo shipping.

While both the Labor Arbiter and the NLRC, on one hand, held that petitioners were regular employees of Shogun Ships, the CA ruled, on the other hand, that petitioners could not have attained regular employment status as they failed to prove that they were continuously employed by Shogun Ships.

Article 295 of the Labor Code "provides for two (2) types of regular employees, namely: *(a)* those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer (first category); and *(b)* those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed (second category)."[62]

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[62] *University of Santo Tomas v. Samahang Manggagawa ng UST*, 809 Phil. 212, 221 (2017).

The regular employment status of a person is defined and prescribed by law and not by what the parties say it should be.[63] Thus, while respondent was of the belief that rendering occasional work for Shogun Ships prevented the parties from creating an employment relationship, much more for petitioners from attaining regular employment status, provision of law, however, dictates that they were regular employees of Shogun Ships.

First, the records of the case are bereft of evidence that petitioners were duly informed of the nature and status of their engagement with Shogun Ships. Notably, in the absence of a clear agreement or contract, whether written or otherwise, which would clearly show that petitioners were properly informed of their employment status with Shogun Ships, petitioners enjoy the presumption of regular employment in their favor.[64]

Second, petitioners were performing activities which are usually necessary or desirable in the business or trade of Shogun Ships. This connection can be determined by considering the nature of the work performed by petitioners and its relation to the scheme of the particular business or trade of Shogun Ships in its entirety.[65] As Shogun Ships is engaged in the business of domestic cargo shipping, it is essential, if at all necessary, that Shogun Ships must continuously conduct vital repairs for the proper maintenance of its barges. The desirability of petitioners functions is bolstered by the fact that Shogun Ships itself precisely retained in its employ regular employees whose duties and responsibilities included, among others, performing necessary repair and maintenance work on the barges.

Third, irrespective of whether petitioners' duties or functions are usually necessary and desirable in the usual trade or business

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[63] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 439 (2014), citing *Price v. Innodata Phils., Inc./Innodata Corp.*, 588 Phil. 568, 580 (2008).

[64] See *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 346 (2014).

[65] *University of Santo Tomas v. Samahang Manggagawa ng UST*, *supra* note 62 at 62-63, citing *Universal Robina Corporation v. Catapang*, 509 Phil. 765, 779 (2005).

of Shogun Ships, the fact alone that petitioners were allowed to work for it for a period of more than one (1) year, *albeit* intermittently since May 2006 until they were dismissed from employment on May 1, 2008, was indicative of the regularity and necessity of welding activities to its business. As such, their employment is deemed to be regular with respect to such activities and while such activities exist.

In sum, we hold that petitioners have proven by substantial evidence — which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise"[66] that they were regular employees of Shogun Ships. In any event, it is well-settled in this jurisdiction that in any controversy between a laborer and his master, doubts reasonably arising from the evidence are resolved in favor of the laborer.[67]

Petitioners were illegally dismissed from employment

Having gained regular status, petitioners could only be dismissed for just or authorized cause after they had been accorded due process. Thus, the query: Were they dismissed in accordance with law?

It is an established principle that the dismissal of an employee is justified where there was a just cause and the employee was afforded due process prior to dismissal. The burden of proof to establish these twin requirements is on the employer, who must present clear, accurate, consistent, and convincing evidence to that effect.[68]

Here, respondent was unable to discharge the burden of proof required to establish petitioners' dismissal from employment

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[66] *Distribution & Control Products, Inc. v. Santos*, G.R. No. 212616, July 10, 2017, 830 SCRA 452, 460, citing *Agusan del Norte Electric Cooperative, Inc. v. Cagampang*, 589 Phil. 306, 313 (2008).

[67] *Masing and Sons Development Corporation v. Rogelio*, 670 Phil. 120, 133 (2011).

[68] *Allied Banking Corporation now merged with Philippine National Bank v. Calumpang*, G.R. No. 219435, January 17, 2018.

was legal and valid. The records also failed to show that respondent afforded petitioners due process prior to their dismissal, as in fact, they were merely verbally dismissed, and were thus not served notices informing them of the grounds for which their dismissal was sought. Clearly, petitioners' dismissal was not carried out in accordance with law and was, therefore, illegal.

In view therefore of petitioners' illegal dismissal, reinstatement and payment of backwages must necessarily be made. Petitioners' backwages must be computed from the time they were unjustly dismissed from employment on May 1, 2008 up to actual reinstatement.

Petitioners' claims of underpayment of wages and benefits, damages and attorney's fees, and solidary liability of individual respondents Cordero and Raymundo

This Court is aware that the Labor Arbiter, in his April 27, 2009 Decision, which was affirmed by the NLRC, denied petitioners' claims for underpayment of wages and benefits. Petitioners' claims for damages and attorney's fees were similarly denied for lack of merit. A perusal of the Labor Arbiter's Decision would also show that liability as to payment of petitioners' full backwages and award for reinstatement rested solely on Shogun Ships, to the exclusion of herein individual respondents Cordero and Raymundo. The pertinent portion of the April 27, 2009 Decision of the Labor Arbiter reads, as follows:

> Accordingly, respondent company has to reiterate [sic] complainants to their former position without loss of their seniority rights with full backwages from time of dismissal until fully reinstated.
>
> On the money claims, we deny the claims of underpayment of wages and benefits for lack of factual basis thereof. Likewise[,] the claim for damages and attorney's fees are likewise denied for lack of factual basis.[69]

[69] CA *rollo*, p. 57.

Notably, notwithstanding the above findings, the records would bear that petitioners did not appeal from the April 27, 2009 Decision of the Labor Arbiter. It was only before this Court that herein petitioners resurrected their claims for underpayment of wages and benefits, including damages and attorney's fees.[70]

Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's decision, provides:

> ART. 229 (223). *Appeal*. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

Meanwhile, Section 21, Rule V of the 2011 NLRC Rules of Procedure, as amended, provides:

> SECTION 21. *FINALITY OF THE DECISION OR ORDER AND ISSUANCE OF CERTIFICATE OF FINALITY*. — (a) Finality of the Decision or Order of the Labor Arbiter. — If no appeal is filed with the Regional Arbitration Branch of origin within the time provided under Article 223 (now 229) of the Labor Code, as amended, and Section 1, Rule VI of these Rules, the decision or order of the Labor Arbiter shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative. *(As amended by En Banc Resolution No. 11-12, Series of 2012)*

In *Industrial Management International Development Corporation (INIMACO) v. National Labor Relations Commission*,[71] this Court held that:

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. x x x (Citations omitted)

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[70] *Rollo*, pp. 25-32 and 58.

[71] 387 Phil. 659, 667 (2000).

Thus, parties who do not appeal from a judgment can no longer seek modification or reversal of the same. Considering that petitioners failed to question the findings of the Labor Arbiter, as even affirmed by the NLRC, that they are not entitled to their monetary claims consisting of underpayment of salaries and benefits, and claims for damages and attorney's fees, including Shogun Ship's exclusive liability for payment of petitioners' backwages, said findings have therefore long become final and can no longer be impugned in this action.[72]

Since the April 27, 2009 Decision of the Labor Arbiter, insofar as the unappealed portion of the said Decision is concerned, is already final and executory against the petitioners, respondents have already acquired vested rights by virtue of said judgment. "[J]ust as the losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision."[73]

Other matters

Petitioners impute fault on the CA for serving to Atty. Napoleon Banzuela, petitioners' former counsel, its May 11, 2012 Decision, and not to petitioners' counsel on record, The Law Firm of Velandrez and Associates, despite receipt of the Notice of Change in the Composition of the Law Office on January 26, 2012.[74] On this point, this Court finds that the CA committed no error when it served to Atty. Banzuela its May 11, 2012 Decision since it was only on July 17, 2012 that the Court of Appeals received Atty. Banzuela's Motion to Withdraw as Counsel[75] of petitioners.

In the matter of petitioners' motion to cite respondent for direct contempt of court for supposedly misrepresenting facts and using insulting language against petitioners, we find the same unmeritorious. While it is well-established that contemptuous

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[72] *Silliman University v. Fontelo-Paalan*, 552 Phil. 808, 817 (2007).

[73] *Id.* at 818.

[74] CA *rollo*, pp. 339-343.

[75] *Id.* at 370.

statements made in pleadings filed with the court constitute direct contempt,[76] a perusal of respondent's Comment (to petitioners' Petition) would show that no such contemptuous language was utilized. Moreover, this Court finds that respondent has not employed deceitful acts which would serve as basis for the charge of direct contempt.

WHEREFORE, the instant Petition is **GRANTED**. The May 11, 2012 Decision and November 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 112075 are **REVERSED** and **SET ASIDE**. The August 28, 2009 Decision and October 27, 2009 Resolution of the NLRC, which declared petitioners Pedrito R. Parayday and Jaime Reboso to have been illegally dismissed from employment, are **REINSTATED and AFFIRMED**.

The case is **REMANDED** to the Labor Arbiter for the purpose of re-computation of petitioners' full backwages.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 204978-83. July 6, 2020]

IGNACIO C. BAYA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (2ND DIVISION), THE OFFICE OF THE SPECIAL PROSECUTOR, and THE PEOPLE OF THE PHILIPPINES,** *respondents*.

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[76] *Ante v. Pascua*, 245 Phil. 745, 747 (1988).

[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE 65, SECTION 1 (PETITION FOR *CERTIORARI*) IN RELATION TO RULE 46, SECTION 3 (CONTENTS AND FILING OF PETITION); EFFECT OF NON-COMPLIANCE REQUIRES THE INDICATION OF THREE MATERIAL DATES; FAILURE THEREOF IS SUFFICIENT GROUND FOR DISMISSAL OF THE PETITION.— Rule 65, Section 1 in relation to Rule 46, Section 3 requires that a petition for *certiorari* indicate three (3) material dates, namely: (1) when the notice of the judgment or final order was received; (2) when the motion for new trial or reconsideration, if any, was filed; and (3) when notice of the denial of the motion for new trial or reconsideration was received. This is for the court or tribunal to easily assess whether the petition was timely filed. Failure to indicate these material dates is sufficient ground for the dismissal of the petition.

2. POLITICAL LAW; PHILIPPINE CONSTITUTION; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; WHAT CONSTITUTES VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAY; FACTORS TO DETERMINE INORDINATE DELAY.— [T]he right to speedy disposition of cases protects citizens from vexatious, capricious, and oppressive delays in the conduct of any case filed against them, whether the case be judicial, quasi-judicial, or administrative. x x x What constitutes "vexatious, capricious, and oppressive" delay is determined *not* by mere mathematical reckoning but in an *ad hoc*, case-to-case basis. Specifically for the Office of the Ombudsman, though constitutionally mandated to act promptly on complaints, it is given no specific time period the lapse of which would unequivocally establish delay in its conduct of preliminary investigations. Therefore, factors to determine inordinate delay had to be laid down, x x x The first of these factors is the length of delay, the "triggering mechanism[,]" so to speak, for invoking the right to speedy disposition of cases. However, length of time, in itself, is insufficient if it is justified by the peculiar circumstances of the case, such as the complexity of the issues involved or of the crime charged. x x x This goes to the second factor to determine inordinate delay: the reason for the delay. x x x Other reasons that may justify delay include

the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record. x x x Acts attributable to the respondent may also affect the finding of delay. This goes to the third factor: the respondent's assertion of the right. This Court has ruled that the right to speedy disposition of cases may be waived if raised belatedly. This is to prevent respondents from invoking the right only when an adverse resolution is rendered against them. Invocation of the right should not be a mere afterthought, and the respondent should not have employed "delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case." He or she cannot be allowed to benefit from his or her cunning. For the third factor, the respondent in the criminal case has the burden of proving that he had timely asserted the right. x x x The fourth and last factor of the balancing test is prejudice to the respondent, either in the form of oppressive pre-trial incarceration, anxiety and worry, or impairment of respondent's defense. x x x The interplay of these factors determine whether the delay was inordinate. Thus, it said that the right to speedy disposition of cases is a relative and flexible concept. This fluidity, however, gives rise to possible subjectivity and inconsistency in determining whether a case was disposed within an acceptable period of time. Addressing this, this Court in *Cagang* directed the Office of the Ombudsman to promulgate specific time periods for resolving complaints for preliminary investigation. The party with the burden of justifying the delay would then depend on when the delay occurred, that is, before or after the lapse of the time periods set. If the perceived delay occurred within the time periods, the defense has the burden of proving that the delay was inordinate. If the delay occurred after the time periods set, the prosecution has the burden of justifying the delay. Courts are now mandated to apply [the case of] *Cagang* [*v. Sandiganbayan*] on the mode of analysis for resolving claims of violation of the right to speedy disposition of cases.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; DETERMINATION OF PROBABLE CAUSE; EXECUTIVE DETERMINATION OF PROBABLE CAUSE DISTINGUISHED FROM JUDICIAL DETERMINATION

OF PROBABLE CAUSE.— Probable cause is understood in two (2) senses: (1) the executive; and (2) the judicial. The executive determination of probable cause is done during preliminary investigation where the prosecutor ascertains whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The executive determination of probable cause is within the exclusive domain of the prosecutor and, absent grave abuse of discretion, this determination cannot be interfered with by the courts. On the other hand, the judicial determination of probable cause is done by a judge to determine whether a warrant of arrest should issue. In the words of the Constitution, "no. . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" The Rules of Court in Rule 112, Section 5(a) reiterates that "the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence" for purposes of issuance of an arrest warrant.

4. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; ELEMENTS.— [T]he elements of malversation of public funds are: (1) that the offender is a public officer; (2) that he [or she] had custody or control of funds or property by reason of the duties of his [or her] office; (3) that those funds or property were public funds or property for which he [or she] was accountable; and (4) that he [or she] appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

5. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT; CORRUPT PRACTICES OF PUBLIC OFFICERS UNDER SECTION 3 (e); ELEMENTS.— [T]he elements of violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

6. POLITICAL LAW; LOCAL GOVERNMENT CODE; PERSONS ACCOUNTABLE FOR LOCAL GOVERNMENT FUNDS; CASE AT BAR.— Section 340 of the Local Government Code on persons accountable for local government funds provides: SECTION 340. ***Persons Accountable for Local Government Funds***. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof. It is clear that not only those with actual possession or custody of the local government funds are considered accountable persons. Local government officials become accountable public officers either: (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds. Despite not having actual custody of the municipality's funds, petitioner participated in their use or application by directing how the funds should actually be applied. In petitioner's case, his certification that the supposed beneficiaries were indigent and in need of financial assistance led to the use of the funds for the "Aid to the Poor" program. Petitioner cannot pass blame to the Provincial Social Work and Development Office, the office that allegedly had actual custody of the funds and approved of his reimbursement requests. Were it not for his certification in the Disbursement Vouchers and Reimbursement Expense Receipts, the Provincial Social Work and Development Office would not have approved the application for reimbursement.

APPEARANCES OF COUNSEL

Diamante & Associates Law Offices for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

LEONEN, *J.*:

The right to speedy disposition of cases is a relative and flexible concept. It is also waivable and must be seasonably raised. When considered appropriate, the assertion of the right ultimately depends on the peculiar circumstances of the case; hence, citing *Tatad v. Sandiganbayan*[1] will not automatically result in a dismissal on the ground of inordinate delay.

This resolves the Petition for *Certiorari*[2] filed by Ignacio C. Baya (Board Member Baya), alleging grave abuse of discretion on the part of the Sandiganbayan in denying[3] his Motion for Judicial Determination of Probable Cause[4] and eventually issuing a warrant for his arrest.[5]

Board Member Baya maintains that: (1) he was deprived of his right to due process when cases for malversation of public funds and violation of the Anti-Graft and Corrupt Practices Act were filed against him despite alleged lack of probable cause; and (2) the Sandiganbayan gravely abused its discretion in not dismissing the case against him, despite the violation of his right to speedy disposition of cases.[6]

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[1] 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

[2] *Rollo*, pp. 3-39.

[3] *Id.* at 40-46. The Resolution dated March 31, 2011 was penned by Associate Justice Teresita V. Diaz-Baldos, and concurred in by Associate Justices Edilberto G. Sandoval (Chairperson) and Samuel R. Martires (a former Justice of this Court) of the Second Division, Sandiganbayan, Quezon City.

[4] *Id.* at 267-275.

[5] *Id.* at 47-50. The Resolution dated May 4, 2012 was penned by Associate Justice Teresita V. Diaz-Baldos (Chairperson), and was concurred in by Associate Justices Napoleon E. Inoturan and Oscar C. Herrera, Jr. of the Second Division, Sandiganbayan, Quezon City.

[6] *Id.* at 27-33.

Baya was a Board Member of the Sangguniang Panlalawigan of Zamboanga Sibugay.[7] In 2001, the provincial government implemented the "Aid to the Poor" program to grant financial assistance to its poor constituents.[8] Funds for the program came from the savings in Personnel Services (PS) and Maintenance and Other Operating Expenses (MOOE) of the province's regular budget.[9]

Claiming that the implementation of the "Aid to the Poor" program was marred with anomalies and irregularities, Provincial Accountant Venancio C. Ferrer filed before the Office of the Deputy Ombudsman for Mindanao criminal and administrative complaints against the Governor, Vice-Governor, and members of the Sangguniang Panlalawigan in 2003.[10] Provincial Governor George T. Hofer filed a complaint to question the legality of the realignment of funds for the "Aid to the Poor" program.[11]

Considering that the complaints involved the disbursement of public funds, in March 2003, the Office of the Deputy Ombudsman requested the Commission on Audit to conduct an audit investigation.[12] In the meantime, the complaints were dismissed without prejudice to their refiling depending on the Commission on Audit's findings.[13]

In an audit report submitted on February 19, 2004,[14] the Commission on Audit confirmed that there were anomalies in the implementation of the "Aid to the Poor" program. The scheme essentially consisted of the Governor, Vice-Governor, and Zamboanga Sibugay's Board Members allegedly giving financial

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[7] *Id.* at 6.

[8] *Id.* at 8.

[9] *Id.* at 62, July 10, 2006 Ombudsman Resolution.

[10] *Id.* at 60.

[11] *Id.*

[12] *Id.* at 9.

[13] *Id.* at 60.

[14] *Id.* at 9.

assistance from their own pockets, then seeking reimbursement of the amounts from the realigned funds.[15] Reimbursement forms were submitted thereafter, and the disbursement vouchers were approved either by the Governor or by the Vice-Governor.[16] In reality, however, the beneficiaries were nonexistent,[17] and the officials used the realigned funds for their own benefit.

Specifically with respect to Board Member Baya, he was found to have requested for the reimbursement of a total of ₱60,000.00. The amount was allegedly given to 18 named beneficiaries, 14 of whom were found to be fictitious. The 14 were not listed as residents of the area indicated in the application forms, and the Municipal Local Government Operations Officers deployed to the supposed residences of the beneficiaries did not find them there.[18]

The Office of the Deputy Ombudsman considered the submission of Commission on Audit Report as the docketing of the case.[19] It then required Board Member Baya and members of his staff[20] who had prepared the Brief Social Case Study Reports, Application Forms, and Reimbursement Expense Receipts to file their counter-affidavits.[21]

Board Member Baya first submitted a Counter-Affidavit and a Supplemental Counter-Affidavit to the Office of the Deputy Ombudsman. In his Counter-Affidavit, Board Member Baya alleged that members of his staff, namely: (1) Nelita Rodriguez; (2) Alice Libre; and (3) Rex Tago conducted the interview of the beneficiaries and prepared the Brief Social Case Study

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[15] *Id.* at 62.

[16] *Id.*

[17] *Id.* at 61.

[18] *Id.* at 75.

[19] *Id.* at 61.

[20] *Id.* at 75. The members involved are Nelita R. Rodriguez, Alice B. Libre, and Rex P. Tago.

[21] *Id.* at 75 and 97.

Reports.[22] He also chose to "[advance] the amounts to the clients to expeditiously meet their financial problems rather than follow the rigorous processing of vouchers and checks which would take days [and] would have defeated the purpose upon which the clients sought said financial assistance."[23]

However, in his Supplemental Counter-Affidavit filed on July 14, 2004,[24] Board Member Baya claimed that he himself conducted the preliminary interview of the intended beneficiary before giving the monetary assistance.[25] He then left the gathering and completion of the other requirements to his staff.[26]

Further, Board Member Baya maintained that he extended financial assistance to existing beneficiaries, but that he "cannot point out with absolute accuracy the names and other personal circumstances of all those who availed assistance through . . . the 'Aid to the Poor' program[.]"[27] In any case, he allegedly gave his best efforts to locate those who had availed themselves of the financial assistance through him, instructing members of his staff to trace the whereabouts of these beneficiaries.[28] He found that some of the allegedly nonexistent beneficiaries held residence in the addresses indicated in their application forms, evidenced by either barangay certifications or affidavits from the beneficiaries themselves or persons who knew of their existence.[29]

As for the confirmation letters sent by the Commission on Audit to the alleged beneficiaries which were returned to senders, Board Member Baya argued that the returned letters, in

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[22] *Id.* at 113.

[23] *Id.* at 100.

[24] *Id.* at 196.

[25] *Id.* at 113.

[26] *Id.*

[27] *Id.* at 197.

[28] *Id.* at 198.

[29] *Id.* at 198-199.

themselves, do not prove that the intended recipients did not exist. He alleged that upon consultation with the barangay captain and other officials of Poblacion Diplahan in Zamboanga Sibugay, letters were oftentimes not delivered personally to the addressee especially in remote barangays. Instead, names of addressees were posted in the barangay bulletin board and, if the letters were not claimed after a few days, they were returned to senders. It could very well be that the addressees were unaware that they had letters awaiting them in the barangay hall. However, it does not mean that these beneficiaries do not exist. Therefore, the finding of the Commission on Audit that the beneficiaries who had availed themselves of financial assistance through him were fictitious was presumptuous.[30]

In a 136-page Resolution[31] dated July 10, 2006, the Office of the Ombudsman found probable cause to indict Board Member Baya, together with 31 other co-respondents, including the Provincial Governor, Vice-Governor, Board Members of the Province of Zamboanga Sibugay, and their respective staff who participated in the scheme,[32] for the commission of malversation of public funds[33] through falsification of public documents and

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[30] *Id.* at 199.

[31] *Id.* at 59-194.

[32] *Id.* at 59. Board Member Baya's co-respondents were Governor George T. Hofer, Vice-Governor Eugenio L. Famor, Board Members Olympio R. Mañalac, Eric Cabarios, George C. Castillo, Ma. Bella Chiong Javier, Edgar C. Gonzales, Fe F. Gonzales, Leonardo R. Lagas, Ares A. Modapil, and Galwas Musa, and employees Editha Quinte, Lucia T. Palang, Daylinda P. Balbosa, Erlinda D. Albelda, M.Y. Mañalac-Toledo, Gliceria D. Laquijon, Nelita R. Rodriguez, Alice B. Libre, Rex P. Tago, Michelle B. Navalta, James Ismael A. Reventad, Fe B. Pontanar, Wilfredo K. Duran, Arnold S. Bustillo, Juanito C. Taripe, Jr., Almabella C. Zambales, Esmeraldo S. Trapa, Fhadzrama A. Modapil, Rafael J. Quirubin, and Arnel Pague.

[33] REV. PEN. CODE, Art. 217, as amended by Republic Act Nos. 1060 and 10951, provides:

Article 217. *Malversation of public funds or property. — Presumption of malversation.* Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment

violation of Section 3 (e)[34] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

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or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

[34] Republic Act No. 3019 (1960), Sec. 3 (e) 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.

The Office of the Deputy Ombudsman for Mindanao found that Board Member Baya indeed caused the reimbursement of a total of ₱60,000.00 under three (3) disbursement vouchers for amounts he allegedly advanced to poor beneficiaries of the "Aid to the Poor" program. However, of the 18 beneficiaries that had allegedly availed of financial assistance, 14 could not be located. While Board Member Baya submitted affidavits from the alleged beneficiaries of the "Aid to the Poor" program, the Office of the Ombudsman said that these do not "sufficiently explain the inconsistency attending the grant of financial aid to the other beneficiaries whose existence remains doubtful."[35]

It thus concluded that "the documents, such as the [Brief Social Case Study Reports], Application Forms[,] and the Reimbursement Expense Receipts, submitted by [Baya and his co-respondents] to support the claims under the different disbursement vouchers were false and merely fabricated to make it appear that the money was spent and given to the poor."[36]

Aside from the Provincial Governor, Vice-Governor, and the Provincial Board Members, the members of their respective staff who had prepared and signed the Brief Social Case Study Reports, Application Forms, and Reimbursement Expense Receipts were likewise indicted as principals because, according to the Ombudsman, "[t]he appropriation of the subject public funds would not have been carried out were it not for [their] indispensable and active participation[.]"[37]

Even granting that the funds were under the custody of the Provincial Social Welfare and Development Office, the Office of the Ombudsman held, nonetheless, that Board Member Baya and his co-respondents may still be held accountable and responsible since they participated in the misuse and misapplication of the funds.[38] Lastly, the undue haste and evident

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[35] *Rollo*, p. 114.

[36] *Id.* at 160.

[37] *Id.*

[38] *Id.*

bad faith of the respondents were shown by the grant of financial assistance even before the enactment in 2002 of the ordinance providing for guidelines regulating the "Aid to the Poor" program.[39]

The dispositive portion of the July 10, 2006 Resolution of the Office of the Ombudsman partly read:

WHEREFORE, FOREGOING PREMISES CONSIDERED, this Office after due consideration of the evidence on hand finds the existence of probable cause for the commission of the crimes of Malversation thru Falsification of Public Documents and violation of Sec. 3(e) of RA 3019 against the following respondents:

x x x x x x x x x

IGNACIO BAYA, NELITA R. RODRIGUEZ, ALICE B. LIBRE and **REX P. TAGO**

For violation of Sec. 3(e) of R.A. 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of ₱29,000.00 under [**Disbursement Voucher] No. 101-0201-91** and paid under Check No. 75448 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/ beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.

For violation of Sec. 3(e) of RA 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of ₱10,000.00 under **[Disbursement Voucher] No. 101-0109-363** and paid under Check No. 59463 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/ beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.

For violation of Sec. 3(e) of RA 3019 for causing undue injury to the government thru evident bad faith by collecting the amount of ₱21,000.00 under **[Disbursement Voucher] No. 101-0201-90** and

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[39] *Id.* at 161-162.

paid under Check No. 75447 and making it appear that the said amount was used for the Aid to the Poor Program and distributed as financial assistance to the poor of Zamboanga Sibugay when no such financial assistance was granted or extended as the alleged recipients/ beneficiaries of said assistance were fictitious and non-existent, to the detriment of the government and the people of Zamboanga Sibugay.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0201-91** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱29,000.00 paid under Check No. 75448 dated 03 January 2002.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0109-363** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱10,000.00 paid under Check No. 59463 dated 04 September 2001.

For Malversation thru Falsification of Public/Official Document for falsifying the [Brief Social Case Study Report], [Department of Social Welfare and Development] Form 200, and the [Reimbursement Expense Receipt] used as supporting paper to **[Disbursement Voucher] No. 101-0201-90** and making it appear therein that there were beneficiaries who were given financial assistance when no such beneficiaries exist, thus enabling respondents to collect and appropriate the aggregate amount of ₱21,000.00 paid under Check No. 75447 dated 03 January 2002.

x x x x x x x x x

ACCORDINGLY, THE SPECIAL PROSECUTION OFFICE is respectfully urged to cause the filing of the herewith attached Information(s) against the aforenamed accused. . .

x x x x x x x x x

Moreover, as admitted by the members of the Audit Team, they sampled only forty-two (42) Disbursement Vouchers used in the alleged anomalous disbursement of funds appropriated for the "Aid to the Poor" program, due to lack of time. Hence, there are other Disbursement Vouchers which are not yet audited by the Audit Team.

For a comprehensive resolution of the issues involved, there is a need for the [Commission on Audit-Regional Office Number IX] to conduct an investigation touching on the alleged illegal reversions of public funds as presented in OMB-M-C-02-0496-I; and to complete its audit-investigation on the remaining Disbursement Vouchers used in the disbursement of public funds allocated for the "Aid to the Poor" program. To simplify matters, the issue presented in OMB-M-C-02-0496-I, and the remaining disbursements under the "Aid to the Poor" which are not yet audited by the [Commission on Audit], shall be redocketed separately was CPL cases.

x x x x x x x x x

LASTLY, THIS OFFICE acknowledges with grateful appreciation the perseverance and dedication exemplified by the auditors of the Commission on Audit, Regional Office No. IX in the conduct of its investigation. This Office will continue to look forward with enthusiasm to the continued and unyielding support and assistance of the Commission on Audit to its endeavors and goals which are all geared for an honest and efficient government.

SO RESOLVED.[40] (Emphasis in the original)

On September 22, 2010, three (3) Informations for violation of Section 3 (e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act along with three (3) Informations for Malversation of Public Funds thru Falsification of Public Documents were filed before the Sandiganbayan against Board Member Baya, as well as Nelita R. Rodriguez, Alice B. Libre, and Rex P. Tago, the latter three (3) being members of his staff who had prepared or otherwise signed the Brief Social Case Study Reports, copies of Department of Social Welfare and Development Form 200, and the Reimbursement Expense Receipts used to reimburse amounts allegedly given to the

[40] *Id.* at 162-192.

inexistent beneficiaries. Considering that the crime charged against Board Member Baya was a complex crime and the amount involved was more than "₱22,000.00 or higher[,]" no bail was recommended pursuant to the 2000 Bail Bond Guide issued by the Department of Justice, National Prosecution Service.[41]

On October 6, 2010,[42] Board Member Baya filed a Motion for Judicial Determination of Probable Cause[43] with prayer for dismissal of the cases against him. He maintained that he was not furnished a copy of the July 10, 2006 Resolution of the Ombudsman and that there was no probable cause to hold him for the criminal charges against him.[44] He added that his right to speedy disposition of cases was seriously violated when it took the Office of the Ombudsman almost seven (7) years to finish the preliminary investigation.[45] As basis, he cited *Tatad v. Sandiganbayan*[46] where this Court held that a delay in the preliminary investigation that is close to three (3) years is violative of the right to speedy disposition of cases, leading to the dismissal of the criminal complaints against then Secretary of the Department of Public Information Francisco Tatad.

In its March 31, 2011 Resolution,[47] the Sandiganbayan held that during preliminary investigation, failure to furnish a copy of the resolution recommending the filing of information against the respondent does not invalidate the information already filed in court. The proper remedy of the respondent is to file, with leave of court, a motion for reconsideration with the prosecutor, which Board Member Baya failed to do.[48]

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[41] *Id.* at 234 *citing* Department of Justice Circular No. 89 (2000).

[42] *Id.* at 40.

[43] *Id.* at 267-275.

[44] *Id.* at 271-273.

[45] *Id.* at 271.

[46] 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

[47] *Rollo*, pp. 40-46.

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

As to Board Member Baya's claim that his right to speedy disposition of cases was violated, the Sandiganbayan said that it is a "flexible concept"[49] and that "[d]ue regard must be given to the facts and circumstances surrounding each case."[50] According to the Sandiganbayan, the long period that took the Ombudsman to resolve the case, in itself, is not the measure of whether the right was violated, further explaining that:

> [The right to speedy disposition of cases] is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. In the determination of whether or not this right has been violated the Supreme Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[51]

The Sandiganbayan noted that Board Member Baya raised his objection to his perceived delay in the resolution of the case during the preliminary investigation stage only until the information was filed in court. This, the Sandiganbayan said, was a belated assertion of the right. Further, the case involved numerous respondents and voluminous records, which justified the long period to resolve the case.[52]

Ultimately, the Sandiganbayan denied the Motion for Judicial Determination of Probable Cause but ordered the Office of the Ombudsman to reinvestigate the cases against Board Member Baya, nevertheless. The dispositive portion of the Sandiganbayan's March 31, 2011 Resolution reads:

> **WHEREFORE**, premises considered, the Court hereby ***DENIES*** the Motion for Judicial Determination of Probable Cause (With Prayer

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[49] *Id.* at 45.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 45-46.

for Outright Dismissal) filed by the accused, but in the interest of justice treats this pleading as a motion for leave to file a motion for reinvestigation from the resolution of the Office of the Ombudsman. Accordingly, the Office of the Ombudsman is hereby directed to conduct a reinvestigation of these cases and to submit its Report/Resolution thereon, both within a given period of sixty (60) days from receipt hereof.

SO ORDERED.[53] (Emphases in the original)

Board Member Baya received a copy of the March 31, 2011 Resolution on April 15, 2011, through his counsel, Atty. Fernando M. Peña (Atty. Peña).[54]

For its part, the Office of the Ombudsman issued the April 14, 2011 Order[55] pursuant to the Sandiganbayan's directive to reinvestigate the case. It directed Board Member Baya to file a motion for reconsideration or reinvestigation within five (5) days from notice, warning him that failure to file the required motion shall be deemed a waiver, and that the cases shall be resolved based on the evidence on record.

The Order was served via registered mail to Board Member Baya's former counsel, Atty. Alberto P. Din (Atty. Din), and his collaborating counsel, Atty. Peña.[56]

Based on the registry return receipts, Atty. Din actually received a copy of the April 14, 2011 Order on April 29, 2011 while Atty. Peña, collaborating counsel, received his copy on April 28, 2011.[57] However, despite receipt of a copy of the April 14, 2011 Order, neither counsels filed a motion for reconsideration or reinvestigation before the Office of the Ombudsman.

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[53] *Id.* at 46.

[54] *Id.* at 54.

[55] *Id.* at 280.

[56] *Id.*

[57] *Id.* at 219, Order dated July 13, 2011.

In compliance with the order to reinvestigate the cases, the Office of the Ombudsman submitted[58] to the Sandiganbayan the June 1, 2011 Resolution.[59] The Resolution essentially reiterated the findings in the July 10, 2006 Resolution, since Board Member Baya failed to file a Motion for Reconsideration or Reinvestigation and the cases were resolved based on the evidence on record. In any case, the Office of the Ombudsman still considered the former submissions of Board Member Baya in resolving the case. The Office of the Ombudsman recommended as follows:

> **WHEREFORE**, premises considered, it is respectfully recommended by the undersigned prosecutors that the Resolution of the Office of the Ombudsman-Mindanao dated July 10, 2006 finding probable cause against the accused-movants be MAINTAINED.
>
> RESPECTFULLY SUBMITTED.[60] (Emphasis in the original)

In the meantime, on June 7, 2011,[61] Board Member Baya, who is also a member of the Bar, filed on his own behalf and that of his co-respondents Rodriguez, Libre, and Tago a Motion for Reconsideration[62] *before the Sandiganbayan* of its March 31, 2011 Order, maintaining that there was no probable cause for the filing of the Informations against him in court. He alleged that despite receipt of the *Ombudsman*'s Order to file a motion for reconsideration and/or reinvestigation, his former counsel, Atty. Din, failed to file the required motion and subsequently "signified his intention to withdraw as counsel for the accused[.]"[63] He prayed that "the . . . Motion for Reconsideration be admitted and considered by the *Honorable Ombudsman* despite its delay."[64]

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[58] *Id.* at 281-283, Compliance dated July 4, 2011.

[59] *Id.* at 284-299.

[60] *Id.* at 297.

[61] *Id.* at 47, Resolution dated May 4, 2012.

[62] *Id.* at 300-304.

[63] *Id.* at 300.

[64] *Id.*

Realizing that the Motion for Reconsideration he had earlier filed before the Sandiganbayan was meant for the Office of the Ombudsman, Board Member Baya filed a Motion to Admit Motion for Reconsideration[65] before the Office of the Ombudsman. This was denied by the Office of the Ombudsman in the July 13, 2011 Resolution[66] for lack of merit.

Furthermore, the Office of the Ombudsman rejected Board Member Baya's argument. Board Member Baya argued that by the time Attys. Din and Peña had received a copy of the April 14, 2011 Order directing Board Member Baya to file a motion for reconsideration and reinvestigation, Atty. Din had already signified his intention to withdraw as counsel, saying that it "[was] not a justifiable reason"[67] and, consequently, Atty. Din's negligence bound Board Member Baya.[68]

The Motion for Reconsideration merely rehashed the arguments made in the Supplemental Counter-Affidavit, arguments which were already considered when the Office of the Ombudsman resolved the criminal complaints against Board Member Baya and his co-respondents.[69]

Meanwhile, the Sandiganbayan admitted the Amended Informations, and then set Board Member Baya's arraignment on several instances. On February 28, 2012, the Sandiganbayan called Baya's case, but Atty. Joventino Diamante, acting as counsel for Board Member Baya, manifested that there was a pending Motion for Reconsideration before the court. Thus, the Sandiganbayan cancelled the arraignment and deferred it to April 26, 2012.[70]

Before April 26, 2012, however, Board Member Baya filed another Motion to Cancel Arraignment and Defer Enforcement

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[65] *Id.* at 318-320.

[66] *Id.* at 218-222.

[67] *Id.* at 219.

[68] *Id.* at 220.

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

[70] *Id.* at 345.

Warrant of Arrest to reiterate the allegedly pending Motion for Reconsideration before the Sandiganbayan.[71]

On April 26, 2012, the Sandiganbayan called the case for Board Member Baya's arraignment once more. When Board Member Baya failed to appear and after finding that the alleged Motion for Reconsideration was not addressed to the court, it issued an Order[72] denying the Motion for Reconsideration and rescheduled Board Member Baya's arraignment to July 26, 2012.

Further, in the May 4, 2012 Resolution,[73] the Sandiganbayan again denied the Motion for Reconsideration of its March 31, 2011 Order. It noticed that the Motion for Reconsideration filed before it indeed bore the caption "Sandiganbayan." However, the Motion was "actually addressed to the Office of the Ombudsman and in fact [sought] relief from that Office for the dismissal of the cases for alleged lack of probable cause."[74]

Therefore, the Motion for Reconsideration was erroneously filed, and the Sandiganbayan treated it as a "mere scrap of paper, legally [nonexistent], [requiring] no action and is deemed never to have been filed."[75] In the end, the Sandiganbayan merely noted the Motion for Reconsideration, and issued a warrant for Board Member Baya's arrest. The dispositive portion of the Sandiganbayan's May 4, 2012 Resolution reads:

> **WHEREFORE**, in the [sic] light of the foregoing, the Court resolves merely to ***NOTE*** the Motion for Reconsideration dated May 27, 2011 filed by accused Ignacio C. Baya, Nelita R. Rodriguez, Alicia B. Libre, and Rex P. Tago, as well as the Comment thereto, the Reply to the Comment, the Rejoinder and the Sur-Rejoinder attached to the records.
>
> There being no other matter to be resolved, let a Warrant of Arrest be issued against the accused.

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[71] *Id.* at 238.

[72] *Id.* at 346.

[73] *Id.* at 47-50.

[74] *Id.* at 48.

[75] *Id.* at 50.

SO ORDERED.[76] (Emphasis in the original)

On May 28, 2012, Board Member Baya filed a Motion for Reconsideration of the April 26, 2012 Order, insisting that the Sandiganbayan admit his Motion for Reconsideration of the March 31, 2011 Order as his Motion for Reconsideration of the Order denying his Motion for Judicial Determination of Probable Cause.[77] This was denied by the Sandiganbayan in the November 20, 2012 Resolution,[78] noting that it had granted Baya's previous prayer earlier to defer his arraignment.

Further, Board Member Baya had sufficient opportunity to file the proper Motion for Reconsideration, but failed to do so. According to the Sandiganbayan, to grant the Motion for Reconsideration of the April 26, 2012 Order "would be a travesty of court procedure."[79] It added that "the accused have already abused their penchant for delaying the implementation of the warrant of arrest issued against them as well as their arraignment."[80]

The dispositive portion of the November 20, 2012 Resolution read:

WHEREFORE, in the [sic] light of all the foregoing, the Court hereby ***DENIES*** the instant motion for paucity of merit.

The PNP Provincial Command of Zamboanga Sibugay is hereby ordered to implement the Warrant of Arrest issued by this Court on May 8, 2012.

SO ORDERED.[81] (Emphasis in the original)

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[76] *Id.*

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

[78] *Id.* at 51-57. The Resolution was penned by Associate Justices Teresita V. Diaz-Baldos (Chairperson), Napoleon E. Inoturan, and Oscar C. Herrera, Jr. of the Second Division, Sandiganbayan, Quezon City.

[79] *Id.* at 56.

[80] *Id.*

[81] *Id.*

As for the Amended Informations, Board Member filed a Comment, which the Sandiganbayan treated as a "mere scrap of paper"[82] in the Order[83] dated November 21, 2012. It then reset the arraignment to January 17, 2013.

ORDER

Considering that the Court had already admitted the Amended Information in these cases and that the Comment on the Amended Information with Prayer to Adopt and Early Resolve the Pending Motion for Reconsideration of the Accused was belatedly filed by the accused only on November 16, 2012, the Court considers the latter pleading as a mere scrap of paper.

Let the arraignment be reset to January 17, 2013 at 1:30 o'clock in the afternoon.

SO ORDERED.[84]

On January 14, 2013, petitioner filed the Petition for *Certiorari*[85] under Rule 65 with Application for Preliminary Injunction and/or Temporary Restraining Order. Upon the directive of this Court, the Office of the Special Prosecutor, representing the Sandiganbayan and the People of the Philippines, filed a Comment,[86] to which petitioner replied.[87]

The issues raised in the Petition are the following:

First, whether or not the Sandiganbayan gravely abused its discretion in not dismissing the cases for malversation of public funds and the cases for violation of Section 3 (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act for lack of probable cause; and

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[82] *Id.* at 58.

[83] *Id.* The Order was issued by Associate Justices Teresita V. Diaz-Baldos, Napoleon E. Inoturan, and Oscar C. Herrera, Jr. of Second Division, Sandiganbayan.

[84] *Id.*

[85] *Id.* at 3-39.

[86] *Id.* at 228-266.

[87] *Id.* at 363-370.

Second, whether or not the Sandiganbayan erred in not dismissing the cases filed against petitioner for violation of his constitutional rights to due process and speedy disposition of cases.

Petitioner argues that he should not have been charged with malversation of public funds through falsification of public documents. He first enumerates the elements of Article 217 of the Revised Penal Code, which defines the felony of malversation of public funds or property. He then points out that three (3) of the four (4) elements are allegedly missing in this case. Specifically, apart from the element of the accused being a public officer, all the other elements are purportedly absent. He insists that: (1) he had no custody or control of funds or property by reason of the duties of his office; (2) he was not accountable for any public funds or property; and (3) he did not appropriate, take, misappropriate or consent or, through abandonment or negligence, permit another person to take public funds.[88]

Petitioner alleges that the funds for the "Aid to the Poor" program was under the custody of the Provincial Social Welfare and Development Office. He maintains that he never misappropriated any of the funds for the "Aid to the Poor" program, especially since the money he had given to the poor beneficiaries came from his own pocket. All that petitioner sought was a reimbursement of the amounts he had given out from his personal funds, and whether his request for reimbursement will be granted was still subject to the discretion of the Provincial Social Welfare and Development Office. Therefore, there is no malversation of public funds on his part.[89]

Petitioner adds that he should not have been charged with violating Section 3 (e) of Republic Act No. 3019 because no undue injury was caused to any party or to the government. Further, petitioner maintains that he did not benefit from the

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

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

"Aid to the Poor" program since, as he has alleged repeatedly, the money he gave out came from his own funds.[90]

He also assailed the manner by which the Commission on Audit confirmed the existence of the beneficiaries. According to petitioner, it was error for the Commission on Audit and the Office of the Ombudsman to consider the confirmation letters that were returned to senders as proof of the nonexistence of beneficiaries. While it may be true that the addressees may no longer be found at the addresses they gave at the time they availed themselves of the "Aid to the Poor" program, it could very well be that they had already moved out of their old homes. In addition, the Office of the Ombudsman should have considered the affidavits he submitted in evidence, allegedly issued by the some of the beneficiaries of the "Aid to the Poor" program, proving that they indeed received aid from petitioner.[91]

Apart from the lack of probable cause, petitioner argues that the Sandiganbayan gravely abused its discretion for not dismissing the cases on the ground of violation of his rights to due process and speedy disposition of cases. Petitioner highlights how, from the time the crimes were allegedly committed in 2001 to the filing of the cases before the Sandiganbayan in 2010, the Office of the Ombudsman took a period of almost seven (7) years just to resolve the complaints.

Furthermore, petitioner argues that neither the number of the respondents nor the voluminous records of the case justify the delay in resolving the cases at the Ombudsman level. As basis, petitioner cites *Tatad v. Sandiganbayan*[92] and *Lopez, Jr. v. Office of the Ombudsman*,[93] where this Court ordered the dismissal of the cases for the delay in the resolution of the cases during the preliminary investigation stage.[94]

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[90] *Id.* at 29.

[91] *Id.* at 29-31.

[92] 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

[93] 417 Phil. 39 (2001) [Per *J.* Gonzaga-Reyes, Third Division].

[94] *Rollo*, pp. 31-33.

Countering petitioner, respondent People of the Philippines, represented by the Office of the Special Prosecutor, first assails his procedural lapses, alleging that the present Petition is "evidently calculated to delay the proceedings"[95] before the Sandiganbayan.

First, petitioner failed to indicate the following material dates: (1) the date of receipt of the March 31, 2011 Resolution of the Sandiganbayan denying the Motion for Judicial Determination of Probable Cause; (2) the date of filing of the Motion for Reconsideration of the March 31, 2011 Resolution; and (3) the date of receipt of the resolution denying of the Motion for Reconsideration. These dates were omitted because petitioner knows that the Motion for Reconsideration erroneously filed before the Sandiganbayan was a mere scrap of paper and, therefore, was of no force and effect.[96]

Second, it seems that petitioner is assailing the following resolutions of the Sandiganbayan: (1) the May 4, 2012 Resolution that noted the Motion for Reconsideration intended for the Office of the Ombudsman; (2) the November 20, 2012 Resolution, which denied the Motion to Admit Motion for Reconsideration; and, (3) the November 21, 2012 Order, which denied the Motion for Resolution of Motion for Reconsideration.[97]

Nevertheless, respondent maintains that petitioner is mainly and solely assailing the March 31, 2011 Resolution denying his Motion for Judicial Determination of Probable Cause, the reason being that the Motion for Reconsideration subject of the May 4, 2012 Resolution, the November 20, 2012 Resolution, and the November 21, 2012 Order of the Sandiganbayan, merely reiterated the arguments in the Motion for Judicial Determination of Probable Cause.[98]

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[95] *Id.* at 239-240.

[96] *Id.* at 240-242.

[97] *Id.* at 243.

[98] *Id.*

Considering that petitioner is truly assailing the March 31, 2011 Resolution, and he received a copy of the March 31, 2011 Resolution on April 15, 2011, he only had fifteen (15) days from that day to file a motion for reconsideration, or sixty (60) days from April 15, 2011, or until June 14, 2011, to file a petition for *certiorari*. The present Petition, which was filed on January 14, 2013,[99] was filed out of time and should accordingly be dismissed.[100]

As for the May 4, 2012, November 20, 2012, and November 21, 2012 Resolutions and Order of the Sandiganbayan, they were only assailed to make it appear that a motion for reconsideration was timely filed when, in reality, it was belatedly and erroneously filed before the Sandiganbayan, not before the Office of the Ombudsman that conducted the reinvestigation.[101]

Third, petitioner still had a plain, speedy, and adequate remedy in the ordinary course of law, that is, to file a petition for bail before the Sandiganbayan instead of directly invoking this Court's *certiorari* jurisdiction.[102]

Respondent adds that the Sandiganbayan did not gravely abuse its discretion in proceeding with hearing the cases against petitioner. The rule is that the determination of probable cause for purposes of filing an information in court is a duty exclusively lodged to the prosecutory arm of government, which in this case is the Office of the Ombudsman. Once the case is filed before the Sandiganbayan, the latter acquires exclusive jurisdiction to determine the case before it. Here, after the Sandiganbayan granted reinvestigation and petitioner failed to avail himself of the remedies before the Office of the Ombudsman, the Sandiganbayan became duty-bound to proceed with determining probable cause for purposes of issuing a warrant of arrest.[103]

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[99] *Id.* The Office of the Special Prosecutor erroneously indicated February 4, 2013 as the date of filing of the Petition for *Certiorari*.

[100] *Id.* at 242-244.

[101] *Id.* at 243.

[102] *Id.* at 247-248.

[103] *Id.* at 248-250.

Respondent vehemently denies petitioner's claim that he was not given due process during reinvestigation. As shown by the registry return card of the April 14, 2011 Order directing petitioner to file a motion for reconsideration or reinvestigation, his counsel, Atty. Din, and his collaborating counsel, Atty. Peña, received a copy of the April 14, 2011 Order on April 29 and April 28, 2011,[104] respectively, yet they did not file any pleading on behalf of their client. Petitioner, therefore, is deemed to have failed to file a Motion for Reconsideration within five (5) days from the Order's date of receipt.[105]

Even assuming that petitioner's counsels had signified their intention to withdraw their services as petitioner alleged, this, according to respondents, does not justify his belated filing of the Motion for Reconsideration. The rule is that the negligence of counsel binds the client. In any case, the Motion for Reconsideration merely reiterates the allegations in the Supplemental Counter-Affidavit, which was considered in the conduct of reinvestigation.[106]

There is also allegedly no truth to petitioner's claim that his Supplemental Counter-Affidavit was not considered in resolving the criminal complaints against him. The June 1, 2011 Resolution issued after the reinvestigation alludes to the Supplemental Counter-Affidavit and even discussed the Supplemental Counter-Affidavit's contents.[107]

Thus, respondent maintains that there is no reason to disturb the finding of probable cause against petitioner. Respondent reiterates the general rule that "the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court[.]"[108] Consequently, "courts must

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[104] *Id.* at 219.

[105] *Id.* at 251-252.

[106] *Id.* at 251.

[107] *Id.* at 252.

[108] *Id.* at 255, citing *People v. Castillo, et al.*, 607 Phil. 754 (2009) [Per *J.* Quisumbing, Second Division].

respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor."[109]

On the merits, respondent contends that the Office of the Ombudsman correctly found probable cause to file charges for malversation of public funds against petitioner. The Disbursement Vouchers he signed, as well as the Brief Social Case Study Reports, Department of Social Welfare and Development Form 200, and Reimbursement Expense Receipts annexed to the vouchers, all show that petitioner participated in the release of public funds allegedly for beneficiaries of the "Aid to the Poor" program, beneficiaries who turned out be nonexistent. Having participated in the release of the funds, petitioner is accountable for the funds he had reimbursed pursuant to Section 340[110] of the Local Government Code. He cannot claim that he was not an accountable public officer just because he had no physical custody of the funds.[111]

Likewise, probable cause for violation of Section 3 (e) of Republic Act No. 3019 was correctly found against petitioner. By making it appear that he extended financial help to poor beneficiaries when, in truth, there were no such beneficiaries, he caused undue injury to the government in the form of misappropriated public funds.[112]

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[109] *Id.*

[110] LOCAL GOV'T. CODE, Sec. 340 provides:

SECTION 340. *Persons Accountable for Local Government Funds.* — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

[111] *Rollo*, pp. 256-257.

[112] *Id.* at 256.

Finally, respondent argues that there was no violation of petitioner's right to speedy disposition of cases, maintaining that "[a] mere mathematical reckoning of the time involved is not sufficient."[113] Respondent points out that petitioner had 31 co-respondents, including the Provincial Governor, Vice-Governor, and Board Members of the Province of Zamboanga Sibugay and their respective staff.[114]

The first complaint was filed on September 3, 2002, and the next two in 2003. The Office of the Ombudsman then requested the Commission on Audit to conduct an audit investigation in 2004, in the meantime provisionally dismissing the complaints. After the Commission on Audit had submitted its findings contained in a 7,225-page report, the Office of the Ombudsman conducted its own review of the findings of the Commission. These, according to respondent, show that there was no oppressive or capricious delay on the part of the Office of the Ombudsman.[115]

At any rate, petitioner never invoked the right to speedy disposition of cases during preliminary investigation. He slept on his right and invoked it only when the case was filed before the Sandiganbayan, unlike the accused in *Angchangco v. Ombudsman*,[116] the case cited by petitioner where the accused actively invoked the right by filing numerous motions for early resolution before the Ombudsman. In stark contrast with *Angchangco*, petitioner filed no such motion for early resolution during the preliminary investigation stage.[117]

The Petition for *Certiorari* is dismissed.

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[113] *Id.* at 258.

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

[115] *Id.*

[116] 335 Phil. 766 (1997) [Per *J.* Melo, Third Division].

[117] *Rollo*, pp. 262-263.

I

This Court first addresses the procedural issues raised by respondent. After a perusal of the Petition, this Court finds the following procedural errors: (1) it did not indicate the material dates required under Rule 65, Section 1 in relation to Rule 46, Section 3 of the Rules of Court; (2) the Petition was filed out of time; and (3) that the resort to *certiorari* was premature considering that petitioner still had a plain, speedy, and adequate remedy in the ordinary course of law.

Rule 65, Section 1 of the Rules of Court 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, nor 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 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.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

Rule 46, Section 3, referred to in Rule 65, Section 1, partly states:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Rule 65, Section 1 in relation to Rule 46, Section 3 requires that a petition for *certiorari* indicate three (3) material dates, namely: (1) when the notice of the judgment or final order was received; (2) when the motion for new trial or reconsideration, if any, was filed; and (3) when notice of the denial of the motion for new trial or reconsideration was received. This is for the court or tribunal to easily assess whether the petition was timely filed.[118] Failure to indicate these material dates is sufficient ground for the dismissal of the petition.[119]

Petitioner assails four (4) issuances of the Sandiganbayan:

(1) the March 31, 2011 Resolution denying the Motion for Judicial Determination of Probable Cause;

(2) the May 4, 2012 Resolution merely noting the belatedly and erroneously filed Motion for Reconsideration of the March 31, 2011 Resolution and ordering the issuance of the warrant of arrest;

(3) the November 20, 2012 Resolution denying the Motion to Admit Motion for Reconsideration and ordering the Philippine National Police to implement the warrant of arrest issued in the May 4, 2012 Resolution; and

(4) the November 21, 2012 Order treating the Comment on the Amended Information as a mere scrap of paper and resetting petitioner's arraignment.

Yet, in the recital of material dates, petitioner only indicated his date of receipt of the November 20, 2012 Resolution.[120] This incomplete recital of the material dates is sufficient ground for the dismissal of the Petition.

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[118] *Blue Eagle Management, Inc. v. Naval*, 785 Phil. 133, 148-152 (2016) [Per *J.* Leonardo-de Castro, First Division].

[119] RULES OF COURT, Rule 65, Sec. 1 in relation to Rule 46, Sec. 3.

[120] *Rollo*, p. 7.

Furthermore, this Court agrees that the present Petition was filed beyond the sixty-day reglementary period for filing a petition for *certiorari*. Petitioner fundamentally assails the March 31, 2011 Resolution wherein, to recall, the Sandiganbayan denied his Motion for Judicial Determination of Probable Cause. Through counsel, Atty. Peña, petitioner received a copy of the March 31, 2011 Resolution on April 15, 2011, and with the 15th day falling on a Saturday, he had until May 2, 2011, the next working day, to file a motion for reconsideration.[121] No motion for reconsideration of the March 31, 2011 Resolution was filed from April 15, 2011 to May 2, 2011. Instead, a Motion for Reconsideration was belatedly filed on June 7, 2011[122] and which, upon perusal, is actually meant for the Office of the Ombudsman.[123]

Petitioner blames former counsel, Atty. Din, for not filing a motion for reconsideration. According to petitioner, Atty. Din had earlier "signified his intention to withdraw"[124] as petitioner's counsel. Nevertheless, this does not explain why petitioner's other lawyer, Atty. Peña, who also received a copy of the March 31, 2011 Resolution, did not file a motion for reconsideration for him. It being petitioner's assertion that the resolution of his case was taking too long, he should have been more "vigilant in respect of his interests by keeping himself up-to-date on the status of the case."[125]

Hiring the services of counsel does not relieve a litigant of the duty to monitor the status of his or her cases. This was the ruling in *Ong Lay Hin v. Court of Appeals*,[126] where petitioner Ong Lay Hin, claiming that his counsel did not appeal his

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[121] RULES OF COURT, Rule 22, Sec. 1.

[122] *Rollo*, p. 47.

[123] *Id.* at 300.

[124] *Id.*

[125] *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011) [Per J. Bersamin, Third Division].

[126] 752 Phil. 15 (2015) [Per J. Leonen, Second Division].

conviction despite receipt of the adverse judgment against him, was nevertheless declared bound by his counsel's actions:

> The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."
>
> The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.
>
> It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.
>
> The [S]tate does not guarantee to the client that they will receive the kind of service that they expect. Through this [C]ourt, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.
>
> Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the [S]tate is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.
>
> This is one of the bases of the doctrine that the error of counsel visits the client. This [C]ourt will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.
>
> But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross,

almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

Thus, in *Bejarasco, Jr. v. People*, this [C]ourt reiterated:

> For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

In *Bejarasco, Jr.*, Peter Bejarasco, Jr. failed to file a Petition for Review before the Court of Appeals within the extended period prayed for. The Court of Appeals then dismissed the Appeal and issued an Entry of Judgment. His conviction for grave threats and grave oral defamation became final, and a warrant for his arrest was issued.

In his Petition for Review on *Certiorari* before this [C]ourt, Peter Bejarasco, Jr. argued that his counsel's negligence in failing to file the Appeal deprived him of due process.

This [C]ourt rejected Peter Bejarasco, Jr.'s argument, ruling that "[i]t is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case[.]" "[T]o merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough."

This [C]ourt noted the 16 months from the issuance of the Entry of Judgment and the 22 months from the issuance of the trial court's Decision before Peter Bejarasco, Jr. appealed his conviction. According to this [C]ourt, "[h]e ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the [trial court] handed down the dismissal of his appeal without [his counsel] having updated him on the developments[.]"

In the present case, petitioner took almost seven (7) years, or almost 84 months, from the Court of Appeals' issuance of the Resolution denying his Motion for Reconsideration to file a Petition before this court. As this [C]ourt ruled in Bejarasco, Jr., petitioner ought to have

been sooner alerted of the "unreasonably long time" the Court of Appeals was taking in resolving his appeal. Worse, he was arrested in Pasay City, not in Cebu where he resides. His failure to know or to find out the real status of his appeal "rendered [petitioner] undeserving of any sympathy from the Court *vis-a-vis* the negligence of his former counsel."

We fail to see how petitioner could not have known of the issuance of the Resolution. We cannot accept a standard of negligence on the part of a client to fail to follow through or address counsel to get updates on his case. Either this or the alternative that counsel's alleged actions are merely subterfuge to avail a penalty well deserved.[127] (Citations omitted)

With no timely motion for reconsideration filed, the March 31, 2011 Resolution may no longer be assailed. The Motion for Reconsideration belatedly filed on June 7, 2011 was correctly treated as mere scrap of paper in the November 20, 2012 Resolution and November 21, 2012 Order. Consequently, the present Petition for *Certiorari*, which was filed almost two (2) years after the lapse of the 15-day period to file a motion for reconsideration of the March 31, 2011 Resolution, was filed out of time.

This Court sees no denial of due process. Petitioner was given several opportunities to explain his side and file a motion for reconsideration. Even the Sandiganbayan gave him the privilege of a reinvestigation, yet he wasted all these opportunities. In any case, there were no new arguments in the Motion for Reconsideration, which merely echoed the arguments in the Supplemental Counter-Affidavit. Petitioner was not prejudiced by his failure to file a timely motion for reconsideration.

Apart from failing to indicate the material dates and belatedly filing the present Petition for *Certiorari*, petitioner still had several remedies available to him, remedies which were plain, speedy, and adequate in the ordinary course of law. With the amended informations having been filed in court, the

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[127] *Id.* at 23-26.

Sandiganbayan had acquired exclusive jurisdiction to dispose of the case,[128] and petitioner's remedy was to proceed to trial and allow the exhaustive presentation of evidence of the parties.[129] Before entering his plea, petitioner could have availed himself a motion to quash information[130] or a motion for bail.[131]

II

Petitioner's argument that his right to speedy disposition of cases was violated should likewise fail.

The Constitution in Article III, Section 16 provides:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

First appearing in the 1973 Constitution,[132] the right to speedy disposition of cases protects citizens from vexatious, capricious, and oppressive delays in the conduct of any case filed against them, whether the case be judicial, quasi-judicial, or administrative.[133] The importance of the right is more pronounced in criminal proceedings, where not only property but also the life and liberty of the respondent, or the accused once the case is filed in court, is at stake.[134] It is for this reason that, apart from the right to speedy disposition of cases, an accused is guaranteed the right to speedy trial in the Constitution,[135] the

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[128] See *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J*. Gancayco, *En Banc*].

[129] See *Napoles v. De Lima*, 790 Phil. 161 (2016) [Per *J*. Leonen, Second Division].

[130] RULES OF COURT, Rule 117, Secs. 1 and 3.

[131] RULES OF COURT, Rule 114, Secs. 4 and 5.

[132] CONST. (1973), Art. IV, Sec. 16.

[133] CONST., Art. III, Sec. 16.

[134] *Cabarles v. Maceda*, 545 Phil. 210 (2007) [Per *J*. Quisumbing, Second Division].

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

Section 14.

x x x x x x x x x

Speedy Trial Act,[136] and the Revised Rules of Criminal Procedure.[137]

Violation of the right to speedy disposition of cases has a serious consequence: it results in the dismissal of the case.[138] Particularly for criminal cases, the dismissal is with prejudice, and the accused may no longer be indicted for the same offense on the ground of right against double jeopardy.[139] Thus, dismissal on speedy disposition grounds has been characterized as a "radical relief."[140]

What constitutes "vexatious, capricious, and oppressive"[141] delay is determined *not* by mere mathematical reckoning but

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(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.

[136] Republic Act No. 8493 (1998).

[137] RULES OF COURT, Rule 115, Sec. 1 (h) provides:

SECTION 1. *Rights of accused at the trial*. — In all criminal prosecutions, the accused shall be entitled to the following rights:

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(h) To have speedy, impartial and public trial.

[138] See *People v. Anonas*, 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division]; *Tatad v. Sandiganbayan*, 242 Phil. 563 (1988) [Per J. Yap, *En Banc*].

[139] See *Condrada v. People*, 446 Phil. 635 (2003) [Per J. Callejo, Sr., Second Division].

[140] *Tatad v. Sandiganbayan*, 242 Phil. 563, 573 (1988) [Per J. Yap, *En Banc*].

[141] *Salcedo v. Sandiganbayan*, G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division]; see also *People v. Sandiganbayan (Fifth Division)*, 791 Phil. 37 (2016) [Per J. Peralta, Third Division]; *Tello v. People*, 606 Phil. 514 (2009) [Per J. Carpio, First Division]; *Corpuz v. Sandiganbayan*,

in an *ad hoc*, case-to-case basis.[142] Specifically for the Office of the Ombudsman, though constitutionally mandated to act promptly on complaints,[143] it is given no specific time period the lapse of which would unequivocally establish delay in its conduct of preliminary investigations.[144] Therefore, factors to determine inordinate delay had to be laid down, first introduced in this jurisdiction in *Martin v. Ver*.[145] These factors, in turn, were derived from the balancing test formulated in *Barker v. Wingo*,[146] an American case on the right to speedy trial. This

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484 Phil. 899 (2004) [Per *J*. Callejo, Sr., Second Division]; *Bernat v. Sandiganbayan*, 472 Phil. 869 (2004) [Per *J*. Azcuna, First Division]; *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945 (2002) [Per *J*. Kapunan, First Division]; *Lopez, Jr. v. Office of the Ombudsman*, 417 Phil. 39 (2001) [Per *J*. Gonzaga-Reyes, Third Division]; *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per *C.J*. Davide, Jr., *En Banc*].

[142] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917 (2004) [Per *J*. Callejo, Sr., Second Division], citing *Barker v. Wingo*, 407 U.S. 514 (1972) [Per *J*. Powell, Supreme Court of the United States].

[143] CONST., Art. XI, Sec. 12 provides:

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

Republic Act No. 6770 (1989), Sec. 13 provides:

SECTION 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

[144] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J*. Leonen, *En Banc*].

[145] 208 Phil. 658 (1983) [Per *J*. Plana, *En Banc*].

[146] 407 U.S. 514 (1972) [Per *J*. Powell, Supreme Court of the United States].

shows that the right to speedy disposition of cases and right to speedy trial are akin to each other given their similar rationale: to prevent inordinate delay.[147]

The first of these factors is the length of delay, the "triggering mechanism[,]"[148] so to speak, for invoking the right to speedy disposition of cases. However, length of time, in itself, is insufficient if it is justified by the peculiar circumstances of the case, such as the complexity of the issues involved or of the crime charged.[149] Political motivation may likewise affect the determination, such that three (3) years from the submission of all the necessary pleadings before the Tanodbayan up to the filing of case in court was considered oppressive,[150] whereas criminal cases where the Ombudsman took more than that time to conduct preliminary investigation were not dismissed.[151]

This goes to the second factor to determine inordinate delay: the reason for the delay. As discussed, "extraordinary complications such as the degree of difficulty of the questions involved"[152] affect the finding of inordinate delay. Other reasons

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[147] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

[148] *Barker v. Wingo*, 407 U.S. 514, 530 (1972) [Per *J.* Powell, Supreme Court of the United States].

[149] *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018, http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64382 [Per *J.* Velasco, Jr., Third Division].

[150] See *Tatad v. Sandiganbayan*, 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

[151] See *Salcedo v. Sandiganbayan*, G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per *J.* Peralta, Third Division], where the Ombudsman took four (4) years and three (3) months to terminate the preliminary investigation. In *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*], the Ombudsman took seven (7) years to file the informations in court.

[152] *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018, 873 SCRA 420 [Per *J.* Velasco, Jr., Third Division].

that may justify delay include the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record.[153] In criminal prosecutions, the burden of justifying the reason for the delay in the conduction of preliminary investigation rests on the prosecution.[154]

Acts attributable to the respondent may also affect the finding of delay. This goes to the third factor: the respondent's assertion of the right. This Court has ruled that the right to speedy disposition of cases may be waived if raised belatedly.[155] This is to prevent respondents from invoking the right only when an adverse resolution is rendered against them. Invocation of the right should not be a mere afterthought, and the respondent should not have employed "delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case."[156] He or she cannot be allowed to benefit from his or her cunning. For the third factor, the respondent in the criminal case has the burden of proving that he had timely asserted the right.[157]

It is true that in *Coscolluela v. Sandiganbayan*,[158] this Court said that a respondent in a preliminary investigation has no

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[153] *Id.*

[154] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

[155] *Salcedo v. Sandiganbayan*, G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per *J.* Peralta, Third Division]; *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*]; *Tello v. People*, 606 Phil. 514 (2009) [Per *J.* Carpio, First Division]; *Dimayacyac v. Court of Appeals*, 474 Phil. 139 (2004) [Per *J.* Austria-Martinez, Second Division]; *Bernat v. Sandiganbayan*, 472 Phil. 869 (2004) [Per *J.* Azcuna, First Division].

[156] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

[157] *Id.*

[158] 714 Phil. 55 (2013) [Per *J.* Perlas-Bernabe, Second Division].

"duty to follow up on the prosecution of [his or her] case"[159] and that it is "the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it."[160] As basis, *Coscolluela* cited *Barker*, where the United States Supreme Court said that "[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process."[161]

The statement in *Coscolluela* is, at best, *obiter dictum*. The criminal cases against Coscolluela and his co-respondents were dismissed, first, because it took the Ombudsman eight (8) years to resolve the criminal complaints against them and, second, they were unaware that the investigation against them was still on going. Here, there is no indication that petitioner was unaware that the investigation against him and his co-respondents was still on going.

Further, *Coscolluela* directly cited *Barker,* an American case and, therefore, is not binding precedent. While *Barker* served as basis for this Court's adoption of the balancing test, it must be highlighted that *Barker* involved the right to speedy trial which, though akin to the right to speedy disposition of cases, is an entirely different right nonetheless.

Barker, though providing that "[a] defendant has no duty to bring himself to trial[,]"[162] followed with "[t]his does not mean, however, that the defendant has no responsibility to assert his right [to speedy trial]."[163] Precisely, assertion of the defendant's right was made one of the factors to consider in determining whether an accused's right to speedy trial was violated. For the United States Supreme Court, the acceptable test was "a

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[159] *Id.* at 64.

[160] *Id.*

[161] *Barker v. Wingo*, 407 U.S. 514, 527 (1972) [Per *J*. Powell, Supreme Court of the United States].

[162] *Id.*

[163] *Id.* at 528.

balancing test, in which conduct of both the prosecution and the defendant are weighed."[164] *Barker* explains:

> The nature of the speedy trial right does make it impossible to pinpoint a precise time in the process when the right must be asserted or waived, but that fact does not argue for placing the burden of protecting the right solely on defendants. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest.
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> It is also noteworthy that such a rigid view of the demand-waiver rule places defense counsel in an awkward position. Unless he demands a trial early and often, he is in danger of frustrating his client's right. If counsel is willing to tolerate some delay because he finds it reasonable and helpful in preparing his own case, he may be unable to obtain a speedy trial for his client at the end of that time. Since under the demand-waiver rule no time runs until the demand is made, the government will have whatever time is otherwise reasonable to bring the defendant to trial after a demand has been made. Thus, if the first demand is made three months after arrest in a jurisdiction which prescribes a six-month rule, the prosecution will have a total of nine months — which may be wholly unreasonable under the circumstances. The result in practice is likely to be either an automatic, *pro forma* demand made immediately after appointment of counsel or delays which, but for the demand-waiver rule, would not be tolerated. Such a result is not consistent with the interests of defendants, society, or the Constitution.
>
> We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit,

[164] *Id.* at 530.

for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client, or from a situation in which no counsel is appointed. It would also allow a court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely *pro forma* objection.[165] (Citations omitted; underscoring provided)

In any case, the 2018 *en banc* case of *Cagang v. Sandiganbayan*[166] already settled the rule that, in this jurisdiction, the right to speedy disposition of cases must be seasonably invoked; otherwise, it is deemed waived.

The fourth and last factor of the balancing test is prejudice to the respondent, either in the form of oppressive pre-trial incarceration, anxiety and worry, or impairment of respondent's defense.[167] It is said that the most serious of these is the last, because:

> [T]he inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.[168] (Citations omitted)

There are instances when a respondent does *not* want a speedy disposition of his or her case as a way to, albeit

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[165] *Id.* at 527-529.

[166] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

[167] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 918 (2004) [Per *J.* Callejo, Sr., Second Division], citing *Barker v. Wingo*, 407 U.S. 514 (1972) [Per *J.* Powell, Supreme Court of the United States].

[168] *Id.* at 918 citing *Barker v. Wingo*, 407 U.S. 514 (1972) [Per *J.* Powell, Supreme Court of the United States].

counterproductively, ease his or her anxiety. Thus, a respondent may resort to "delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case."[169] He or she may also deliberately fail to object to continuances obtained by the prosecution during preliminary investigation. Then, only when a case is filed in court, will the respondent invoke the right to speedy disposition of cases.

Courts, therefore, perform a delicate balancing act in determining whether or not a person's right to speedy disposition of cases is violated. The four (4) factors — (1) the length of the delay; (2) the reason for the delay; (3) the respondent's assertion of the right; and (4) prejudice to the respondent — are to be considered together, not in isolation. The interplay of these factors determine whether the delay was inordinate. Thus, it said that the right to speedy disposition of cases is a relative and flexible concept.[170] This fluidity, however, gives rise to possible subjectivity and inconsistency in determining whether a case was disposed within an acceptable period of time.

Addressing this, this Court in *Cagang* directed the Office of the Ombudsman to promulgate specific time periods for resolving complaints for preliminary investigation. The party with the burden of justifying the delay would then depend on when the delay occurred, that is, before or after the lapse of

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[169] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

[170] *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018, 873 SCRA 420, 445 [Per *J.* Velasco, Jr., Third Division]. See also *Almeda v. Ombudsman*, 791 Phil. 129 (2016) [Per *J.* Del Castillo, Second Division]; *People v. Sandiganbayan (Fifth Division)*, 791 Phil. 37 (2016) [Per *J.* Peralta, Third Division]; *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004) [Per *J.* Callejo, Sr., Second Division]; *Dela Peña v. Sandiganbayan*, 412 Phil. 921 (2001) [Per *C.J.* Davide, Jr., *En Banc*]; *Caballero v. Alfonso*, 237 Phil. 154 (1987) [Per *J.* Padilla, *En Banc*].

the time periods set. If the perceived delay occurred within the time periods, the defense has the burden of proving that the delay was inordinate.[171] If the delay occurred after the time periods set, the prosecution has the burden of justifying the delay. Courts are now mandated to apply *Cagang* on the mode of analysis for resolving claims of violation of the right to speedy disposition of cases:

> This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.
>
> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
>
> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.
>
> *Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.
>
> If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

[171] *Id.*

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.[172] (Citations omitted; emphasis in the original)

The subsequent case of *Salcedo v. Sandiganbayan*,[173] decided in 2019, reiterated that "the accused must invoke his or her constitutional right to speedy disposition of cases in a timely

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[172] *Id.*

[173] G.R. Nos. 223869-960, February 13, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64881> [Per J. Peralta, Third Division].

manner and failure to do so even when he or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right."[174] *Revuelta v. People*[175] and *People v. Sandiganbayan (First Division)*,[176] also decided in 2019, affirm the applicability of *Cagang* in cases where the right to speedy disposition of cases is invoked.

Taking the foregoing into consideration, we find no violation of petitioner's right to speedy disposition of cases. The preliminary investigation lasted six (6) years, six (6) months, and three (3) days, beginning on February 19, 2004, when the Ombudsman docketed the Commission on Audit's audit report as a formal charge, up to September 22, 2010, when the informations were filed before the Sandiganbayan. The time the Commission on Audit took to conduct its audit investigation from March 2003 to February 19, 2004, which was about 11 months, is not considered part of the proceedings for preliminary investigation but only for fact-finding purposes. The audit investigation was merely preparatory for the filing of the formal complaint before the Ombudsman should the Commission on Audit find anomalies in the transactions.[177]

The six-and-a-half years it took the Ombudsman to resolve the criminal complaints was not vexatious, capricious, or oppressive. As explained by respondent Office of the Special Prosecutor, petitioner was indicted together with 31 other co-respondents for malversation of public funds and for allegedly violating the Anti-Graft and Corrupt Practices Act. The alleged criminal act consisted of disbursing funds from the coffers of Zamboanga Sibugay through a sham financial aid program.

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[174] *Id.*

[175] G.R. No. 237039, June 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65191> [Per *J.* Peralta, Third Division].

[176] G.R. No. 240776, November 20, 2019, <https://elibrary. judiciary.gov.ph/thebookshelf/showdocs/1/65928> [Per *J.* Perlas-Bernabe, Second Division].

[177] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> [Per *J.* Leonen, *En Banc*].

To establish a *prima facie* case, the Ombudsman, with the help of the Commission on Audit, investigated the public officers, including petitioner, who had requested for reimbursements from the provincial government for amounts allegedly advanced to give financial aid. The identities of the supposed beneficiaries were verified, but it was found that the numerous beneficiaries indicated in the reimbursement requests were nonexistent.

These findings were detailed in the 7225-page audit report of the Commission on Audit, which was reviewed by the Office of the Deputy Ombudsman for Mindanao before docketing the case and directing the 32 respondents to file their respective counter-affidavits. After the submission of the complaints and counter-affidavits, the Deputy Ombudsman for Mindanao found probable cause against the respondents through a 136-page Resolution. The Resolution was further reviewed before finally approved by the Ombudsman.

These reasons — (1) number of persons charged; (2) the degree of review needed to unravel the scheme; (3) the numerous pleadings filed; (4) the voluminous documents and testimonies for review; and (5) the participation of petitioner — justify the time it took the Ombudsman to finally file the information in court.

Notably, during the preliminary investigation, petitioner never filed any kind of motion or manifestation to speedily resolve the complaints against him. Only when the six (6) informations were filed in the Sandiganbayan did petitioner file his Motion for Judicial Determination of Probable Cause, raising as one of the grounds the alleged violation of his right to speedy disposition of cases. To our mind, the right was invoked belatedly, and that petitioner acquiesced to the delay in the conduct of preliminary investigation.

Considering that petitioner never asserted his right to speedy disposition of cases at the prosecutor level, We conclude that he was not prejudiced by the six (6) years of preliminary investigation. No allegations of threats to liberty, loss of employment or compensation, or any other kind of prejudice

were made, leading this Court to believe that petitioner actually welcomed the delay.

While the preliminary investigation in this case took more time than the three (3) years of preliminary investigation in *Tatad v. Sandiganbayan*,[178] the latter case does not apply here. In *Tatad*, a formal report for alleged violations of the Anti-Graft and Corrupt Practices Act was filed against then Minister of Public Information Francisco S. Tatad as early as 1974. It was only in 1979, when Minister Tatad resigned from his position after he had a falling out with President Marcos, that the Presidential Security Command resurrected the 1974 report and filed it as a formal complaint before the Tanodbayan. Circuitously, the Tanodbayan referred the complaint back to the Presidential Security Command for fact-finding investigation. By 1982, all the complaint-affidavits and counter-affidavits were with the Tanodbayan for final disposition, with the resolution approved and the case filed in court in 1985.

The peculiar circumstances in *Tatad* show that, though not in its technical sense, a "case" has been built against Minister Tatad as early as 1974 and its disposition was inordinately delayed to deliberately prejudice Minister Tatad.

The government, then controlled by a dictator, deviated from established procedure for preliminary investigation. Instead of directly filing a case before the Tanodbayan, a formal report was made to sleep in the Presidential Security Command. After the falling out in 1979, only then was the formal report revived and converted into a formal complaint. The Tanodbayan referred the complaint back to the Presidential Security Command, the very office that had received the initial report, for fact-finding investigation.

Three (3) years after, the Tanodbayan had the complaint and all the counter-affidavits. It then took another three (3) years to file cases before the Sandiganbayan. These circumstances were patently impelled by political motivations,

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[178] 242 Phil. 563 (1988) [Per *J.* Yap, *En Banc*].

and this Court rightly concluded that Minister Tatad's right to speedy disposition of cases was violated.

Petitioner's prosecution was not similarly colored by political motivations. Nothing in the facts show that petitioner's prosecution was done in retaliation for offending a powerful person in government. As opposed to *Tatad*, the proceedings done here were in accord with established procedure for preliminary investigation, including the referral of the complaint to the Commission on Audit. It is the accepted practice in the Ombudsman to refer to the Commission on Audit complaints involving the alleged illegal disbursement of public funds in view of the Commission's authority to examine and audit expenditures and uses of government funds and property.[179] This is to ensure that no more State funds are wasted by filing unmeritorious cases in court.

Lopez, Jr. v. Ombudsman,[180] likewise cited by petitioner, also does not apply here. In *Lopez*, a former official of the Department of Education, Culture, and Sports (now Department of Education) was charged with violating the Anti-Graft and Corrupt Practices Act for his involvement in an overpricing scheme and lack of public bidding for the procurement of laboratory apparatus and school equipment. After a four (4)-year conduct of the preliminary investigation, cases were filed before the Sandiganbayan. This Court considered the four (4) years too long a delay, finding that the cases filed against respondent Lopez were "not sufficiently complex to justify the length of time for their resolution."[181] There was also "no statement that voluminous documentary and testimonial evidence were involved."[182]

In contrast with the overpricing scheme in *Lopez*, the nature of the "Aid to the Poor" program, coupled with the sheer number

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[179] CONST., Art. IX (D), Sec. 2 (1).

[180] 417 Phil. 39 (2001) [Per *J.* Gonzaga-Reyes, Third Division].

[181] *Id.* at 50.

[182] *Id.*

of respondents, justifies the six (6) years it took the Office of the Ombudsman to file cases in court. Numerous persons were named as beneficiaries of financial aid, so numerous that the Commission on Audit issued a 7225-page report. To establish a *prima facie* case, the identities of these various persons had to be verified. The allegations of the parties here also establish that voluminous and testimonial evidence were involved.

In sum, this Court finds that petitioner's right to speedy disposition of cases was not violated.

III

Even on the merits, this Court finds that the Sandiganbayan did not gravely abuse its discretion in denying petitioner's Motion for Judicial Determination of Probable Cause.

Probable cause is understood in two (2) senses: (1) the executive; and (2) the judicial. The executive determination of probable cause is done during preliminary investigation where the prosecutor ascertains whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[183] The executive determination of probable cause is within the exclusive domain of the prosecutor and, absent grave abuse of discretion, this determination cannot be interfered with by the courts.[184]

On the other hand, the judicial determination of probable cause is done by a judge to determine whether a warrant of arrest should issue. In the words of the Constitution, "no . . .

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[183] RULES OF COURT, Rule 112, Sec. 1 provides:

SECTION 1. *Preliminary investigation defined; when required*. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial[.]

[184] *Alberto v. Court of Appeals*, 711 Phil. 530, 550 (2013) [Per *J*. Perlas-Bernabe, Second Division]. See also *Napoles v. De Lima*, 790 Phil. 161 (2016) [Per *J*. Leonen, Second Division].

warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may be produce[.]"[185] The Rules of Court in Rule 112, Section 5 (a) reiterates that "the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence" for purposes of issuance of an arrest warrant.

While denominated as "Motion for Judicial Determination of Probable Cause," the motion filed before the Sandiganbayan was, in reality, a motion for the judge to make an *executive* determination of probable cause. Petitioner makes no mention of any grave abuse of discretion in relation to the issuance of a warrant of arrest. Instead, he argues that the Sandiganbayan gravely abused its discretion in "not dismissing the instant cases despite the obvious lack of probable cause,"[186] assailing the filing of informations in court.

But as discussed, a court, including this Court, cannot interfere with the executive determination of probable cause absent grave abuse of discretion on the part of the prosecutor. There is grave abuse of discretion when power is exercised "arbitrarily or despotically by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law."[187] No such grave abuse of discretion exists here.

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[185] CONST., Art. III, Sec. 2 provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[186] *Rollo*, p. 7.

[187] *Valencia v. Sandiganbayan*, 477 Phil. 103, 119 (2004) [Per J. Ynares-Santiago, First Division].

Petitioner was charged with malversation of public funds[188] and violating Section 3 (e)[189] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

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[188] REV. PEN. CODE, Art. 217, as amended by Republic Act Nos. 1060 and 10951, provides:

ART. 217. *Malversation of public funds or property. — Presumption of malversation*. Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000).

2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000).

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (₱4,400,000) but does not exceed Eight million eight hundred thousand pesos (₱8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

[189] Republic Act No. 3019, Sec. 3 (e) provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following

As for the first charge, the elements of malversation of public funds are: (1) that the offender is a public officer; (2) that he [or she] had custody or control of funds or property by reason of the duties of his [or her] office; (3) that those funds or property were public funds or property for which he [or she] was accountable; and (4) that he [or she] appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.[190]

As for the second charge, the elements of violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[191]

The presence of these elements are evident in the Ombudsman's Resolution dated July 10, 2006 and June 1, 2011, thereby confirming probable cause for filing the informations in the Sandiganbayan. Relevant portions of the July 10, 2006 Resolution stated:

FINDINGS/RECOMMENDATIONS

RESPONDENTS FACE the herein criminal charges for causing the disbursement of the funds intended for the Aid to the Poor Program

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shall constitute corrupt practices of any public officer and are hereby declared unlawful:

(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.

[190] See *Cantos v. People*, 713 Phil. 344 (2013) [Per *J.* Villarama, Jr., First Division].

[191] See *Garcia v. Sandiganbayan*, 730 Phil. 521 (2014) [Per *J.* Carpio, Second Division].

to alleged inexistent beneficiaries. That while respondents maintain that the funds were extended and granted to the people who personally came to their respective offices and the funds were properly expended, the documents availing and the questionable existence of the said beneficiaries, however, subject the disbursements of said funds to suspicion.

As declared, the funds used as aid to the poor came from the funds of the province which were earlier realigned by way of resolutions issued by the [Sangguniang Panlalawigan] of Zamboanga Sibugay. The funds were placed under the budget of the [Provincial Social Welfare and Development Office] but were used exclusively by the respondents.

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4) BOARD MEMBER IGNACIO C. BAYA

Respondent BM BAYA caused the reimbursement of the amount of ₱60,000.0[0] under the three (3) vouchers which amount was allegedly spent as financial assistance to the people of Zamboanga Sibugay under the Aid to the Poor Program. That out of the alleged eighteen (18) beneficiaries of said financial assistance, fourteen (14), however, could not be located.

Reiterating the same averments of his co-respondents, respondent Baya maintained his participation as being limited to referrals, also stressing the possible misrepresentation employed by beneficiaries. On the contrary, the members of his staff, namely, Nenita Rodriguez, Alice Libre and Rex Tago, who claimed to have personally seen the beneficiaries, are firm on their belief that the beneficiaries would not lie as to their names and addresses. Respondent Baya's allegations as to procedure claimed to have been undertaken in the release of the funds appears inconsistent, hence dubious. In his reply-affidavit, respondent Baya was quick to point responsibility to the [Provincial Social Work and Development Office], therein claiming that it was the [Provincial Social Work and Development Office] who prepared the [Brief Social Case Study Reports] and that payments to the beneficiaries were only made after the approval by the [Provincial Social Work and Development Office]. In his counter-affidavit, however, respondent Baya alleged that it was his personnel, namely, Nelita Rodriguez, Alice Libre and Rex Tago who conducted the interview, gathered data and filled-up the [Brief Social Case Study Reports]. In his supplemental counter-affidavit, respondent Baya

claimed that he conducted preliminary interview of the client before giving the monetary assistance, after which he left everything to his staff including the gathering and completion of requirements.

In an effort to prove the existence of the beneficiaries, respondent submitted affidavits of people who attested to the whereabouts of the beneficiaries, especially those of Oliver Alvarico, Romeo dela Cerna, Erlinda Yecla, Rogelyn Mejorada and Ramon Chavez. The statements of the affiants may show their association with the earlier named beneficiaries, however, the same do not in any way show that said alleged beneficiaries received the amounts claimed to have been extended to them by respondent Baya. While the affidavits of Emeliana Sueno and Cecille Ceballos may show that financial aid were extended to them by [Board Member] Baya, these confirmations do not sufficiently explain the inconsistency attending the grant of financial to aid to the other beneficiaries whose existence remains doubtful. A peculiar case is that of Erlinda Yecla who is listed as one of the beneficiaries for the amount of ₱4,000.00. In the confirmation letter dated 10 June 2003, **Erlinda Yecla** denied having received any cash aid from [the Provincial Social Work and Development Office] nor of having known [Board Member] Baya, further claiming that while she formerly resided at Malangas, she has since . . . transferred to Ipil [in 1977]. While respondents impress on this Office the existence of another beneficiary likewise named **Erlinda Yecla**, such assertion, however, does not in any way establish the existence of said Erlinda Yecla as alleged recipient of the cash aid.[192] (Emphasis in the original)

The Resolution dated June 1, 2011, issued after the reinvestigation, provides:

THE RULING

The undersigned prosecutors examined all pertinent documents in these cases which consist of the three [Disbursement Vouchers] and all its annexes, the Audit-Investigation Report, the sworn statements of accused-movants, and the Affidavits of alleged beneficiaries of the Aid to the Poor Program, among others.

A careful scrutiny of the Disbursement Vouchers and the annexes thereto, consisting of the Brief Social Case Study Reports (BSCSR), DSWD Form 200, and Reimbursement Expense Receipts (RERs)

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[192] *Rollo*, pp. 104-114.

revealed that all of the accused-movants participated in the release of public funds through reimbursement of expenses allegedly incurred for the "Aid to the Poor" program. Thus:

A. For [Disbursement Voucher] No. 101-0201-90 amounting to ₱21,000.00:

Accused-movant **Ignacio C. Baya** signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I hereby certify that I personally paid the Client under the Aid to the Poor Program." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed the Request for Obligation Allotment (ROA) and the [Brief Social Case Study Reports] dated October 15, 16, 19 and 26, 2001 and November 5, 7, and 26, 2001 for the clients which commonly state, among others, that:

i. the case situation pertains to the need of medical assistance to purchase the prescribed medicines;
ii. the relative (mother, father, husband, wife or daughter) of the client came to the office of [Board Member] Ignacio C. Baya seeking for medical assistance to purchase the needed medicines of the client;
iii. a thorough interview was made; and
iv. the family is truly in need of medical assistance . . . of certain amount.

Accused-movant **Rex P. Tago** attested in all the [Reimbursement Receipts] that financial assistance for the purchase of medicines were given and received by the payee from accused-movant Baya.

On the other hand, accused-movant **Nelita R. Rodriguez** prepared and signed all the [Brief Social Case Study Reports] attached [Disbursement Voucher] No. 101-0201-90 together with accused-movant Baya. She also stated in all the six (6) DSWD/PSWDO Form No. 2000 that financial assistance were given to the clients mentioned therein.

B. For [Disbursement Voucher] No. 101-0201-91 amounting to ₱29,000.00:

Accused-movant **Ignacio C. Baya** also signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I HEREBY CERTIFY that I personally paid the Client under the Aid

to the Poor Program under the office of the undersigned." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed the Request for Obligation Allotment (ROA) and the [Brief Social Case Study Reports] dated November 26, 2011 for client Efraim Lumokso which states, among others, that:

i. the wife of a client came to the residence of [Board Member] Ignacio C. Baya seeking for medical assistance to purchase the needed medicines of her husband who is suffering from peptic ulcer;
ii. a thorough interview was made; and
iii. the family is truly in need of medical assistance hence, the client was extended medical assistance of ₱3,000.00.

Accused-movant Baya also signed all the other [Brief Social Case Study Reports] for the other clients attached to this [Disbursement Voucher] which similarly stated the above data.

Accused-movant **Alice B. Libre** attested in all the [Reimbursement Receipts] that financial assistance for the purchase of medicines were given and received by the payee from accused-movant Baya. She also stated in all the eight (8) [Provincial Social Work and Development Office] Form No. [200] that financial assistance were given to the clients mentioned therein.

For her part, accused-movant **Nelita R. Rodriguez** prepared and signed all the [Brief Social Case Study Reports] attached to [Disbursement Voucher] No. 101-0201-91 together with accused-movant Baya.

C. For [Disbursement Voucher] No. 101-0109-363 amounting to ₱10,000.00:

Accused-movant **Ignacio C. Baya** similarly signed the Certification in this [Disbursement Voucher] which states "CERTIFICATION I HEREBY CERTIFY that I personally paid the Client under the Aid to the Poor Program." He also signed Column A of this [Disbursement Voucher] which states: "CERTIFIED: Expenses, Cash Advance necessary, lawful and incurred under my direct supervision." He also signed all the [Brief Social Case Study Reports] attached to this [Disbursement Voucher] which states, among others, that he gave financial assistance to the clients mentioned in these [Brief Social Case Study Reports].

Accused-movant **Nelita R. Rodriguez** also attested in all the [Reimbursement Receipts] attached to this [Disbursement Voucher] that financial assistance were given and received by the payee from accused-movant Baya. She also signed all the DSWD Form [2000] and all the [Brief Social Case Study Reports][sic], thereby attesting that financial assistance were given to the clients mentioned therein.

Based on their sworn statements, accused-movants do not dispute their participation in the release of public funds through the three above-stated reimbursement Disbursement Vouchers. They insist, however, that they actually paid the clients mentioned in the [Reimbursement Receipts], [Provincial Social Work and Development Office] Form 200 [sic] and [Brief Social Case Study Reports]. In support of this claim, they submitted the Affidavits of Barangay Captain Edison Ybañez, Emeliana Sueño, Barangay Captain Jonathan Acalendo, Cecile Gomez Ceballos, Lowell Lalican, Alan B. Tolorio, Roger Mejorada, Albani Maut and Dr. Carlos L. Gemarino, Jr.

x x x x x x x x x

Likewise, the Certification of Dr. Carlos L. Gemarino, Jr. anent Erlinda Yecla states that:

> "This is to certify that Mrs. Erlinda Yecla was confined at this Hospital for Medical Check-up. This is to certify further that she was different Erlinda Yecla from the Erlinda Yecla whom I know as an employee of the DSWD, Ipil, Zamboanga Sibugay.
>
> x x x x x x x x x."

The above-stated Certification does not state that the Erlinda Yecla who was confined at the Gemarino Hospital for medical check-up received financial assistance from accused-movant Baya.

On the other hand, Allan Tolorio's Affidavit that Erlinda Yecla received financial assistance from accused-movant Baya is hearsay, not being executed by Erlinda Yecla herself. More importantly, this is belied by the Confirmation letter dated June 10, 2003 of Erlinda Yecla which expressly states that she did not receive financial aid from accused-movants.

The affirmation of Emelyn Sueño, Cecile Gomez Ceballos and Roger Mejorada that accused-movant Baya gave them financial assistance, including their defense of good faith are also matters of

evidence which are best threshed out in the trial of these cases. Besides, the [Brief Social Case Study Reports] and [Provincial Social Work and Development Office] Form 200 [sic] show that accused-movants allegedly gave financial assistance to nineteen (19) clients and they have not submitted any proof as regards the other sixteen (16) alleged clients.

Significantly, accused-movant Libre did not sign any document attached to [Disbursement Voucher] Nos. 101-0201-90 and 101-0109-363 while accused-movant Tago did not sign any document attached to [Disbursement Voucher] Nos. 101-0201-91 and 101-0109-363. However, there is prima facie evidence that all the accused-movants conspired in all of these cases. They expressly admitted in their respective Sworn Statements that they personally witnessed Board Member Baya actually paying the clients listed in the AOL and that they personally met the individual clients, despite the finding in the audit investigation report of the "Aid to the Poor Program" were found to be fictitious or non-existing.

WHEREFORE, premises considered, it is respectfully recommended by the undersigned prosecutors that the Resolution of the Office of the Ombudsman-Mindanao dated July 10, 2006 finding probable cause against the accused-movants be MAINTAINED.[193] (Emphasis in the original)

We reject petitioner's argument that he cannot be charged with malversation because he was not an accountable officer who had custody of the funds appropriated by him. Section 340 of the Local Government Code on persons accountable for local government funds provides:

SECTION 340. ***Persons Accountable for Local Government Funds***. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

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[193] *Rollo*, pp. 291-297.

It is clear that not only those with actual possession or custody of the local government funds are considered accountable persons. Local government officials become accountable public officers either: (1) because of the nature of their functions; or (2) on account of their participation in the use or application of public funds.[194]

Despite not having actual custody of the municipality's funds, petitioner participated in their use or application by directing how the funds should actually be applied. In petitioner's case, his certification that the supposed beneficiaries were indigent and in need of financial assistance led to the use of the funds for the "Aid to the Poor" program.

Petitioner cannot pass blame to the Provincial Social Work and Development Office, the office that allegedly had actual custody of the funds and approved of his reimbursement requests. Were it not for his certification in the Disbursement Vouchers and Reimbursement Expense Receipts, the Provincial Social Work and Development Office would not have approved the application for reimbursement.

This Court will not pass upon petitioner's contention that the manner by which the Commission on Audit confirmed the existence of the beneficiaries was "very much insufficient to establish probable cause."[195] Again, this goes into the exclusive domain of the prosecution, and this Court sees nothing capricious, whimsical, arbitrary, or despotic in sending out confirmation letters to the addresses indicated by the beneficiaries in their respective application forms. On the contrary, it was the logical way of confirming the beneficiaries' existence.

All told, there is no grave abuse of discretion in the finding of probable cause against petitioner, both for malversation of public funds and violation of Section 3 (e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

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[194] See *Zoleta v. Sandiganbayan*, 765 Phil. 39 (2015) [Per *J.* Brion, Second Division]; *Frias, Sr. v. People*, 561 Phil. 55, 64 (2007) [Per *J.* Corona, *En Banc*].

[195] *Rollo*, p. 30.

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

SO ORDERED.

Hernando,[*] *Carandang, Zalameda,* and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 211962. July 6, 2020]

JOSE ROMEO C. ESCANDOR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-SEXUAL HARASSMENT ACT OF 1995 (RA NO. 7877); AN ACT OF SEXUAL HARASSMENT MAY RESULT IN THREE DISTINCT LIABILITIES: CRIMINAL, CIVIL AND ADMINISTRATIVE.— Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995, was the first criminal statute enacted in the Philippines to penalize sexual harassment. It was adopted pursuant to the declared policy that "the State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education." x x x Under Republic Act No. 7877, an act of sexual harassment may result in three distinct liabilities: criminal, civil, and administrative. An action for each can proceed independently of the others. In a criminal action, the accused is prosecuted for a wrong committed against society itself or the State whose law he or she violated. In a civil action, a defendant is sued by the plaintiff in an effort to correct a private wrong. The purpose of an administrative

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[*] Designated additional Member per Raffle dated July 1, 2020.

action, on the other hand, is to protect the public service by imposing administrative sanctions to an erring public officer.

2. ID.; ID.; SEXUAL HARASSMENT; ELEMENTS.— Sexual harassment as defined and penalized under Republic Act No. 7877 requires three elements for an accused to be convicted: (1) that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has *authority, influence, or moral-ascendancy* over another; (2) the authority, influence, or moral ascendancy exists in a *work-related, training-related, or education-related environment*, and (3) the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another *makes a demand, request, or requirement of a sexual favor*.

3. ID.; ID.; ID.; SEXUAL HARASSMENT IS *MALUM PROHIBITUM*.— Since Republic Act No. 7877 is a special criminal statute, the offense of sexual harassment is *malum prohibitum*. Thus, in prosecuting an offender for sexual harassment, intent is immaterial. Mere commission is sufficient to warrant a conviction. The Court explained in *Narvasa v. Sanchez* the reason why, even without intent, sexual harassment is penalized: Assuming *arguendo* that respondent never intended to violate [Republic Act No.] 7877, his attempt to kiss petitioner was *a flagrant disregard of a customary rule that had existed since time immemorial — that intimate physical contact between individuals must be consensual. Respondent's defiance of custom and lack of respect for the opposite sex were more appalling because he was a married man*. Respondent's act showed a low regard for women and disrespect for petitioner's honor and dignity. This is in contrast with crimes *mala in se*, which are so serious in their effects on society as to call for almost unanimous condemnation of its members. In crimes *mala in se*, the intent governs; but in *mala prohibita*, the only inquiry is whether the law has been violated.

4. ID.; ID.; ID.; PENALTIES.— Conviction under Republic Act No. 7877 subjects the offender to criminal penalties. Under Section 7, any person who violates the law shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than ₱10,000.00

nor more than ₱20,000.00, or both such fine and imprisonment at the discretion of the court. Since in a criminal action, the State prosecutes the accused for an act or omission punishable by law, the action is commenced by filing the complaint with the regular courts or the office of prosecutor. The criminal action arising from violation of the provisions of Republic Act No. 7877 prescribes in three (3) years.

5. ID.; ID.; ID.; THE OFFENDED PARTY MAY PURSUE A SEPARATE CIVIL ACTION.— Criminal liability for sexual harassment notwithstanding, the offended party may pursue a separate civil action. x x x Civil liability arises from the damage or injury caused by the felonious act. Thus, in a civil action, the real party plaintiff is the offended party, while in a criminal action, the plaintiff is the "People of the Philippines." Furthermore, the quantum of evidence required in a civil action is mere "preponderance of evidence," in contrast to "proof beyond reasonable doubt" which is required for conviction in a criminal action. Being independent from criminal action, the conviction or acquittal of the accused is not a bar to an independent suit for damages in a civil action. Accordingly, in *London v. Baguio Country Club,* this Court allowed an independent action for damages against the accused despite the existence of an ongoing criminal case.

6. ID.; ID.; ID.; ID.; THE EMPLOYER OR THE HEAD OF OFFICE OR INSTITUTION MAY ALSO BE IMPLEADED IN AN INDEPENDENT ACTION FOR DAMAGES.— Aside from the actual perpetrator, the employer, or the head of office or institution may also be impleaded in an independent action for damages. They would be solidarily liable for damages if they did not take immediate action on a sexual harassment complaint. Section 4 of Republic Act No. 7877 requires the employer or head of office to promulgate appropriate rules and regulations to prevent the commission of acts of sexual harassment and to provide procedures for the resolution, settlement or prosecution of acts of sexual harassment. In the government, the Civil Service Commission promulgated CSC Resolution No. 01-0940, otherwise known as the Administrative Disciplinary Rules on Sexual Harassment Cases, which apply to all government officials and employees. For the private sector, each organization's rules promulgated in accordance with Section 4 shall apply.

7. ID.; ID.; EMPLOYERS AND HEADS OF OFFICES ARE REQUIRED TO CREATE A COMMITTEE ON DECORUM AND INVESTIGATION OF CASES ON SEXUAL HARASSMENT.— Section 4(b) of Republic Act No. 7877 further requires employers and heads of offices to create a "committee on decorum and investigation of cases on sexual harassment." Pursuant to this, all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations, were required to create their own Committee on Decorum and Investigation. Unlike in criminal and civil actions which are brought before regular courts, an administrative action is commenced by filing a complaint with the disciplining authority or agency, or with the Committee on Decorum and Investigation, which shall receive and investigate sexual harassment complaints. x x x Unlike in a criminal action where the penalty is a fine, imprisonment, or both, the penalty in an administrative action is, at most, dismissal, from the service. This is because an administrative action seeks to protect the public service by imposing administrative sanctions to the erring public officer.

8. ID.; ID.; AT THE CORE OF SEXUAL HARASSMENT IN THE WORKPLACE IS POWER EXERCISED BY A SUPERIOR OVER A SUBORDINATE.— At the core of sexual harassment in the workplace is power exercised by a superior over a subordinate. The power emanates from how the superior can remove or disadvantage the subordinate should the latter refuse the superior's sexual advances. Thus, sexual harassment is committed when the sexual favor is made as a condition in the hiring of the victim or the grant of benefits thereto; or when the sexual act results in an intimidating, hostile, or offensive environment for the employee.

9. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, RESPECTED.— Factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to great respect. These findings will not be disturbed in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances. This is because trial provides judges with the "opportunity to detect, consciously or unconsciously, observable cues and micro expressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will." x x x The

Sandiganbayan, being the court which conducted trial, "is in the best position to determine the truthfulness of witnesses." Indeed, this court must "give the highest respect to [its] the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand." x x x When the victim's testimony is straightforward, convincing, consistent with human nature, and unflawed by any material or significant controversy, it passes the test of credibility and the accused may be convicted solely on the basis thereof.

10. ID.; CRIMINAL PROCEDURE; INFORMATION; THE TIME OF THE COMMISSION OF THE OFFENSE MUST BE ALLEGED AND DEFECT THEREIN MUST BE ASSAILED BEFORE ARRAIGNMENT; HOWEVER, PRECISE DATE NEED NOT BE STATED EXCEPT WHEN IT IS A MATERIAL INGREDIENT OF THE OFFENSE. — Rule 110, Section 11 of the Rules of Court requires that the time of the commission of the offense must be alleged as near to the actual date as the information will permit; otherwise, the right of the accused to be informed would be violated. The accused must raise the issue of defective information in a motion to quash or bill of particulars, which may only be filed before arraignment. Petitioner failed to assail the Information within the permitted period. Thus, it is now too late for him to claim that the information was defective. When the accused fails, before arraignment, to move for the quashal of such information and goes to trial thereunder, he thereby waives the objection and may be found guilty of as many offenses as those charged in the information and proved during trial. Assuming he is permitted to assail the Information, it is still not defective. Rule 110, Section 11 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date that the offense was committed except when it is a material ingredient of the offense. In this case, the time of the commission of the offense is not an essential element under Republic Act No. 7877. Thus, the phrase "on or about" in the information does not require the prosecution to prove any precise date.

11. CRIMINAL LAW; ANTI-SEXUAL HARASSMENT ACT OF 1995 (RA 7877); SEXUAL HARASSMENT; NOT NEGATED BY DELAY IN REPORTING THE CRIME.— Escandor assails his conviction citing "unreasonable delay and silence"

as it was only initiated five years after the alleged incidents. x x x There is no time period within which a victim is expected to complain about sexual harassment. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee. x x x Neither has prescription set in by the time Gamallo filed her Complaint Affidavit on September 4, 2004. Escandor's acts of sexual harassment persisted until December 2003, the end of Gamallo's employment with the National Economic and Development Authority Region 7. By the time she filed her Complaint-Affidavit, only about nine (9) months had lapsed. This is well-within the three (3) years permitted by Section 7 of Republic Act No. 7877 within which an action under the same statute may be pursued.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina & Lopez for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

LEONEN, *J.*:

At the core of sexual harassment in the workplace, as penalized by Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995, is abuse of power by a superior over a subordinate.[1] Sexual harassment engenders three-fold liability: criminal, to address the wrong committed against society itself; civil, to address the private wrong against the offended party; and administrative, to protect the public service.[2] Courts and

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[1] In *Floralde v. Court of Appeals*, 392 Phil. 146, 150 (2000) [Per *J.* Pardo, *En Banc*]:

Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire; it *is about power being exercised by a superior officer over his women subordinates*. The power emanates from the fact that *the superior can remove the subordinate from his workplace if the latter would refuse his amorous advances*. (Emphasis supplied)

[2] In *Domingo v. Rayala*, 569 Phil. 423, 447 (2008) [Per *J.* Nachura, Third Division]:

administrative bodies should not hesitate to penalize insidious acts of sexual harassment, especially when committed by high-ranking public officers.

This resolves a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Jose Romeo C. Escandor (Escandor). He prays for the reversal of the assailed October 17, 2013 Decision[3] and February 28, 2014 Resolution[4] of the Special Third Division of the Sandiganbayan. The assailed Decision found Escandor guilty beyond reasonable doubt of the offense of sexual harassment as penalized by the Anti-Sexual Harassment Act. The assailed Resolution denied Escandor's Motion for Reconsideration.

Escandor was the Regional Director of the National Economic and Development Authority Region 7, Cebu City from August 16, 1992 to October 31, 2005. Private complainant Cindy Sheila C. Gamallo (Gamallo) was a contractual employee of the National Economic and Development Authority Region 7 for the United Nations Children's Fund assisted Fifth Country Program for Children from March 1995 to December 2003.[5]

In an Information[6] dated March 21, 2007, Escandor was charged with violating Republic Act No. 7877 as follows:

That in (sic) or about the period from the month of July 1999 until November 2003, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused JOSE ROMEO C. ESCANDOR, a public officer, being the Regional Director of NEDA Regional Office No. 7, based in Sudlon, Lahug, Cebu City

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Basic in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others. *This rule applies with full force to sexual harassment*. (Emphasis supplied)

[3] *Rollo*, at pp. 59-94.

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

[5] *Id.* at 61.

[6] *Id.* at 103-107.

(SG-28), in such capacity and committing the offense in relation to his official functions and taking advantage of his position, and with grave abuse of authority, with deliberate intent, with evident bad faith, did then and there willfully, unlawfully and criminally perform or make a series of unwelcome sexual advances or verbal or physical behaviour of sexual nature, and demand, solicit, and request sexual favors from Mrs. Cindy Sheila Cobarde-Gamallo, then a Contractual Employee of the NEDA Regional Office No. 7 for the UNICEF-assisted Fifth Country Program for Children (CPC V), and, thus, the accused's subordinate, thereby exercising authority, influence or moral ascendancy over said Mrs. Cindy Sheila Cobarde-Gamallo in her working place, namely **by: telling her that he has fallen in love with her and has been attracted to her for a long time already, maliciously grabbing her hands, embracing her and planting a kiss on her forehead; telling her that if it were possible, he would have prevented her marriage with her husband; asking her for a date; groping her thigh; sending her winpop messages showing his amorous concern for her; *on the office Christmas party of 2002,* by grabbing her on a stairway and kissing her on the lips; giving her gifts of chocolates, wine and a bracelet on that same Christmas, and consistently throughout this time, sending her text messages suggestive of sex; which acts of the accused resulted to an intimidating, hostile, or offensive environment as these caused discomfort and humiliation on his subordinate, Ms. Cindy Sheila Cobarde-Gamallo**, adversely affecting her and her family, thus constituting sexual harassment.[7] (Emphasis supplied)

In her Complaint-Affidavit,[8] Gamallo averred that the first incident of sexual harassment happened one afternoon in July 1999, when Escandor called her in his office.[9] There, Escandor apologized for his temper the previous day when he got angry at Gamallo for the delay in the payment of her salary. Escandor, who was standing near his computer, then asked Gamallo to approach him. When she did, he "grabbed her hand, embraced her, and kissed her on the forehead."[10]

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[7] *Id.* at 103-105.

[8] *Id.* at 267-279.

[9] *Id.* at 268.

[10] *Id.*

Gamallo further narrated the succeeding incidents of sexual harassment, as follows:

> 9. One day sometime in 2000 RD Escandor called me to his office. . . . Then he said that I deserved to be happy, that I am beautiful and smart and that many men admired me. . . . To my great horror, he told me he had been attracted to me for a long time and if it was only possible, he would have prevented me from marrying Mark. . . . He said he liked the way I walked. . . . He declared I was the kind of woman he wanted. . . .
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> 10. In the afternoon of the same day, . . . he gently said he loved me and he could no longer hold back his attraction to me. . . . Suddenly, I felt his hand on my thigh.[11]

After these incidents, Gamallo told her colleague, Lina Villamor, about what Escandor did to her.[12]

Escandor's alleged advances continued in the succeeding days, when Escandor would frequently ask Gamallo personal questions such as her mood, what she did at home and during weekends, and details about her family, among others.[13] Because of the frequency of Escandor summoning Gamallo to his office, Gamallo related the incidents to Rafael Tagalog (Tagalog), her immediate superior. Together with Villamor, Tagalog helped Gamallo avoid situations where she would be alone with Escandor. Whenever Escandor would look for Gamallo, either Tagalog or Villamor would accompany her to his office.[14]

However, Escandor's alleged advances did not stop. He incessantly sent Gamallo unsolicited messages through Winpop, an intra-office messaging system, such as "Hello," "How are you today," "I miss you," "You look beautiful," "You look nice in your dress," and "I love you more every day."[15] When

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[11] *Id.* at 268-269.

[12] *Id.* at 269.

[13] *Id.* at 270.

[14] *Id.* at 271.

[15] *Id.* at 271.

Gamallo did not reply to these messages, Escandor threatened her that she would be removed from the meeting list.[16]

During their Christmas party in 2000, Gamallo claimed she felt conscious as Escandor stared at her during her dance performance with her officemates. After the party, she went to get her things from the third floor of the office and when she reached the guard's station, Escandor was there. Upon reaching him, he grabbed her and was about to kiss her on the lips. However, she moved away and the kiss landed on her left cheek. Gamallo then ran downstairs where Villamor was waiting for her.[17] In the same year's Christmas, Gamallo received chocolates, wine, an agenda book and a bracelet from Escandor.[18] A few days after, Gamallo told then Asst. Regional Director of the National Economic Development Sandra Manuel (Manuel) about the incidents. Manuel advised her not to resign, but made arrangements with Tagalog and Villamor to guard her.[19]

In February 2001, while in Cebu for a workshop, Escandor tracked Gamallo and Villamor to a folk house near their hotel. He did not make any advances but insisted to pay for their drinks, which Gamallo and Villamor refused.[20]

Escandor's sexual advances allegedly continued, until Gamallo finally quit her job in November 2003.[21]

Three colleagues testified to corroborate Gamallo's account.[22] Villamor testified that not only had Gamallo told her about Escandor's sexual advances, but that she herself saw Escandor make such overtures, causing Gamallo great distress to the point

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[16] *Id.*

[17] *Id.*

[18] *Id.* at 273.

[19] *Id.* at 272.

[20] *Id.* at 274.

[21] *Id.* at 278.

[22] *Id.* at 405, Comment.

of reducing her to tears.[23] She said that after those instances, she tried to prevent Gamallo from being left alone with Escandor.[24]

Tagalog claimed that he, too, found out about the sexual harassment after he saw Escandor commit "some improper acts and advances . . . towards Gamallo."[25] He said that "he counseled her to give Escandor the benefit of the doubt [since] he might be undergoing a midlife crisis."[26] Still, as Gamallo's immediate superior, he said he did his best to "protect her from Escandor."[27]

Finally, Manuel averred that in 2000, she also learned of Escandor's indiscretions — first, when Villamor told her, and second, when Gamallo herself confided in her.[28] She said that while she "dissuaded Gamallo from resigning," she "reported the matter to the [National Economic and Development Authority] Deputy Director General."[29] This caused the latter to confront Escandor.[30] Escandor, learning about her action "accused her of disloyalty and told her to resign from NEDA."[31]

In his defense,[32] Escandor testified that he never engaged in the acts recounted by Gamallo. He claimed that the acts allegedly committed by him are "pure fabrication."[33] He explained that his office was always open and its inside was visible from the outside, as their office was designed such that every room would have one door beside a large glass window measuring around

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[23] *Id.* at 406.

[24] *Id.* at 406.

[25] *Id.* at 406-407.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 407.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 407.

[32] *Id.* at 281-324, Counter Affidavit.

[33] *Id.* at 282.

four by six feet, making the people inside visible.[34] He also claimed that he could not have harassed Gamallo as his wife, who was employed at the same office, could also see the things happening in his office, just like the other employees.[35]

According to Escandor, the filing of the Complaint was part of an effort by a group of disgruntled employees to remove him and his wife from office.[36] He averred that the Complaint was also filed in retaliation to the filing of administrative cases against Gamallo's husband, Atty. Russ Mark Gamallo (Atty. Gamallo), who was also a National Economic and Development Authority employee.[37]

To prove this scheme against him, Escandor presented as lone witness John Louis Savellon, a utility worker at the National Economic and Development Authority, who testified that some of his officemates asked for his support to oust Escandor.[38] When he declined, Atty. Gamallo and a certain Mark Cabadsan harassed him. He also said that he heard someone say in the library, *"Tan awa nato asa kutob si Escandor kini ka file sa sexual harassment cases"* (Let us see how far Escandor can go when the sexual harassment cases are filed).[39]

Escandor also questioned Gamallo's credibility, averring that her acts when she was still with the National Economic and Development Authority were inconsistent with her claims of sexual harassment. Escandor questioned Gamallo's signature in a Memorandum Petition indorsed to the Director General of the National Economic and Development Authority in October 2000 against the demand of Senator Osmeña for Escandor's

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[34] *Id.* at 300.

[35] *Id.*

[36] *Id.* at 282.

[37] *Id.*

[38] *Id.* at 81.

[39] *Id.* at 81.

ouster.[40] Escandor also questioned Gamallo's March 2003 application to be his secretary.[41]

On October 17, 2013, the Sandiganbayan rendered a Decision[42] finding Escandor guilty of sexual harassment. It found that the prosecution was able to prove the elements of sexual harassment as defined and punished under Republic Act No. 7877.[43] It gave credence to Gamallo's testimony, noting that "there is nothing in the records that would indicate that Gamallo is dishonest or untruthful."[44]

The Sandiganbayan also noted that Escandor presented only one corroborating witness, despite identifying several individuals who were allegedly present during the incidents of sexual harassment:

> Escandor's testimony identifies several people who were allegedly present during the incidents recounted by Gamallo — Mrs. Escandor, his secretary, the other staff, the security guard, and so on. However, with the exception of Mrs. Escandor whose testimony was excluded, it is unfortunate for the accused that only Savellon could corroborate part of his defense that the NEDA employees allegedly schemed to oust Escandor from office. It is unbelievable, to say the least, that Escandor, a person of high rank at the NEDA, could not find other witnesses to refute Gamallo's claims, while the complainant was able to gather witnesses who testified on her behalf.[45]

The Sandiganbayan disposed of the case in the following manner:

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[40] *Id.* at 110.

[41] *Id.* at 118.

[42] *Id.* at 59-94. The October 17, 2013 Decision in SB-07-CRM-0043 was penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Jose R. Hernandez and Samuel R. Martires of the Special Third Division of the Sandiganbayan.

[43] *Id.* at 90.

[44] *Id.* at 91.

[45] *Id.* at 93.

WHEREFORE, in view of the foregoing, the accused Jose Romeo C. Escandor is found GUILTY beyond reasonable doubt and is sentenced to imprisonment for six (6) months and to pay a fine of Twenty Thousand Pesos (₱20,000.00), with subsidiary imprisonment in case of insolvency.[46]

Escandor filed a Motion for Reconsideration,[47] where he stated that the Sandiganbayan erred in ignoring undisputed evidence and established facts on record showing the belated filing of the Complaint. He averred that the Decision "contravened the exacting test in assessing the credibility of a sexual harassment complaint."[48] He also stated that the Sandiganbayan erroneously disregarded the doctrinally settled rule in evaluating major self-contradictions and irreconcilable inconsistencies.[49] His motion was denied by the Sandiganbayan in its February 28, 2014 Resolution.[50]

Hence, this petition.

Petitioner insists that the evidence fails to establish his guilt beyond reasonable doubt.[51] He likewise assails his conviction as having been made for an offense which was never charged in the Information since Gamallo testified to events that supposedly transpired during the Christmas Party in 2000, whereas the Information alleged sexual harassment for events that supposedly transpired during the Christmas party in 2002.[52] He claims that this amounts to a violation of his constitutional

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[46] *Id.* at 93.

[47] *Id.* at 131-187.

[48] *Id.* at 132.

[49] *Id.* at 133.

[50] *Id.* at 96-100. The February 28, 2014 Resolution was penned by Associate Justice Alex L. Quiroz and concurred in by Associate Justices Amparo M. Cabotaje-Tang and Samuel R. Martires of the Third Division of the Sandiganbayan.

[51] *Id.* at 29.

[52] *Id.* at 28.

right to be informed of the nature and the cause of accusation against him.[53]

He further assails his conviction based on a complaint that was filed after the lapse of the three (3) year prescriptive period under Section 7 of Republic Act No. 7877.[54]

For resolution are the following issues:

First, whether or not Jose Romeo C. Escandor's guilt for sexual harassment under Republic Act No. 7877 has been established beyond reasonable doubt.

Second, whether or not the discrepancy in the date of the Christmas party in which *some* complained act/s were allegedly committed suffices to absolve Jose Romeo C. Escandor of liability.

Third, whether or not the Complaint against Jose Romeo C. Escandor was filed on time.

I (A)

Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995, was the first criminal statute enacted in the Philippines to penalize sexual harassment. It was adopted pursuant to the declared policy that "the State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education."[55]

It defines sexual harassment as follows:

SECTION 3. *Work, Education or Training-Related, Sexual Harassment Defined*. — Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent

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[53] *Id.* at 33.

[54] *Id.* at 29.

[55] Section 2, Republic Act No. 7877.

of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:

(1) Against one who is under the care, custody or supervision of the offender;

(2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;

(3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or

(4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

Sexual harassment, as initially conceived, was the product of a consciousness that emerged among women, and propelled various feminist movements. Its subsequent recognition in law is an offshoot of those campaigns.

The concept of sexual harassment began in the context of unwanted sexual relations imposed by superiors on subordinates in the workplace.[56] As early as 1887, the plight of women working in factories and the extortion *vis-à-vis* sexual favors that they experience have been noted by several commentators.[57] In 1840, women's moral reform societies in the United States started petition drives for statutes penalizing seduction, in response to what were then inadequate legal protection of women against sexual predation at work.[58] In the decade before the American Civil War, women's rights movement began pursuing discussions on women's socioeconomic conditions which make them vulnerable to sexual coercion.[59] Women's rights advocates publicized the case of domestic servant Hester Vaughn who was held guilty of infanticide. After being fired by her employer who impregnated her, Vaughn gave birth alone and impoverished, and left her infant dead.[60] Vaughn's case propelled efforts by women's groups to institute legal reforms to protect women

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[56] REVA B. SIEGEL, *A Short History of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 3 (2004).

[57] *Id.* The article cited the following authors:

> Thus, by the close of the nineteenth century, we find Helen Campbell's 1887 report on Women Wage-Workers invoking the common understanding that "[h]ousehold service has become synonymous with the worst degradation that comes to woman." Campbell also described in some detail the forms of sexual extortion practiced upon women who worked in factories and in the garment industry. Along similar lines, Upton Sinclair's 1905 expose. The Jungle dramatized the predicament of women in the meat-packing industry by comparing the forms of sexual coercion practiced in "wage slavery" and chattel slavery[.]

[58] MARILYN WOOD HILL, *THEIR SISTERS' KEEPERS: PROSTITUTION IN NEW YORK CITY* 140-141 (1993).

[59] REVA B. SIEGEL, *A Short History of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 6 (2004).

[60] *Id.*

from sexual predation, and to enable other modes of collective self-help, such as organizing labor unions for women.[61]

These developments made by the early feminist and labor movements were sustained in the 1970s by several lawyers and activists representing women in courts. It was during this time that a concerted retaliation against sexual harassment was pursued by advocates.[62] The term "sexual harassment" was coined by Lin Farley during a consciousness-raising session for a Cornell University course on women and work, where the women in the discussion group repeatedly described being fired or quitting a job because they were harassed and intimidated by men.[63] In her works, Farley recognized the sexual coercion women experienced at work as a "social order that situates sexual relations between men and women in relations of economic dependency."[64] In April 1975, Farley testified before the New York City Human Rights Commission Hearings on Women and Work, and defined sexual harassment as "unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as a worker."[65] Inspired by the case of Carmita Dickerson Wood, an administrative assistant at Cornell University who quit her position due to harassment by her supervisor, Farley and other women activists at Cornell formed the Working Women United, a women's rights organization that sought to combat sexual harassment of women in the workplace.[66]

In 1979, Catharine MacKinnon published her book "Sexual Harassment of Working Women" which propelled the adoption

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[61] *Id.* at 7.

[62] *Id.* at 8.

[63] *Id.*

[64] *Id.* at 9 citing LIN FARLEY, *SEXUAL SHAKEDOWN: THE SEXUAL HARASSMENT OF WOMEN ON THE JOB* (1978).

[65] *Id.*

[66] Carrie N. Baker, *The Emergence of Organized Feminist Resistance to Sexual Harassment in the United States in the 1970s*, 19 J. WOMEN'S HISTORY 161, 164 (2007).

of laws on sexual harassment in the United States.[67] Her central argument was that sexual harassment was sex discrimination: "Sexual harassment is discrimination 'based on sex' within the social meaning of sex, as the concept is socially incarnated in sex roles. Pervasive and 'accepted' as they are, these rigid roles have no place in the allocation of social and economic resources."[68] Through the works of Lin Farley and Catharine MacKinnon, the discourse on sexual harassment translated into that of anti-discrimination.

In 1964, in the United States, the Civil Rights Act prohibited acts of discrimination on the basis of sex, among others.[69] American jurisprudence subsequently recognized two (2) categories of sexual harassment: first, *quid pro quo*; and second, hostile environment sexual harassment.[70] *Quid pro quo* harassment conditions employment or job benefits on sexual favors;[71] while hostile environment sexual harassment results from sexual advances which make the working environment hostile or abusive to the employee.[72]

The two types of sexual harassment recognized in American jurisprudence are akin to sexual harassment as defined under Republic Act No. 7877. Section 3 (a) (1)[73] similarly recognizes

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[67] STAGY L. MALLICOAT, *Women and Victimization: Stalking and Sexual Harassment in WOMEN AND CRIME*: A TEXT/READER 199 (2011).

[68] REVA B. SIEGEL, *A Short History of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 10 (2004).

[69] *Philippine Telegraph and Telephone Co. v. National Labor Relations Commission*, 338 Phil. 1093, 1110 (1997) [Per J. Regalado, Second Division].

[70] Scalia, Eugene, *The Strange Career of Quid Pro Quo Sexual Harassment*, 21 HARV. J. L. & PUB. POL'Y 307, 308 (1998).

[71] *Id.* citing *Bryson v. Chicago State University*, 96 F.3d 912, 915 (7th Cir. 1996).

[72] *Harris v. Forklift Systems, Inc.*, 510 US 17, 21(1993).

[73] Republic Act No. 7877 (1995), Sec. 3 (a) (1) provides:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual,

that sexual harassment is committed when a sexual favor is made a condition for employment or for the grant of certain benefits. Likewise, Section 3(a) (3)[74] recognizes sexual harassment as committed when the offender's advances result in an intimidating, hostile, or offensive environment for the employee.

In the Philippines, the Anti-Sexual Harassment Act of 1995 is a relatively new law. Although the Revised Penal Code, enacted in 1930, already penalized offenses relating to violations of chastity, Congress saw it fit to enact a new law specifically punishing sexual harassment committed in an "employment, education, or training environment."[75]

The original provisions of the Revised Penal Code on Rape (prior to its amendment in 1997) already punished a man who has carnal knowledge of a woman under specified circumstances.[76]

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or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee.

[74] Republic Act No. 7877 (1995), Sec. 3 (a) (3) provides:

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

[75] By its own title, Republic Act No. 7877 is, "An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes." Furthermore, Section 2 states that "The State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education."

[76] REV. PEN. CODE, Art. 335 states:

ARTICLE 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

That the crime is committed in an employment, school, or training environment was not an element. This is also true for other crimes centering on a perpetrator's lascivious, harassing or otherwise vexatious conduct, such as Acts of Lasciviousness,[77] Seduction,[78] and Unjust vexation.[79] These offenses pertain to

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The crime of rape shall be punished by *reclusion perpetua*.
Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.
When rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.
When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

[77] *Olivarez v. Court of Appeals*, 503 Phil. 421, 442-443 (2005) [Per *J.* Ynares Santiago, First Division].
The essential elements of acts of lasciviousness under the Revised Penal Code, Art. 336 in relation to Art. 335 are as follows:
1. That the offender commits any act of lasciviousness or lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
   a. By using force or intimidation; or
   b. When the offended party is deprived of reason or otherwise unconscious; or
   c. By means of fraudulent machination or grave abuse of authority; or
   d. When the offended party is under 12 years of age or is demented.

[78] *Gonzales v. Court of Appeals*, 302 Phil. 706, 712 (1994) [Per *J.* Vitug, Third Division].
The elements of qualified seduction are:
(1) that the offended party is a virgin, which is presumed if she is unmarried and of good reputation;
(2) that she must be over twelve (12) and under eighteen (18) years of age;
(3) that the offender has sexual intercourse with her; and
(4) that there is abuse of authority, confidence or relationship on the part of the offender.

[79] *Baleros, Jr. v. People*, 518 Phil. 175, 195 (2006) [Per *J.* Garcia, Second Division] *citing* III AQUINO, REVISED PENAL CODE, 1997 ed., Vol, III, p. 81 (1997).

Unjust vexation is "any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate [or] distress or disturb[] . . . the mind of the person to whom it is directed."

acts which are not necessarily committed in an employment, training, or school environment.

Under Republic Act No. 7877, an act of sexual harassment may result in three distinct liabilities: criminal, civil, and administrative.[80] An action for each can proceed independently of the others.[81] In a criminal action, the accused is prosecuted for a wrong committed against society itself or the State whose law he or she violated.[82] In a civil action, a defendant is sued by the plaintiff in an effort to correct a private wrong.[83] The purpose of an administrative action, on the other hand, is to protect the public service by imposing administrative sanctions to an erring public officer.[84]

Sexual harassment as defined and penalized under Republic Act No. 7877 requires three elements for an accused to be convicted: (1) that the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has *authority, influence, or moral-ascendancy* over another; (2) the authority, influence, or moral ascendancy exists in a *work-related, training-related, or education-related environment*, and (3) the employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who has authority, influence, or moral-ascendancy over another *makes a demand, request, or requirement of a sexual favor*.[85]

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[80] *Domingo v. Rayala*, 569 Phil. 423, 447 (2008) [Per *J*. Nachura, Third Division].

[81] *Id.*

[82] *Rodriguez v. Ponferrada*, 503 Phil. 306, 314 (2005) [Per *J*. Panganiban, Third Division].

[83] *Tecson v. Sandiganbayan*, 376 Phil. 191, 198-199 (1999) [Per *J*. Quisumbing, Second Division].

[84] *Office of the President v. Cataquiz*, 673 Phil. 318, 344-345 (2011) [Per *J*. Mendoza, Third Division].

[85] *Aquino v. Acosta*, 429 Phil. 498, 509 (2002) [Per *J*. Sandoval-Gutierrez, *En Banc*].

The key elements which distinguish sexual harassment, as penalized by Republic Act 7877, from other chastity-related and vexatious offenses are: first, its setting; and second, the person who may commit it. As to its setting, the offense may only be committed in a work-related, training-related, or education-related environment. As to the perpetrator, it may be committed by a person who exercises authority, influence, or moral ascendancy over another.[86]

Since Republic Act No. 7877 is a special criminal statute, the offense of sexual harassment is *malum prohibitum*. Thus, in prosecuting an offender for sexual harassment, intent is immaterial. Mere commission is sufficient to warrant a conviction.[87] The Court explained in *Narvasa v. Sanchez*[88] the reason why, even without intent, sexual harassment is penalized:

> Assuming *arguendo* that respondent never intended to violate [Republic Act No.] 7877, his attempt to kiss petitioner was *a flagrant disregard of a customary rule that had existed since time immemorial — that intimate physical contact between individuals must be consensual. Respondent's defiance of custom and lack of respect for the opposite sex were more appalling because he was a married man*. Respondent's act showed a low regard for women and disrespect for petitioner's honor and dignity.[89] (Emphasis supplied)

This is in contrast with crimes *mala in se*, which are so serious in their effects on society as to call for almost unanimous

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[86] Republic Act No. 7877 (1995), Sec. 3.

[87] The Court has long upheld the general rule that "acts punished under a special law are *malum prohibitum*." (*ABS-CBN Corp. v. Gozon*, 755 Phil. 709, 763 (2015) [Per *J.* Leonen, Second Division] citing *Ho Wai Pang v. People*, 675 Phil. 692 (2011) [Per *J.* Del Castillo, First Division]; and *People v. Chua*, 695 Phil. 16 (2012) [Per *J.* Villarama, First Division.]) Also, for "[a]n act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial." (*ABS-CBN Corp. v. Gozon*, 755 Phil. 709, 763 (2015) [Per *J.* Leonen, Second Division] citing *Go v. The Fifth Division of Sandiganbayan*, 558 Phil. 736, 744 (2007) [Per *J.* Ynares-Santiago, Third Division].)

[88] *Narvasa v. Sanchez, Jr.*, 630 Phil. 577 (2010) [*Per Curiam, En Banc*].

[89] *Id.* at 582.

condemnation of its members. In crimes *mala in se*, the intent governs; but in *mala prohibita*, the only inquiry is whether the law has been violated.[90]

Vedana v. Judge Valencia[91] explained that the criminalization of sexual harassment was in keeping with "humanity's march towards a more refined sense of civilization":

> In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, persons were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings being treated as mere chattel was judicially upheld in other jurisdictions. But in humanity's march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct for, at bottom, history reveals that the moving force of civilization has been to realize and secure a more humane existence. Ultimately, this is what humanity as a whole seeks to attain as we strive for a better quality of life or higher standard of living. *Thus, in our nations very recent history, the people have spoken, through Congress, to deem conduct constitutive of sexual harassment or hazing, acts previously considered harmless by custom, as criminal.*[92]

Conviction under Republic Act No. 7877 subjects the offender to criminal penalties.[93] Under Section 7, any person who violates the law shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than ₱10,000.00 nor more than ₱20,000.00, or both such fine and imprisonment at the discretion of the court. Since in a criminal action, the State prosecutes the accused for an act or omission punishable by law,[94] the action is

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[90] *Tan v. Ballena*, 579 Phil. 503, 527-528 (2008) [Per J. Chico-Nazario, Third Division].

[91] *Vedaña v. Valencia*, 356 Phil. 317 (1998) [Per J. Davide Jr., First Division].

[92] *Id.* at 332.

[93] Republic Act No. 7877 (1995), Sec. 7.

[94] RULES OF COURT, Rule 1, Sec. 3.

commenced by filing the complaint with the regular courts or the office of prosecutor.[95] The criminal action arising from violation of the provisions of Republic Act No. 7877 prescribes in three (3) years.[96]

Criminal liability for sexual harassment notwithstanding, the offended party may pursue a separate civil action. As stated in Section 6 of Republic Act No. 7877:

> SECTION 6. *Independent Action for Damages*. — Nothing in this Act shall preclude the victim of work, education, or training-related sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

Section 6 is consistent with Article 100 of the Revised Penal Code, which states that, "Every man criminally liable is also civilly liable." The rationale for this was explained in *Rodriguez v. Ponferrada*:[97]

> Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) *the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission*.[98] (Emphasis supplied)

Civil liability arises from the damage or injury caused by the felonious act.[99] Thus, in a civil action, the real party plaintiff is the offended party, while in a criminal action, the plaintiff is the "People of the Philippines." Furthermore, the quantum of evidence required in a civil action is mere "preponderance

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[95] RULES OF COURT, Rule 110, Sec. 1.

[96] Republic Act No. 7877 (1995), Sec. 7.

[97] *Rodriguez v. Ponferrada*, 503 Phil. 306 (2005) [Per *J.* Panganiban, Third Division].

[98] *Id.* at 314.

[99] *Id.* at 315.

of evidence," in contrast to "proof beyond reasonable doubt" which is required for conviction in a criminal action.[100]

Being independent from criminal action, the conviction or acquittal of the accused is not a bar to an independent suit for damages in a civil action.[101] Accordingly, in *London v. Baguio Country Club*,[102] this Court allowed an independent action for damages against the accused despite the existence of an ongoing criminal case.

Aside from the actual perpetrator, the employer, or the head of office or institution may also be impleaded in an independent action for damages.[103] They would be solidarily liable for damages if they did not take immediate action on a sexual harassment complaint.[104]

Section 4 of Republic Act No. 7877 requires the employer or head of office to promulgate appropriate rules and regulations to prevent the commission of acts of sexual harassment and to provide procedures for the resolution, settlement or prosecution of acts of sexual harassment.[105]

In the government, the Civil Service Commission promulgated CSC Resolution No. 01-0940, otherwise known as the Administrative Disciplinary Rules on Sexual Harassment Cases, which apply to all government officials and employees.[106] For

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[100] "While the guilt of the accused in a criminal prosecution must be established beyond reasonable doubt, only a preponderance of evidence is required in a civil action for damages." (*People v. Ligon y Trias*, 236 Phil. 450, 460 (1987) [Per *J.* Yap, *En Banc*] citing CIVIL CODE, Art. 29.)

[101] *Vedaña v. Valencia*, 356 Phil. 317 (1998) [Per *J.* Davide Jr., First Division].

[102] *London v. Baguio Country Club Corp.*, 439 Phil. 487 (2002) [Per *J.* Vitug, First Division].

[103] Republic Act No. 7877 (1995), Sec. 5.

[104] Republic Act No. 7877 (1995), Sec. 5.

[105] Republic Act No. 7877 (1995), Sec. 4.

[106] CSC Resolution No. 01-0940, Sec. 2 provides:

the private sector, each organization's rules promulgated in accordance with Section 4 shall apply.

Section 4 (b) of Republic Act No. 7877 further requires employers and heads of offices to create a "committee on decorum and investigation of cases on sexual harassment." Pursuant to this, all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations, were required to create their own Committee on Decorum and Investigation.[107]

Unlike in criminal and civil actions which are brought before regular courts, an administrative action is commenced by filing a complaint with the disciplining authority or agency, or with the Committee on Decorum and Investigation, which shall receive and investigate sexual harassment complaints.[108]

CSC Resolution No. 01-0940, Section 3 defines sexual harassment as follows:

SECTION 3. For the purpose of these Rules, the administrative offense of sexual harassment is an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of a sexual nature, committed by a government employee or official in a work-related, training or education related environment of the person complained of.

(a) Work-related sexual harassment is committed under the following circumstances:

(1) submission to or rejection of the act or series of acts is used as a basis for any employment decision (including, but not limited to, matters related to hiring, promotion, raise in salary, job security,

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SECTION 2. These Rules shall apply to all officials and employees in government, whether in the Career or Non-Career service and holding any level of position, including Presidential appointees and elective officials regardless of status, in the national or local government, state colleges and universities, including government-owned or controlled corporations, with original charters.

[107] CSC Resolution No. 01-0940 (2001), Sec. 7.

[108] Republic Act No. 7877 (1995), Sec. 7.

benefits and any other personnel action) affecting the applicant/ employee; or

(2) the act or series of acts have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment; or

(3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant, customer, or ward of the person complained of.

(b) Education or training-related sexual harassment is committed against one who is under the actual or constructive care, custody or supervision of the offender, or against one whose education, training, apprenticeship, internship or tutorship is directly or constructively entrusted to, or is provided by, the offender, when:

(1) submission to or rejection of the act or series of acts as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade, the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration.

(2) the act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or

(3) the act or series of acts might reasonably expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.

CSC Resolution No. 01-0940, Section 4 further gives examples on where and how sexual harassment may take place:

1. in the premises of the workplace or office or of the school or training institution;
2. in any place where the parties were found as a result of work or education or training responsibilities or relations;
3. at work or education or training-related social functions;
4. while on official business outside the office or school or training institution or during work or school or training-related travel;

5. at official conferences, fora, symposia or training sessions; or
6. by telephone, cellular phone, fax machine or electronic mail.

CSC Resolution No. 01-0940, Section 5 enumerates illustrative forms of sexual harassment:

a) Physical
   i. Malicious Touching;
   ii. Overt sexual advances;
   iii. Gestures with lewd insinuation.

b) Verbal, such as but not limited to, requests or demands for sexual favors, and lurid remarks;

c) Use of objects, pictures or graphics, letters or writing notes with sexual underpinnings;

d) Other forms analogous to the foregoing.

Casual gestures of friendship and camaraderie, done during festive or special occasions and with other people present, do not constitute sexual harassment.[109] Accordingly, in *Aquino v. Acosta*,[110] the Court agreed with the report of the investigating Justice that the complainant failed to show by convincing evidence that the acts of Judge Acosta in greeting her with a kiss on the cheek, in a 'beso-beso' fashion, were carried out with lustful and lascivious desires or were motivated by malice or ill motive. The Court explained:

> In all the incidents complained of, the respondent's pecks on the cheeks of the complainant should be understood in the context of having been done on the occasion of some festivities, and not the assertion of the latter that she was singled out by Judge Acosta in his kissing escapades. The busses on her cheeks were simply friendly and innocent, bereft of malice and lewd design.[111]

Unlike in a criminal action where the penalty is a fine, imprisonment, or both, the penalty in an administrative action

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[109] See *Aquino vs. Judge Acosta,* 429 Phil. 498 (2002).

[110] *Aquino v. Judge Acosta*, 429 Phil. 498 (2002).

[111] *Id.* at 506.

is, at most, dismissal, from the service.[112] This is because an administrative action seeks to protect the public service by imposing administrative sanctions to the erring public officer.[113] As has been explained:

> Public service requires the utmost integrity and strictest discipline; thus, a public servant must exhibit at all times the highest sense of honesty and integrity, and utmost devotion and dedication to duty, respect the rights of others and shall refrain from doing acts contrary to law, and good.[114]

In addition to Republic Act No. 7877, Congress has since enacted Republic Act No. 11313, otherwise known as the Safe Spaces Act. Signed into law on July 15, 2019, it penalizes gender-based sexual harassment, and is founded on, among others, the recognition that "both men and women must have equality, security and safety not only in private, but also on the streets, public spaces, online, workplaces and educational and training institutions."[115] It addresses four (4) categories of gender-based sexual harassment: gender-based streets and public spaces sexual harassment; gender-based online sexual harassment; gender-

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[112] On one hand, Republic Act No. 7877 (1995), Sec. 7 provides for the criminal penalties:

SECTION 7. *Penalties*. — Any person who violates the provisions of this Act shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (₱10,000) nor more than Twenty thousand pesos (₱20,000), or both such fine and imprisonment at the discretion of the court.

On the other hand, 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Sec. 51 (A) concerns administrative liability by a public officer or employee for sexual harassment. Depending on precise nature of the acts committed and other attendant circumstances, an act of sexual harassment may be deemed a grave, less grave, or light offense.

[113] *Office of the President v. Cataquiz*, 673 Phil. 318, 345 (2011) [Per *J.* Mendoza, Third Division].

[114] Office of the President, Administrative Order No. 119, May 8, 2000, as quoted in *Domingo v. Rayala*, 569 Phil. 423, 436 (2008) [Per *J.* Nachura, Third Division].

[115] Rep. Act. No. 11313 (2019), Sec. 2.

based sexual harassment in the workplace; and, gender-based sexual harassment in educational and training institutions.

In line with fundamental constitutional provisions regarding human dignity and human rights, the Safe Spaces Act expands the concept of discrimination and protects persons of diverse sexual orientation, gender identity and/or expression. It thus recognizes gender-based sexual-harassment as including, among others, "misogynistic, transphobic, homophobic and sexist slurs."

The Safe Spaces Act does not undo or abandon the definition of sexual harassment under the Anti-Sexual Harassment Law of 1995. The gravamen of the offenses punished under the Safe Spaces Act is the act of sexually harassing a person on the basis of the his/her sexual orientation, gender identity and/or expression, while that of the offense punished under the Anti-Sexual Harassment Act of 1995 is abuse of one's authority, influence or moral ascendancy so as to enable the sexual harassment of a subordinate.

I (B)

All the elements of sexual harassment, as penalized by Republic Act No. 7877, are present in this case.

Gamallo had earlier filed an administrative complaint with the National Economic Development Authority Central.[116] The present case, however, is exclusively concerned with Escandor's criminal liability and will be decided exclusively of and without prejudice to his administrative liability. On this, we find all the requisites for criminal liability present, and sustain Escandor's conviction.

On the first requisite, it is clear that Escandor had authority over Gamallo. He was the Regional Director of the National Economic and Development Authority Region 7, while Gamallo was a contractual employee in that office.[117] Escandor's authority

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[116] *Rollo*, at p. 68.

[117] *Id.* at 61.

also existed in a work-related environment; thereby satisfying the second requisite for sexual harassment.

While the third requisite calls for a "demand, request, or requirement of a sexual favor," this Court has held in *Domingo v. Rayala*[118] that it is not necessary that these be articulated in a categorical oral or written statement. It may be discerned from the acts of the offender.[119] Thus, the Court found in that case that the accused's acts of "holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones"[120] satisfy the third requisite.

Here, Gamallo testified to several acts of sexual harassment committed by Escandor. Among these were grabbing her hand,[121] kissing,[122] engaging in improper conversations,[123] touching her thigh,[124] giving her gifts,[125] telling her that "she was the kind of girl he really wants," asking her out on dates,[126] and sending her text and Winpop messages telling her that he missed her, that she looked beautiful, and that he loved her.[127] All these acts undoubtedly amount to a request for sexual favors.

At the core of sexual harassment in the workplace is power exercised by a superior over a subordinate. The power emanates

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[118] *Domingo v. Rayala*, 569 Phil. 423 (2008) [Per *J.* Nachura, Third Division].

[119] *Id.* at 450.

[120] *Id.*

[121] *Rollo*, p. 268.

[122] *Id.*

[123] *Id.*

[124] *Id.* at 272.

[125] *Id.*

[126] *Id.*

[127] *Id.*

from how the superior can remove or disadvantage the subordinate should the latter refuse the superior's sexual advances.[128] Thus, sexual harassment is committed when the sexual favor is made as a condition in the hiring of the victim or the grant of benefits thereto; or when the sexual act results in an intimidating, hostile, or offensive environment for the employee.[129]

In this case, Gamallo stated that the acts of Escandor made her feel "disrespected,"[130] "humiliated and cheap,"[131] "uneasy,"[132] and "frightened."[133] She could also not concentrate on work,[134] could not sleep[135] and found herself "staring into empty space."[136] When she disabled her Winpop messaging because of Escandor's inappropriate messages, she was threatened that she will be deleted from the National Economic and Development Authority meeting list. Villamor, Tagalog and Manuel, who all testified for Gamallo, tried to protect her from Escandor. Villamor and Tagalog made sure that whenever Escandor called for Gamallo, either of them would go with her.[137] Manuel even had to relay the incidents to the National Economic and Development Authority Deputy Director General. Undoubtedly, Escandor's acts resulted in an intimidating, hostile, and offensive environment for Gamallo.

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[128] *Floralde v. Court of Appeals*, 392 Phil. 146, 150 (2000) [Per J. Pardo, *En Banc*].

[129] Republic Act No. 7877 (1995), Sec. 3.

[130] *Rollo*, p. 268.

[131] *Id.* at 269.

[132] *Id.* at 271.

[133] *Id.*

[134] *Id.* at 268.

[135] *Id.* at 269.

[136] *Id.* at 272.

[137] *Id.* at 270.

I (C)

Escandor counters that, "[t]he evidence proferred . . . is totally repugnant to human standard[s], common experience and observation."[138] He claims that the credibility of Gamallo is "zero not only because of unreasonable delay, but also because of the inherent improbability of her story, her propensity to resort to falsehood and her strong motive to falsely accuse and get back at the accused."[139]

Contrary to Escandor's assertions, the Sandiganbayan found Gamallo's testimony credible.[140] We sustain this conclusion.

Factual findings of the trial court on the credibility of witnesses and their testimonies are entitled to great respect. These findings will not be disturbed in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances.[141] This is because trial provides judges with the "opportunity to detect, consciously or unconsciously, observable cues and micro expressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will."[142]

The matters raised by Escandor have been more than adequately addressed by the Sandiganbayan:

> In the present case, there is nothing in the records that would indicate that Gamallo is dishonest or untruthful. She was able to give her testimony in Court and answer the questions put to her on cross-examination. Her former supervisor, Tagalog, attests that he had never heard of any act of immorality committed by Gamallo.[143]

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[138] *Id.* at 45.

[139] *Id.*

[140] *Id.* at 46.

[141] *People v. Quintos*, 746 Phil. 809, 819-820 (2014) [Per *J.* Leonen, Second Division].

[142] *Id.* at 820.

[143] *Rollo*, p. 91.

The Sandiganbayan, being the court which conducted trial, "is in the best position to determine the truthfulness of witnesses."[144] Indeed, this court must "give the highest respect to [its] of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand."[145]

In *Batistis v. People of the Philippines*,[146] this Court held that only questions of law may be entertained in petitions for review on *certiorari* filed with this court from decisions of the Sandiganbayan:

> The factual findings of the [trial court], its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted.[147]

When the victim's testimony is straightforward, convincing, consistent with human nature, and unflawed by any material or significant controversy, it passes the test of credibility and the accused may be convicted solely on the basis thereof.[148]

Escandor's claims fail to cast such degree of doubt on the Sandiganbayan's findings as to justify absolving him of liability. On the other hand, Gamallo has adequately testified to the acts attributed to Escandor. Moreover, her account is supported by the testimonies of three colleagues: Villamor, Tagalog and Manuel. As against these, Escandor only had his own testimony and bare denials.

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[144] *People v. Sanchez*, 681 Phil. 631, 635 (2012) [Per J. Reyes, Second Division] citing *People v. Laog*, 674 Phil. 444 (2011) [Per J. Villarama, Jr., First Division].

[145] *Id.*

[146] 623 Phil. 246 (2009) [Per J. Bersamin, First Division].

[147] *Id.* at 256 citing *Pelonia v. People*, 549 Phil. 717 (2007) [Per J. Callejo, Sr., Third Division].

[148] *People v. Quintos*, 746 Phil. 809, 825-826 (2014) [Per J. Leonen, Second Division].

II (A)

Escandor further argues that his constitutional right to be informed of the nature and the cause of the accusation against him was violated when the Sandiganbayan convicted him of sexual harassment committed during their 2000 Christmas party despite the Information pertaining to acts of sexual harassment committed on another date, *i.e.*, their 2002 Christmas party.[149]

This contention fails to impress.

The Information detailed Escandor's acts of sexual harassment as follows:

> . . . telling her that he has fallen in love with her and has been attracted to her for a long time already, maliciously grabbing her hands, embracing her and planting a kiss on her forehead; telling her that if it were possible, he would have prevented her marriage with her husband; asking her for a date; groping her thigh; sending her winpop messages showing his amorous concern for her; *on the office Christmas party of 2002*, by grabbing her on a stairway and kissing her on the lips; giving her gifts of chocolates, wine and a bracelet on that same Christmas, and consistently throughout this time, sending her text messages suggestive of sex[.][150]

The recital lists several distinct acts (or sets of acts) of sexual harassment; the incident in the "Christmas party of 2002" being just one. That each act was distinct is manifested in how they were recited in the information: separated by a semicolon for each act, or set of acts, making them distinct items in a list.[151] Each of these acts or sets of acts, if proven, is sufficient to convict Escandor. Thus, even if the Court does not appreciate the allegations relating to events that transpired during the Christmas party — whether it was in 2002, as alleged in the

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[149] *Rollo*, p. 30.

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

[151] See *Agcaoili v. Suguitan*, 48 Phil. 676 (1926) [Per J. Johnson, *En Banc*] where the court stated that a semicolon, like a comma, indicates separation or division, but in a degree greater than that expressed by comma.

Information, or in 2000, as testified to by Gamallo — this does not absolve Escandor of liability.

II (B)

Escandor also argues that his constitutional right to be informed of the nature and the cause of the accusation against him was violated when the Sandiganbayan convicted him of acts of sexual harassment based on the Information which alleges an indefinite time when the offense charged was committed.[152]

It is now too late for Escandor to assail the validity of the information.

Rule 110, Section 11 of the Rules of Court requires that the time of the commission of the offense must be alleged as near to the actual date as the information will permit; otherwise, the right of the accused to be informed would be violated. The accused must raise the issue of defective information in a motion to quash or bill of particulars, which may only be filed before arraignment.[153]

Petitioner failed to assail the Information within the permitted period. Thus, it is now too late for him to claim that the information was defective. When the accused fails, before arraignment, to move for the quashal of such information and goes to trial thereunder, he thereby waives the objection and may be found guilty of as many offenses as those charged in the information and proved during trial.[154]

Assuming he is permitted to assail the Information, it is still not defective. Rule 110, Section 11 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date that the offense was committed except when it is a material ingredient of the

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[152] *Rollo*, p. 33.

[153] *People v. Razonable*, 386 Phil. 771, 780 (2000) [Per *J.* Puno, First Division].

[154] *People v. Manalili*, 355 Phil. 652, 689 (1998) [Per *J.* Panganiban, First Division].

offense. In this case, the time of the commission of the offense is not an essential element under Republic Act No. 7877. Thus, the phrase "on or about" in the information does not require the prosecution to prove any precise date.[155]

III (A)

Escandor assails his conviction citing "unreasonable delay and silence"[156] as it was only initiated five years after the alleged incidents. He argues that the belated filing of the Complaint renders Gamallo's actuations doubtful.[157] He notes that Gamallo is a college graduate, a National Economic and Development Authority Project Staff, and has a lawyer for a husband.[158] Citing *Digitel Communications v. Mariquit*,[159] he argues that it was simply against the natural order of events and against human nature that she would not complain about the sexual incidents immediately.[160]

Escandor is mistaken. There is no time period within which a victim is expected to complain about sexual harassment.[161] The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee. Thus, in *Philippine Aelous v. NLRC*,[162] this Court emphasized that filing after four years does not invalidate sexual harassment:

Private respondent admittedly allowed four (4) years to pass before finally coming out with her employer's sexual impositions. Not many

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[155] *People v. Bugayong*, 359 Phil. 870, 881-882 (1998) [Per *J.* Panganiban, First Division].

[156] *Rollo*, p. 36.

[157] *Id.*

[158] *Id.* at 37.

[159] 525 Phil. 765 (2006) [Per *J.* Carpio Morales, Third Division].

[160] *Id.*

[161] *Phil. Aeolus Auto-Motive United Corp. v. National Labor Relations Commission*, 387 Phil. 250, 264 (2000) [Per *J.* Bellosillo, Second Division].

[162] 387 Phil. 250 (2000) [Per *J.* Bellosillo, Second Division].

women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate, scandal. If petitioner corporation had not issued the third memorandum that terminated the services of private respondent, we could only speculate how much longer she would keep her silence. Moreover, few persons are privileged indeed to transfer from one employer to another. The dearth of quality employment has become a daily "monster" roaming the streets that one may not be expected to give up one's employment easily but to hang on to it, so to speak, by all tolerable means. Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on her job and consider them as mere occupational hazards. This uneasiness in her place of work thrived in an atmosphere of tolerance for four (4) years, and one could only imagine the prevailing anxiety and resentment, if not bitterness, that beset her all that time. But William Chua faced reality soon enough. Since he had no place in private respondent's heart, so must she have no place in his office. So, he provoked her, harassed her, and finally dislodged her; and for finally venting her pent-up anger for years, he "found" the perfect reason to terminate her.[163]

As aptly observed by the Sandiganbayan, Escandor is mistaken in his interpretation of *Digitel*.[164] *Digitel* stemmed from a Complaint for constructive dismissal due to professional and sexual harassment. In that case, this Court stated that "there is, strictly speaking, no fixed period within which an alleged victim of sexual harassment may file a complaint, [although] it does not mean that he or she is at liberty to file one anytime she or he wants to. Surely, any delay in filing a complaint must be justifiable or reasonable as not to cast doubt on its merits."[165]

Neither has prescription set in by the time Gamallo filed her Complaint Affidavit on September 4, 2004. Escandor's acts of sexual harassment persisted until December 2003, the end of Gamallo's employment with the National Economic and Development Authority Region 7. By the time she filed her Complaint-Affidavit, only about nine (9) months had lapsed.

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[163] *Id.* at 264-265.

[164] 525 Phil. 765 (2006) [Per *J.* Carpio Morales, Third Division].

[165] *Id.* at 794.

This is well-within the three (3) years permitted by Section 7 of Republic Act No. 7877 within which an action under the same statute may be pursued.

III (B)

Escandor further imputes ill-motive to Gamallo in filing the charges. He submits that the charges were in retaliation to Escandor's administrative complaints against Gamallo's husband who also worked at the National Economic and Development Authority. He also emphasized Gamallo's act of signing the petition in support of his retention as Regional Director.

These fail to discredit Gamallo. She already explained the circumstances surrounding her participation in the petition against Escandor:

ATTY. MARONILLA:

Q: Around the same date, Madam Witness, September 2000, do you not recall having signed a memorandum in support of the accused against the effort of then Senator Osmeña to remove him from NEDA Legislative?

PROS. RAFAEL:
The question, Your Honor, has no basis.

JUSTICE DE LA CRUZ:
Answer.

WITNESS:
A: I signed that document.

ATTY. MARONILLA:
Q: Madam Witness, the question is, do you recall?
A: Yes, Sir.
Q: Can you recall the tenor of that document?
A: It was depending (sic) NEDA as an institution. It did not depend (sic) the integrity of Director Escandor as a person. It was on the NEDA extreme political pressure, and also Director Escandor was not guilty of the wrongdoing that the Senator was accusing him of. We were really depending (sic) the integrity of NEDA, not the integrity of Director Escandor.[166]

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[166] *Rollo*, pp. 91-92.

The memorandum sought to "uphold the image of NEDA as a government institution that has resisted undue political pressures."[167] Such image, according to the "[National Economic and Development Authority] Region 7 Staff," will be tainted "should transfers or reshuffle of regional directors be made because of political pressure."[168] The mere happenstance of Gamallo's participation in an effort to protect the National Economic and Development Authority as an institution is not itself a disavowal of and, in no way, precludes Escandor's harassment of Gamallo.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision of the Sandiganbayan, finding petitioner Jose Romeo Escandor guilty of the offense of sexual harassment as defined and punished under Sections 3 and 7 of Republic Act No. 7877, and penalizing him with imprisonment of six (6) months and a fine of Twenty Thousand Pesos (₱20,000.00), with subsidiary imprisonment in case of insolvency, is **AFFIRMED**.

SO ORDERED.

Hernando,[*] *Carandang, Zalameda,* and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 214326. July 6, 2020]

ALASTAIR JOHN KANE, *petitioner, vs.* **PATRICIA ROGGENKAMP,** *respondent.*

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[167] *Id.* at 381.

[168] *Id.* at 381.

[*] Designated additional Member per Raffle dated July 1, 2020.

SYLLABUS

1. CIVIL LAW; PERSONS AND HUMAN RELATIONS; ARTICLE 33 ON DEFAMATION, FRAUD AND PHYSICAL INJURIES; THE CIVIL ACTION IS ENTIRELY SEPARATE AND DISTINCT FROM THE CRIMINAL ACTION AND SHALL PROCEED INDEPENDENTLY OF THE CRIMINAL PROSECUTION.— Respondent based her Complaint for Damages against petitioner on Article 33 of the Civil Code: x x x Article 33 is explicit that in cases of defamation, fraud, and physical injuries, the civil action is "entirely separate and distinct from the criminal action" and shall "proceed independently of the criminal prosecution." Accordingly, Article 33 "contemplates a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case." Even the quantum of proof required—preponderance of evidence, as opposed to the proof beyond reasonable doubt in criminal cases—is different, confirming that the civil action under Article 33 is independent of the criminal action. Reservation of the right to separately file a civil action for damages under Article 33 need not even be made. The civil action under Article 33 may be pursued before the filing of the criminal case, during the pendency of the criminal case, or even after the criminal case is resolved. The only limitation is that an offended party cannot "recover [damages] twice for the same act or omission" of the defendant. Rule 111, Section 3 of the 2000 Revised Rules of Criminal Procedure x x x Further, "defamation," "fraud," and "physical injuries," as used in Article 33, are to be understood in their ordinary sense. Specifically, the "physical injuries" contemplated in Article 33 is bodily injury, not the "physical injuries" referred to in the Revised Penal Code.

2. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND CHILDREN ACT OF 2004 (RA 9262); ACTS OF VIOLENCE AGAINST WOMEN AND THEIR CHILDREN; ENUMERATED.— Alastair John was charged with violating Section 5(a) of Republic Act No. 9262, or the Anti-Violence Against Women and Children Act of 2004: SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts: (a) Causing physical harm to the woman or her child; (b) Threatening to cause the woman or her child physical harm; (c) Attempting to cause the woman

or her child physical harm[.] Section 5 enumerates the various "acts of violence against women and their children," generally defined as: SECTION 3. *Definition of Terms*. — any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. Paragraphs (a), (b), and (c) of Section 5 specifically refer to acts of "physical violence," which, under the law, includes "acts that include bodily or physical harm[.]"

3. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT ACQUITTING THE ACCUSED; ACQUITTAL WAS DUE TO REASONABLE DOUBT AND IT MUST INDICATE IF THE ACT OR OMISSION FROM WHICH THE CIVIL LIABILITY MIGHT ARISE DID NOT EXIST; WITHOUT SUCH DECLARATION, IT IS PRESUMED THAT THE ACCUSED IS CIVILLY LIABLE *EX DELICTO*.— Under Rule 120, Section 2 of the 2000 Revised Rules of Criminal Procedure, a judgment acquitting the accused must state whether the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. Furthermore, the judgment must determine if the act or omission from which the civil liability might arise did not exist: x x x It is essential to indicate whether the act or omission from which the civil liability might arise did not exist. Without such declaration, it must be presumed that the acquittal was due to reasonable doubt, and the accused is civilly liable *ex delicto*. Thus, the general rule shall apply: every person criminally liable is also civilly liable. x x x [Here,] having been acquitted due to reasonable doubt, petitioner is not exempt from civil liability. This is true even if his guilt was not satisfactorily established.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; *RES JUDICATA*; THE ACQUITTAL FOR VIOLATION OF RA 9262 IS NOT *RES JUDICATA* ON THE ACTION FOR DAMAGES UNDER ARTICLE 33 OF THE CIVIL CODE.— [P]etitioner's acquittal in the case for violation of Section 5(a) of Republic Act No. 9262 is not *res judicata* on the action for

damages under Article 33 of the Civil Code. One of the elements of *res judicata* is the identity of causes of action, with "cause of action" being the "act or omission by which a party violates a right of another." While the criminal action and the action for damages arise from the same act or omission—the alleged physical violence committed by petitioner against respondent—these actions violate two (2) different rights of respondent: (1) her right not to be physically harmed by an intimate partner under Republic Act No. 9262; and (2) her right to recover damages for bodily injury under Article 33 of the Civil Code. In other words, the criminal case and the civil case do not have identical causes of action, and respondent had the right to pursue either petitioner's civil liability arising from the violation of Republic Act No. 9262, or the independent civil liability provided for in Article 33 of the Civil Code.

5. ID.; RULE ON FORUM SHOPPING.— Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action[.] To determine whether there is forum shopping, it is necessary to ascertain "whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another[.]" The test is "whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought." *Litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." The following requisites must concur for *litis pendentia* to be present: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for; and (3) the identity of the two (2) cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

6. ID.; RULE ON VENUE; DISCUSSED.— Venue is "the place where the case is to be heard or tried[.]" Under our Rules, the venue of an action generally depends on whether it is a real or personal action. Real actions are those affecting the title or

possession of a real property, or interest therein, to be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. All other actions, called personal actions, may be commenced and tried where the plaintiff or any of the principal plaintiffs reside, or where the defendant or any of the principal defendants reside, at the election of the plaintiff. The action for damages filed by respondent does not involve the title or possession of a real property, or interest therein. It is a personal action, and respondent, as plaintiff, had the option of either filing it in her place of residence or the defendant, petitioner's, place of residence.

APPEARANCES OF COUNSEL

Quial Beltran & Yu for petitioner.
Laluces Ecarma & Diaz for respondent.

D E C I S I O N

LEONEN, *J.*:

An acquittal from a charge of physical violence against women and their children is not a bar to the filing of a civil action for damages for physical injuries under Article 33 of the Civil Code if an acquittal was due to reasonable doubt, without any declaration that the facts upon which the offense arises are nonexistent.

This resolves the Petition for Review on *Certiorari*[1] filed by Alastair John Kane, assailing the Decision[2] and Resolution[3]

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 22-33. The March 25, 2014 Decision was penned by Associate Justice Ramon A. Cruz and was concurred in by Associate Justices Hakim S. Abdulwahid (Chairperson) and Romeo F. Barza of the Sixth Division of the Court of Appeals, Manila.

[3] *Id.* at 35-36. The September 3, 2014 Resolution in CA-G.R. CV No. 96341 was penned by Associate Justice Ramon A. Cruz and was concurred in by Associate Justices Hakim S. Abdulwahid (Chairperson) and Romeo F. Barza of the Former Sixth Division of the Court of Appeals, Manila.

of the Court of Appeals. The Court of Appeals reversed and set aside the Order[4] of the Regional Trial Court, Branch 214, Mandaluyong City, dismissing Patricia Roggenkamp's Complaint for Damages against Alastair John Kane. The Complaint, which was based on Article 33 of the Civil Code, was dismissed on the grounds of *res judicata* and lack of jurisdiction.

Alastair John Kane (Alastair John) and Patricia Roggenkamp (Patricia) are Australian citizens.[5] They met in January 2004 in Brisbane, Australia, and became lovers immediately.[6]

Patricia decided to put up a business in the Philippines, and eventually travelled with Alastair John to Manila. They settled in a condominium unit located in Parañaque City supposedly owned by Patricia.[7]

On March 30, 2006, an Information for violation of Republic Act No. 9262 or the Anti-Violence Against Women and Children Act of 2004 was filed against Alastair John, with Patricia as the private complainant. The case, docketed as Criminal Case No. 06-0413, was then raffled to Branch 260 of the Regional Trial Court of Parañaque City.[8]

According to Patricia, she and Alastair John attended a party hosted by her son, Ashley Richard Cayzer (Ashley Richard) on November 30, 2004. The next day, December 1, 2004, after they had just arrived at their residence at about 1:00 a.m., Patricia confronted Alastair John for allegedly looking at the underwear of other female guests at the party. Ignoring Patricia, Alastair John went on to lie down on the bed. Patricia then sat on a nearby chair.[9]

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[4] *Id.* at 64-65, Comment. The Order was issued by Acting Presiding Judge Ofelia Calo in Civil Case No. MC08-3871.

[5] *Rollo*, p. 22. Court of Appeals Decision.

[6] *Id.* at 92, Plaintiff-Appellant's Brief; and 113, Brief for the Defendant-Appellee.

[7] *Id.* at 23. Court of Appeals Decision.

[8] *Id.*

[9] *Id.*

Alastair John, angered by Patricia's remarks, allegedly approached Patricia, lifted her off the chair, and dropped her on the floor. Patricia further claimed that Alastair John punched her in the head, dragged her by the hair to the bed, and pushed her head against the pillow. Patricia fought back and, when she had the chance, ran to the bathroom and locked herself inside.[10]

The next day, on December 2, 2004, Patricia's son, Ashley Richard, visited his mother and saw her lying in bed in pain. Alastair John told Ashley Richard that his mother had too much liquor the night of the party and, when they arrived home, Alastair John tried to carry her to the bed. Unfortunately, he accidently dropped her on the floor because the bed, which allegedly had wheels, moved.[11]

Ashley Richard then brought Patricia to the San Juan de Dios Hospital where she was prescribed painkillers for 12 days. After the trip to the hospital, Patricia went home to Alastair John. Their situation went back to being peaceful, and they even went on vacation from December 26, 2004 to January 1, 2005.[12]

On January 6, 2005, or merely five (5) days after, Alastair John allegedly verbally abused Patricia. He then left the next day, taking Patricia's car with him, as well as the keys to their Parañaque residence and another condominium unit in Pasig City where he stayed. Patricia, accompanied by her driver, went to the Pasig condominium unit and recovered possession of her car.[13]

On February 4, 2005, Patricia finally reported the incidents to the police. She explained that, prior to the December 1, 2004 incident, there were already prior incidents of abuse committed against her by Alastair John. After preliminary investigation,

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

probable cause for violation of Republic Act 9262 or the Anti-Violence Against Women and their Children Act of 2004 was found against Alastair John.[14]

After trial, the Regional Trial Court, Branch 260, Parañaque City acquitted Alastair John on the ground of reasonable doubt.[15] The Parañaque trial court was of the opinion that Alastair John's account of the events — that he accidentally dropped Patricia on the floor while he was carrying her — was "in accord with human experience[,]"[16] while that of Patricia's was not. It further said that "if [Patricia] was really a victim of violence or abuse, she should have told the same to her son [Ashley Richard], especially because the latter, according to her, is a lawyer."[17] The Parañaque trial court more particularly said:

> The Court noted that there was a heated altercation between the private complainant and the accused after they came from the birthday party of the former's son on December 1, 2004. Kane was accused of looking and peeping at the girls during the party. The Court is inclined to give credence to the version of the accused. The same is in accord with human experience. On the other hand[,] the version of Patricia is not in accord with human experience. She claimed that she was grabbed by the hair, hit her head and chest, neck, pelvic area and shoulder but the clinical abstract does not indicate any signs of physical violence. This court finds it unnatural why Patricia declared to the doctor that she accidentally fell on a marble floor. This is her same declaration to her son, Ashley. If she was really a victim of violence or abuse, she should have told the same to her son, especially because the latter, according to her, is a lawyer. This court is also surprised why she did not leave the accused if it is true that he manhandled her. She could easily do those things because her relationship with the accused was that only of lovers and there was no marriage to protect and family to save. To reiterate, the version of Mr. Kane is shown by the parties' actuations after the date alleged in the information. They even celebrated Christmas in a beach resort

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[14] *Id.*

[15] *Id.*

[16] *Id.* at 7. As cited in the Petition for Review on *Certiorari*.

[17] *Id.* at 98. As cited in the Plaintiff-Appellant's Brief.

with friends and with the accused playing Santa [Claus]. Noteworthy is the filing of the case almost one year after the alleged incident and after the parties started to have issues on property.[18]

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WHEREFORE, due to reasonable doubt, the accused, ALASTAIR JOHN KANE, is hereby ACQUITTED of the crime [of] violation of Sec. 5(a) of R.A. 9262, penalized by Sec. 6 (a) of the said Act.

SO ORDERED.[19] (Emphasis in the original)

Thereafter, Patricia filed a Complaint for Damages based on Article 33 of the Civil Code before the Regional Trial Court of Mandaluyong City, praying for actual, moral and exemplary damages, and attorney's fees. Patricia argued that the right of action provided in Article 33 in cases of physical injuries is entirely separate and distinct from the criminal action earlier commenced against Alastair John.[20]

Further, she added that the civil actions for damages under Articles 32, 33, 34, and 2176 of the Civil Code, called independent civil actions, "are not deemed instituted with the criminal action and may be filed separately by the offended party even without reservation." Considering that Alastair John was acquitted on the ground of reasonable doubt, not because he wasn't the author of the act complained of, Patricia argued that he may still be held liable under Article 33 of the Civil Code.[21]

Opposing the civil action, Alastair John filed a Motion to Dismiss on the grounds of *res judicata* and improper venue. [22] Alastair John claimed that the dismissal of the criminal case barred the filing of the civil case, because the cases allegedly

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[18] *Id.* at 7-8. As cited in the Petition for Review on *Certiorari*.

[19] *Id.* at 30. As cited in the Court of Appeals Decision.

[20] *Id.* at 24.

[21] *Id.*

[22] *Id.*

involved identical causes of action. He emphasized that the cases were both based on his alleged physical abuse of Patricia, a matter already found to be not "in accord with human experience."[23] With respect to the venue, Alastair John argued that it was improperly laid. The action for damages was a personal action, yet none of the parties resided in Mandaluyong City where the civil action was filed.[24]

In an April 20, 2009 Order, the Motion to Dismiss was denied by the 214th Branch of the Regional Trial Court, Mandaluyong City, then presided by Judge Edwin D. Sorongon.[25]

The trial court held that civil liability was not extinguished, because Alastair John's acquittal was based on reasonable doubt. Furthermore, the action filed by Patricia was an independent civil action which, together with the actions provided in Articles 32, 34, and 2176 of the Civil Code, is separate and distinct from the criminal action and may be enforced against an offender, separately or simultaneously, with his civil liability *ex delicto* under Article 100 of the Revised Penal Code. Finally, the trial court held that venue was properly laid because at the time of the filing of the civil complaint, Patricia was already residing in Mandaluyong City.[26] In the words of the trial court:

"The motion is unimpressive.

"While it is true that accused's (herein defendant) guilt in the criminal case had not been proven beyond reasonable doubt by the trial court in Parañaque City, the decision however did not state in clear and [un]equivocal terms that he did not commit the offense charged. Hence, impliedly the trial court of Parañaque acquitted him on reasonable doubt. Since civil liability is not extinguished in criminal cases if the acquittal is based on reasonable doubt[,] then the instant civil complaint must proceed. Civil liability arising from criminal and civil liability

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

[24] *Id.*

[25] *Id.* at 62, Comment. Then Presiding Judge Edwin D. Sorongon is now an Associate Justice of the Court of Appeals.

[26] *Rollo,* pp. 62-64. Comment.

arising from Articles 32, 33, 34 and 2176 quasi-delict for contract (Art. 31) are entirely separate and distinct from the criminal action that may be brought by injured party (*International Flavors and Fragrances, Inc. vs. Argos*, 364 SCRA. 792)[.]

"Even if the guilt of the accused has not been [satisfactorily] established, he is not exempted from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 33 of the Civil Code where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The civil liability is not extinguished where acquittal is based on reasonable doubt (*Manantan vs. Court of Appeals*, 350 SCRA 387).

"An act or omission causing damage to another may give rise to two separate liabilities on the part of the offender, *i.e.*, (1) civil liability *ex deli[c]to*, under Article 100 of the Revised Penal Code, and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of felony, *e.g.*, *culpa contractual* or obligations arising from law under Article 32 of the Civil Code, intentional torts under Articles 32 and 34, and *culpa aquiliana* under Article 2176 of the Civil Code, or (b) where the injured party is granted a right to file an independent and distinct criminal action (Article 33, Civil Code). Either of these two possible liabilities may be enforced against the offender (separately and simultaneously) subject, however, to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes (*Cando, Jr. v. Isip*, G.R. No. 133978, November 12, 2002). However, a separate civil action based on subsidiary liability cannot be instituted during the pendency of the criminal case (Remedial Law, Herrera).

"Likewise, the ground of improper venue cannot be sustained. It was clarified by plaintiff that when she testified on May 22, 2007 and May 13, 2008 she considered herself a resident of Parañaque, however, in November 2008 and subsequently thereafter[,] she stayed at the condominium unit of her friend in . . . Mandaluyong City. In other words, at the time of the filing of the complaint on November 29, 2008 she was already residing in Mandaluyong City[.] Clearly,

plaintiff for purposes of this instant case is a resident of Mandaluyong City."[27] (Emphasis in the original)

With his Motion for Reconsideration having been denied by the trial court, Alastair John filed his Answer with Compulsory Counterclaim and Patricia, her Reply. Issues were joined and the case was set for pre-trial.[28]

In the meantime, Judge Sorongon was appointed Associate Justice of the Court of Appeals. Judge Ofelia Calo then acted as Presiding Judge of the Mandaluyong trial court[29] and, in the June 8, 2010 Order, dismissed the case *motu proprio* on the ground of *res judicata* and lack of jurisdiction.[30]

The Mandaluyong trial court said that, after "[taking] a closer look at the records extant to the instant case[,]"[31] any subsequent proceeding in the civil case would be "a waste of time"[32] since the decision of the Parañaque trial court had the effect of *res judicata*. Specifically, the Mandaluyong trial court declared that the Parañaque trial court's evaluation of the parties' respective evidence meant that "the act from which the civil liability might arise did not exist."[33]

Consequently, the action based on Article 33 allegedly had no basis, and Patricia effectively committed forum shopping. Finally, it ruled that the Parañaque trial court's decision in the criminal case already attained finality, thus depriving the Mandaluyong trial court of jurisdiction over Patricia's Complaint for Damages.

A closer look at the records of the instant case filed by plaintiff would show that this court has no jurisdiction over the instant case.

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[27] *Id.* at 63-64. As cited in the Comment.

[28] *Id.* at 24. Court of Appeals Decision.

[29] *Id.* at 64. As cited in the Comment.

[30] *Id.* at 24. Court of Appeals Decision.

[31] *Id.* at 65. As cited in the Comment.

[32] *Id.*

[33] *Id.*

The instant case which is for damages was also the subject matter of Criminal Case No. 06-413 litigated in another court, the Regional Trial Court of Parañaque City, Branch 260 wherein a Decision rendered by the said court acquitting the accused, the herein defendant.

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Although the motion to dismiss filed by defendants on the grounds that the instant complaint is barred by prior judgment and improper venue was already denied for lack of merit in an Order dated 20 April 2009, the undersigned acting presiding judge deemed it proper to take a closer look at the records extant to the instant case considering that proceeding to the initial trial will just be a waste of time and any proceedings taken by the court will only be a nullity if the court has no jurisdiction because of the principle of res judicata.

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Verily, the evaluation made by the RTC, Branch 260, Parañaque City of the criminal case giving credence to the version of the accused, which the Court perceived to be in accord with human experience, and pointing to factual circumstances and explaining why the version of Patricia is not in accord with human experience, is a clear showing that the act from which the civil liability might arise did not exist.

With the decision rendered by the RTC Branch 260, Parañaque City involving the same cause of action and relief sought, and identity [of] parties, this court perceives that the filing of the instant case in this jurisdiction constituted forum shopping. . . .

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Considering that the RTC, Branch 260, Parañaque City has already taken cognizance of the case involving the same cause of action and identity of parties, and has in fact rendered a decision which has attained finality, this court therefore has no jurisdiction to try the same action.[34]

Patricia filed a Motion for Reconsideration, which was subsequently denied in a November 19, 2010 Order.[35]

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[34] *Id.* at 90-91. As cited in the Plaintiff-Appellant's Brief. See also *Rollo*, pp. 6-66, Comment.

[35] *Id.* at 22. Court of Appeals Decision.

Alleging error on the part of the Mandaluyong trial court, Patricia appealed before the Court of Appeals. In the March 25, 2014 Decision,[36] the Court of Appeals granted the appeal and reversed the June 8, 2010 and August 23, 2010 Orders of the Mandaluyong trial court.

The Court of Appeals first discussed how an act or omission may give rise to two (2) separate civil liabilities on the part of an offender. The civil liability *ex delicto* or that arising from the crime is provided in Article 100 of the Civil Code. On the other hand, independent civil liabilities are provided in Articles 32, 33, 34, and 2176 of the Civil Code, which are liabilities separate and distinct from the criminal action and may be pursued independently of it. Reservation to file the civil action is even unnecessary. Thus, an offended party may pursue any of these civil liabilities, whether *ex delicto* or not, subject to Article 2177 of the Civil Code prohibiting double recovery.[37]

The Court of Appeals then emphasized that the civil case filed by Patricia was based on Article 33 of the Civil Code, an independent civil action. Thus, contrary to the Mandaluyong trial court's ruling, the decision of the Parañaque trial court acquitting Alastair John did not operate as *res judicata* so as to bar the filing of the Complaint for Damages under Article 33. It was immaterial that the decision of the Parañaque trial court had already become final and executory, because the causes of action between the case for violation of Republic Act No. 9262 and the one filed under Article 33 of the Civil Code are different.[38]

The Court of Appeals held that Patricia did not commit forum shopping because the causes of action for the criminal action and the Complaint for Damages are different. There can also be no forum shopping, according to the Court of Appeals, when

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

[37] *Id.* at 26-27.

[38] *Id.* at 28.

the law expressly allows the filing of an independent civil action in cases of physical injuries.[39]

Finally, the Court of Appeals held that the venue was properly laid. Under the Rules of Court, personal actions, such as an action for damages, must be filed in the plaintiff or defendant's residence, at the election of the plaintiff, unless the parties agree on another venue. Considering that Patricia was already residing in Mandaluyong City at the time of the filing of the case, she correctly filed the Complaint for Damages before the Regional Trial Court of Mandaluyong.[40]

The dispositive portion of the Court of Appeals' March 25, 2014 Decision read:

> **WHEREFORE**, the appeal is **GRANTED**. The Orders dated June 8, 2010 and November 19, 2010 of the Regional Trial Court of Mandaluyong City, Branch 214 in Civil Case No. MC08-3871 are **REVERSED AND SET ASIDE**. The Regional Trial Court of Mandaluyong City, Branch 214 is **DIRECTED** to reinstate Civil Case No. MC08-3871, to continue with the proceedings and to resolve the same with deliberate dispatch.
>
> **SO ORDERED**.[41] (Emphasis in the original)

Alastair John then filed a Motion for Reconsideration, which was denied by the Court of Appeals in the September 3, 2014 Resolution.[42]

On October 9, 2014, Alastair John filed his Petition for Review on *Certiorari*.[43] Upon the directive of this Court, Patricia filed her Comment,[44] to which Alastair John replied.[45]

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[39] *Id.* at 29.

[40] *Id.* at 31.

[41] *Id.*

[42] *Id.* at 35-36.

[43] *Id.* at 3-20.

[44] *Id.* at 61-83.

[45] *Id.* at 156-170.

Petitioner mainly argues that he may no longer be made liable for damages under Article 33 of the Civil Code. According to petitioner, the Parañaque trial court's decision on the criminal case for violation of Republic Act No. 9262 clearly established that "the act or omission from which the civil liability may arise did not exist."[46] Therefore, there is no basis to hold him liable for damages for the alleged physical injuries sustained by respondent.[47]

Further, petitioner maintains that respondent's Complaint for Damages was already barred by *res judicata*. He claims that the Complaint for Damages was based on the alleged intentional physical injuries sustained by respondent. In the criminal case, however, the Parañaque trial court already ruled that the physical injuries resulted from an accident. With the decision of the Parañaque trial court having attained finality, it is allegedly binding upon the parties, and the Complaint for Damages was correctly dismissed by the Mandaluyong trial court.[48]

It follows that in filing the Complaint for Damages, respondent committed forum shopping. Specifically, respondent allegedly sought damages after she failed to secure a favorable ruling with the Parañaque trial court.[49]

Finally, petitioner contends that the venue for the civil action was improperly laid. Although the term "residence" merely refers to a physical habituation or actual residence, the physical presence and actual stay in that place must be more than temporary and must be with continuity and consistency. According to petitioner, respondent failed to establish such continuity, as she testified under oath in two (2) proceedings that she was a resident of Parañaque City:[50] (1) one in 2007;

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[46] *Id.* at 11.

[47] *Id.* at 11-13.

[48] *Id.* at 6-10.

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

[50] *Id.* at 38-39. TSN dated May 22, 2007.

and (2) another in 2008, both after the filing of the Complaint for Damages. These declarations should bind respondent, since her declarations were given under pain of prosecution for perjury.[51]

Respondent counters that the Court of Appeals committed no error in ruling that petitioner may still be held liable for damages, regardless of his acquittal in the criminal case. According to respondent, nowhere in the text of the Parañaque trial court decision could it be inferred that the fact from which petitioner's civil liability might arise did not exist.

On the contrary, the Parañaque trial court explicitly stated that it acquitted petitioner "due to reasonable doubt[.]"[52] Consequently, the Mandaluyong trial court should have proceeded to trial, and petitioner's liability for physical injuries, if any, should have been ascertained.[53]

Respondent further submits that *res judicata* does not apply in the present case. She maintains that the civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are independent civil actions which may be separately filed by the offended party, even without reservation in the prosecution of the criminal action. Therefore, respondent is legally "allowed to file two (2) separate suits for the same act or omission. The first a criminal suit where the civil action to recover civil liability *ex-delicto* is deemed instituted, and the other a civil case for quasi-delict[,]"[54] and the independent civil action may proceed regardless of the result of the proceedings in the criminal case.[55]

On the issue of forum shopping, respondent contends that the Court of Appeals correctly ruled on the issue. According to respondent, the civil liability under Article 33 of the Civil Code is separate and distinct from the civil liability arising

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[51] *Id.* at 13-15.

[52] *Id.* at 76.

[53] *Id.* at 73-78.

[54] *Id.* at 73.

[55] *Id.* at 74-78.

under Article 100 of the Revised Penal Code. Thus, an offended party may pursue both kinds of civil liability, even simultaneously, without offending the rule against forum shopping.[56]

Lastly, respondent maintains that, as correctly found by the Court of Appeals, the venue was properly laid. She argues that "whether [she] lived in other places prior to [the filing of the complaint] is irrelevant[,]"[57] and in this case, she clearly established that she was a resident of Mandaluyong City when she filed her Complaint for Damages under Article 33.[58]

The issues for this Court's resolution are:

First, whether or not petitioner Alastair John Kane may still be held civilly liable because his acquittal was based on reasonable doubt;

Second, whether or not the Complaint for Damages was already barred by *res judicata*;

Third, whether or not respondent Patricia Roggenkamp committed forum shopping; and,

Fourth, whether or not the venue was properly laid.

This Petition must be denied. The Mandaluyong trial court seriously erred in *motu proprio* dismissing respondent's Complaint for Damages on the grounds of *res judicata* and lack of jurisdiction.

I

Respondent based her Complaint for Damages against petitioner on Article 33 of the Civil Code:

ARTICLE 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the

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[56] *Id.* at 71-73; and 77-78.

[57] *Id.* at 78.

[58] *Id.* at 78-79.

criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

Article 33 is explicit that in cases of defamation, fraud, and physical injuries, the civil action is "entirely separate and distinct from the criminal action" and shall "proceed independently of the criminal prosecution." Accordingly, Article 33 "contemplates a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case."[59] Even the quantum of proof required — preponderance of evidence, as opposed to the proof beyond reasonable doubt in criminal cases — is different, confirming that the civil action under Article 33 is independent of the criminal action.

Reservation of the right to separately file a civil action for damages under Article 33 need not even be made. The civil action under Article 33 may be pursued before the filing of the criminal case,[60] during the pendency of the criminal case,[61] or even after the criminal case is resolved.[62] The only limitation is that an offended party cannot "recover [damages] twice for the same act or omission" of the defendant. Rule 111, Section 3 of the 2000 Revised Rules of Criminal Procedure provides:

RULE 111

Prosecution of Civil Action

SECTION 3. *When Civil Action May Proceed Independently*. — In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought

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[59] *Azucena v. Potenciano*, 115 Phil. 465, 469 (1962) [Per J. Makalintal, *En Banc*].

[60] See *Dulay v. Court of Appeals*, 313 Phil. 8 (1995) [Per J. Bidin, Second Division].

[61] See *Madeja v. Caro*, 211 Phil. 469 (1983) [Per J. Abad Santos, Second Division]; and *Carandang v. Santiago*, 97 Phil. 94 (1955) [Per J. Labrador, First Division].

[62] See *Azucena v. Potenciano*, 115 Phil. 465 (1962) [Per J. Makalintal, *En Banc*].

by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

Further, "defamation," "fraud," and "physical injuries," as used in Article 33, are to be understood in their ordinary sense. Specifically, the "physical injuries" contemplated in Article 33 is bodily injury, not the "physical injuries" referred to in the Revised Penal Code. As first explained in *Carandang v. Santiago*:[63]

> [Article 33] uses the words "defamation," "fraud" and "physical injuries." Defamation and fraud are used in their ordinary sense because there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein, so that these two terms defamation and fraud must have been used not to impart to them any technical meaning in the laws of the Philippines, but in their generic sense. With this apparent circumstance in mind, it is evident that the term "physical injuries" could not have been used in its specific sense as a crime defined in the Revised Penal Code, for it is difficult to believe that the Code Commission would have used terms in the same article — some in their general and another in its technical sense. In other words, the term "physical injuries" should be understood to mean bodily injury, not the crime of physical injuries, because the terms used with the latter are general terms. In any case the Code Commission recommended that the civil action for physical injuries be similar to the civil action for assault and battery in American Law, and this recommendation must have been accepted by the Legislature when it approved the article intact as recommended. If the intent has been to establish a civil action for the bodily harm received by the complainant similar to the civil action for assault and battery, as the Code Commission states, the civil action should lie whether the offense committed is that of physical injuries, or frustrated homicide, or attempted homicide, or even death.[64]

Madeja v. Caro[65] reiterates that "physical injuries" in Article 33 means bodily injury.

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[63] 97 Phil. 94 (1955) [Per *J.* Labrador, First Division].

[64] *Id.* at 96-97.

[65] 211 Phil. 469, 472-473 (1983) [Per *J.* Abad Santos, Second Division].

Alastair John was charged with violating Section 5 (a) of Republic Act No. 9262, or the Anti-Violence Against Women and Children Act of 2004:

> SECTION 5. *Acts of Violence Against Women and Their Children*. — The crime of violence against women and their children is committed through any of the following acts:
>
> (a) Causing physical harm to the woman or her child;
>
> (b) Threatening to cause the woman or her child physical harm;
>
> (c) Attempting to cause the woman or her child physical harm[.]

Section 5 enumerates the various "acts of violence against women and their children," generally defined as:

> SECTION 3. *Definition of Terms*. — any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.[66]

Paragraphs (a), (b), and (c) of Section 5 specifically refer to acts of "physical violence," which, under the law, includes "acts that include bodily or physical harm[.]"

It is not hard to see that respondent properly availed herself of a separate action for damages under Article 33 after the dismissal of the criminal case against petitioner. The criminal action filed against petitioner was one for physical injuries in the sense contemplated in Article 33, that is, bodily injury.

Nevertheless, Alastair John claims that his acquittal should have barred the filing of the Complaint for Damages. He maintains that, as allegedly held by the Parañaque trial court, the act or commission from which the civil liability might arise

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[66] Republic Act No. 9262 (2004), Sec. 3 (a).

did not exist; hence, there is no civil liability *ex delicto* to which the Article 33 action may be anchored.

The contention is without merit.

Under Rule 120, Section 2 of the 2000 Revised Rules of Criminal Procedure, a judgment acquitting the accused must state whether the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. Furthermore, the judgment must determine if the act or omission from which the civil liability might arise did not exist:

RULE 120
Judgment

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SECTION 2. *Contents of the Judgment*. — If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall 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. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist. (Emphasis supplied)

It is essential to indicate whether the act or omission from which the civil liability might arise did not exist. Without such declaration, it must be presumed that the acquittal was due to reasonable doubt, and the accused is civilly liable *ex delicto*. Thus, the general rule shall apply: every person criminally liable is also civilly liable.[67]

[67] REV. PEN. CODE, Art. 100.

In *Manantan v. Court of Appeals*,[68] accused George Manantan was charged with reckless imprudence resulting in homicide. The trial court acquitted him of the crime charged, leading the heirs of the deceased to appeal the civil aspect of the trial court decision. Despite Manantan's acquittal, the Court of Appeals granted the appeal, declared Manantan to be the "proximate cause of the vehicular accident,"[69] and held him civilly liable.

Among Manantan's arguments before this Court was that the Court of Appeals erred in finding him civilly liable, because the trial court already found that he was neither imprudent nor negligent. To this, this Court said that nowhere in the text of the trial court decision can it be inferred that no negligence or imprudence existed. All the judgment provided was that Manantan was "NOT GUILTY of the crime charged[.]"[70]

Thus, the Court of Appeals "was not precluded from looking into the question of [Manantan's] negligence or reckless imprudence[,]"[71] for "even if [his guilt] has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only."[72] In other words, Manantan's acquittal was *not* because the act or omission from which the civil liability might arise did not exist. Therefore, Manantan was correctly held civilly liable by the Court of Appeals. Explained this Court:

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil

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[68] 403 Phil. 298 (2001) [Per *J.* Quisumbing, Second Division].

[69] *Id.* at 305.

[70] *Id.* at 304.

[71] *Id.* at 309.

[72] *Id.*

action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this rule is that the parties are not the same and secondarily, different rules of evidence are applicable. Hence, notwithstanding herein petitioner's acquittal, the Court of Appeals in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence.[73] (Citations omitted)

Like in *Manantan*, nowhere in the decision of the Parañaque trial court in the criminal case does it state that the act or omission from which civil liability might arise did not exist. On the contrary, the trial court was unequivocal that petitioner was acquitted due to reasonable doubt:

WHEREFORE, ***due to reasonable doubt***, the accused, ALASTAIR JOHN KANE, is hereby ACQUITTED of the crime [of] violation of Sec[.] 5(a) of R.A. 9262, penalized by Sec[.] 6 (a) of the said Act.

SO ORDERED.[74] (Emphasis supplied)

Having been acquitted due to reasonable doubt, petitioner is not exempt from civil liability. This is true even if his guilt was not satisfactorily established.

II

Furthermore, contrary to petitioner's argument, the decision of the Parañaque trial court acquitting him did not operate as

[73] *Id.* at 308-309.

[74] *Rollo*, p. 30. Court of Appeals Decision.

res judicata so as to bar the filing of the Complaint for Damages under Article 33 of the Civil Code.

The concept of *res judicata* was expounded in *Club Filipino, Inc. v. Bautista*:[75]

> *Res judicata* "literally means 'a matter adjudged; a thing judicially acted upon or decided; [or] a thing or matter settled by judgment.'" *Res judicata* "lays the rule that an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit."
>
> *Res judicata* has two (2) aspects. The first is bar by prior judgment that precludes the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is conclusiveness of judgment, which states that "issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action."
>
> The elements of *res judicata* are:
>
> (1) the judgment sought to bar the new action must be final;
>
> (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
>
> (3) the disposition of the case must be a judgment on the merits; and
>
> (4) there must be as between the first and second action identity of parties, subject matter, and causes of action[.][76] (Citations omitted; emphasis in the original)

It is settled that a decision acquitting the accused is not *res judicata* on the independent civil action, even if the latter action arises from the same act or omission on which the criminal action was based.

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[75] 750 Phil. 599 (2015) [Per *J.* Leonen, Second Division].

[76] *Id.* at 617-618.

In *Cancio v. Isip*,[77] cases for *estafa* were filed against Emerenciana Isip for issuing checks with insufficient funds. After it had failed to present its second witness, the prosecution moved to dismiss the *estafa* cases, but reserved the right to file a separate civil action. The motion was granted, and the private complainant, Jose Cancio, Jr., subsequently filed a case for collection of sum of money to recover the amount of the checks subject of the *estafa* cases.

Isip filed a motion to dismiss, arguing that that the collection case was barred on the ground of *res judicata*. The trial court agreed and dismissed the collection case. It held that "the dismissal of the criminal cases . . . on the ground of lack of interest or failure to prosecute is an adjudication on the merits which amounted to *res judicata* on the civil case for collection."[78]

On appeal, this Court set aside the trial court's decision. It explained that an act or omission causing damage to another may give rise to two (2) separate civil liabilities: (1) civil liability *ex delicto*, or that arising from the crime, and (2) independent civil liabilities, *i.e.*, those *not* arising from the crime, or those where the law expressly grants the injured party the right to file an independent and distinct civil action from the criminal action. An action for collection of sum of money is *not* an action arising from the crime but from contract, an independent civil action which, according to this Court, may be pursued even without reservation.[79]

This Court rejected the contention that the collection case was barred by *res judicata*. Among the elements of *res judicata* is that there is an identity of causes of action between the actions, and between a criminal case based on *culpa criminal* and an action based on *culpa contractual*, there is no such identity of causes of action. The independent civil action:

> . . . remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal

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[77] 440 Phil. 29 (2002) [Per J. Ynares-Santiago, First Division].

[78] *Id.* at 33.

[79] *Id.* at 39.

action based on *culpa criminal*, a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, *culpa contractual*.[80] (Citation omitted; emphasis in the original)

The defense of *res judicata* was likewise raised but nonetheless rejected in *Lim v. Kou Co Ping*.[81] The case involved withdrawal authorities issued by a cement corporation, thereby allowing holders of the instrument to withdraw cement bags from the corporation's cement plant. Kou Co Ping had earlier bought withdrawal authorities, which he subsequently sold to Lily Lim. When Lim failed to withdraw cement bags covered by the withdrawal authorities, she sued Kou Co Ping for *estafa* before the Regional Trial Court of Pasig.

The trial court acquitted Kou Co Ping of *estafa* for insufficiency of evidence. However, it set the case for reception of evidence on Kou Co Ping's civil liability. After trial on the criminal case, the trial court also absolved Kou Co Ping of civil liability to Lim.

This caused Lim to subsequently file a complaint for specific performance and damages before the Regional Trial Court of Manila. Moving to dismiss the complaint, Kou Co Ping argued that his acquittal in the *estafa* case was *res judicata* on the specific performance and damages case.

The Manila trial court denied the motion to dismiss, which was affirmed by this Court. Citing *Cancio*, this Court discussed how an act or omission may give rise to civil liability arising from different sources. The source of the civil liability arising from the offense is different from that arising from contract, and an offended party may pursue either or both, subject to the prohibition on double recovery under Article 2177 of the Civil Code. Considering that the complaint for specific performance and damages is premised on a civil liability, and *not* arising from crime but from contract, this Court held that

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[80] *Id.* at 40.

[81] 693 Phil. 286 (2012) [Per *J.* Del Castillo, First Division].

the decision on the civil aspect of the *estafa* case had no bearing on the case for specific performance and damages. In *Lim*:

A single act or omission that causes damage to an offended party may give rise to two separate civil liabilities on the part of the offender — (1) ***civil liability ex delicto***, that is, civil liability arising from the criminal offense under Article 100 of the Revised Penal Code, and (2) ***independent civil liability***, that is, civil liability that may be pursued independently of the criminal proceedings. The independent civil liability may be based on "an obligation not arising from the act or omission complained of as a felony," as provided in Article 31 of the Civil Code (such as for breach of contract or for tort). It may also be based on an act or omission that may constitute felony but, nevertheless, treated independently from the criminal action by specific provision of Article 33 of the Civil Code ("in cases of defamation, fraud and physical injuries").

The civil liability arising from the offense or *ex delicto* is based on the acts or omissions that constitute the criminal offense; hence, its trial is inherently intertwined with the criminal action. For this reason, the civil liability *ex delicto* is impliedly instituted with the criminal offense. If the action for the civil liability *ex delicto* is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action. The civil liability based on delict is extinguished when the court hearing the criminal action declares that "the act or omission from which the civil liability may arise did not exist."

On the other hand, the independent civil liabilities are separate from the criminal action and may be pursued independently, as provided in Articles 31 and 33 of the Civil Code, which state that:

> ART. 31. When the civil action is based on an **obligation not arising from the act or omission complained of as a felony**, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.
>
> ART. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall **proceed independently of the criminal prosecution**, and shall require only a preponderance of evidence.

Because of the distinct and independent nature of the two kinds of civil liabilities, jurisprudence holds that the offended party may pursue

the two types of civil liabilities simultaneously or cumulatively, without offending the rules on forum shopping, *litis pendentia*, or *res judicata*. As explained in *Cancio, Jr. v. Isip*:

> One of the elements of *res judicata* is identity of causes of action. In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on *culpa criminal*, a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, *culpa contractual*.
>
> In the same vein, the filing of the collection case after the dismissal of the *estafa* cases against [the offender] did not amount to forum-shopping. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Although the cases filed by [the offended party] arose from the same act or omission of [the offender], they are, however, based on different causes of action. The criminal cases for estafa are based on *culpa criminal* while the civil action for collection is anchored on *culpa contractual*. Moreover, there can be no forum-shopping in the instant case because the law expressly allows the filing of a separate civil action which can proceed independently of the criminal action.[82]
>
> (Citations omitted; emphasis in the original)

Applying the foregoing, petitioner's acquittal in the case for violation of Section 5 (a) of Republic Act No. 9262 is not *res judicata* on the action for damages under Article 33 of the Civil Code.One of the elements of *res judicata* is the identity of causes of action, with "cause of action" being the "act or omission by which a party violates a right of another."[83]

While the criminal action and the action for damages arise from the same act or omission — the alleged physical violence committed by petitioner against respondent — these actions violate two (2) different rights of respondent: (1) her right not

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[82] *Id.* at 298-300.

[83] RULES OF COURT, Rule 2, Sec. 2.

to be physically harmed by an intimate partner under Republic Act No. 9262; and (2) her right to recover damages for bodily injury under Article 33 of the Civil Code.

In other words, the criminal case and the civil case do not have identical causes of action, and respondent had the right to pursue either petitioner's civil liability arising from the violation of Republic Act No. 9262, or the independent civil liability provided for in Article 33 of the Civil Code.

Even the finality of the acquittal is immaterial in the present case. To reiterate: actions under Article 33 of the Civil Code are "'separate, distinct, and independent' of any criminal prosecution based on the same act [or omission]"[84] on which the civil action was filed. As this Court said in Cancio, "a ruling on the culpability of the offender will have no bearing on [the] independent civil action based on an entirely different cause of action[.]"[85]

All told, the Court of Appeals correctly rejected petitioner's *res judicata* argument.

III

Corollarily, this Court affirms the Court of Appeals' ruling that respondent did not commit forum-shopping when she filed the Complaint for Damages under Article 33 of the Civil Code. Forum shopping is committed:

> by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action[.][86] (Citation omitted)

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[84] *Philippine Rabbit Bus Lines, Inc. v. People of the Philippines*, 471 Phil. 415, 431 (2004) [Per *J.* Panganiban, First Division].

[85] *Cancio v. Isip*, 440 Phil. 29, 40 (2002) [Per *J.* Ynares-Santiago, First Division].

[86] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 747-748 (2003) [Per *J.* Bellosillo, Second Division].

To determine whether there is forum shopping, it is necessary to ascertain "whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another[.]"[87] The test is "whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought."[88]

Litis pendentia "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[89]

The following requisites must concur for *litis pendentia* to be present: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for; and (3) the identity of the two (2) cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[90]

As discussed, the final judgment on the violation for Section 5 (a) of Republic Act No. 9262 does not amount to *res judicata* in the action for damages under Article 33 of the Civil Code. Further, Article 33 expressly allows the filing of a separate civil action for damages arising from physical injuries that can proceed independently of the criminal action. With one of the crucial elements of *res judicata* being absent, there can be no forum shopping in this case.

IV

The Court of Appeals correctly held that the venue was properly laid.

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[87] *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per J. Reyes, Second Division].

[88] *Id.* citing *Young v. Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

[89] *Aboitiz Equity Ventures, Inc. v. Chiongbian*, 738 Phil. 773, 796 (2014) [Per J. Leonen, Third Division] citing *Yap v. Chua*, 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

[90] *Id.* at 796 citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per J. Austria-Martinez, Third Division].

Venue is "the place where the case is to be heard or tried[.]"[91] Under our Rules, the venue of an action generally depends on whether it is a real or personal action.

Real actions are those affecting the title or possession of a real property, or interest therein, to be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.[92] All other actions, called personal actions, may be commenced and tried where the plaintiff or any of the principal plaintiffs reside, or where the defendant or any of the principal defendants reside, at the election of the plaintiff.[93]

The action for damages filed by respondent does not involve the title or possession of a real property, or interest therein. It is a personal action, and respondent, as plaintiff, had the option of either filing it in her place of residence or the defendant, petitioner's, place of residence. She chose to file the civil case in her place of residence, that is, Mandaluyong City.

Petitioner, however, maintains that Mandaluyong City is not respondent's place of residence. While respondent alleged in her Complaint for Damages that she resides in a condominium unit in Mandaluyong City, petitioner cites two (2) instances where respondent testified that she resides at a condominium unit in Parañaque City. The venue, petitioner argues, was improperly laid and the Complaint for Damages should be dismissed accordingly.

Looking into petitioner's allegations, he cites parts of the proceedings in the criminal case, specifically, the hearing held on May 22, 2007[94] and May 13, 2008[95] where respondent testified that she resided in a condominium in Parañaque.

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[91] *Nocum v. Tan*, 507 Phil. 620, 626 (2005) [Per *J*. Chico-Nazario, Second Division].

[92] RULES OF COURT, Rule 4, Sec. 1.

[93] RULES OF COURT, Rule 4, Sec. 2.

[94] *Rollo*, p. 37.

[95] *Id.* at 15.

The Complaint for Damages, however, was filed on November 28, 2008,[96] and it could very well be that, as respondent had alleged in her civil complaint, she was already a resident of Mandaluyong City at that time. Absent proof to the contrary, this Court affirms the findings of the Court of Appeals that "[a]t the time of the filing of this case, [respondent] was already residing [at Mandaluyong City]. Thus, venue was properly laid at the [Regional Trial Court] of Mandaluyong City."[97]

As a final note, not only did the Mandaluyong trial court err in dismissing the action based on Article 33 of the Civil Code by assuming that the acquittal, by itself, is a declaration that the facts upon which the civil action can arise did not exist is already presumed. The court that tried the civil case also possibly erred in the manner by which it interpreted the facts on the basis of what it considered as which narrative is "in accord with human experience."[98]

The two (2) points articulated in the decision regarding the criminal case seems to reveal the severe lack of gender sensitivity and/or practical wisdom on the trial court judge's part. The first is the assertion that the woman chose to hide her lover's transgressions against her person before the doctor, as well as her son. The second is the judge's assertion of his conclusion that the hesitation of the woman to immediately leave her lover is an unnatural act and, hence, unbelievable.

These assumptions that provide the filters for a judge to eventually acquit, demonstrate that there is a possibility that another civil action may interpret the facts differently. A more enlightened interpretation of the evidence may involve a less caricaturized, less patriarchal set of assumptions. For instance, the capability of women to sacrifice their own welfare in favor of those who they care for and love is known to many women.

Thus, protecting the husband's reputation before a stranger, even if that stranger be a doctor, or sparing the son from a

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[96] *Id.* at 78.

[97] *Id.* at 79.

[98] *Id.* at 7.

premature dilemma that undermines his view of his father, is possibly a more ordinary and enlightened view of respondent's motive, assuming the facts as established by the court trying the criminal case.

Similarly, that someone, usually the woman, would hesitate to simply leave her family and deprive them of her caring for her part in maintaining the household, even at peril to herself or her dignity, is not outlandish, inconceivable or, sadly, even exceptional. Certainly, it is "in accord with human experience."[99]

These motives, often perpetuated by culture, are the precise targets of our laws which underscore gender equality in every type of relationship. It is the awareness of the possibility of abuse that a more gendered perspective of human intentions is privileged by laws on sexual harassment — including the law which seeks to prohibit violence against women in intimate relationships. The rather dismal failure to consider the complexity of the human psyche in the criminal case may not be how the judge in the civil case will consider the case given the same set of evidence. It is in these respects that We see the wisdom of our current rules.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Court of Appeals' March 25, 2014 Decision and September 3, 2014 Resolution in CA-G.R. CV No. 96341 are hereby **AFFIRMED**. The Regional Trial Court of Mandaluyong City, Branch 214, is hereby **DIRECTED** to reinstate Civil Case No. MC08-3871, continue with the proceedings, and to resolve the same with dispatch.

SO ORDERED.

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

Gesmundo, J., on wellness leave.

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[99] *Id.*

THIRD DIVISION

[G.R. No. 224006. July 6, 2020]

CJH DEVELOPMENT CORPORATION, *petitioner, vs.* **CORAZON D. ANICETO,** *respondent.*

[G.R. No. 224472. July 6, 2020]

CORAZON D. ANICETO, *petitioner, vs.* **CJH DEVELOPMENT CORPORATION, ATTY. MA. GEORGINA ALVAREZ, and ATTY. HILARIO BELMES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.—** Only questions of law may be raised in a Rule 45 petition. As this Court is not a trier of facts, the lower courts' factual findings are generally binding upon it. Nevertheless, jurisprudence has provided several exceptions to this rule: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS HAVE THE FORCE OF LAW BETWEEN**

THE CONTRACTING PARTIES AND WHATEVER STIPULATIONS AGREED UPON IN THEM MUST BE COMPLIED WITH IN GOOD FAITH, BUT THEY CANNOT AGREE ON STIPULATIONS THAT ARE CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY.— When parties enter into contracts, they are free to stipulate on the terms and conditions of their agreement as they may deem convenient. Contracts have the force of law between the contracting parties. Thus, whatever stipulations agreed upon in them must be complied with in good faith. However, the freedom to stipulate is not absolute. Under Article 1306 of the Civil Code, parties cannot agree on stipulations that are "contrary to law, morals, good customs, public order, or public policy."

3. ID.; ID.; LEASE; RIGHTS AND OBLIGATIONS OF THE LESSOR AND THE LESSEE; WHEN THE LEASE HAS A DEFINITE PERIOD, IT CEASES ON THE DAY FIXED WITHOUT NEED OF A DEMAND FROM THE LESSOR BUT IF AT THE END OF THE CONTRACT, THE LESSOR ALLOWS THE LESSEE TO ENJOY THE LEASE FOR FIFTEEN DAYS, THERE ARISES AN IMPLIED LEASE AND THE TERMS OF THE ORIGINAL CONTRACT ARE REVIVED, AND IF THE LESSOR REFUSES TO RENEW THE LEASE, HE MUST FURNISH THE LESSEE WITH A FORMAL NOTICE TO VACATE THE PREMISES.— A contract of lease is a special form of contract in civil law. The Civil Code outlines a number of provisions that guide the parties and limit the stipulations that may be agreed upon in the lease contract. It specifies the rights and obligations of the lessor and the lessee, as well as the rules on the payment and ejectment. Under the Civil Code provisions on lease, when the lease has a definite period, it ceases on the day fixed without need for a demand from the lessor. The lessee, then, shall return the thing leased, as they received it, to the lessor. However, if at the end of the contract, the lessor allows the lessee to enjoy the lease for 15 days, there arises an implied lease and the terms of the original contract are revived. It is presumed by law that the lessor is amenable to its renewal. When there is an implied lease, the lease will continue based on the period of payment. For instance, if the lease is paid monthly, the implied lease would only be renewed every month. The implied lease is a lease with

a definite period, and it is "terminable at the end of each month upon demand to vacate by the lessor." On the other hand, if the lessor refuses to renew the lease, it is necessary for him or her to furnish the lessee with a formal notice to vacate the premises. If the lessee continues to possess the premises against the lessor's will, the lessee would be holding the property illegally and a judicial action may be filed. Moreover, the lessee "shall be subject to the responsibilities of a possessor in bad faith."

4. ID.; ID.; ID.; ID.; A JUDICIAL ACTION IS NOT ALWAYS REQUIRED TO EJECT THE LESSEE, FOR HE MAY BE EJECTED FROM THE LEASED PREMISES WITHOUT ANY COURT ACTION AS LONG AS THERE IS A STIPULATION TO THIS EFFECT.— Under Article 1673, "[t]he lessor may judicially eject the lessee" in the following instances: (1) if the period agreed upon has expired; (2) if the lessee fails to pay the price stipulated; (3) if the lessee violates any of the conditions of the contract; and (4) if the thing leased suffered deterioration due to use or service not stipulated. However, judicial action is not always required to eject the lessee. In *Consing v. Jamandre*, x x x [t]his Court ruled that x x x [the] stipulation in a lease contract, which authorized the sublessor to take possession of the premises without judicial action, is valid and binding because the stipulation is in the nature of a resolutory condition. x x x *Consing* teaches that while Article 1673 provides for judicial action to eject the lessee, it is only required if the lease contract has no special provision granting the cancellation of the lease. *Viray v. Intermediate Appellate Court* reiterated this doctrine. x x x The more recent case of *Republic v. Peralta* is likewise illuminating. The petitioner-lessor again argued that a judicial action was not required to evict the lessees because the contract allowed for extrajudicial ejectment upon the expiration of the lease contract. Again, this Court upheld the contract provision as valid, declaring that since such stipulations form "the law between the parties, they must be respected." x x x Here, before the second lease lapsed on May 17, 2007, Aniceto asked CJH Development to renew the Lease Contract. While CJH Development refused the request, it still allowed Aniceto to keep occupying the premises. Only on January 30, 2008 did it notify her to vacate the premises. From then on, despite Aniceto's persistent requests to renew the lease, CJH Development refused and reminded her to vacate

the premises, and that she had until March 1, 2008 to do so. Clearly, there was an implied lease between the parties. When the lease expired on May 17, 2007, CJH Development acquiesced to Aniceto's continued occupancy. It did not send a notice to vacate and even accepted Aniceto's monthly payments until February 28, 2008. As it was paid monthly, the implied lease ran on a month-to-month renewal, in accordance with Article 1687 of the Civil Code. It follows that the lease would be terminated by the end of each month, and CJH Development may choose not to renew the lease and demand repossession of the premises. In sending the notice to vacate on January 30, 2008, CJH Development signified that it no longer wished to continue the lease. By then, the month-to-month implied lease was terminated. The lessee can no longer insist on staying in the premises against the lessor's will because there is no longer a contract of lease to speak of. Thus, when Aniceto refused to surrender the premises, the Lease Contract provided CJH Development recourse. Article X, Section 2 authorized it to enter the premises and extrajudicially regain possession if Aniceto failed to promptly deliver the premises upon the termination of the Lease Contract. This provision is neither unconstitutional nor illegal, contrary to Aniceto's assertions. As this Court has consistently held, the lessee may be ejected from the leased premises without any court action *as long as there is a stipulation to this effect.* Due process was not violated here, considering that the lessor owns the property and merely allowed the lessee to occupy and possess it for a certain period. There is no deprivation of property without due process when the law and the provision of the lease contract allow the lessor to immediately repossess the property when the lease is terminated. More so, in an implied lease, the lessee cannot unreasonably insist on continuing it. Nor can the lessee keep on badgering the lessor into renewing the lease when the contract has already expired. Even if the lease was repeatedly renewed, it does not give the lessee a better right over the property. The lessor, as the property owner, may decide not to renew the implied lease and devote the property to other use.

5. ID.; ID.; ID.; ID.; IF THE LESSEE INTRODUCES IMPROVEMENTS ON THE LEASED PREMISES, THE LAW ONLY GRANTS HIM THE RIGHT TO REMOVE THESE IMPROVEMENTS, OR BE PAID FIFTY PERCENT

OF THEIR VALUE IN CASE THE LESSOR DECIDES TO RETAIN.— Article 1678 of the Civil Code provides the rule on improvements introduced by the lessee upon the premises. x x x In *Land Bank of the Philippines v. AMS Farming Corporation,* this Court explained that a lessee who builds on the leased premises is treated differently from a builder in good faith. Unlike a lessee, a builder in good faith believed that he or she owned the land. Under Articles 448 and 546 of the Civil Code, the builder in good faith is granted the rights of retention and reimbursement for the necessary and useful expenses spent on the improvements. On the other hand, a lessee is conclusively presumed to know that he or she does not own the land. If the lessee introduces improvements on the leased premises, the law only grants him or her the right to remove these improvements, or be paid 50% of their value in case the lessor decides to retain. Because the lessee is deemed to have known the nature of occupation and possession of the premises, he or she is deemed to have introduced the improvements at his or her own risk. The lessee knows that at some point, the life of the lease contract will end, and the lessor will eventually demand the premises back. Moreover, the reimbursement to the lessee is predicated on the lessor's choice to appropriate the improvements introduced by the lessee. The lessee cannot compel the lessor to retain the improvement or pay the reimbursement. The lessee may only remove the improvements if the lessor refused to appropriate and reimburse.

6. **ID.; ID.; CONTRACTS OF ADHESION; A CONTRACT OF ADHESION IS NOT VOID *PER SE* AND IT MAY BE BINDING ON THE PARTIES AS ANY ORDINARY CONTRACT.—** An adhesion contract is a contract unilaterally prepared and drafted in advance by one party. In this kind of contract, "parties are not given a real arms' length opportunity to transact[.]" Hence, the weaker party has no option but to accept the terms and conditions already inserted in the contract. For this reason, the party may not have understood all the terms and stipulations prescribed. Nevertheless, contracts of adhesion are not void per se. They may be as binding on the parties as any ordinary contract. Here, Aniceto failed to show how CJH Development dominated her when they entered into the contract. There was no showing that Aniceto was unaware of the contract's provisions or that the provisions were vaguely worded. Aniceto

even seemed to understand the implications of the contract, as shown when she entered into a second lease with CJH Development, as well as in the further extensions made by amending the contract. As parties to the Lease Contract, Aniceto and CJH Development entered into stipulations they found convenient. Without showing that the provisions are against law, morals, good customs, public order, or public policy, the contract has the force of law and must be binding upon the parties.

7. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; LOSS OF THE THING DUE; AN OBLIGATION TO DELIVER A DETERMINATE THING SHALL BE EXTINGUISHED IF IT IS LOST OR DESTROYED WITHOUT FAULT AND DELAY ON THE PART OF THE OBLIGOR.— Article X, Section 2 of the Lease Contract not only gives CJH Development the right to repossess the premises, but also the authority to "take inventories of Aniceto's merchandise and to place the same in [CJH Development's] *bodega*" for Aniceto's retrieval. It further states that Aniceto will shoulder all reasonable expenses incurred by CJH Development in safekeeping the merchandise, including storage fees. x x x While the agreement of the parties is akin to a contract of deposit, the special rules on deposit cannot apply because safekeeping is not the principal purpose of the contract. Hence, we find guidance in the general provisions on obligations. Under Article 1262 of the Civil Code, an obligation to deliver a determinate thing shall be extinguished if it was lost or destroyed without fault and delay on the part of the obligor. If the thing is lost while in the custody of the obligor, the law presumes that the loss was due to the obligor's fault, unless there is proof to the contrary. This presumption lies because the obligor "has the custody and care of the thing can easily explain the circumstances of the loss." Here, CJH Development was authorized under the Lease Contract to take Aniceto's personal properties found in the premises; in turn, Aniceto is obliged to retrieve them. However, due to Aniceto's refusal to do so, the properties deteriorated over time. CJH Development has proven that the deterioration of Aniceto's personal properties was not its fault. When CJH Development entered the premises, Aniceto's employees were present. When it asked them to remove all the items, the employees refused. Hence, the corporation itself took the articles and goods and

placed them in its bodega for Aniceto's retrieval. When it prepared the inventories, Aniceto's employees also refused to sign them. x x x It is clear, then, that CJH Development only acted within its authority. The Lease Contract states that upon its termination, the premises must be returned by Aniceto, "devoid of all occupants, furniture, articles and effects of any kind[.]" It was Aniceto's unjustified refusal to retrieve the properties that caused them to sit idle and deteriorate over time, rotten to be of any use. The personal articles and goods were no longer capable of being returned to Aniceto, but CJH Development cannot be held liable to pay their value. CJH Development is released from its obligation to safekeep and return the items if these were destroyed and lost without fault and delay on its part. Aniceto must solely bear the loss she brought on herself, through her unjustified refusal to comply with her obligation. Thus, the award of damages for the value of the personal properties must be deleted.

8. ID.; HUMAN RELATIONS; ABUSE OF RIGHTS PRINCIPLE; ELEMENTS.— The abuse of rights principle is enshrined in the Civil Code x x x. Article 19 puts a "primordial limitation on all rights[.]" It mandates that the norms of human conduct be observed in the exercise of one's rights. While a right may be granted by law, it may not be exercised in a way that causes damage to another, giving rise to a legal wrong. Article 19, which only lays down a rule of conduct, is read together with Articles 20 and 21, which authorize an action for damages. Article 20 pertains to damage arising from a violation of law, while Article 21 provides damages for those who suffered material and moral injury. To be awarded damages under the abuse of rights principle, the following elements must be proven: (1) there is a legal right or duty; (2) the legal right or duty was exercised in bad faith; and (3) it was done for the sole intent of prejudicing or injuring another. Bad faith is not merely bad judgment or simple negligence, but a "dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motives or interest or [ill will] that partakes of the nature of fraud." Similarly, malice "implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive."

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for CJH Development Corporation.

E. L. Gayo & Associates for Corazon D. Aniceto.

D E C I S I O N

LEONEN, *J.*:

A stipulation in a lease contract that authorizes the lessor to take possession of the leased premises is valid and binding, even when there is no judicial action.

Before this Court are two consolidated Petitions for Review[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which reversed the Regional Trial Court Decision[4] and found Camp John Hay Development Corporation (CJH Development) liable to pay Corazon Aniceto (Aniceto) ₱2,183,625.00, the value of the personal properties seized by the corporation when the parties' Lease Contract expired.

Aniceto owned El Rancho Cafe and Restaurant (El Rancho), which then stood on Camp John Hay in Baguio City. CJH Development had allowed her to use a junkyard within the vicinity, on which she built her restaurant from October to December 2003.[5]

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[1] *Rollo* (G.R. No. 224472), pp. 10-52 and *rollo* (G.R. No. 224006), pp. 10-38.

[2] *Rollo* (G.R. No. 224472), pp. 103-116. The July 27, 2015 Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao and Socorro B. Inting of the Special Eighth Division of the Court of Appeals, Manila.

[3] *Id.* at 143-145. The March 8, 2016 Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao and Socorro B. Inting of the Former Special Eighth Division of the Court of Appeals, Manila.

[4] *Id.* at 79-101. The December 11, 2013 Decision was penned by Presiding Judge Antonio C. Reyes of the Regional Trial Court of Baguio City, Branch 61.

[5] *Rollo* (G.R. No. 224472), pp. 78-79.

On December 1,2003, Aniceto and CJH Development formally entered into a Lease Contract effective until November 30, 2004. When the lease expired, it was renewed on a monthly basis.[6] On November 18, 2005, Aniceto and CJH Development entered into another Lease Contract that would last until November 17, 2006.[7]

Pertinently, under Article VI, Section 1 of the Lease Contract, all permanent improvements made by Aniceto shall form an integral part of the premises and become CJH Development's property upon the termination of the lease.[8] Moreover, under Article X, when the contract is terminated, Aniceto must promptly deliver the premises to CJH Development devoid of occupants, furniture, articles, and effects of any kind; otherwise, CJH Development can enter the premises and take inventories of Aniceto's merchandise. The merchandise will then be placed in the bodega for Aniceto's retrieval.[9]

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[6] *Id.* at 79.

[7] *Id.* at 68-77.

[8] *Id.* at 71-72. Article VI, Section 1 of the Lease Contract reads:

ARTICLE VI
IMPROVEMENTS & ALTERATIONS

Section 1. Improvements and Alterations. The LESSEE, with the written consent and approval of the LESSOR, may introduce improvements or alterations on the Leased Premises. For this purpose, the LESSEE shall:

a) Shall submit to the LESSOR detailed engineering plans for improvements or alterations which shall be subject to the review and approval of the LESSOR, prior to start of work;

b) Require its contractor to apply for accreditation with the LESSOR;

c) Require its contractor and employees to undergo a safety and environmental briefing.

It is expressly understood that the actual cost of the permanent improvements or alterations introduced shall be for the account of the LESSEE.

All permanent improvements or alterations made on the Leased Premises shall upon completion thereof, form an integral part of the Leased Premises, and shall not be removed therefrom, but shall belong to and become the exclusive property of the LESSOR and the LESSEE shall have no right to reimbursement of the cost or value thereof.

[9] *Id.* at 74. Article X Section of the Lease Contract reads:

When the term of this Lease Contract lapsed, the parties amended it to extend for six more months, or until May 17, 2007.[10]

Before the second lease expired, Aniceto asked for another extension from Federico S. Alquiros (Alquiros), the officer-in-charge of CJH Development. The request was denied. Nevertheless, El Rancho continued to operate on a monthly basis, with Aniceto paying advance rentals up to February 28, 2008.[11]

However, on January 30, 2008, Alquiros wrote Aniceto, informing her to vacate the premises as it would undergo land

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ARTICLE X
TERMINATION OF LEASE

Section 1. Termination or Expiration of Lease. The LESSEE, at the expiration or termination of the term of this Contract or cancellation of this Contract as herein provided, shall promptly deliver the said Leased Premises to the LESSOR in good condition, reasonable wear and tear excepted, devoid of all occupants, furniture, articles and effects of any kind, subject to Section I, Article VI hereof.

Section 2. Non-compliance. Non-compliance on the part of the LESSEE with the terms and conditions of this Article will give the LESSOR the right to enter the Leased Premises and LESSEE hereby expressly appoints LESSOR as his duly authorized Attorney-in-Fact with power and authority to cause the Leased Premises to be opened in the presence of a peace officer to take inventories of the LESSEE'S merchandise and to place the same in LESSOR'S bodega so that the LESSOR can take full possession of the said premises. LESSEE hereby expressly agrees to pay all reasonable expenses incurred by LESSOR in connection therewith including storage fees; Provided, further that failure of LESSEE to claim said merchandise and equipment within thirty (30) days from date of transfer to LESSOR'S bodega, LESSOR is hereby given the right to dispose of said property in private sale and to apply the proceeds to whatever indebtedness of LESSEE to LESSOR and the balance, if any, shall be given to LESSEE. LESSOR shall not incur civil and/or criminal liabilities whatsoever by exercising its rights granted under these provisions. The rights granted to the LESSOR in this section, may be exercised by the LESSOR'S duly authorized employees, agents or representatives and, in so doing, they shall not incur civil and/or criminal liabilities whatsoever.

[10] *Id.* at 79.

[11] *Id.*

development. Aniceto was given until March 1, 2008 to remove all furniture, equipment, and furnishing within the premises.[12]

In February 2008, Aniceto twice tried to convince Alquiros to extend the lease, reasoning that El Rancho would not get in the way of the land development. On both occasions, Alquiros denied the requests, reminding Aniceto instead to vacate the premises.[13] On February 28, 2008, a day before the deadline, Aniceto sent yet another request for extension. This was rejected all the same, and she was given 24 hours to vacate the premises.[14]

Thus, before the Regional Trial Court of Baguio City, Aniceto filed a Complaint seeking to enjoin the closure and demolition of El Rancho. The Complaint was lodged against CJH Development; its Legal and Corporate Service Senior Vice President, Atty. Ma. Georgina Alvarez (Atty. Alvarez); its legal officer, Atty. Hilario Belmes (Atty. Belmes), and Alquiros.[15]

On March 4, 2008, the trial court issued a 72-hour Temporary Restraining Order, directing CJH Development to cease and desist from closing El Rancho. On March 6, 2008, it issued a *status quo* order. Eventually, however, it denied the application for the issuance of a writ of preliminary injunction.[16]

While Aniceto was seeking reconsideration of the denial, on May 1, 2008, El Rancho was demolished.[17]

Thus, the trial court denied her Motion for Reconsideration for mootness.[18] Meanwhile, the case itself became a complaint for damages.[19] Aniceto sought actual damages worth ₱4,983,625.00

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[12] *Id.*

[13] *Id.* at 79-80.

[14] *Id.* at 80.

[15] *Id.* at 78.

[16] *Id.* at 81.

[17] *Id.* at 80.

[18] *Id.* at 105.

[19] *Id.* at 78.

for the demolition of the structure and the personal properties taken from El Rancho. This amount was broken down as follows: (a) ₱2,500,000.00 for the value of the structures; (b) ₱300,000.00 for the landscaping, (c) ₱46,000.00 for the value of the signage; and (d) ₱2,137,625.00 for the value of personal properties.[20]

In its Answer, CJH Development argued that Aniceto had no cause of action because the lease had long expired on May 17, 2007. The monthly extension, it said, was only allowed pursuant to the hold-over provision of the Lease Contract. It also maintained that the demolition was legal and within its rights as owner of El Rancho's structure, citing Article VI, Section 1 and Article X, Section 2 of the Lease Contract.[21]

When the parties failed to arrive at an amicable settlement, trial proceeded.[22] From this, the Regional Trial Court issued its December 11, 2013 Decision[23] ruling in favor of Aniceto. It disposed as follows:

WHEREFORE, this Court finds for the plaintiff and **RESOLVES** to:

1. **DECLARE** as contrary to law, good customs and public policy the demolition made by the defendants of the El Rancho and the taking of all properties found therein.

2. **DECLARE** **Section 2, Article X** of the Lease dated November 18, 2005 without force and effect being contrary to law.

3. **ORDER** the defendants CJHDevCo, Atty. Ma. Georgina Alvarez, and Atty. Hilario Belmes, jointly and severally, **TO PAY** the plaintiff: **(a)** actual damages in the amount of ₱2,183,625.00, being the uncontested value of the personal properties owned by the plaintiff kept at the Roosevelt Building of CJHDevCo, less the value of any undamaged properties defendant CJHDevCo will turn over to the plaintiff; **(b)** the amount of ₱1,000,000.00 by way of moral damages; **(c)** the

[20] *Id.* at 95.

[21] *Id.* at 80.

[22] *Id.* at 106.

[23] *Id.* at 79-101.

amount of ₱500,000.00 by way of exemplary damages; **(d)** ₱200,000.00 as attorney's fees; and **(e)** the costs.

SO ORDERED. [24] (Emphasis in the original)

The trial court held that the demolition was illegal and may not be justified by the Lease Contract. It held that Article X, Section 2 of the contract was illegal as it ignored the basic demands of due process.[25]

The trial court further denounced how the restaurant was demolished while the case was pending, saying that this act grossly violated the rules on forcible entry and unlawful detainer and usurped the power of the courts.[26]

Thus, the trial court found bad faith in CJH Development and its lawyers, finding them liable under the abuse of rights principle laid down in Articles 19, 20, and 21 of the New Civil Code.[27] It awarded damages for the restaurant's demolition, which it found to have caused damage and injury on Aniceto.[28] It, however, spared Alquiros, whom it ruled was just a layperson without knowledge of the law and who merely relied on the advice of his legal advisers.[29]

In assessing the actual damages, the trial court gave more weight to Aniceto's inventory than the company's incomplete inventory. However, it explained that the value of the demolished structures and landscape could not be awarded to Aniceto as these were deemed owned by CJH Development based on the Lease Contract. Only the value of the personal properties amounting to ₱2,183,625.00 may be awarded to Aniceto, less the value of personal properties kept by CJH Development for

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[24] *Id.* at 101.

[25] *Id.* at 82-84.

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

[27] *Id.* at 86.

[28] *Id.* at 91.

[29] *Id.* at 94-95.

Aniceto's retrieval.[30] The trial court also awarded ₱1,000,000.00 as moral damages, ₱500,000.00 as exemplary damages, ₱200,000.00 as attorney's fees, and costs of suit.[31]

On appeal, the Court of Appeals, in its July 27, 2015 Decision,[32] set aside the Regional Trial Court Decision. It disposed:

> **WHEREFORE,** in view of the foregoing, the appeal is hereby **GRANTED.** The Decision dated December 11, 2013 of the Baguio City Regional Trial Court, Branch 61, in Civil Case No. 6648-R is hereby **REVERSED AND SET ASIDE.**
>
> However, [CJH Development] is hereby ORDERED to pay the amount of Php2,183,625.00 representing the value of personal properties taken from plaintiff-appellee during the demolition undertaken on April 29 to May 1, 2008. In addition, the value of the personal properties, if any, which are still kept at Roosevelt Building of [CJH Development] shall be deducted from the aforesaid amount, provided that [CJH Development] shall turn them over in an undamaged state and in the same condition as when they were removed from the leased premises.
>
> **SO ORDERED.**[33] (Emphasis in the original)

Relying on Article VI, Section 1 of the Lease Contract, the Court of Appeals ruled that CJH Development was well within its rights as owner to demolish the restaurant. It ruled that since the contract had already expired on May 17, 2007, the company's removal of the structure was valid.[34]

The Court of Appeals also found that CJH Development only demolished the restaurant after Aniceto's application for preliminary injunction had been denied. It also noted that the *status quo* order had expired a month before the demolition,

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[30] *Id.* at 100.

[31] *Id.* at 101.

[32] *Id.* at 103-116.

[33] *Id.* at 115.

[34] *Id.* at 108.

and that Aniceto had been informed several times to vacate the premises until March 1, 2008. Hence, it ruled that the demolition on April 29, 2008 did not need a court action.[35]

In deleting the award of damages, the Court of Appeals ascribed good faith to CJH Development. It held that Aniceto had no clear right to retain possession since the lease had expired. Since the application for preliminary injunction had been denied, it found that CJH Development may proceed with the demolition even if a motion for reconsideration was still pending.[36] More telling of good faith, the Court of Appeals noted, was that Aniceto's employees and the Baguio City police even witnessed the demolition.[37]

Absolving the company lawyers, the Court of Appeals maintained that these officers may not be held jointly and severally liable with the corporation unless they have exceeded their authority. It opined that Attys. Alvarez and Belmes only acted within their duty to protect the company's interests.[38]

The Court of Appeals, however, agreed with the trial court that the value of permanent improvements should be deducted from the damages claimed by Aniceto. It deducted the following: (1) the value of the permanent improvements, particularly the structures and the landscape, amounting to ₱2,800,000.00, deemed owned by CJH Development; and (2) the value of the personal articles and goods that may be returned to Aniceto.[39]

The Court of Appeals further ruled that CJH Development should return the personal properties in an undamaged state and in the same condition as when they were removed from the restaurant.[40]

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[35] *Id.* at 109.

[36] *Id.* at 110.

[37] *Id.* at 113.

[38] *Id.*

[39] *Id.* at 114.

[40] *Id.*

Both parties moved for reconsideration, but these were denied by the Court of Appeals in its March 8, 2016 Resolution.[41]

Hence, both parties went before this Court with their Petitions for Review on *Certiorari*. CJH Development's was docketed as G.R. No. 224006,[42] while Aniceto's was docketed as G.R. No. 224472.[43] The cases were eventually consolidated.[44]

In her Petition, Aniceto mainly argues that the provisions of the Lease Contract are illegal and without force and effect.[45]

She contends that Article X, Section 2 violates due process. Moreover, for giving CJH Development the right to unilaterally take possession of the premises, she says that the contract went against law, morals, good customs, public order, and public policy.[46] She likewise assails Article VI, Section 1 for allowing the lessor to have an unbridled right over the property. She claims that the provision cannot protect CJH Development from civil or criminal liabilities in their exercise of its right.[47] In demolishing the restaurant, Aniceto claims, CJH Development disregarded the court and violated the rules on forcible entry and unlawful detainer.[48]

Aniceto likewise imputes bad faith to CJH Development for demolishing the establishment without any court order. Asserting that the corporation was wrong to take the law into its own hands, she avers that it violated the abuse of rights principle.[49] She did not spare Attys. Belmes and Alvarez, saying that as

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[41] *Id.* at 143-145.

[42] *Rollo* (G.R. No. 224006), pp. 10-38.

[43] *Rollo* (G.R. No. 224472), pp. 10-52.

[44] *Id.* at 7.

[45] *Id.* at 18.

[46] *Id.* at 19-20.

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

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

[49] *Id.* at 22-26.

lawyers, the two cannot feign innocence and claim that they saw no legal impediment against the demolition.[50]

Lastly, Aniceto claims that she is entitled to the damages awarded by the trial court. As to the actual damages, she asserts that she presented a list of structures demolished and goods taken during the demolition, which should be given more weight and credence than CJH Development's inventory.[51]

In its Comment,[52] CJH Development counters that stipulations allowing the eviction of the lessee without court intervention are valid. It further avers that the stipulation allowing CJH Development to regain possession of the premises upon default is a resolutory condition, which is valid.[53]

Citing jurisprudence, [54] CJH Development avers that Aniceto, whose lease has expired, cannot maintain an action against it even if the ouster was done extrajudicially.[55] It points out that under the law, parties may enter into contracts and agree on stipulations that will govern their affairs. As such, when CJH Development and Aniceto entered into the lease contract, they agreed that upon default, the lessor can extrajudicially regain possession of the premises.[56]

Moreover, CJH Development claims that it acted in good faith when it proceeded with the demolition. It invokes Article 1306 of the Civil Code, under which a stipulation granting

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

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

[52] *Id.* at 164-206.

[53] *Id.* at 181.

[54] *Id.* at 182-189 citing *Consing v. Jamandre,* 159-A Phil. 291 (1975) [Per *J.* Esguerra, First Division]; *Viray v. Intermediate Appellate Court,* 275 Phil. 870 (1991) [Per *J.* Narvasa, First Division]; *Irao v. By the Bay, Inc.*, 580 Phil. 288 (2008) [Per *J.* Carpio Morales, Second Division]; and *Republic v. Peralta,* 669 Phil. 81 (2011) [Per *J.* Carpio, Second Division].

[55] *Id.* at 184.

[56] *Id.* at 190.

ownership of improvements to the lessor is valid.[57] Thus, it maintains that when it removed the structures of the restaurant, it was authorized under the Lease Contract to do so. It then reiterates that the removal was done after the *status quo* order had expired and Aniceto's application for preliminary injunction had been denied, and that it was witnessed by Aniceto's employees and police officers.[58]

CJH Development further maintains that it was constrained to remove the structures because Aniceto refused to vacate the premises and to remove her personal properties despite several notices. Thus, it cannot be said that CJH Development disregarded the court and acted in bad faith.[59] Absent bad faith, it cannot be held liable under the abuse of rights principle.[60]

CJH Development also maintains that Attys. Alvarez and Belmes are not personally liable to pay damages,[61] given that the corporation has a personality of its own. Thus, it asserts that without bad faith or gross negligence on their part, they have no liability.[62]

In her Reply,[63] Aniceto reiterates that CJH Development took the law into its own hands when it demolished the restaurant and took possession of her personal properties despite her protest.[64]

Meanwhile, in its own Petition, CJH Development argues that while Aniceto's personal properties must be returned, it must not be held liable for any deterioration, damage, or loss

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[57] *Id.*

[58] *Id.* at 191.

[59] *Id.* at 191-193.

[60] *Id.* at 196.

[61] *Id.*

[62] *Id.* at 197.

[63] *Id.* at 214-216.

[64] *Id.* at 215.

of these items. [65] It reasons that these personal properties include perishable food items and materials made of wood, which have already rotted,[66] and which had long been available for Aniceto's retrieval.[67]

Moreover, CJH Development maintains that the removal of the properties is consistent with the Lease Contract, citing Article X, Section 1 that says the premises, upon turnover, must be "devoid of any occupants, furniture, equipment and/or furnishing except the permanent improvements introduced thereon."[68] Citing the same provision, it insists that Aniceto had agreed to pay all reasonable expenses CJH Development incurred in storing the removed properties.[69]

CJH Development further narrates that when it entered the premises, Aniceto's employees were asked to remove all the personal items, but they refused. Thus, they were constrained to take the properties and store them in the *bodega*. When they asked the representatives to sign the inventories they prepared, the latter refused again.[70] CJH Development asserts that it would be unjust to be required to pay for the personal properties which Aniceto could have retrieved long ago.[71]

CJH Development also prays that the actual damages of ₱2,183,625.00 be deleted.[72] It notes that Aniceto failed to prove the actual loss suffered, with the inventory she presented in court only self-serving.[73]

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[65] *Id.* at 29.

[66] *Id.* at 38.

[67] *Id.* at 29.

[68] *Id.* at 31.

[69] *Id.* at 32.

[70] *Id.* at 33.

[71] *Id.* at 35.

[72] *Id.* at 38.

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

Lastly, CJH Development admits that it raises questions of fact, but asserts that its Petition falls under recognized exceptions, namely: (1) the Court of Appeals' inference is manifestly mistaken, absurd, or impossible; (2) its judgment is based on a misapprehension of facts; and (3) its findings of fact are premised on the absence of evidence and is contradicted by the evidence on records.[74]

In her Comment,[75] Aniceto counters that the Lease Contract is a contract of adhesion whose provisions she had no option but to accept. Thus, she says, the trial court correctly struck down the provisions for violating her right to due process, as well as the human relations principles.[76]

As to the award of damages, Aniceto echoes the Court of Appeals ruling that the inventory she presented prevails over CJH Development's incomplete list. She likewise maintains CJH Development's liability for the value of the personal properties it confiscated.[77]

In its Reply,[78] CJH Development maintains that the Court of Appeals' finding of fact must be revisited for being based on a misapprehension of facts. It notes that it submitted at least two inventories which the Court of Appeals failed to consider, and which Aniceto herself did not dispute. It also attacks Aniceto's inventory, claiming that it cannot be the basis of actual damages for being self-serving and inadmissible.[79]

Finally, CJH Development reiterates that it repeatedly notified Aniceto about retrieving the properties, but Aniceto failed to do so.[80] Since it was Aniceto who unjustifiably refused to take

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[74] *Id.* at 30.

[75] *Rollo* (G.R. No. 224472), pp. 207-212.

[76] *Id.* at 209.

[77] *Id.* at 210.

[78] *Id.* at 222-232.

[79] *Id.* at 228.

[80] *Id.* at 224.

her personal properties, any deterioration, damage, and loss should be borne by her and not the corporation.[81]

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

First, whether or not questions of fact may be raised in the Rule 45 Petition of Camp John Hay Development Corporation;

Second, whether or not the assailed provisions of the Lease Contract are valid. Subsumed under this are the issues of whether or not the demolition and ejectment were validly made even without a court order, whether or not a contract may grant the lessor ownership over the permanent improvements, and whether or not the Lease Contract is a contract of adhesion;

Third, whether or not Camp John Hay Development Corporation is liable for personal properties of the lessee; and

Finally, whether or not Camp John Hay Development Corporation and its lawyers are liable for damages under the abuse of rights principle.

I

Only questions of law may be raised in a Rule 45 petition.[82] As this Court is not a trier of facts, the lower courts' factual findings are generally binding upon it.[83] Nevertheless, jurisprudence has provided several exceptions to this rule:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of

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[81] *Id.* at 228.

[82] RULES OF COURT, Rule 45, Sec. 1 provides:

SECTION 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[83] *Pascual v. Burgos*, 116 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[84] (Citations omitted)

For these cases, a proper resolution would demand a scrutiny of the factual issues, which is generally beyond the ambit of a Rule 45 petition. CJH Development alleged that its case is an exception, for the following reasons: (1) the Court of Appeals' inference was manifestly mistaken, absurd, or impossible; (2) its judgment was based on a misapprehension of facts; and (3) its findings of fact were premised on the absence of evidence and was contradicted by the evidence on records.[85]

After a judicious review, this Court finds it necessary to review the facts to have a proper determination of these cases.

II

When parties enter into contracts, they are free to stipulate on the terms and conditions of their agreement as they may deem convenient.[86] Contracts have the force of law between the contracting parties. Thus, whatever stipulations agreed upon in them must be complied with in good faith.[87]

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[84] *Medina v. Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J.* Bidin, Third Division].

[85] *Rollo* (G.R. No. 224006), p. 30.

[86] *Spouses Mallari v. Prudential Bank,* 710 Phil. 490 (2013) [Per *J.* Peralta, Third Division].

[87] *Bustamante v. Spouses Rosel*, 377 Phil. 436 (1999) [Per *J.* Pardo, First Division].

However, the freedom to stipulate is not absolute.[88] Under Article 1306 of the Civil Code, parties cannot agree on stipulations that are "contrary to law, morals, good customs, public order, or public policy." It states:

> ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[89]

A contract of lease is a special form of contract in civil law. The Civil Code outlines a number of provisions that guide the parties and limit the stipulations that may be agreed upon in the lease contract. It specifies the rights and obligations of the lessor and the lessee, as well as the rules on the payment and ejectment.[90]

Under the Civil Code provisions on lease, when the lease has a definite period, it ceases on the day fixed without need for a demand from the lessor.[91] The lessee, then, shall return the thing leased, as they received it, to the lessor.[92]

However, if at the end of the contract, the lessor allows the lessee to enjoy the lease for 15 days, there arises an implied lease and the terms of the original contract are revived. [93] It is

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[88] *Spouses Mallari v. Prudential Bank*, 710 Phil. 490 (2013) [Per *J*. Peralta, Third Division].

[89] CIVIL CODE, Art. 1306.

[90] CIVIL CODE, Arts. 1646-1688.

[91] CIVIL CODE, Art. 1669 provides:

> ARTICLE 1669. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand.

[92] CIVIL CODE, Art. 1665 provides:

> ARTICLE 1665. The lessee shall return the thing leased, upon the termination of the lease, as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause.

[93] CIVIL CODE, Art. 1670 provides:

presumed by law that the lessor is amenable to its renewal.[94] When there is an implied lease, the lease will continue based on the period of payment.[95] For instance, if the lease is paid monthly, the implied lease would only be renewed every month. The implied lease is a lease with a definite period, and it is "terminable at the end of each month upon demand to vacate by the lessor."[96]

On the other hand, if the lessor refuses to renew the lease, it is necessary for him or her to furnish the lessee with a formal notice to vacate the premises.[97] If the lessee continues to possess the premises against the lessor's will, the lessee would be holding the property illegally and a judicial action may be filed.[98]

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

[94] *Arevalo Gomez Corp. v. Lao Hian Liong,* 232 Phil. 343 (1987) [Per *J*. Cruz, First Division].

[95] CIVIL CODE, Art. 1687 provides:

ARTICLE 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[96] *Chua v. Court of Appeals,* 312 Phil. 857, 866 (1995) [Per *J*. Quiason, First Division].

[97] *Arevalo Gomez Corp. v. Lao Hian Liong,* 232 Phil. 343 (1987) [Per *J*. Cruz, First Division].

[98] *Gindoy v. Tapucar,* 166 Phil. 34 (1977) [Per *J*. Barredo, Second Division].

Moreover, the lessee "shall be subject to the responsibilities of a possessor in bad faith."[99]

Under Article 1673, "[t]he lessor may judicially eject the lessee" in the following instances: (1) if the period agreed upon has expired; (2) if the lessee fails to pay the price stipulated; (3) if the lessee violates any of the conditions of the contract; and (4) if the thing leased suffered deterioration due to use or service not stipulated.[100]

However, judicial action is not always required to eject the lessee.

In *Consing v. Jamandre*,[101] the petitioner-sublessee of a hacienda in Negros Occidental allegedly failed to pay the respondent-sublessor. Because of this, the respondent regained possession of the hacienda, relying on a provision of their lease contract stating that when the lessee fails to comply with any of its term and conditions, the lessor is authorized "to take possession of the leased premises including all its improvements without compensation to the [sublessee] and without necessity

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[99] CIVIL CODE, Art. 1671 provides:

Article 1671. If the lessee continues enjoying the thing after the expiration of the contract, over the lessor's objection, the former shall be subject to the responsibilities of a possessor in bad faith.

[100] CIVIL CODE, Art. 1673 provides:

Article 1673. The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under Articles 1682 and 1687, has expired;

(2) Lack of payment of the price stipulated;

(3) Violation of any of the conditions agreed upon in the contract;

(4) When the lessee devotes the thing leased to any use or service not stipulated which causes the deterioration thereof; or if he does not observe the requirement in No. 2 of Article 1657, as regards the use thereof.

The ejectment of tenants of agricultural lands is governed by special laws.

[101] 159-A Phil. 291 (1975) [Per *J.* Esguerra, First Division].

of resorting to any court action[.]"[102] The petitioner went to this Court, assailing its validity.[103]

This Court ruled that such stipulation in a lease contract, which authorized the sublessor to take possession of the premises without judicial action, is valid and binding because the stipulation is in the nature of a resolutory condition. It held:

> This stipulation is in the nature of a resolutory condition, for upon the exercise by the Sub-lessor of his right to take possession of the leased property, the contract is deemed terminated. This kind of contractual stipulation is not illegal, there being nothing in the law proscribing such kind of agreement. As held by this Court in *Froilan vs. Pan Oriental Shipping Co:*
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> > "Under Article 1191 of the Civil Code, in case of reciprocal obligations, the power to rescind the contract where a party incurs in default, is impliedly given to the injured party. Appellee maintains, however, that the law contemplates of rescission of contract by judicial action and not a unilateral act by the injured party; consequently, the action of the Shipping Administration contravenes said provision of the law. This is not entirely correct, because there is also nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract. As already held, judicial action is needed where there is absence of special provision in the contract granting to a party the right of rescission."
>
> Judicial permission to cancel the agreement was not, therefore, necessary because of the express stipulation in the contract of sub-lease that the sub-lessor, in case of failure of the sub-lessee to comply with the terms and conditions thereof, can take-over the possession of the leased premises, thereby cancelling the contract of sub-lease. Resort to judicial action is necessary only in the absence of a special provision granting the power of cancellation.[104] (Citations omitted)

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[102] *Id.* at 298.

[103] *Id.*

[104] *Id.*

Consing teaches that while Article 1673 provides for judicial action to eject the lessee, it is only required if the lease contract has no special provision granting the cancellation of the lease.[105]

Viray v. Intermediate Appellate Court[106] reiterated this doctrine. There, a similar provision, which authorized the sublessor repossession without court action, was assailed for contravening public policy. In upholding its validity, this Court held that there was no law against extrajudicial ejectment. In fact, stipulations may authorize the use of "all necessary force" or "reasonable force" for the sublessor to repossess the lessor of the premises:

> This Court ruled that the stipulation "is in the nature of a resolutory condition, for upon the exercise by the Sub-lessor of his right to take possession of the leased property, the contract is deemed terminated"; and that such a contractual provision "is not illegal, there being nothing in the law proscribing such kind of agreement."
>
> Similarly, there is considerable authority in American law upholding the validity of stipulations of this nature.
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> > "Although the authorities are not in entire accord, the better view seems to be, even in jurisdictions adopting the view that the landlord cannot forcibly eject a tenant who wrongfully holds without incurring civil liability, that nevertheless, where a lease provides that if the tenants holds over after the expiration of his term, the landlord may enter and take possession of the premises, using all necessary force to obtain the actual possession thereof, and that such entry should not be regarded as a trespass, be sued for as such, or in any wise be considered unlawful, the landlord may forcibly expel the tenant upon the termination of the tenancy, using no more force than is necessary, and will not be liable to the tenant therefor, such a condition in a lease being valid."
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> > ". . . although there is contrary authority, the rule supported by a substantial number of cases is that despite the effect of forcible entry and detainer statutes, where a lease expressly

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[105] *Id.*

[106] 275 Phil. 870 (1991) [Per *J.* Narvasa, First Division].

> gives a landlord a right to use such reasonable force as is necessary in making re-entry and dispossessing a tenant, when the landlord becomes entitled to possession because of the termination of the term, the landlord can use force in making re-entry and dispossessing the tenant."[107] (Citations omitted)

The more recent case of *Republic v. Peralta*[108] is likewise illuminating. The petitioner-lessor again argued that a judicial action was not required to evict the lessees because the contract allowed for extrajudicial ejectment upon the expiration of the lease contract.[109] Again, this Court upheld the contract provision as valid, declaring that since such stipulations form "the law between the parties, they must be respected."[110]

Similarly, the cases here put in issue the legality of some provisions in the parties' Lease Contract.

First, Aniceto contends that Article X, Sections 1 and 2, which gave CJH Development authority to extrajudicially regain possession of the premises, must be struck down for violating due process and being illegal. Second, Aniceto argues that Article VI, Section 1, which granted CJH Development ownership over the permanent improvements, is likewise illegal.

II (A)

The provisions on the termination of Lease Contract, which Aniceto claims violate due process and the law, state:

ARTICLE X

TERMINATION OF LEASE

Section 1. Termination or Expiration of Lease. The LESSEE, at the expiration or termination of the term of this Contract or cancellation of this Contract as herein provided, shall promptly deliver the said Leased Premises to the LESSOR in good condition, reasonable wear

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

[108] 669 Phil. 81 (2011) [Per *J.* Carpio, Second Division].

[109] *Id.*

[110] *Id.* at 88.

and tear excepted, devoid of all occupants, furniture, articles and effects of any kind, subject to Section 1, Article VI hereof.

Section 2. Non-compliance. ***Non-compliance on the part of the LESSEE with the terms and conditions of this Article will give the LESSOR the right to enter the Leased Premises and LESSEE hereby expressly appoints LESSOR as his duly authorized Attorney-in-Fact with power and authority to cause the Leased Premises to be opened in the presence of a peace officer to take inventories of the LESSEE's merchandise and to place the same in LESSOR's bodega so that the LESSOR can take full possession of the said premises.*** LESSEE hereby expressly agrees to pay all reasonable expenses incurred by LESSOR in connection therewith including storage fees; Provided, further that failure of LESSEE to claim said merchandise and equipment within thirty (30) days from date of transfer to LESSOR'S bodega, LESSOR is hereby given the right to dispose of said property in private sale and to apply the proceeds to whatever indebtedness of LESSEE to LESSOR and the balance, if any, shall be given to LESSEE. LESSOR shall not incur civil and/or criminal liabilities whatsoever by exercising its rights granted under these provisions. The rights granted to the LESSOR in this section, may be exercised by the LESSOR'S duly authorized employees, agents or representatives and, in so doing, they shall not incur civil and/or criminal liabilities whatsoever.[111] (Emphasis supplied)

Here, before the second lease lapsed on May 17, 2007, Aniceto asked CJH Development to renew the Lease Contract. While CJH Development refused the request, it still allowed Aniceto to keep occupying the premises. Only on January 30, 2008 did it notify her to vacate the premises.[112] From then on, despite Aniceto's persistent requests to renew the lease, CJH Development refused and reminded her to vacate the premises, and that she had until March 1, 2008 to do so.

Clearly, there was an implied lease between the parties. When the lease expired on May 17, 2007, CJH Development acquiesced to Aniceto's continued occupancy. It did not send a notice to vacate and even accepted Aniceto's monthly payments until

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[111] *Rollo* (G.R. No. 224472), p. 74.

[112] *Id.* at 79.

February 28, 2008. As it was paid monthly, the implied lease ran on a month-to-month renewal, in accordance with Article 1687 of the Civil Code. It follows that the lease would be terminated by the end of each month, and CJH Development may choose not to renew the lease and demand repossession of the premises.

In sending the notice to vacate on January 30, 2008, CJH Development signified that it no longer wished to continue the lease. By then, the month-to-month implied lease was terminated. The lessee can no longer insist on staying in the premises against the lessor's will because there is no longer a contract of lease to speak of.

Thus, when Aniceto refused to surrender the premises, the Lease Contract provided CJH Development recourse. Article X, Section 2 authorized it to enter the premises and extrajudicially regain possession if Aniceto failed to promptly deliver the premises upon the termination of the Lease Contract.

This provision is neither unconstitutional nor illegal, contrary to Aniceto's assertions. As this Court has consistently held, the lessee may be ejected from the leased premises without any court action *as long as there is a stipulation to this effect.*

Due process was not violated here, considering that the lessor owns the property and merely allowed the lessee to occupy and possess it for a certain period. There is no deprivation of property without due process when the law[113] and the provision of the lease contract allow the lessor to immediately repossess the property when the lease is terminated.

More so, in an implied lease, the lessee cannot unreasonably insist on continuing it. Nor can the lessee keep on badgering

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[113] Civil Code, Arts. 1665 and 1669 provide:

ARTICLE 1665. The lessee shall return the thing leased, upon the termination of the lease, as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause.

ARTICLE 1669. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand.

the lessor into renewing the lease when the contract has already expired. Even if the lease was repeatedly renewed, it does not give the lessee a better right over the property. The lessor, as the property owner, may decide not to renew the implied lease and devote the property to other use.

II (B)

Aniceto also assails Article VI, Section 1 of the Lease Contract for supposedly giving CJH Development ownership over the permanent improvements, and therefore an unbridled right over the property. The section states:

ARTICLE VI
IMPROVEMENTS & ALTERATIONS

Section 1. Improvements and Alterations. The LESSEE, with the written consent and approval of the LESSOR, may introduce improvements or alterations on the Leased Premises. For this purpose, the LESSEE shall:

a) Shall submit to the LESSOR detailed engineering plans for improvements or alterations which shall be subject to the review and approval of the LESSOR, prior to start of work;
b) Require its contractor to apply for accreditation with the LESSOR;
c) Require its contractor and employees to undergo a safety and environmental briefing.

It is expressly understood that the actual cost of the permanent improvements or alterations introduced shall be for the account of the LESSEE.

All permanent improvements or alterations made on the Leased Premises shall upon completion thereof, form an integral part of the Leased Premises, and shall not be removed therefrom, but shall belong to and become the exclusive property of the LESSOR and the LESSEE shall have no right to reimbursement of the cost or value thereof.[114] (Emphasis supplied)

Article 1678 of the Civil Code provides the rule on improvements introduced by the lessee upon the premises. It states:

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[114] *Rollo* (G.R. No. 224472), pp. 72-73.

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

With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.[115]

In *Land Bank of the Philippines v. AMS Farming Corporation*,[116] this Court explained that a lessee who builds on the leased premises is treated differently from a builder in good faith. Unlike a lessee, a builder in good faith believed that he or she owned the land. Under Articles 448 and 546 of the Civil Code, the builder in good faith is granted the rights of retention and reimbursement for the necessary and useful expenses spent on the improvements.[117]

On the other hand, a lessee is conclusively presumed to know that he or she does not own the land. If the lessee introduces improvements on the leased premises, the law only grants him or her the right to remove these improvements, or be paid 50% of their value in case the lessor decides to retain. Because the lessee is deemed to have known the nature of occupation and possession of the premises, he or she is deemed to have introduced the improvements at his or her own risk. The lessee knows that at some point, the life of the lease contract will end, and the lessor will eventually demand the premises back.[118]

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[115] CIVIL CODE, Art. 1678.

[116] 590 Phil. 170 (2008) [Per *J.* Chico-Nazario, Third Division].

[117] *Id.*

[118] *Id.*

Moreover, the reimbursement to the lessee is predicated on the lessor's choice to appropriate the improvements introduced by the lessee. The lessee cannot compel the lessor to retain the improvement or pay the reimbursement. The lessee may only remove the improvements if the lessor refused to appropriate and reimburse.[119]

Here, the last sentence of the Lease Contract's Article VI, Section 1 provides that CJH Development does not have to reimburse Aniceto for her permanent improvements on the premises.

This outright violates Article 1678, which mandates the lessor to choose whether or not to appropriate the improvement. If so, the lessee must be reimbursed half of its value; if not, the lessee has the right to remove the improvements. Either way, the lessor cannot own the improvement without paying the lessee. Hence, CJH Development cannot insist on a blanket provision that grants it ownership over the structure of the restaurant. For this, the last sentence of Article VI, Section 1 must be struck down.

In any case, it appears that CJH Development decided not to appropriate and use the permanent improvement introduced by Aniceto. Hence, it is not liable to reimburse Aniceto for the demolished structures.

We likewise agree with the Court of Appeals that the demolition of the restaurant did not go against the authority of the trial court.

As explained by the Court of Appeals, the 72-hour Temporary Restraining Order directing CJH Development to desist from closing the restaurant had already expired at the time of the demolition. Moreover, the *status quo* order had likewise lapsed and Aniceto's application for preliminary injunction had been denied. Hence, there was no legal obstacle for CJH Development to take possession of the premises.

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[119] *Spouses Guzman v. Court of Appeals,* 258 Phil. 410 (1989) [Per *J.* Cortes, Third Division].

II (C)

Additionally, in assailing the provisions, Aniceto argues that the lease contract is a contract of adhesion, and thus, against public policy.

This argument deserves scant consideration.

An adhesion contract is a contract unilaterally prepared and drafted in advance by one party. In this kind of contract, "parties are not given a real arms' length opportunity to transact[.]"[120] Hence, the weaker party has no option but to accept the terms and conditions already inserted in the contract. For this reason, the party may not have understood all the terms and stipulations prescribed.[121]

Nevertheless, contracts of adhesion are not void per se. They may be as binding on the parties as any ordinary contract. In *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*:[122]

> [W]hile we affirm that the subject lease agreement is a contract of adhesion, such a contract is not void per se. It is as binding as any ordinary contract. A party who enters into an adhesion contract is free to reject the stipulations entirely. If the terms thereof are accepted without objection, then the contract serves as the law between the parties.[123]

Here, Aniceto failed to show how CJH Development dominated her when they entered into the contract. There was no showing that Aniceto was unaware of the contract's provisions or that the provisions were vaguely worded. Aniceto even seemed to understand the implications of the contract, as shown when she entered into a second lease with CJH Development, as well as in the further extensions made by amending the contract.

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[120] *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corp.,* 551 Phil. 768, 775 (2007) [Per *J.* Nachura, Third Division].

[121] *Id.*

[122] 551 Phil. 768 (2007) [Per *J.* Nachura, Third Division].

[123] *Id.* at 781.

As parties to the Lease Contract, Aniceto and CJH Development entered into stipulations they found convenient. Without showing that the provisions are against law, morals, good customs, public order, or public policy, the contract has the force of law and must be binding upon the parties.

III

Article X, Section 2 of the Lease Contract not only gives CJH Development the right to repossess the premises, but also the authority to "take inventories of Aniceto's merchandise and to place the same in [CJH Development's] *bodega*"[124] for Aniceto's retrieval. It further states that Aniceto will shoulder all reasonable expenses incurred by CJH Development in safekeeping the merchandise, including storage fees.

Yet, the Court of Appeals ruled that CJH Development was liable to return or pay the value of the personal properties it stored in its *bodega*.

Such finding has no basis in law.

While the agreement of the parties is akin to a contract of deposit, the special rules on deposit cannot apply because safekeeping is not the principal purpose of the contract.[125] Hence, we find guidance in the general provisions on obligations.

Under Article 1262 of the Civil Code, an obligation to deliver a determinate thing shall be extinguished if it was lost or destroyed without fault and delay on the part of the obligor.[126]

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[124] *Rollo* (G.R. No. 224472), p. 74. Article X, Section 2 of the Lease Contract.

[125] CIVIL CODE, Art. 1962 provides:

ARTICLE 1962. A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and of returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract.

[126] CIVIL CODE, Art. 1262 provides:

ARTICLE 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

If the thing is lost while in the custody of the obligor, the law presumes that the loss was due to the obligor's fault, unless there is proof to the contrary.[127] This presumption lies because the obligor "has the custody and care of the thing can easily explain the circumstances of the loss."[128]

Here, CJH Development was authorized under the Lease Contract to take Aniceto's personal properties found in the premises; in turn, Aniceto is obliged to retrieve them. However, due to Aniceto's refusal to do so, the properties deteriorated over time.

CJH Development has proven that the deterioration of Aniceto's personal properties was not its fault. When CJH Development entered the premises, Aniceto's employees were present. When it asked them to remove all the items, the employees refused. Hence, the corporation itself took the articles and goods and placed them in its *bodega* for Aniceto's retrieval. When it prepared the inventories, Aniceto's employees also refused to sign them.

Aniceto did not deny these allegations. She only insists that her inventory must be upheld over the list submitted by CJH Development.

It is clear, then, that CJH Development only acted within its authority. The Lease Contract states that upon its termination, the premises must be returned by Aniceto, "devoid of all

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When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

[127] CIVIL CODE, Art. 1265 provides:

ARTICLE 1265. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Article 1165. This presumption does not apply in case of earthquake, flood, storm or other natural calamity.

[128] *Co v. Court of Appeals*, 353 Phil. 305, 314 (1998) [Per *J.* Martinez, Second Division].

occupants, furniture, articles and effects of any kind[.]"[129] It was Aniceto's unjustified refusal to retrieve the properties that caused them to sit idle and deteriorate over time, rotten to be of any use.

The personal articles and goods were no longer capable of being returned to Aniceto, but CJH Development cannot be held liable to pay their value. CJH Development is released from its obligation to safekeep and return the items if these were destroyed and lost without fault and delay on its part.[130] Aniceto must solely bear the loss she brought on herself, through her unjustified refusal to comply with her obligation. Thus, the award of damages for the value of the personal properties must be deleted.

IV

Lastly, this Court affirms the Court of Appeals' ruling that CJH Development and its lawyers are not liable for damages under the abuse of rights principle.

The abuse of rights principle is enshrined in the Civil Code:

> ARTICLE 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
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> ARTICLE 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> ARTICLE 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

These articles provide a standard to which one must adhere in the exercising rights and performing duties.[131]

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[129] *Rollo* (G.R. No. 224006), p. 32.

[130] CIVIL CODE, Arts. 1262 and 1265.

[131] *GF Equity Inc. v. Valenzona*, 501 Phil. 153 (2005) [Per *J.* Carpio Morales, Third Division].

As stated in *Globe Mackay Cable and Radio Corporation v. Court of Appeals*,[132] these Civil Code provisions provide "basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order."[133] This Court said:

> The framers of the Code, seeking to remedy the defect of the old Code which merely stated the effects of the law, but failed to draw out its spirit, incorporated certain fundamental precepts which were "designed to indicate certain norms that spring from the fountain of good conscience" and which were also meant to serve as "guides for human conduct [that] should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice[.]"[134]

Moreover, in *De Guzman v. National Labor Relations Commission*:[135]

> The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices another or offends morals or good customs. Over and above the specific precepts of positive law are the supreme norms of justice which the law develops and which are expressed in three principles: *honeste vivere, alterum non laedere and jus suum quique tribuere;* and he who violates them violates the law. For this reason, it is not permissible to abuse our rights to prejudice others.[136] (Citation omitted)

Article 19 puts a "primordial limitation on all rights[.]"[137] It mandates that the norms of human conduct be observed in the exercise of one's rights.[138]

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[132] 257 Phil. 783 (1989) [Per *J.* Cortes, Third Division].

[133] *Id.* at 788.

[134] *Id.*

[135] 286 Phil. 885 (1992) [Per *J.* Cruz, First Division].

[136] *Id.* at 893-894.

[137] *Albenson Enterprises Corp. v. Court of Appeals*, 291 Phil. 17, 27 (1993) [Per *J.* Bidin, Third Division].

[138] *Id.*

While a right may be granted by law, it may not be exercised in a way that causes damage to another, giving rise to a legal wrong. Article 19, which only lays down a rule of conduct, is read together with Articles 20 and 21, which authorize an action for damages. Article 20 pertains to damage arising from a violation of law, while Article 21 provides damages for those who suffered material and moral injury.[139]

To be awarded damages under the abuse of rights principle, the following elements must be proven: (1) there is a legal right or duty; (2) the legal right or duty was exercised in bad faith; and (3) it was done for the sole intent of prejudicing or injuring another.[140]

Bad faith is not merely bad judgment or simple negligence, but a "dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motives or interest or [ill will] that partakes of the nature of fraud."[141] Similarly, malice "implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive."[142]

Here, CJH Development has no liability under the abuse of rights principle. It was not shown to have acted in bad faith or with malice in pursuing its rights under the Lease Contract. Aniceto has not proven how the company's actions were tainted with an ill motive to cause her harm. In entering and regaining possession of the premises, CJH Development only exercised its right as the owner of the land.

Even before CJH Development demolished the premises, it sent Aniceto several notices to vacate. When it removed the personal properties, Aniceto's employees and the Baguio City

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[139] *Globe Mackay Cable and Radio Corp. v. Court of Appeals*, 257 Phil. 783 (1989) [Per *J.* Cortes, Third Division].

[140] *Padillo v. Rural Bank of Nabunturan. Inc.*, 701 Phil. 697 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[141] *Development Bank of the Phils. v. Court of Appeals*, 487 Phil. 9, 30 (2004) [Per *J.* Callejo, Sr, Second Division].

[142] *Id.*

police were present. CJH Development also requested Aniceto to retrieve her properties, but she, for unknown reasons, refused to do so.

Neither did the lawyers act in bad faith in advising CJH Development to demolish the restaurant and remove Aniceto's properties. As discussed, the entry and repossession of the premises are within CJH Development's contractual rights. As lawyers, Attys. Alvarez and Belmes only advised their client to protect its interests under the law.

In sum, the circumstances here do not demonstrate bad faith or malice, nor any unjustifiable harm caused to Aniceto. Hence, the Court of Appeals correctly deleted the award of damages.

WHEREFORE, the Petition for Review of Corazon D. Aniceto is **DENIED,** but the Petition for Review of Camp John Hay Development Corporation is **GRANTED.** The Court of Appeals' July 27, 2015 Decision and March 8, 2016 Resolution in CA-G.R. CV No. 102139 are **AFFIRMED with MODIFICATION.** The award of damages worth ₱2,183,625.00, which represents the value of the personal properties, is deleted for lack of legal basis. The remaining personal properties stored with Camp John Hay Development Corporation, if any, shall be turned over to Corazon D. Aniceto.

SO ORDERED.

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

Gesmundo, J., on official leave.

THIRD DIVISION

[G.R. No. 231984. July 6, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEO IBAÑEZ *y* MORALES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND ITS EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE GENERALLY ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL.— Both the Regional Trial Court and the Court of Appeals held that the prosecution had discharged its burden to prove accused-appellant's guilt beyond reasonable doubt. It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." x x x A scrutiny of the records here shows no reason to disturb the Regional Trial Court's factual findings, as affirmed by the Court of Appeals. As their appreciation of the facts and the law reveal no glaring error, this Court will not depart from their uniform rulings.

2. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS; DULY ESTABLISHED IN CASE AT BAR.— The Regional Trial Court convicted accused-appellant of four counts of qualified rape. Article 266-A(1) of the Revised Penal Code, as amended, enumerates the elements of rape by sexual intercourse: Article 266-A. Rape; When and How Committed. — Rape is committed – 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. 2) By any person who, under any of the circumstances

mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. Article 266-B of the Revised Penal Code, as amended, states that rape is qualified when the victim is under 18 years old, "and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]" The victim's minority and relationship with the perpetrator must both be alleged in the Information, as in this case. The prosecution established all the elements of qualified rape. It is undisputed that accused-appellant and AAA are relatives by affinity within the third civil degree, accused-appellant being the husband of AAA's aunt. Likewise undisputed is AAA's minority at the time of the alleged rape incidents.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, CONVICTION OR ACQUITTAL MAY SOLELY DEPEND ON THE PRIVATE COMPLAINANTS' CREDIBILITY, AS ONLY THEY CAN TESTIFY ON ITS OCCURRENCE.—** As the trial court found, AAA's consistent and categorical testimony suffices to convict accused-appellant. In rape cases, conviction or acquittal may solely depend on the private complainants' credibility, as only they can testify on its occurrence. AAA's testimony was also bolstered by the medical finding of hymenal lacerations, which corroborated her narration. x x x [A]ccused-appellant alleged inconsistencies in AAA's testimony that only point to collateral and trivial matters. These neither taint AAA's credibility nor dispute the commission of rape.

4. **ID.; ID.; DENIAL AND FRAME-UP; CONSIDERED AS SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.—** Against AAA's detailed and categorical testimony, accused-appellant interposed the defenses of denial and frame-up, which are inherently weak defenses. These are "self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters."

5. CRIMINAL LAW; RAPE; LACK OF RESISTANCE CANNOT IN ANY WAY NEGATE ACCUSED'S COMMISSION OF RAPE WHEN HE EXERCISES MORAL ASCENDANCY OR INFLUENCE OVER THE VICTIM.— AAA's alleged lack of resistance cannot in any way negate accused-appellant's commission of rape. x x x That accused-appellant is AAA's uncle presupposes that he exercises moral ascendancy or influence over her. Further, he repeatedly pointed a knife at her and threatened to kill her if she told anybody of his dastardly acts. Such influence and use of force naturally rendered AAA unable to resist. In any case, survivors of such cruelty in the hands of their relatives — or any person for that matter—must not be blamed for any action, or lack thereof, that they take when suddenly forced to respond to a threat. People differ in how they address danger. There is no blueprint on how a victim should act when violated. There is no certainty as to how one would react. What is certain, however, is that a person who forces sexual congress on another is a rapist. Rapists' acts must never be attributed to their victims.

6. ID.; ID.; A VICTIM'S FAILURE TO RESIST ANOTHER PERSON'S VIGOROUS ADVANCES DOES NOT EQUATE TO CONSENTING TO SEXUAL ABUSE.— Contrary to accused-appellant's attempt at exculpation, it does not matter whether AAA attempted to flee or take every chance to escape whenever he found her alone. A victim's failure to resist another person's vigorous advances does not equate to consenting to sexual abuse. What is truly contrary to human experience is how a victim would "[expose] himself/herself again" to violence and invite a rapist to his/her house, as he insisted—which, as the facts bear out, AAA certainly did not.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

A man who forces sexual congress on a person is a rapist. Survivors of such cruelty must not be blamed for any action, or lack thereof, that they take when suddenly forced to respond to a threat. Rapist are rapists, and their acts must never be attributed to the victims.

For this Court's resolution is an appeal of the Decision[1] of the Court of Appeals, which affirmed the Regional Trial Court's Joint Decision[2] convicting Leo Ibañez *y* Morales (Ibañez) of four counts of qualified rape.

In four separate pieces of Information, Ibañez was charged with four counts of qualified rape committed on AAA, penalized under Article 248 of the Revised Penal Code. The first Information reads:

> That on or about the 25th day of April, 2003, in the Municipality of [redacted] Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of a knife, a deadly weapon, through force, threat and intimidation, taking advantage of his moral ascendancy and with the attendant special qualifying circumstance of relationship and minority, the accused being the uncle, thus, a relative by affinity within the third civil degree of herein victim who was under eighteen (18) years of age, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a minor, 17 years old, against her will, in her own dwelling, to her damage and prejudice.
>
> CONTRARY TO LAW.[3]

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[1] *Id.* at 4-11. The December 21, 2016 Decision in CA-G.R. CEB CR-HC No. 02169 was penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap of the Eighteenth Division, Court of Appeals, Cebu City.

[2] CA *rollo*, pp. 54-69. The August 27, 2015 Joint Decision in Crim. Case Nos. 04-26058/59/60/61 was penned by Presiding Judge Raymond Joseph G. Javier of Branch 52, Regional Trial Court, Bacolod City.

[3] *Id.* at 54.

The other pieces of Information were similarly worded except for the varying dates for each of the crimes charged.[4]

When arraigned, Ibañez pleaded not guilty to the crimes charged. Thus, trial ensued.[5]

The prosecution, through witnesses AAA, Dr. Jocelyn Gayares (Dr. Gayares), and Dr. Raymund Antonio Maguad (Dr. Maguad),[6] narrated the following:

One afternoon in March 2003, while AAA was in her house in [redacted], Negros Occidental, Ibañez came in and asked her where her father was. When AAA told him that her father was not home, Ibañez grabbed her and pointed a knife at her. He then kissed her, groped her breasts, and shoved her into a bedroom. He undressed himself, inserted his penis into AAA's vagina, and made a "push-and-pull movement."[7] After satisfying his savage desires at AAA's expense, Ibañez threatened to kill her if she told her parents of what had transpired.[8]

Similarly, at around 5:00 p.m. on April 12, 2003, Ibañez came again and asked where AAA's parents were. When he found out that she was alone, he pointed a knife at her, brought her into her bedroom, and forcefully inserted his penis into her vagina. The same thing happened again at around 5:00 p.m. on April 25, 2003.[9]

The fourth alleged incident happened on May 11, 2003. At 7:00 p.m., Ibañez entered AAA's house when she was alone and began kissing her, only to pause when AAA's friend came into the house. While AAA and her friend watched a television show, Ibañez slept on the sofa, but not before making sure that

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

[5] *Id.* at 56.

[6] *Id.*

[7] *Id.* at 57.

[8] *Id.*

[9] *Id.*

AAA would not tell on him. By 9:00 p.m., despite AAA's pleas, her friend left. AAA woke Ibañez up and told him to go home, but upon waking up, Ibañez started kissing her again. AAA attempted to flee, but she slipped and fell. Ibañez then went on top of her and sexually abused her for the fourth time.[10]

Three days later, AAA went to the municipal health office to be examined by Dr. Agustus Ceasar J. Tan. However, the physician died shortly after, and Dr. Maguad testified on his report. Dr. Maguad reported that AAA "had old hymenal lacerations on her external genitalia at the three and nine o'clock position" which may have been caused by a blunt object like a penis.[11]

Solely testifying for his defense, Ibañez denied raping AAA, whom he admitted to be his niece through marriage. He claimed that he was working as a carpenter and a welder at [redacted] Resort in [redacted], about 10 kilometers from his house, when the alleged incidents happened.[12]

Ibañez insisted that he was being framed, and the rape charges were filed on account of his land dispute with AAA's father. He contended that he had not been to AAA's house since 2001 when the land dispute arose.[13]

In its August 27, 2015 Joint Decision,[14] the Regional Trial Court convicted Ibañez of four counts of qualified rape. It held that Ibañez's bare denial could not prevail over AAA's "direct, positive and categorical" testimony,[15] which was corroborated by the results of the medical examination.[16] The dispositive portion of the ruling read in part:

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[10] *Rollo*, p. 6.

[11] *Id.*

[12] CA *rollo*, p. 58.

[13] *Id.*

[14] *Id.* at 54-69.

[15] *Id.* at 66.

[16] *Id.* at 65.

WHEREFORE, premises considered, judgment is hereby rendered as follows:

(a) In Criminal Case No. 04-26058, finding accused-defendant LEO IBAÑEZ y MORALES "**GUILTY**" beyond reasonable doubt of the felony of Qualified Rape punishable under Article 266-A in relation to 266-B of the Revised Penal Code. He is therefore convicted of the Information dated January 6, 2004. Accused-defendant LEO IBAÑEZ y MORALES is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole with all of its accessory penalties. He is also ordered to **PAY** the victim [AAA] the amount of seventy five thousand pesos (₱75,000.00) as civil indemnity, seventy five thousand pesos (₱75,000.00) as moral damages and thirty thousand pesos (₱30,000.00) as exemplary damages;

(b) In Criminal Case No. 04-26059, finding accused-defendant LEO IBAÑEZ y MORALES "**GUILTY**" beyond reasonable doubt of the felony of Qualified Rape punishable under Article 266-A in relation to 266-B of the Revised Penal Code. He is therefore convicted of the Information dated January 6, 2004. Accused-defendant LEO IBAÑEZ y MORALES is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole with all of its accessory penalties. He is also ordered to **PAY** the victim [AAA] the amount of seventy five thousand pesos (₱75,000.00) as civil indemnity, seventy five thousand pesos (₱75,000.00) as moral damages and thirty thousand pesos (₱30,000.00) as exemplary damages;

(c) In Criminal Case No. 04-26060, finding accused-defendant LEO IBAÑEZ y MORALES "**GUILTY**" beyond reasonable doubt of the felony of Qualified Rape punishable under Article 266-A in relation to 266-B of the Revised Penal Code. He is therefore convicted of the Information dated January 6, 2004. Accused-defendant LEO IBAÑEZ y MORALES is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole with all of its accessory penalties. He is also ordered to **PAY** the victim [AAA] the amount of seventy five thousand pesos (₱75,000.00) as civil indemnity, seventy five thousand pesos (₱75,000.00) as moral damages and thirty thousand pesos (₱30,000.00) as exemplary damages;

(d) In Criminal Case No. 04-26061, finding accused-defendant LEO IBAÑEZ y MORALES "**GUILTY**" beyond reasonable doubt

of the felony of Qualified Rape punishable under Article 266-A in relation to 266-B of the Revised Penal Code. He is therefore convicted of the Information dated January 6, 2004. Accused-defendant LEO IBAÑEZ y MORALES is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole with all of its accessory penalties. He is also ordered to **PAY** the victim [AAA] the amount of seventy five thousand pesos (₱75,000.00) as civil indemnity, seventy five thousand pesos (₱75,000.00) as moral damages and thirty thousand pesos (₱30,000.00) as exemplary damages;

x x x x x x x x x

SO ORDERED.[17] (Emphasis in the original)

Aggrieved, Ibañez appealed before the Court of Appeals.[18]

In his Brief,[19] Ibañez contended that AAA's testimony was "tainted with inconsistencies and improbabilities which necessarily destroy her credibility."[20] He pointed out that he could not have held both her hands, mashed her body parts, pulled her underwear, and held a knife all at the same time.[21] If the previous harrowing experiences really did happen, he averred that it was strange for AAA to not run away or shout for help, but instead keep naively telling him that her parents were not home and letting him in.[22] He highlighted how, on the fourth time, "[i]nstead of running away, AAA woke [him up], thereby exposing herself again to the possibility [of] another episode of sexual encounter."[23] He faulted her for having the "audacity" to wake him up, which ran counter to what a woman spoiled of her honor would do. He pointed out that a victim's

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[17] *Id.* at 67-69.

[18] *Rollo*, p. 7.

[19] CA *rollo*, pp. 29-53.

[20] *Id.* at 41.

[21] *Id.* at 43.

[22] *Id.* at 44.

[23] *Id.* at 45.

actions immediately after the incident "is of utmost importance in establishing" rape, which AAA's testimony failed to prove.[24]

Ibañez also argued that the absence of any physical injury after the alleged rape incidents was "highly suggestive of her lack of resistance to the sexual act, granting *arguendo* that sexual intercourse indeed transpired."[25] He asserted that AAA seemed to have let him do as he pleased even if she was unrestrained,[26] and did not put up the slightest resistance.[27]

In its December 21, 2016 Decision,[28] the Court of Appeals affirmed the Regional Trial Court's Joint Decision with modifications.

The Court of Appeals ruled that minor inconsistencies in AAA's testimony did not affect her direct and positive assertions.[29] It held that the absence of physical injuries on AAA did not negate rape, as the presence of physical injuries was not an element of the crime.[30]

In modifying the ruling, the Court of Appeals raised the award of damages. The dispositive portion of its Decision read:

> **WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Decision dated 27 August 2015 of the Regional Trial Court of Bacolod City, Branch 52 finding Leo Ibañez y Morales guilty beyond reasonable doubt of Qualified Rape in Criminal Case Nos. 04-26058/59/60/61 is **AFFIRMED** with **MODIFICATION**. Leo Ibañez y Morales is **ORDERED** to pay AAA the amount of [₱]100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages for each crime, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision.

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[24] *Id.* at 46.

[25] *Id.* at 47.

[26] *Id.*

[27] *Id.* at 46.

[28] *Rollo*, pp. 4-11.

[29] *Id.* at 8.

[30] *Id.* at 10.

SO ORDERED.[31] (Emphasis in the original)

Thus, Ibañez filed a Notice of Appeal.[32] Accordingly, the Court of Appeals gave due course to the appeal and elevated the case records to this Court.[33]

In its July 31, 2017 Resolution,[34] this Court noted the case records and directed the parties to file their respective supplemental briefs.

Both accused-appellant[35] and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General,[36] manifested that they would no longer file supplemental briefs. These were noted by this Court in its December 4, 2017 Resolution.[37]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in convicting accused-appellant Leo Ibañez *y* Morales for four counts of qualified rape.

This Court affirms accused-appellant's conviction.

Both the Regional Trial Court and the Court of Appeals held that the prosecution had discharged its burden to prove accused-appellant's guilt beyond reasonable doubt. It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or

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[31] *Id.* at 11.

[32] *Id.* at 12-14.

[33] *Id.* at 1 and 15.

[34] *Id.* at 17-18.

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

[36] *Id.* at 26-29.

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

misapplied any fact or circumstance of weight and substance."[38] In *People v. Lita*:[39]

> *The Regional Trial Court had the opportunity to personally observe the witnesses during their testimonies.* Thus, its assignment of probative value to testimonial evidence will not be disturbed except when significant matters were overlooked. A reversal of its findings becomes even less likely when affirmed by the Court of Appeals.[40] (Emphasis supplied)

A scrutiny of the records here shows no reason to disturb the Regional Trial Court's factual findings, as affirmed by the Court of Appeals. As their appreciation of the facts and the law reveal no glaring error, this Court will not depart from their uniform rulings.

The Regional Trial Court convicted accused-appellant of four counts of qualified rape. Article 266-A (1) of the Revised Penal Code, as amended, enumerates the elements of rape by sexual intercourse:

> Article 266-A. Rape; When and How Committed. — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and

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[38] *People v. Pusing*, 789 Phil. 541, 556 (2016) [Per *J.* Leonen, Third Division] citing *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per *J.* Brion, Second Division].

[39] G.R. No. 227755, August 14, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65609> [Per *J.* Leonen, Third Division].

[40] *Id.* citing *People v. Dimapilit*, 816 Phil. 523, 540-541 (2017) [Per *J.* Leonen, Second Division].

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[41]

Article 266-B of the Revised Penal Code, as amended, states that rape is qualified when the victim is under 18 years old, "and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]"[42] The victim's minority and relationship with the perpetrator must both be alleged in the Information,[43] as in this case.

The prosecution established all the elements of qualified rape.

It is undisputed that accused-appellant and AAA are relatives by affinity within the third civil degree, accused-appellant being the husband of AAA's aunt. Likewise undisputed is AAA's minority at the time of the alleged rape incidents.

AAA testified on how she was sexually abused by her own uncle through force, threat, and intimidation:

Q: . . . [W]ill you kindly narrate to us from the very beginning how [the rape] transpired?
A: On that afternoon, Leo Ibañez went to our house and inquired where my Papa and Mama was [sic]. I answered "I don't know," they left" [sic] and then he came near me and pulled me and pointed a knife at me.

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[41] REV. PEN. CODE, Art. 266-A, as amended by Republic Act No. 8353 (1997).

[42] REV. PEN. CODE, Art. 266-B, as amended by Republic Act No. 8353 (1997).

[43] *People v. Armodia*, 810 Phil. 822, 833 (2017). [Per *J.* Leonen, Third Division] citing *People v. Malana*, 646 Phil. 290, 310 (2010) [Per *J.* Perez, First Division].

x x x x x x x x x

Q: After he pulled you and pointed a knife at your side, what happened next?
A: He pointed a knife at my side pulling me towards the house. He kissed my lips and his hands mashed different parts of my body going towards the bed. He held tightly both my hands and his left hand while his right hand pulling [sic] my pants and panty.

Q: What happened next?
A: Then he pushed me to the bed and he placed himself on top of me.

x x x x x x x x x

Q: What else happened?
A: He was wearing blue shorts and he also removed his shorts while on top of me.

Q: After he removed his shorts, what did he do?
A: Then he inserted his penis into my vagina and done [sic] the push-and-pull motion.

x x x x x x x x x

Q: Was he able to enter your vagina?
A: Yes, it penetrated me and I felt pain.

Q: After doing the push-and-pull inside your vagina, what happened next?
A: When he penetrated me I shouted "agoy."

x x x x x x x x x

Q: What were you doing at that time on April 12, 2003 at about 5:00 to 5:30 o'clock in the afternoon?
A: I was arranging my clothes inside our house when the accused called up and asked the whereabouts of my parents. . . .

x x x x x x x x x

Q: While he was kissing and continued mashing [sic] the different parts of your body, what else happened?
A: He told me to go to the bed and he continued kissing me . . . and then he undressed himself and he let me lie down and he placed himself on top of me and continued mashing the different parts of my body and pointing to me the knife.

x x x x x x x x x

Q: After licking your vagina with his tongue, what else happened?
A: He kissed my lips and he inserted his penis into my vagina, Sir.

x x x x x x x x x

Q: Can you recall when the third one happened? The second was on April 12, 2003, when was the third one?
A: April 25, 2003.

x x x x x x x x x

Q: What happened in your house when your parents were no longer there?
A: I placed the water in our kitchen and Leo Ibañez was already there sitting in our bamboo set, then he warned me not to tell my parents about the things he had been doing to me, Sir.

x x x x x x x x x

Q: What else happened?
A: He was on top of me, undressing me and he also undressed himself, Sir.

Q: After he had undressed himself, what did you do while on top of you? [sic]
A: He inserted his left middle finger inside my vagina, Sir.

Q: What else did he do?
A: He let his left mid[d]le finger roam around inside my vagina, Sir.

x x x x x x x x x

Q: What else happened?
A: [A]nd later on, he inserted his penis into my vagina and made a push-and-pull movement, Sir.

Q: For how long did he do the push-and-pull motion?
A: Until such time that he ejaculated, Sir.

x x x x x x x x x

Q: So when Sammy went home, what happened next?
A: And [sic] I tried to wake up Leo so that he will be able to go home but suddenly he switched the TV off and he then pulled me and tried to kiss me.

Q: What else transpired?
A: I tried to get away from Leo and my feet even slipped from the floor and I fell down on the floor, Sir.

Q: So when you fell down on the floor, what did you do, if any?
A: When I was on the floor, I tried to get away from him but he placed himself on top of me and kept kissing me, undressed me, he again inserted his fingers inside my vagina. He licked my vagina and he inserted his penis inside my vagina and did the push-and-pull movement, Sir.[44] (Citations omitted)

As the trial court found, AAA's consistent and categorical testimony suffices to convict accused-appellant. In rape cases, conviction or acquittal may solely depend on the private complainants' credibility, as only they can testify on its occurrence.[45]

AAA's testimony was also bolstered by the medical finding of hymenal lacerations, which corroborated her narration.[46] In *People v. Quintos*,[47] this Court has held:

The presence of lacerations is not an element of the crime of rape. This court previously characterized the presence or absence of lacerations as a "trivial or inconsequential [matter] that does not alter the essential fact of the commission of rape." The presence of lacerations is, therefore, not necessary to sustain a conviction. An accused may be found guilty of rape regardless of the existence or inexistence of lacerations. The absence of lacerations is not a sufficient defense.

However, the presence of lacerations may be used to sustain conviction of an accused by corroborating testimonies of abuse and documents showing trauma upon the victim's genitals.[48] (Citation omitted)

Against AAA's detailed and categorical testimony, accused-appellant interposed the defenses of denial and frame-up, which

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[44] CA *rollo*, pp. 59-64.

[45] *People v. Arlee*, 380 Phil. 175 (2000) [Per *J*. Purisima, Third Division].

[46] CA *rollo*, p. 65.

[47] 746 Phil. 809 (2014) [Per *J*. Leonen, Second Division].

[48] *Id.* at 825-826.

are inherently weak defenses. These are "self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters."[49]

Moreover, accused-appellant alleged inconsistencies in AAA's testimony that only point to collateral and trivial matters. These neither taint AAA's credibility nor dispute the commission of rape. In *People v. Corpuz*:[50]

> The discrepancies pertaining to "minor details and not in actuality touching upon the central fact of the crime" do not prejudice AAA's credibility. Thus, "[i]nstead of weakening [her] testimonies, such inconsistencies tend to strengthen [her] credibility because they discount the possibility of their being rehearsed."[51] (Citations omitted)

Finally, AAA's alleged lack of resistance cannot in any way negate accused-appellant's commission of rape. This Court has previously clarified in *Quintos*:

> [R]esistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is "lack of consent."
>
> "Consent," "resistance," and "absence of resistance" are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.
>
> Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. *However, it may also be the product of force, intimidation, manipulation, and other external forces*.
>
> Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any

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[49] *People v. Buclao*, 736 Phil. 325, 339 (2014) [Per *J.* Leonen, Third Division] citing *People v. Alvero*, 386 Phil. 181, 200 (2000) [*Per Curiam, En Banc*] and *People v. Piosang*, 710 Phil. 519 (2013) [Per *J.* Leonardo-de Castro, First Division].

[50] 812 Phil. 62 (2017) [Per *J.* Leonen, Second Division].

[51] *Id.* at 88.

sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape.

Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape.[52] (Emphasis supplied)

That accused-appellant is AAA's uncle presupposes that he exercises moral ascendancy or influence over her. Further, he repeatedly pointed a knife at her and threatened to kill her if she told anybody of his dastardly acts. Such influence and use of force naturally rendered AAA unable to resist.

In any case, survivors of such cruelty in the hands of their relatives — or any person for that matter — must not be blamed for any action, or lack thereof, that they take when suddenly forced to respond to a threat. People differ in how they address danger. There is no blueprint on how a victim should act when violated. There is no certainty as to how one would react. What is certain, however, is that a person who forces sexual congress on another is a rapist. Rapists' acts must never be attributed to their victims.

Contrary to accused-appellant's attempt at exculpation, it does not matter whether AAA attempted to flee or take every chance to escape whenever he found her alone. A victim's failure to resist another person's vigorous advances does not equate to consenting to sexual abuse. What is truly contrary to human experience is how a victim would "[expose] himself/herself again"[53] to violence and invite a rapist to his/her house, as he insisted — which, as the facts bear out, AAA certainly did not.

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[52] *People v. Quintos*, 746 Phil. 809, 828 (2014) [Per *J*. Leonen, Second Division].

[53] CA *rollo*, p. 45.

For all these, accused-appellant's guilt for the four counts of qualified rape has been proven beyond reasonable doubt. In view of Republic Act No. 9346, the penalty of *reclusion perpetua* without eligibility for parole was correctly imposed by the Regional Trial Court for each count. The Court of Appeals likewise rightfully increased the civil indemnity, moral damages, and exemplary damages in each count to ₱100,000.00 each, in line with current jurisprudence.[54]

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals' December 21, 2016 Decision in CA-G.R. CEB-CR-HC No. 02169 is **AFFIRMED**.

Accused-appellant Leo Ibañez *y* Morales is found **GUILTY** beyond reasonable doubt of four counts of qualified rape, punished under Article 266-B of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each count. He is also **DIRECTED** to pay the victim, for each count, moral damages, civil indemnity, and exemplary damages worth ₱100,000.00 each.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until their full satisfaction.[55]

SO ORDERED.

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

Gesmundo, J., on wellness leave.

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[54] See *People v. Jugueta*, 783 Phil. 806 (2016) [Per *J.* Peralta, *En Banc*].

[55] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 240430. July 6, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYMAR V. ANICOY,** *accused-appellant,* **XXX,**[*] *defendant (minor-pleaded guilty).*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE DELIVERY OF THE ILLICIT DRUGS TO THE POSEUR-BUYER AND THE RECEIPT BY THE SELLER OF THE MARKED MONEY CONSUMMATE THE ILLEGAL TRANSACTION.— The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money consummate the illegal transaction.

2. ID.; ID.; CHAIN OF CUSTODY PROCEDURE; IN ILLEGAL DRUGS CASES, THERE SHOULD BE PROOF THAT THE TRANSACTION OR SALE TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI* AS EVIDENCE, AND THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY.— In illegal drugs cases, there should be proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. To establish the identity of the dangerous drug with moral certainty,

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[*] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law also requires that the inventory and photography be done in the presence of the accused or his counsel, as well as the required witnesses: representatives from the media and the DOJ, and any elected public official.

3. ID.; ID.; ID.; REQUIREMENTS; A STRICT COMPLIANCE WITH THE REQUIREMENTS IS MANDATORY BUT A DEVIATION THEREFROM MAY BE ALLOWED WHEN THERE ARE JUSTIFIABLE GROUNDS ALLOWING THE DEPARTURE FROM THE RULE ON STRICT COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM.— [T]he law puts in place requirements of time, witnesses, and proof of inventory with respect to the custody of seized dangerous drugs: 1. The initial custody requirements must be done **immediately after seizure** or confiscation; 2. The **physical inventory and photographing** must be done **in the presence of**: a. The **accused** or his representative or counsel; b. The **required witnesses**: i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and **prior to its amendment by RA 10640**; ii. an elected public official and a representative of the National Prosecution Service of the DOJ or the media for offenses committed during the effectivity of RA 10640. As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished.

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

DELOS SANTOS, *J.*:

The Case

Before the Court is an ordinary Appeal[1] assailing the Decision[2] dated 27 March 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01531-MIN. The CA affirmed the Decision[3] dated 17 March 2016 of the Regional Trial Court (RTC) of [redacted], Davao del Norte, Branch 34 in Criminal Case No. 399-2013, convicting accused-appellant Jaymar V. Anicoy (Anicoy) of the crime of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Anicoy was sentenced to suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

The Facts

Anicoy, together with accused 15-year old XXX, was charged in an Information[4] dated 12 August 2013 for violating Section 5, Article II of RA 9165, known as the Comprehensive Dangerous Drugs Act of 2002. The Information states:

That on August 9, 2013, in the [redacted] Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Jaymar V. Anicoy and [XXX], who

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[1] *Rollo*, pp. 18-19.

[2] Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *id.* at 3-17.

[3] Penned by Presiding Judge Dax Gonzaga Xenos; CA *rollo*, pp. 23-32.

[4] Records, p. 1.

is a fifteen (15) year old minor, who is a Child in Conflict with the Law (CICL), acting with discernment, conspiring, confederating and mutually helping with each other, without being authorized by law, did then and there willfully, unlawfully and feloniously deal, sell and distribute to PO1 Tony B. Rubion, who acted as poseur buyer, six (6) packs of dried marijuana fruiting tops, a dangerous drug with a weight of 17.1112 grams, in exchange for a marked money of Php200.00 bill, with serial number GJ23202.

CONTRARY TO LAW.[5]

Upon arraignment, Anicoy pleaded not guilty while his minor companion pleaded guilty. In a Decision[6] dated 3 October 2013 and promulgated on 18 November 2013, the RTC convicted XXX of the crime charged and suspended his sentence. Also, in an Order[7] dated 18 November 2013, the RTC released XXX, placed him in the custody of his mother and made him undergo the disposition measures adopted for a period of two (2) years due to his minority. Meanwhile, trial on the merits ensued against Anicoy.

The prosecution presented Police Officer 1 Tony B. Rubion (PO1 Rubion) as the lone witness. The prosecution dispensed with the testimonies of Senior Police Officer 4 Wilfredo Galo (SPO4 Galo) and Forensic Chemist Jade Ryan P. Bajade (Forensic Chemist Bajade) of the Philippine National Police (PNP) Davao del Norte Provincial Crime Laboratory in view of the stipulations made by the prosecution and the defense in the Pre-Trial Order[8] dated 8 September 2014.

PO1 Rubion testified that a confidential informant reported at the [redacted], Davao del Norte Police Station that a certain *alias* Jaymar is selling marijuana, a dangerous drug. On 9 August 2013, at around 8:30 A.M., a briefing was immediately conducted

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[5] *Id.*

[6] *Id.* at 26-27.

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

[8] *Id.* at 64-68. See also RTC Order dated 10 September 2015, *id.* at 100-101.

by Officer-in-Charge (OIC) Police Senior Inspector Werenfredo S. Regidor[9] (PSI Regidor) for a buy-bust operation at [redacted], Davao del Norte. PO1 Rubion was designated as the *poseur*-buyer with SPO4 Galo as backup.

PSI Regidor handed PO1 Rubion a ₱200.00 bill as marked money, with serial number GJ23202, which PO1 Rubion signed with the initial "TBR." As pre-arranged signal, they agreed that PO1 Rubion would raise his right hand upon consummation of the sale. SPO4 Galo coordinated with the Philippine Drug Enforcement Agency (PDEA) regarding the operation.

Thereafter, PO1 Rubion and the informant went to the target area while SPO4 Galo posted himself nearby. PO1 Rubion then saw Anicoy standing along the road and away from a shanty while his minor companion XXX was sitting at the shanty. The informant introduced PO1 Rubion to Anicoy as the one interested in buying marijuana. PO1 Rubion asked Anicoy to sell him ₱200.00 worth of marijuana and Anicoy handed PO1 Rubion two (2) packs of marijuana fruiting tops from his pocket. PO1 Rubion opened the two (2) packs then asked Anicoy for other stocks of marijuana to choose from. Anicoy called XXX and asked him to bring the other packs. XXX handed PO1 Rubion four (4) other packs of marijuana. After examining the packs, PO1 Rubion chose the two (2) packs originally handed to him since they have more contents than the other four (4) packs. PO1 Rubion then handed Anicoy the ₱200.00 marked money. Afterwards, PO1 Rubion raised his right hand prompting SPO4 Galo to come near them. The two police officers arrested Anicoy and XXX. PO1 Rubion recovered the marked money and the other four (4) packs of marijuana.

At the place of arrest, PO1 Rubion marked the confiscated evidence in the presence of (1) Anicoy; (2) XXX; the three required witnesses[10] from the: (3) media — Reneliza R. Torollo; (4) Department of Justice (DOJ) — Carl P. Montifalcon; and

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[9] Also referred to as PSI Wilfredo S. Regidor in some parts of the records.

[10] Records, p. 72.

(5) elected public official — Barangay Captain Ronald P. Dimaya.

Also, PO1 Rubion marked the six (6) packs of suspected marijuana with the date (08-09-2013), time (9:30 A.M.), placed his initials "TBR," and signature. PO1 Rubion placed the numbers 1 and 2 (TBR1 and TBR2) on the two (2) packs which were the subject of the buy-bust operation, while the other four (4) packs were numbered 3 to 6 (TBR3 to TBR6). Three pictures were taken during the marking and PO1 Rubion took custody of the confiscated drugs. After the marking and picture taking, the police officers brought the two accused at the police station. At the station, PO2 Rochelle G. Hervas (PO2 Hervas) documented the inventory and took three more pictures in the presence of representatives from the media, DOJ and the barangay captain.[11] The Certificate of Inventory[12] was signed by PSI Regidor and all six witnesses.

Afterwards, PO1 Rubion delivered the six (6) packs of suspected marijuana, together with a request for laboratory examination dated 9 August 2013 signed by PSI Regidor, to the Davao del Norte Provincial Crime Laboratory Office. The six (6) packs were received by PO1 Rhuffy Federe (PO1 Federe). The suspected marijuana fruiting tops weighing a total of 17.1112 grams tested positive for marijuana, a dangerous drug, as per Chemistry Report No. D-149-2013[13] issued by Forensic Chemist Bajade.

The defense presented the testimony of Anicoy as the lone witness. Anicoy testified that the incident happened on 8 August 2013, a Thursday, and not on 9 August 2013, which he remembered since his mother called him up that day asking him to come to his parent's house. Anicoy stated that at around 8:00 A.M., while waiting for a tricycle going to the house of his mother, he saw XXX pass by heading towards the down

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

[12] *Id.*

[13] Records, Book 2, p. 1.

slope. Afterwards, a motorcycle arrived with two men onboard. They asked Anicoy the whereabouts of RJ, which he understood to refer to XXX. Anicoy told them that he saw XXX heading towards the down slope. The passenger of the motorcycle alighted and the other drove on. Five minutes later, before Anicoy was about to board a tricycle along the road at [redacted], he was arrested by a man he later found out as SPO4 Galo. Anicoy asserted that he did not sell marijuana to PO1 Rubion since PO1 Rubion only arrived after SPO4 Galo arrested him. SPO4 Galo was the one who handcuffed him while PO1 Rubion held him. Thereafter, XXX and a certain "Benjamin," whom Anicoy knew as the neighbor of his live-in partner, were likewise brought to the area wearing handcuffs. The two were arrested separately from Anicoy. Subsequently, SPO4 Galo asked XXX where the rest of the marijuana was. XXX said that the rest was at their house across the street. They proceeded to the house and SPO4 Galo went inside and brought with him a multi-colored sling bag and took out the contents consisting of three packs of marijuana. Anicoy also saw a ₱200.00 bill handed by XXX to the barangay captain. Afterwards, they were all brought to the police station.

The Ruling of the RTC

In a Decision[14] dated 17 March 2016, the RTC rendered judgment finding Anicoy guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The dispositive portion of the Decision states:

> **WHEREFORE**, judgment is hereby rendered finding *Jaymar V. Anicoy* guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of ***life imprisonment*** and fine in the amount of Php500,000.00.
>
> The 17.1112 grams of marijuana fruiting tops is hereby ordered confiscated and forfeited in favor of the government through the PDEA to be disposed of by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao

[14] CA *rollo*, pp. 23-32.

City is directed to assume custody of the subject drug for its proper disposition and destruction within ten (10) days from notice.

SO ORDERED.[15]

The RTC found that there was substantial compliance with the chain of custody rule since the subject marijuana was sufficiently accounted for from the time of its seizure, marking at the crime scene, inventory at the police station, and its delivery to the crime laboratory.[16] The RTC found that the account of PO1 Rubion was natural, reasonable, and easy to believe from the natural sequence of events in the buy-bust operation starting with the preliminary introduction, manifestation and declaration of intent to buy and sell, up to the actual exchange of money and drugs. In contrast, the RTC declared that there were a number of inconsistent loose ends from the testimony of the accused. *First*, Anicoy stated that he was only waiting for a ride, so what would be the motive of the police officers for arresting and charging him with such a serious offense? *Second*, if Anicoy's defense was only a frame-up, then why was XXX and a certain Benjamin likewise involved and arrested? *Last*, if PO1 Rubion only came later and it was SPO4 Galo who was involved and arrested Anicoy, why did PO1 Rubion testify as a *poseur*-buyer and not SPO4 Galo? Also, the RTC remarked that Anicoy did not even present any corroborative witnesses which could have helped build a stronger defense and shed light on important aspects of his testimony. Anicoy could have called on XXX and Benjamin, his mother or live-in partner to bolster the veracity of the frame-up and denial defense he portrayed.[17] However, Anicoy failed to do so. Thus, with doubts and nagging suspicions surrounding Anicoy's accounts, the RTC found in favor of the prosecution and declared that Anicoy clearly committed the act of selling marijuana.

Anicoy filed an appeal with the CA.

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[15] *Id.* at 32. (Emphasis, italics, and underscore in the original)

[16] *Id.* at 29.

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

The Ruling of the CA

In a Decision[18] dated 27 March 2018, the CA denied the appeal and upheld the conviction against Anicoy for violating Section 5, Article II of RA 9165. The dispositive portion of the Decision states:

> ACCORDINGLY, the appeal is DENIED. The Decision dated 17 March 2016 of the Regional Trial Court (RTC), 11th Judicial Region, Branch 34, [redacted], in Criminal Case No. *399-2013*, is hereby AFFIRMED with MODIFICATION that accused-appellant Jaymar V. Anicoy is guilty beyond reasonable doubt of selling two (2) packs of marijuana weighing 6.3685 grams, defined and penalized under Section 5, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.
>
> SO ORDERED.[19]

The CA declared that the prosecution established the chain of custody from the time the police officers confiscated the six (6) packs of suspected marijuana, up to the time they were inventoried and brought to the forensic chemist for laboratory examination, and thereafter were offered in evidence in court. The CA stated that the chain of custody was duly established by the prosecution through the following links: (1) PO1 Rubion marked the seized six (6) packs of marijuana subject of the buy-bust operation as "TBR1 to TBR6"; (2) a request for laboratory examination of the seized items marked was signed by PSI Regidor, the OIC of the Sto. Tomas Police Station; (3) the request and the marked items seized, which were personally delivered by PO1 Rubion, were received by the PNP Crime Laboratory; (4) Chemistry Report No. D-149-2013 confirmed that the marked items seized from Anicoy and XXX were marijuana; and (5) the marked items were offered in evidence.[20]

Also, the CA gave full faith and credence to the testimony of PO1 Rubion as *poseur*-buyer, with SPO4 Galo as back-up,

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[18] *Rollo*, pp. 3-17.

[19] *Id.* at 16. (Italics in the original)

[20] *Id.* at 12.

when they conducted the buy-bust operation and led to the seizure of the six (6) packs of marijuana, following the legal presumption of regularity in the performance of official functions.[21]

However, the CA found that Anicoy was guilty for selling only two (2) packs of marijuana and not six (6) packs. The CA stated that PO1 Rubion testified during the direct examination that he only bought two (2) packs of marijuana from Anicoy and that the other four (4) packs were seized from Anicoy and XXX after the arrest. Thus, Anicoy was found guilty beyond reasonable doubt of selling only two (2) packs of marijuana marked as TRB1 and TRB2 with a total weight of 6.3685 grams. Nevertheless, the penalty for violation of Section 5, Article II of RA 9165, regardless of the quantity and purity involved, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱1,000,000.00. Therefore, the CA affirmed the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the RTC.

Anicoy comes before the Court assailing the decisions of the trial and appellate courts for failure to establish the chain of custody of the alleged dangerous drugs and to comply with the requirements established by Section 21, Article II of RA 9165.

Issue

Whether accused-appellant Anicoy is guilty beyond reasonable doubt for the crime of violation of Section 5, Article II of RA 9165.

The Court's Ruling

The appeal lacks merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are:

(1) the identity of the buyer and the seller, the object of the sale and the consideration; and

[21] *Id.* at 13.

(2) the delivery of the thing sold and its payment.

The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[22]

In the present case, all the elements of illegal sale of dangerous drugs were present. Anicoy was caught *in flagrante delicto* of selling marijuana to PO1 Rubion, as *poseur*-buyer, for ₱200.00 during a legitimate buy-bust operation conducted by the police in coordination with the PDEA.

In illegal drugs cases, there should be proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[23] As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[24] The law also requires that the inventory and photography be done in the presence of the accused or his counsel, as well as the required witnesses: representatives from the media and the DOJ, and any elected public official.[25]

In *People v. Luna*,[26] the Court re-examined the law and held that the legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of RA 9165. Under the law, the following procedure must be observed in the seizure,

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[22] *People v. Basilio*, 754 Phil. 481, 485 (2015).

[23] *People v. Año*, G.R. No. 230070, 14 March 2018, 859 SCRA 380, 388-389.

[24] In *People v. Tumulak*, 791 Phil. 148 (2016), the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

[25] Section 21 (1), Article II of RA 9165.

[26] G.R. No. 219164, 21 March 2018, 860 SCRA 1.

custody, and disposition of dangerous drugs and related paraphernalia:

> 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**[.] (Emphasis supplied; italics in the original)

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 supplied details as to the place where the physical inventory and photographing of the seized items should be done, *i.e.*, at the place of seizure, at the nearest police station, or at the nearest office of the apprehending officer or team. Further, a "saving clause" was added in case of non-compliance with the requirements under justifiable grounds. Section 21 (a), Article II of the IRR states:

> **SECTION 21.** 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.

In sum, the law puts in place requirements of time, witnesses, and proof of inventory with respect to the custody of seized dangerous drugs:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:

a. The **accused** or his representative or counsel;
b. The **required witnesses**:

i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and **prior to its amendment by RA 10640**;

ii. an elected public official and a representative of the National Prosecution Service of the DOJ or the media for offenses committed during the effectivity of RA 10640.[27]

As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished.[28]

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[27] *Id.* at 20.

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

After a careful review of the records of this case, the Court finds that the police officers faithfully executed their duty in complying with the requirements on the seizure, initial custody, and handling of the seized items pursuant to Section 21, Article II of RA 9165.

As shown by the prosecution, immediately after seizure of the suspected packs of marijuana, PO1 Rubion did a physical inventory and marked the packs with the date (08-09-2013), time (9:30 A.M.), initials "TBR1 to TBR6," and placed his signature. Also, PO1 Rubion took three pictures, at the place of arrest, in the presence of the two accused and the three required witnesses from the media, DOJ, and the barangay captain. At the police station, PO2 Hervas documented the inventory and again took three more pictures in the presence of the two accused and the three required witnesses. Afterwards, the seized items and the Request for Laboratory Examination dated 9 August 2013 signed by PSI Regidor, the OIC of the Sto. Tomas Police Station, were personally delivered by PO1 Rubion to the PNP Provincial Crime Laboratory and received by PO1 Federe. Then Forensic Chemist Bajade confirmed that the marked items yielded a positive result of the dangerous drug marijuana as embodied in Chemistry Report No. D-149-2013. Clearly, from the sequence of events, the police officers sufficiently complied with the chain of custody rule and they were able to preserve the identity, integrity, and evidentiary value of the seized items.

However, given that the charge is for the Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 and did not include Section 11, Article II of RA 9165 on the illegal possession of dangerous drugs, then we agree with the findings of the appellate court that Anicoy is guilty in selling only two (2) packs of marijuana marked as "TBR1" and "TBR2" in the total weight of 6.3685 grams. PO1 Rubion's testimony during the direct examination[29] disclosed that he only bought from Anicoy two (2) packs of marijuana, which was the subject of

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[29] Records, Book 3, TSN, Direct Examination of PO1 Rubion, 10 September 2015, pp. 10-11.

the sale transaction, and not the entire six (6) packs, which were seized after the consummation of the sale. The other four (4) packs should have been separately charged under Section 11, Article II of RA 9165.

Regardless, Anicoy is still guilty for the crime of Illegal Sale of Dangerous Drugs. The prosecution fully substantiated the guilt of Anicoy by clear and convincing evidence which clearly outweighs Anicoy's uncorroborated denial and alleged frame-up of the offense charged. Thus, both the RTC and CA correctly ruled in convicting him under Section 5, Article II of RA 9165 and in imposing on him the penalty of life imprisonment and a fine of ₱500,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 27 March 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01531-MIN is **AFFIRMED**. Accused-appellant Jaymar V. Anicoy is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Gaerlan,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 244544. July 6, 2020]

AMALIA G. CARDONA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[**] Designated as additional member of the Second Division per Special Order No. 2780 dated 11 May 2020.

SYLLABUS

1. **CRIMINAL LAW; *MALA IN SE* DISTINGUISHED FROM *MALA PROHIBITA*; TO DISTINGUISH BETWEEN *MALA IN SE* AND *MALA PROHIBITA* A DETERMINATION OF THE INHERENT IMMORALITY OR VILENESS OF THE PENALIZED ACT MUST BE MADE.—** An act prohibited by a special law does not automatically make it *malum prohibitum.* "When the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law." The bench and bar must rid themselves of the common misconception that all *mala in se* crimes are found in the Revised Penal Code (RPC), while all *mala prohibita* crimes are provided by special laws. The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act.

2. **POLITICAL LAW; OMNIBUS ELECTION CODE (BP 881); A VIOLATION OF SECTION 195 OF BP 881 IS AN ELECTION OFFENSE THAT IS *MALA IN SE* IN NATURE; GOOD FAITH AND LACK OF CRIMINAL INTENT CAN BE RAISED AS VALID DEFENSES.—** Is a violation of Section 195 of the OEC *mala in se* such that good faith and lack of criminal intent can be raised as valid defenses against its conviction? We rule Section 195 of the OEC to be *mala in se*. The applicable portion of Section 195 forbids the ***intentional*** tearing or defacing of the ballot or the placement of a distinguishing mark. x x x "Marks made by the voter unintentionally do not invalidate the ballot. Neither do marks made by some person other than the voter." If these innocuous marks do not violate the constitutional duty to secure the secrecy of the ballot and preserve the sanctity and integrity of the electoral process, then We can reasonably conclude that such marking does not constitute an election offense, as in this case.

APPEARANCES OF COUNSEL

Ernesto M. Butawan for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARANDANG, *J.*:

The instant Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated February 9, 2017 and the Resolution[3] dated December 14, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 02354. The assailed Decision and Resolution affirmed the Judgment[4] dated December 6, 2013 and the Resolution[5] dated March 17, 2014 of the Regional Trial Court (RTC) of Baybay City, Leyte, Branch 14. The RTC's Judgment and Resolution found petitioner Amalia G. Cardona (Cardona) guilty of violating Section 23 (a)[6] and (c)[7] of Republic

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

[2] Penned by Associate Justice Edward B. Contreras with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Geraldine C. Fiel-Macaraig; CA *rollo*, pp. 95-205.

[3] Penned by Associate Justice Edward B. Contreras with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Emily R. Aliño-Geluz; *id.* at 243-244.

[4] Penned by Presiding Judge Carlos O. Arguelles; *rollo*, pp. 48-63.

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

[6] Section 23. *Official Ballots*. — (a) Ballots for national and local elections regular or special, plebiscites and referenda, shall be of uniform size and shall be provided by the Commission. They shall be printed in black ink on which security paper with distinctive, clear and legible watermarks that will readily distinguish it from ordinary paper. Each ballot shall be in the shape of a strip with stub and detachable coupon containing the serial number of the ballot, and a space for the thumbmark of the voter on the detachable coupon. It shall bear at the top of the voter on the detachable coupon. It shall bear at the top of the middle portion thereof the coat-of-arms of the Republic of the Philippines, the word "Official Ballot," the name of the city or the municipality and province in which the election is to be held, the date of the election, and the following notice in English: "Fill out this ballot secretly inside the voting booth. Do not put any distinct mark on any part of this ballot."

[7] Section 23. x x x

(c) There shall not be anything printed or written on the back of the ballot except as provided in Section 24 of this Act.

Act No. (R.A.) 7166[8] in relation to Section 195[9] of Batas Pambansa Bilang 881 otherwise known as the "Omnibus Election Code" (OEC).

Facts of the Case

On February 27, 2002, an Information[10] was filed against Cardona. The Information states:

> That on or about the 14th day of May 2001 in the Municipality of Mahaplag, Leyte Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the Chairman of the Board of Election Inspectors for Poll Precinct No. 8A, for the May 14, 2001 National and Local Elections, did then and there willfully *(sic)*, unlawfully and feloniously require, instruct and order the registered voters of said precinct to sign or affix their signatures at the back of their official ballots against their will, thereby intentionally putting in said ballot a distinguishing mark and using means to identify the vote of the voters.
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> CONTRARY TO LAW.[11]

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[8] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[9] Section 195. *Manner of preparing the ballot.* — The voter, upon receiving his folded ballot, shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the individual candidate for whom he desires to vote.

No voter shall be allowed to enter a booth occupied by another, nor enter the same accompanied by somebody, except as provided for in the succeeding section hereof, nor stay therein for a longer time than necessary, nor speak with anyone other than as herein provided while inside the polling place. It shall be unlawful to prepare the ballot outside the voting booth, or to exhibit its contents to any person, or to erase any printing from the ballot, or to intentionally tear or deface the same or put thereon any distinguishing mark. It shall likewise be unlawful to use carbon paper, paraffin paper, or other means for making a copy of the contents of the ballot or make use of any other means to identify the vote of the voter.

[10] Records, p. 1.

[11] *Id.*

The Information was a result of an Affidavit-Complaint[12] filed by a certain Glenn H. Bartolini (Bartolini) — a mayoral candidate for Mahaplag, Leyte who lost during the May 14, 2001 elections.

When arraigned, Cardona entered the plea of not guilty.[13] Trial was conducted.

The prosecution presented the following witnesses: (1) Natividad Lopez Ganton; (2) Bonifacio Cagol Dupal; (3) Constancia Malate Alterado; (4) Teodoro Vitualla Alombro; (5) Yolanda Duquiatan Bergado; (6) Diogracia Mipaña Samorin; (7) Macaria Renegado Tomulac; and (8) Victoria Villason Refe. Cardona's defense was based solely on her testimony.[14]

The prosecution witnesses were all voters of Poblacion Mahaplag, Leyte. They were assigned to precinct 8-A in Mahaplag Central School where Cardona was assigned as the chairperson of the Board of Election Inspectors (BEI). Some of the witnesses stated that Cardona insisted that they (*i.e.*, the voters) sign at the back of the ballot because it is the new law.[15] The witnesses testified that they were made to sign the dorsal portion of their ballot after they cast their votes. Some added that Cardona instructed them to sign upon discovering that they voted for Bartolini.[16]

Cardona admitted that she allowed some of the voters to sign the dorsal portion of the latter's ballots on May 14, 2001. However, Cardona said that she instructed the voters to sign immediately upon receipt of the ballot and not after the voters

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

[13] *Id.* at 325-326.

[14] CA *rollo*, p. 35.

[15] TSN dated September 28, 2005, p. 12; TSN dated November 14, 2006, p. 31; TSN dated February 6, 2007, p. 10.

[16] TSN dated February 8, 2006, p. 7; TSN dated November 14, 2006, p. 27; TSN dated February 6, 2007, p. 9; TSN dated March 25, 2008, p. 10; TSN dated January 15, 2009, p. 26.

have cast their votes.[17] She explained that she had the voters sign at the back of their respective ballots because she experienced a "mental black-out."[18] She realized her mistake before lunch break, or around 11 a.m.[19] Cardona then clarified the proper procedure with a certain Teresita Cartilla, a BEI chairperson in a nearby precinct.[20] Upon learning of her mistake, Cardona ordered the ballot box's closure and requested the poll clerk to go the Commission on Election's (COMELEC) Registrar to ask what could be done to correct the mistake.[21] The Registrar simply ordered her to write the incident in the minutes.[22] Thereafter, Cardona continued with the voting and did not let any subsequent voter sign at the back of the ballots.[23] Cardona clarified that she did not do it on purpose.[24]

Ruling of the Regional Trial Court

In its Judgment[25] dated December 6, 2013 the RTC found Cardona guilty of the charges against her. The dispositive portion of the RTC's Decision reads:

> WHEREFORE, PREMISES CONSIDERED, this Court finds the accused guilty beyond reasonable doubt of the offense charged, and she [is] hereby condemned to suffer an indeterminate penalty of Two (2) to Four (4) years of imprisonment without benefit of probation.
>
> Further, accused is ordered disqualified to hold public office and to exercise her right to suffrage in accordance to *(sic)* Section 264 of the Omnibus Election Code.

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[17] TSN dated November 10, 2011, pp. 65-66.

[18] *Id.* at 64.

[19] *Id.* at 71.

[20] *Id.* at 73.

[21] *Id.* at 58.

[22] *Id.* at 59.

[23] *Id.* at 69.

[24] *Id.* at 60.

[25] *Supra* note 4.

SO ORDERED.[26]

In convicting Cardona, the trial court relied on Cardona's admission that she allowed the first few batches of voters to sign the latter's names at the back of their respective ballots.[27] Because of such admission, the burden of evidence shifted to Cardona. The RTC held that Cardona failed to prove her claim that she had a mental block and that she immediately corrected her mistake.[28] It noted that this was Cardona's second time to be the chairperson of a BEI and that "she attended lectures on the conduct of election proceedings."[29]

The RTC disregarded Cardona's claim of good faith because she was accused of committing an election offense under the OEC — a law that the RTC ruled as *mala prohibitum*.[30]

Aggrieved, Cardona appealed[31] the Judgment of the RTC with the CA.

Ruling of the Court of Appeals

In its Decision[32] dated February 9, 2017, the CA affirmed the conviction with modification as to the penalty imposed. The dispositive portion of the Decision states:

WHEREFORE, the appeal is hereby DENIED. The Judgment of the RTC, Branch 14, Baybay City, Leyte, in Criminal Case No. 02-03-27 is hereby AFFIRMED with MODIFICATION that Amalia G. Cardona is sentenced to an indeterminate imprisonment of one (1)

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[26] *Rollo*, p. 62.

[27] *Id.* at 59.

[28] *Id.* at 61.

[29] *Id.* at 62.

[30] *Black's Law Dictionary* (6th ed. 1990), p. 960. A wrong prohibited; a thing which is wrong *because* prohibited; an act which is not inherently immoral, but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law.

[31] CA *rollo*, pp. 30-44.

[32] *Supra* note 2.

year as minimum to two (2) years as maximum. The Judgment is affirmed in all other respects.

SO ORDERED.[33]

In affirming the conviction, the appellate court reiterated the RTC's pronouncement that violation of Section 23 (a) and (c) of R.A. 7166 in relation to Section 195 of the OEC is a *malum prohibitum*, hence, Cardona's intent was immaterial.[34] Cardona's voluntary admission was not considered as a mitigating circumstance. However, the CA lowered the penalty imposed on Cardona in view of the circumstances surrounding the case.[35]

The CA junked Cardona's attempt to have the criminal proceedings nullified because of the private prosecutor's active participation during trial. Citing Rule 34,[36] of the 1993 COMELEC Rules of Procedure, the CA concluded that a private prosecutor is allowed to appear in the criminal case to recover any civil liability due his/her client.

As Cardona's Motion for Reconsideration[37] was denied in a Resolution[38] dated December 14, 2018, Cardona filed the instant petition for review.[39]

Respondent, through the Office of the Solicitor General (OSG), filed a Comment[40] dated October 30, 2019 and sought the outright dismissal of the petition due to a defective verification and certification of non-forum shopping. The OSG explained that Cardona was convicted on the strength of the

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[33] CA *rollo*, p. 205.

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

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

[36] Prosecution of Election Offenses.

[37] CA *rollo*, pp. 209-217.

[38] *Supra* note 3.

[39] *Supra* note 1.

[40] *Rollo*, pp. 92-109.

prosecution's evidence and not because of Cardona's judicial admission.[41] While the OSG argued that Section 195 of the OEC is *malum prohibitum* where intent is immaterial, it also claimed that Cardona should have proven her defense of experiencing a mental blackout as a justifying circumstance.[42]

In her Reply, Cardona insists that: (1) there was no defect in her Verification and Certification of Non-Forum Shopping; (2) conviction was not proper because (a) it was the voter who placed a distinguishing mark on the ballot; (b) she did not induce the voters to affix their signatures; (c) the prosecution did not include the voters as principal by direct/active participation; and (d) none of the supposedly marked ballots were identified and presented during trial; and (3) the burden of proof did not shift to Cardona because the prosecution failed to prove Cardona's guilt beyond reasonable doubt.

Ruling of the Court

We find the petition meritorious. Cardona should be acquitted of the crime charged.

This Court notes the OSG's prayer to dismiss the instant petition in view of the petitioner's defective verification and certification against forum shopping. Given that the merits of the instant petition and Cardona's liberty at stake, this Court deems it best to set aside the procedural flaw in the interest of substantial justice. We have repeatedly held that "rules of procedure are used to only help secure, not override substantial justice."[43]

Another procedural issue is the private prosecutor's active participation during trial.

The CA's citation of Rule 34 of the 1993 COMELEC Rules of Procedure is incorrect. Rule 34 pertains to the prosecution

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[41] *Id.* at 98-107.

[42] *Id.* at 100-104.

[43] *Malixi v. Baltazar*, 821 Phil. 423, 439 (2017), citing *Acaylar, Jr. v. Harayo*, 582 Phil. 600, 612-613 (2008).

of election offenses *via* a preliminary investigation before the COMELEC or those authorized under Section 4 (b)[44] of the said Rules. Here, Cardona questioned the private prosecutor's participation during trial before the RTC. The applicable rule is Section 5,[45] Rule 110 of the Rules of Court as amended by A.M. No. 02-2-07-SC. Under Section 5, the private prosecutor may prosecute the case upon a written authority of the Chief of the Prosecution Office or Regional State Prosecutor with the trial court's approval. Cardona admits that the Assistant City Prosecutor deputized the private prosecutor to prosecute the criminal case.[46] Therefore, the criminal proceeding was regularly conducted.

The RTC and the CA found Cardona guilty of violating Section 23 (a) and (c) of R.A. 7166 in relation to Section 195 of the OEC.

Section 23 (a) and (c) of R.A. 7166 states:

Section 23. *Officials Ballots*. — (a) Ballots for national and local elections regular or special, plebiscites and referenda, shall be of

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[44] Section 4. *Form of Complaint and Where to File*. —

x x x x x x x x x

(b) The complaint shall be filed with the Law Department of the Commission; or with the offices of the Election Registrars, Provincial Election Supervisors or Regional Election Directors, or the State Prosecutor, Provincial Fiscal or City Fiscal. If filed with any of the latter three (3) officials, investigation thereof may be delegated to any of their assistants.

x x x x x x x x x

[45] Section 5. *Who must prosecute criminal actions*. — All criminal actions commenced by either a complaint or information shall be prosecuted under the direction and control of the prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office of the Regional State Prosecution to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. x x x The prosecution for violation of special laws shall be governed by the provisions thereof.

[46] *Rollo*, p. 21; TSN dated September 28, 2005, p. 6.

uniform size and shall be provided by the Commission. They shall be printed in black ink on which security paper with distinctive, clear and legible watermarks that will readily distinguish it from ordinary paper. Each ballot shall be in the shape of a strip with stub and detachable coupon containing the serial number of the ballot, and a space for the thumbmark of the voter on the detachable coupon. It shall bear at the top of the voter on the detachable coupon. It shall bear at the top of the middle portion thereof the coat-of-arms of the Republic of the Philippines, the word "Official Ballot," the name of the city or the municipality and province in which the election is to be held, the date of the election, and the following notice in English: "Fill out this ballot secretly inside the voting booth. Do not put any distinct mark on any part of this ballot."

x x x x x x x x x

(c) There shall not be anything printed or written on the back of the ballot except as provided in Section 24[47] of this Act.

On the other hand, Section 195 of the OEC provides:

Section 195. *Manner of preparing the ballot.* — The voter, upon receiving his folded ballot, shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the individual candidate for whom he desires to vote.

No voter shall be allowed to enter a booth occupied by another, nor enter the same accompanied by somebody, except as provided for in the succeeding section hereof, nor stay therein for a longer time than necessary, nor speak with anyone other than as herein provided while inside the polling place. It shall be unlawful to prepare the ballot outside the voting booth, or to exhibit its contents to any person, or to erase any printing from the ballot, or to intentionally tear or deface the same or put thereon any distinguishing mark. It shall likewise be unlawful to use carbon paper, paraffin paper, or other means for

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[47] Section 24. *Signature of Chairman at the Back of Every Ballot*. — In every case before delivering an official ballot to the voter, the chairman of the board of election inspectors shall, in the presence of the voter, affix his signature at the back thereof. Failure to so authenticate shall be noted in the minutes of the board of election inspectors and shall constitute an election offense punishable under Sections 263 and 264 of the Omnibus Election Code.

making a copy of the contents of the ballot or make use of any other means to identify the vote of the voter.

Under Section 262[48] of the OEC, a violation of Section 195 constitutes an election offense. The penalty for committing an election offense under the OEC is punishable "with imprisonment of not less than one year but not more than six years and shall not be subject to probation."[49] Furthermore, the person found guilty will also be: (1) disqualified to hold public office; and (2) deprived of the right of suffrage.

Given the gravity of the penalty imposed, it must be determined whether all marks made on the ballot (outside of those prescribed under Section 23 (a) and (c) of R.A. 7166 and Section 195 of the OEC automatically constitute an election offense.

This Court rules in the negative.

The RTC incorrectly convicted Cardona because of Cardona's admission that she instructed the voters to affix their (*i.e.*, the voters) signatures at the back of their respective ballots. The trial court ruled that the burden of evidence is shifted to Cardona

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[48] Section 262. *Other election offenses*. — Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.

[49] Section 264. *Penalties*. — Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

to prove that she did not commit the crime.[50] The CA wrongfully upheld the conviction on the basis of the prosecution witnesses' testimonies.[51]

The RTC and CA held that the OEC is a special law, hence, intent is unnecessary to secure a conviction.

We do not agree.

An act prohibited by a special law does not automatically make it *malum prohibitum*. "When the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law."[52] The bench and bar must rid themselves of the common misconception that all *mala in se* crimes are found in the Revised Penal Code (RPC), while all *mala prohibita* crimes are provided by special laws. The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act.[53]

Is a violation of Section 195 of the OEC *mala in se* such that good faith and lack of criminal intent can be raised as valid defenses against its conviction?

We rule Section 195 of the OEC to be *mala in se*.

The applicable portion of Section 195 forbids the ***intentional*** tearing or defacing of the ballot or the placement of a distinguishing mark.

A distinguishing mark is one, whether a letter, figure, or character, which shows an intention on the part of the voter to distinguish his particular ballot from others of its class, and not one that is common to, and not distinguishable from, others of a designated class. However, not every mark made by a voter on his ballot, which may separate and distinguish it from other ballots cast at the election, will result

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[50] *Rollo*, p. 59.

[51] *Id.* at 39.

[52] *Garcia v. Court of Appeals*, 519 Phil. 591, 596 (2006).

[53] *Dungo v. People*, 762 Phil. 630, 658-659 (2015).

in a declaration of invalidity. To constitute a mark a distinguishing mark, it must be placed on a ballot with the deliberate intention that it shall identify the ballot after the vote has been cast, unless a statute enumerates certain marks as illegal or distinguishing regardless of the question of intent.[54] (Underscoring supplied)

In the case of *Locsin v. House of Representatives Electoral Tribunal*,[55] We defined a distinguishing mark as one "placed in the ballots x x x which the elector may have placed with the intention of facilitating the means of identifying said ballot, for the purpose of defeating the secrecy of the suffrage which the law establishes."[56] "Marks made by the voter unintentionally do not invalidate the ballot. Neither do marks made by some person other than the voter."[57] If these innocuous marks do not violate the constitutional duty to secure the secrecy of the ballot and preserve the sanctity and integrity of the electoral process, then We can reasonably conclude that such marking does not constitute an election offense, as in this case.

The RTC's reliance in the case of *Dr. Domalanta v. COMELEC*,[58] is misplaced. In *Dr. Domalanta*, this Court ruled that the burden of evidence is shifted to the petitioners in that case because the discrepancies in the Certificates of Canvass and Statement of Votes were "too substantial and rounded off to be categorized as a mere 'computation error' or a result of fatigue."[59] Thus, it is understood that unintentional mistakes do not necessarily constitute an election offense or electoral sabotage.[60] Still, this case is no different from *Dr. Domalanta*

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[54] Sibal, J. (2001), *Omnibus Election Code of the Philippines Annotated* (2nd ed.), pp. 202-203.

[55] 706 Phil. 590 (2013).

[56] *Id.* at 604, citing *Cailles v. Gomez*, 42 Phil. 496, 533 (1921).

[57] *Id.* at 605.

[58] 390 Phil. 46 (2000).

[59] *Id.* at 60; underscoring supplied.

[60] Note that this case was for violation of Section 27 (b) of Republic Act No. 6646 or The Electoral Reforms Law of 1987. Section 27 referred to election offenses and electoral sabotage.

as both involve the violation of a special law (*i.e.*, R.A. 6646). This Court's consideration of petitioners' claim of fatigue (in *Dr. Domalanta*) shows that intent was necessary to convict an accused of an election offense covered by a special law. In *Garcia v. Court of Appeals*,[61] this Court categorically held that an electoral offense under Section 27 (b) of R.A. 6646 is *mala in se* because "it could not [have been] the intent of the law to punish unintentional election canvass errors."[62] The same should apply to unintentional marks made on a ballot.

Therefore, is Cardona guilty of deliberately placing or causing the voter to place a distinguishing mark?

We rule in the negative.

It is undisputed that Cardona instructed some of the voters to affix their signatures on the dorsal portion of the ballot. However, Cardona's actions were not intended to identify the ballot after the vote has been cast.

Cardona explained that she experienced a "mental black-out" because of the belated voting in precinct 8A.[63] She allowed voters to cast their vote at 8:45 a.m. (instead of the mandated 7:00 a.m. time), despite having the most number of voters in the area, in order to wait for her poll clerk[64] and Bartolini's poll watcher.[65] Cardona insisted on waiting for all the authorized people inside the precinct even if it would delay the voting proceedings: (1) in order to avoid any complaints from the candidates representatives; and (2) to ensure fairness in the conduct of the voting.[66] By the time voting was about to start, the voters in line were already angry.[67]

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[61] 519 Phil. 591 (2006).

[62] *Id.* at 597.

[63] TSN dated November 10, 2011, p. 57.

[64] Who arrived at 7:30 a.m.; TSN dated November 10, 2011, p. 56.

[65] TSN dated November 10, 2011, pp. 56-57.

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

[67] *Id.* at 57.

Cardona's defense is in the nature of a plea of confession and avoidance. Under such principle, "the pleader has to confess the allegations against him before he can be allowed to set out matters which, if true, would defeat the action."[68]

The absence of Cardona's intent to place a distinguishing mark on the prosecution witnesses' ballots becomes more evident because she immediately closed the box upon realizing her mistake and requested the poll clerk to go to the COMELEC Registrar to ask how she can rectify the situation.[69] Despite the first batch of ballots containing the voters' signatures, Cardona counted every vote during canvassing.[70] This fact was never disputed by the prosecution.

Prior to Cardona's instruction to close the ballot box, the poll watchers did not protest the voters' act of signing the dorsal portion of the ballot.[71] Even Bartolini's counsel, who was inside precinct 8A and observed everything, did not object to what happened on May 14, 2001.[72] Even without any objection from the poll watchers, Cardona corrected her mistake immediately after realizing it. Taken together, these show Cardona's good faith that should exculpate her from criminal liability.

Even more important is the prosecution's failure to present the allegedly marked ballots. While the trial court had possession of precinct 8A's ballot boxes since July 22, 2002,[73] the prosecution never presented nor formally offered the same in evidence during trial. In its formal offer of evidence,[74] the prosecution only presented the following documentary evidence:

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[68] *People v. Llaneta*, 86 Phil. 219, 243-244 (1950).

[69] TSN dated November 10, 2011, p. 58.

[70] *Id.* at 59.

[71] *Id.* at 58.

[72] *Id.* at 60.

[73] Records, p. 180. As evidenced by a Letter dated July 22, 2002 by Election Officer II Arturo S. Benitez and Municipal Treasurer Oscar S. Reales.

[74] See Offer of Documentary Evidence with Motion for Re-Marking *Ad Cautelam*; *id.* at 562-564.

a) Exhibit "A" — Judicial Affidavit of Deogracias Samorin dated December 6, 2007;
b) Exhibit "B" — Judicial Affidavit of Macaria R. Tomulac dated September 6, 2007;
c) Exhibit "C" — Judicial Affidavit of Victoria Refe dated March 25, 2008;
d) Exhibit "D" — Judicial Affidavit of Constancia Alterado dated October 30, 2008; and
e) Exhibit "E" — Judicial Affidavit of Laila Padalapat.[75]

Without the physical evidence of the *corpus delicti, i.e.*, the allegedly marked ballots, the trial court was not given the opportunity to appreciate the nature of the markings made. Thus, the prosecution was not able to prove beyond reasonable doubt that the markings were deliberate and made for the purpose of identifying the ballot. It is basic in criminal law that a conviction "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[/her] innocence."[76]

WHEREFORE, the petition for review is **GRANTED**. The Decision dated February 9, 2017 and the Resolution dated December 14, 2018 of the Court of Appeals in CA-G.R. CR No. 02354 are **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Amalia G. Cardona is **ACQUITTED** of the crime charged.

Let entry of judgment be issued immediately.

SO ORDERED.

Leonen, Zalameda, and *Gaerlan, JJ.*, concur.

Gesmundo, J., on official leave.

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[75] *Id.* at 562-563.

[76] *Daayata v. People*, 807 Phil. 102, 118 (2017), citing *Macayan, Jr. v. People*, 756 Phil. 202, 213 (2015); *People v. Solayao*, 330 Phil. 811, 819 (1996); *Basilio v. People*, 591 Phil. 508, 521-522 (2008).

SECOND DIVISION

[G.R. No. 244775. July 6, 2020]

ADELAIDA YATCO, *petitioner*, *vs.* **OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, MARLYN "LEN" BELIZARIO ALONTE-NAGUIT, WALFREDO REYES DIMAGUILA, JR., VIRGILIO M. DIMARANAN, and ANGELITO ALONALON,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN ACT; THE DECISION OF THE OMBUDSMAN IN ADMINISTRATIVE CHARGES IMPOSING THE PENALTY OF PUBLIC CENSURE OR REPRIMAND, OR SUSPENSION OF NOT MORE THAN ONE (1) MONTH'S SALARY SHALL BE FINAL AND UNAPPEALABLE, SUBJECT TO JUDICIAL REVIEW BEFORE THE COURT OF APPEALS VIA PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT, ON THE GROUND OF GRAVE ABUSE OF DISCRETION; WHERE THE PENALTY IMPOSED FOR ADMINISTRATIVE CHARGES IS NOT MERELY PUBLIC CENSURE OR REPRIMAND, OR SUSPENSION OF NOT MORE THAN ONE (1) MONTH'S SALARY, THE OMBUDSMAN'S DECISION IS APPEALABLE BEFORE THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT; THE OMBUDSMAN RULINGS WHICH EXONERATE THE RESPONDENT FROM ADMINISTRATIVE LIABILITY ARE, BY IMPLICATION, CONSIDERED FINAL AND UNAPPEALABLE.— With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27 of the Ombudsman Act, any order, directive or decision of the Ombudsman "imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month's salary shall be final and unappealable." Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability

are, by implication, also considered final and unappealable. In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for *certiorari* under Rule 65 of the Rules of Court before the CA**. In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals**.

2. ID.; ID.; ID.; ID.; THE REMEDY OF AN AGGRIEVED PARTY FROM A RESOLUTION OF THE OMBUDSMAN FINDING THE PRESENCE OR ABSENCE OF PROBABLE CAUSE IN CRIMINAL CASES OR ADMINISTRATIVE CASES, WHEN TAINTED WITH GRAVE ABUSE OF DISCRETION, IS TO FILE A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT BEFORE THE SUPREME COURT.— [W]ith respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for *certiorari* under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme Court**. x x x. x x x. *Kuizon* and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that **the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's findings of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*. x x x. Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/criminal cases (*i.e.*, file a petition for *certiorari* under Rule 65 of the Rules of Court **before the Supreme Court**) is well-entrenched in our jurisprudence.

3. ID.; ID.; ID.; ID.; WHEN THE OMBUDSMAN HAD RENDERED A CONSOLIDATED DECISION ON ADMINISTRATIVE AND CRIMINAL CHARGES, THE AGGRIEVED PARTY COULD ASSAIL THE ADMINISTRATIVE ASPECT OF THE DECISION BY FILING A RULE 43 PETITION FOR REVIEW WITH THE COURT OF APPEALS WHEN THE RIGHT TO APPEAL IS AVAILABLE, OR ASSAIL THE CRIMINAL ASPECT BY FILING A RULE 65 *CERTIORARI* PETITION WITH THE SUPREME COURT.— [P]etitioner insists that **when the Ombudsman issues a consolidated decision on administrative and criminal charges, the aggrieved party has alternative remedies, *i.e.*, to either file a petition for review under Rule 43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court.** As basis, she cites the following excerpt in the 2013 case of *Cortes*: Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the **option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a *certiorari* petition under Rule 65 before this Court**. x x x. Petitioner's reliance on *Cortes* is mistaken. In the first place, it is well to point out that **petitioner filed a Rule 65 petition for *certiorari* before the CA to assail both the administrative and criminal aspects of the Ombudsman's consolidated ruling in this case**. As such, her recourse did not even conform to the supposed alternative remedies stated in the *Cortes* case (*i.e.*, a petition for review under Rule 43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court). Hence, *Cortes* is not a proper basis to grant petitioner's present appeal. In any event, assuming that petitioner did pursue either of the supposed alternative remedies, the Court finds it fitting to clarify that each of these remedies remain viable only with respect to the corresponding nature of the charges assailed. The foregoing statement in *Cortes* — which, to note, is a division ruling — should not be taken as a modification of the well-settled configuration of remedies in our jurisprudence. In *Cortes*, therein petitioner Amando P. Cortes (Cortes) filed before the Supreme Court a Rule 45 petition for review on *certiorari* to assail the Ombudsman's consolidated decision on an administrative and criminal complaint. Thus, the Court held that the filing of the Rule 45 petition was a procedural misstep that merited an outright dismissal. Consistent with the above-discussed procedural

framework, the above-cited excerpt in *Cortes* should be understood to mean that Cortes could have assailed the administrative aspect by filing a Rule 43 petition for review with the CA when the right to appeal is available, or assailed the criminal aspect by filing a Rule 65 *certiorari* petition with the Court. Since Cortes did neither of these, the Ombudsman's ruling was not properly assailed.

4. **ID.; ID.; ID.; ID.; THE AGGRIEVED PARTY IS REQUIRED TO TAKE THE APPROPRIATE PROCEDURAL REMEDIES TO SEPARATELY ASSAIL THE ADMINISTRATIVE AND CRIMINAL COMPONENTS OF THE OMBUDSMAN'S CONSOLIDATED RULING PERTAINING TO ONE INCIDENT, INVOLVING THE SAME SET OF FACTS AND PARTIES.—** The fact that the Ombudsman had rendered a consolidated ruling does not — as it should not — alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed. Consolidation is an act of judicial discretion when several cases are already filed and pending before it. This assumes that the procedural vehicles taken when these remedies are filed in the deciding forum are proper and thus, are to be given due course. Rule 31 of the Rules of Court, which applies suppletorily in cases before the Ombudsman, provides that consolidation involves actions that are already *pending* before the Court x x x. As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same. Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an

unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling). As held in *Madrigal Transport, Inc. v. Lapanday Holdings*, the special civil action for *certiorari* and appeal are two different remedies that are mutually exclusive. They are different from one another with respect to purpose, manner of filing, subject matter, period of filing, and the need for a prior motion for reconsideration. Verily, to accept petitioner's reading of the *Cortes* case would not only unnerve the settled jurisprudence on the matter, it would also obscure the well-defined distinctions between *certiorari* and appeal. Besides, in cases decided subsequent to *Cortes*, the Court has consistently preserved the existing procedural approach in assailing the administrative and criminal aspects of the Ombudsman's ruling, regardless of their consolidation.

5. ID.; ID.; ID.; ID.; A PETITION FOR *CERTIORARI* QUESTIONING THE CRIMINAL INCIDENT OF THE CASE SHOULD BE FILED WITH THE SUPREME COURT AND NOT WITH THE COURT OF APPEALS; DISMISSAL OF THE PETITION INSOFAR AS THE CRIMINAL ASPECT IS CONCERNED, AFFIRMED.— [T]he Ombudsman, through a Joint Resolution, exonerated respondents from administrative liability and dismissed the criminal charges due to lack of probable cause. After petitioner's motion for reconsideration was denied, she assailed the Joint Resolution by filing a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. XXX [W]hile this is the proper procedural recourse to assail the administrative aspect of the Ombudsman's Joint Resolution, the same is not true for its criminal aspect. To reiterate , the prevailing rule is that the petition for *certiorari* questioning the criminal incident of the case should be filed with the Supreme Court, and not with the CA. Hence, the CA correctly dismissed the petition filed before it insofar as the criminal aspect is concerned.

APPEARANCES OF COUNSEL

Calleja Law Office for petitioner.
Redentor S. Roque for Alonte-Naguiat.
Dennis P. Amparo for Dimaranan.
Teodoto F. Agati for Alonalon.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Resolution[2] dated February 7, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156633, which partly dismissed the petition for *certiorari* before it on the ground that the CA has no jurisdiction over the criminal aspect of the cases coming from the Office of the Ombudsman (Ombudsman).

The Facts

In 2016, petitioner Adelaida Yatco (petitioner) filed a complaint with the Ombudsman against four (4) officials of Biñan, Laguna, particularly: then Mayor Marlyn B. Alonte-Naguit (Alonte-Naguit), then Vice Mayor Walfredo R. Dimaguila, Jr. (Dimaguila), Municipal Accountant Virgilio M. Dimaranan, and Municipal Treasurer Angelito Alonalon (respondents), for violations of Republic Act No. (RA) 3019, RA 6713, Plunder, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Dishonesty, in relation to the purchase of a property for the expansion of the municipal cemetery. Petitioner alleged, among others, that the purchase was disadvantageous to the government and that respondent Alonte-Naguit had financial interest in the transaction.

In a Joint Resolution[3] dated August 17, 2017 (Joint Resolution), the Ombudsman dismissed the complaint for lack of probable cause and lack of substantial evidence. It held, among others, that Alonte-Naguit had no direct or indirect financial interest in the subject transaction because the portion

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[1] *Rollo*, pp. 11-19.

[2] *Id.* at 24-27. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Marlene B. Gonzales-Sison and Ruben Reynaldo G. Roxas, concurring.

[3] *Id.* at 28-40. Signed by Graft Investigation and Prosecution Officer III Regina C. Anniban-Navarro and approved by Ombudsman Conchita Carpio-Morales.

purchased by the municipality did not include the portion of the estate owned by her mother and that the purchase price was not grossly and manifestly disadvantageous to the government since it reflected the fair market value of similar properties in the vicinity.[4]

Petitioner moved for reconsideration, which was, however, denied in a Joint Order[5] dated April 10, 2018 (Joint Order). **She then filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA, assailing the entirety of the Ombudsman's ruling.** She explained that since the Ombudsman "consolidated the decision for *both* the *criminal* and the *administrative*" aspects of the case, she filed the petition before the CA "as a whole."[6]

Respondent Dimaguila filed a motion to dismiss on the ground of lack of jurisdiction. In turn, petitioner opposed the motion to dismiss. Citing *Cortes v. Office of the Ombudsman (Cortes)*,[7] she argued that "in cases involving consolidation of administrative and criminal complaints, the aggrieved party has the option to either file a petition for review under Rule 43 of the Rules of Court (Rule 43) with the [CA] or directly file

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[4] As regards the alleged violation of Section 7 (a) of RA 6713, the Ombudsman held that respondent Alonte-Naguit cannot be said to have direct or indirect financial interest in the subject transaction because the portion purchased by the municipality did not include the portion of the estate owned by her mother. The Ombudsman also found no probable cause to indict respondents for violating RA 3019, explaining that the purchase price was not grossly and manifestly disadvantageous to the government since it reflected the fair market value of similar properties in the vicinity. The Ombudsman likewise held that the charge for Plunder must fail because petitioner failed to establish that respondents amassed ill-gotten wealth amounting to at least Fifty Million Pesos as a result of the subject transaction. Further, the Ombudsman found no substantial basis to hold respondent administratively liable due to petitioner's failure establish that respondents violated any law or rules, or that their actions tarnished the image or integrity of their office, or that the government was defrauded in the subject transaction. (See *id.* at 34-39).

[5] *Id.* at 52-55.

[6] *Id.* at 16.

[7] 710 Phil. 699 (2013).

a petition for *certiorari* under Rule 65 of the Rules of Court (Rule 65) before the Supreme Court."[8]

The CA's Ruling

In a Resolution[9] dated February 7, 2019, the CA **dismissed the petition for *certiorari* "as regards the criminal aspect of the case."** It held that it has jurisdiction over decisions of the Ombudsman in administrative disciplinary cases only, and accordingly, it cannot review the Ombudsman's decisions in criminal or non-administrative cases. Further, it ruled that petitioner misconstrued the ruling in *Cortes*, because it did not contain a categorical pronouncement that an aggrieved party has "alternative remedies" in case of a consolidated decision by the Ombudsman resolving administrative and criminal complaints.[10] In fact, in one case,[11] the Court held that the CA exceeded its jurisdiction when the latter touched on the criminal aspect of the Ombudsman's decision.[12] Hence, this petition.

The Issue Before the Court

The issue before the Court is whether or not the CA correctly dismissed petitioner's petition for *certiorari* as regards the criminal aspect of cases coming from the Ombudsman.

The Court's Ruling

The petition lacks merit.

The corresponding remedies to assail Ombudsman rulings with respect to administrative and criminal charges are already well-settled in jurisprudence.

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27[13] of the

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[8] *Rollo*, p. 25.

[9] *Id.* at 24-27.

[10] See *id.* at 25-27.

[11] *Duyon v. CA*, 748 Phil. 375 (2014).

[12] See *id.* at 384-387.

[13] Section 27. *Effectivity and Finality of Decisions*. —

Ombudsman Act, any order, directive or decision of the Ombudsman "imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month's salary shall be final and unappealable." Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable.[14] In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for *certiorari* under Rule 65 of the Rules of Court before the CA**.[15]

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals**. As stated in Section 7, Rule III of the Ombudsman Rules:[16]

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Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

x x x x x x x x x

[14] See *Reyes, Jr. v. Belisario*, 612 Phil. 937, 952-953 (2009).

[15] See *id.* at 953-954. The Court held that "if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration," adding that "its inclusion is implicit." The Court also stated that the clear import of the provision in the Ombudsman is "deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge." Accordingly, in the 2016 case of *Joson v. Ombudsman* (784 Phil. 172 [2016]), the Court held that an Ombudsman ruling absolving the respondent of the administrative charge possesses the character of finality, and thus, not subject to appeal.

[16] Amendment of Rule III, Administrative Order No. 07, Ombudsman Administrative Order No. 17-03, September 15, 2003.

Section 7. *Finality and execution of decision*. — Where the respondent is **absolved of the charge**, and in case of **conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary**, the decision shall be **final, executory and unappealable**. **In all other cases**, the **decision may be appealed to the Court of Appeals** on a verified petition for review under the requirements and conditions set forth in **Rule 43 of the Rules of Court**, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x x x x x x x (Emphases and underscoring supplied)

Meanwhile, with respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for *certiorari* under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme Court**.[17] In the fairly recent case of *Gatchalian v. Office of the Ombudsman*,[18] (decided on August 1, 2018), the Court traced the genesis of the foregoing procedure and cited a wealth of jurisprudence recognizing the same:

The first case on the matter was the 1998 case of *Fabian vs. Desierto*, where the Court held that Section 27 of Republic Act No. 6770 (RA 6770), which provides that all "orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a *petition for certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court," was unconstitutional for it increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. The Court thus held that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provision of Rule 43."

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[17] See *Baviera v. Zoleta*, 535 Phil. 292, 312-314 (2006).

[18] G.R. No. 229288, August 1, 2018.

Subsequently, in ***Kuizon v. Desierto,*** **the Court stressed that the ruling in *Fabian* was limited only to administrative cases, and added that it is the Supreme Court which has jurisdiction when the assailed decision, resolution, or order was an incident of a criminal action**. Thus:

> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

In *Golangco vs. Fung*, the Court voided a decision of the CA which directed the Ombudsman to withdraw an Information already filed by it with a Regional Trial Court (RTC). The Court in Golangco reasoned that **"[t]he Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases."**

With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court, in *Tirol, Jr. v. Del Rosario,* held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. The Court explained:

> True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be

> exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.
>
> However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

The Court in *Tirol, Jr.*, however, was unable to specify the court — whether it be the RTC, the CA, or the Supreme Court — to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.

Five years after, the Court clarified in *Estrada v. Desierto* that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause — or the lack thereof — by the Ombudsman should be filed with the Supreme Court. The Court elucidated:

> But in which court should this special civil action be filed?
>
> Petitioner contends that *certiorari* under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in *Kuizon v. Ombudsman* where we decreed —
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> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*. The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative*

> *disciplinary* cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that **the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals.** In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.

In the 2009 case of *Ombudsman v. Heirs of Margarita Vda. De Ventura*, the Court reiterated *Kuizon, Golangco*, and *Estrada*, and ruled that the CA did not have jurisdiction over orders and decisions of the Ombudsman in non-administrative cases, and that **the remedy of aggrieved parties was to file a petition for *certiorari* under Rule 65 with this Court**. The foregoing principles were repeatedly upheld in other cases, such as in *Soriano v. Cabais* and *Duyon v. Court of Appeals*. (Emphases and underscoring supplied)

Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/ criminal cases (*i.e.*, file a petition for *certiorari* under Rule 65 of the Rules of Court **before the Supreme Court**) is well-entrenched in our jurisprudence.

This notwithstanding, petitioner insists that **when the Ombudsman issues a consolidated decision on administrative and criminal charges, the aggrieved party has alternative remedies, *i.e.*, to either file a petition for review under Rule**

43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court.[19] As basis, she cites the following excerpt in the 2013 case of *Cortes*:

> Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the **option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a *certiorari* petition under Rule 65 before this Court**. Neither of these two remedies was resorted to by petitioner.
>
> By availing of a wrong remedy, this petition merits an outright dismissal.[20] (Emphasis supplied)

Petitioner's reliance on *Cortes* is mistaken.

In the first place, it is well to point out that **petitioner filed a Rule 65 petition for *certiorari* before the CA to assail both the administrative and criminal aspects of the Ombudsman's consolidated ruling in this case**. As such, her recourse did not even conform to the supposed alternative remedies stated in the *Cortes* case (*i.e.*, a petition for review under Rule 43 before the CA or a *certiorari* petition under Rule 65 before the Supreme Court). Hence, *Cortes* is not a proper basis to grant petitioner's present appeal.

In any event, assuming that petitioner did pursue either of the supposed alternative remedies, the Court finds it fitting to clarify that each of these remedies remain viable only with respect to the corresponding nature of the charges assailed. The foregoing statement in *Cortes* — which, to note, is a division ruling — should not be taken as a modification of the well-settled configuration of remedies in our jurisprudence.

In *Cortes*, therein petitioner Amando P. Cortes (Cortes) filed before the Supreme Court a Rule 45 petition for review on *certiorari* to assail the Ombudsman's consolidated decision on an administrative and criminal complaint. Thus, the Court held that the filing of the Rule 45 petition was a procedural misstep that merited an outright dismissal. Consistent with the

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[19] *Rollo*, p. 17.

[20] *Cortes v. Office of the Ombudsman*, *supra* note 7, at 703.

above-discussed procedural framework, the above-cited excerpt in *Cortes* should be understood to mean that Cortes could have assailed the administrative aspect by filing a Rule 43 petition for review with the CA when the right to appeal is available, or assailed the criminal aspect by filing a Rule 65 *certiorari* petition with the Court. Since Cortes did neither of these, the Ombudsman's ruling was not properly assailed.

The fact that the Ombudsman had rendered a consolidated ruling does not — as it should not — alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed. Consolidation is an act of judicial discretion when several cases are already filed and pending before it. This assumes that the procedural vehicles taken when these remedies are filed in the deciding forum are proper and thus, are to be given due course. Rule 31 of the Rules of Court, which applies suppletorily in cases before the Ombudsman,[21] provides that consolidation involves actions that are already *pending* before the Court:

> SECTION 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set

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[21] Section 3, Rule V of the Administrative Order No. 7, Rules of Procedure of the Ombudsman provides: "x x x in all matters not provided in these rules, the Rules of Court shall apply in a suppletory character, or by analogy whenever practicable and convenient."

of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same. Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling). As held in *Madrigal Transport, Inc. v. Lapanday Holdings*,[22] the special civil action for *certiorari* and appeal are two different remedies that are mutually exclusive. They are different from one another with respect to purpose, manner of filing, subject matter, period of filing, and the need for a prior motion for reconsideration.[23]

Verily, to accept petitioner's reading of the *Cortes* case would not only unnerve the settled jurisprudence on the matter, it would also obscure the well-defined distinctions between *certiorari* and appeal.

Besides, in cases decided subsequent to *Cortes*, the Court has consistently preserved the existing procedural approach in assailing the administrative and criminal aspects of the Ombudsman's ruling, regardless of their consolidation.

In *Joson v. Ombudsman* (2016),[24] a Rule 65 petition was filed with the Supreme Court to assail the Ombudsman's dismissal of both administrative and criminal complaints. The Court ruled on the criminal aspect and found no grave abuse of discretion on the part of the Ombudsman. Meanwhile, as regards the administrative aspect, the Court held that the Ombudman's finding "has already attained finality because Joson failed to file a petition for *certiorari* before the [CA]."[25]

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[22] 479 Phil. 768 (2004).

[23] See *id.* at 779-782.

[24] 784 Phil. 172 (2016).

[25] See *id.* at 184-191.

In *Ornales v. Office of the Deputy Ombudsman for Luzon*,[26] a Rule 65 petition was filed with the CA to question the Ombudsman's order holding respondent administratively liable for grave misconduct and finding probable cause to indict him for violation of RA 3019. The CA dismissed the Rule 65 petition for lack of jurisdiction. The Court affirmed the CA's dismissal of the petition for being the wrong remedy, stressing that it has "repeatedly pronounced that the [Ombudsman's] orders and decisions in criminal cases may be elevated to this Court in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the [CA]."

In this case, the Ombudsman, through a Joint Resolution, exonerated respondents from administrative liability and dismissed the criminal charges due to lack of probable cause. After petitioner's motion for reconsideration was denied, she assailed the Joint Resolution by filing a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. As above-discussed, while this is the proper procedural recourse to assail the administrative aspect of the Ombudsman's Joint Resolution, the same is not true for its criminal aspect. To reiterate, the prevailing rule is that the petition for *certiorari* questioning the criminal incident of the case should be filed with the Supreme Court, and not with the CA. Hence, the CA correctly dismissed the petition filed before it insofar as the criminal aspect is concerned.

WHEREFORE, the petition is **DENIED**. Accordingly, the February 7, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 156633 is hereby **AFFIRMED**.

SO ORDERED.

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

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[26] G.R. No. 214312, September 5, 2018.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 247345. July 6, 2020]

FILIPINA D. ABUTIN, *petitioner, vs.* **JOSEPHINE SAN JUAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION FOR *CERTIORARI* IS A REMEDY DIRECTED NOT ONLY TO CORRECT ERRORS OF JURISDICTION, BUT ALSO TO SET RIGHT, UNDO, AND RESTRAIN ANY ACT OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT; TO QUALIFY, MERE ABUSE OF DISCRETION IS NOT ENOUGH; IT MUST BE GRAVE ABUSE OF DISCRETION AS WHEN THE POWER IS EXERCISED IN AN ARBITRARY OR DESPOTIC MANNER BY REASON OF PASSION OR PERSONAL HOSTILITY, AND MUST BE SO PATENT AND SO GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY; A JUDGE GRAVELY ABUSED HER DISCRETION WHEN SHE ACTED IN MANIFEST DISREGARD OF WHAT IS CONTEMPLATED AND IMPELLED BY LAW, EFFECTIVELY EVADING HER POSITIVE AND SOLEMN DUTY AS A JUDGE.— The standards for issuing a writ of *certiorari* are settled. "[A] petition for *certiorari* is a remedy directed not only to correct errors of jurisdiction, 'but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government[.]'" Grave abuse of discretion is the "evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism." It is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." To qualify, "[m]ere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or

despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty[.]" It was serious error for the Court of Appeals to not issue the writ of *certiorari* sought by petitioner. Judge Patrimonio-Soriaso so recklessly disregarded long-settled standards on service of papers and processes on parties and their counsels, finality of judgments, and the duties of clerks of court in preparing records on appeal. In so doing, she acted in manifest disregard of what is contemplated and impelled by law, effectively evading her positive, solemn duty as a judge. She gravely abused her discretion.

2. ID.; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; FILING AND SERVICE OF PAPERS AND PROCESSES; WHEN A PARTY IS REPRESENTED BY COUNSEL, NOTICES OF ALL KINDS, INCLUDING MOTIONS, PLEADINGS, AND ORDERS, MUST BE SERVED ON SAID COUNSEL AND NOTICE TO HIM IS NOTICE TO CLIENT; BUT SERVICE UPON THE PARTIES THEMSELVES IS NOT CONSIDERED SERVICE UPON THEIR LAWYERS; RATIONALE.— Rule 13, Section 2 of the 1997 Rules of Civil Procedure defines service as "the act of providing a party with a copy of the pleading or paper concerned." It further stipulates that, unless otherwise ordered, service upon a party's counsel effectively works as service upon the actual party x x x. When a party is represented by counsel, "notices of all kinds, including motions, pleadings, and orders must be served on said counsel and notice to him is notice to client." *Delos Santos v. Elizalde* explained the rationale for this: To reiterate, service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers. The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself if s/he does not intend to hire a lawyer.

3. ID.; ID.; ID.; ID.; MODES OF SERVICE; DISCUSSED; PERSONAL SERVICE AND SERVICE BY MAIL OF

PLEADINGS, JUDGMENTS, FINAL ORDERS OR RESOLUTION, WHEN DEEMED COMPLETE.— Under Rule 13, Section 5, service may either be personal or by mail. However, should personal service or service by mail be unavailable, service may be made through substituted service. Rule 13, Section 9 specifically governs service of judgments, final orders, or resolutions, such as Judge Patrimonio-Soriaso's December 28, 2015 Order x x x. Rule 13, Section 11 expresses a preference for personal service: "[w]henever practicable, the service and filing of pleadings and other papers shall be done personally." Rule 13, Section 6 specifies how personal service is done x x x. When resorted to, service by mail or substituted service "must be accompanied by a written explanation why the service or filing was not done personally." This requirement applies "[e]xcept with respect to papers emanating from the court." Service by mail is preferably done through registered mail. Service through registered mail is done "by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered." Service by ordinary mail may be resorted to only "[i]f no registry service is available in the locality of either the sender or the addressee." Rule 13, Section 10 provides standards for determining when personal service and service by mail, whether by registered mail or ordinary mail are deemed complete: SECTION 10. *Completeness of service*. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. *Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.* Registered mail is then complete upon actual receipt or five (5) days after the postmaster's initial notice. An addressee is given only a limited period to act on a notice as "[t]he purpose is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure."

4. ID.; ID.; ID.; ID.; SERVICE BY REGISTERED MAIL IS COMPLETE WHEN IT IS DELIVERED TO THE

RECIPIENT'S ADDRESS AND RECEIVED BY A PERSON OF SUFFICIENT DISCRETION TO RECEIVE IT; RECEIPT BY THE COUNSEL'S DRIVER OF THE TRIAL COURT'S ORDER, IS DEEMED RECEIPT BY THE COUNSEL, WHERE THERE ARE EVIDENCE THAT THE DRIVER HAD LONG BEEN AUTHORIZED BY THE COUNSEL TO RECEIVE PAPERS AND PROCESSES ON HIS BEHALF.— *Land Bank of the Philippines v. Heirs of Fernando Alsua* clarified what amounts to completed service by registered mail when actual delivery is made. Citing *Laza v. Court of Appeals*, it ruled that delivery "to [any] person of sufficient discretion to receive" was sufficient. In *Land Bank*, petitioner Land Bank of Philippines (Land Bank) contended that service of a regional trial court's order of dismissal, which had been effected through registered mail, could only have been completed upon receipt of its actual counsel. x x x. This Court rejected Land Bank's contention and noted that, in several prior decisions, delivery to persons who were not expressly authorized to receive mail matter on behalf of the addressee was deemed sufficient. x x x. Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of "a person of sufficient discretion to receive the registered mail." The paramount consideration is that the registered mail is delivered to the recipient's address and *received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney.* In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well. x x x. The incidents of this case are acutely similar with those in *Land Bank*. Capuno was certified by the Office of the Postmaster to have actually received a copy of Judge Patrimonio-Soriaso's December 28, 2015 Order on February 9, 2016. Petitioner and her mother attached "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno]" to the Opposition they filed to respondent and her mother's Motion for Reconsideration. The Court of Appeals itself noted that, while Atty. Ginete disclaimed Capuno's authority to receive mail matter for him, "he did not refute the evidence presented by [petitioner] that several registry return

receipts. . . bore Capuno's name and signature." The Court of Appeals was even constrained to concede that this "indicat[ed] that [Capuno] has been customarily receiving decisions or orders from the courts." How the Court of Appeals could make the observations that it did—on top of the evidence adduced by petitioner and her mother, against which Atty. Ginete could offer nothing but bare denials—and yet proceed to deny petitioner's Rule 65 Petition, is perplexing. From all indications, Capuno had long been authorized by Atty. Ginete to receive papers and processes on his behalf. Consistent with this, Capuno effectively and validly received a copy of Judge Patrimonio-Soriaso December 28, 2015 Order on Atty. Ginete's behalf. Rule 13's standards on what amounts to completed service by registered mail were satisfied the moment Capuno received the Order on February 9, 2016.

5. ID.; ID.; JUDGMENTS; FINALITY OF JUDGMENTS; UNLESS A MOTION FOR RECONSIDERATION IS FILED WITHIN 15 DAYS FROM NOTICE OF A JUDGMENT OR ORDER, THE JUDGMENT OR ORDER FROM WHICH IT AROSE SHALL BECOME FINAL; A FINAL JUDGMENT MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT WHAT IS PERCEIVED TO BE AN ERRONEOUS CONCLUSION OF FACT OR LAW, AND REGARDLESS OF WHETHER THE MODIFICATION IS ATTEMPTED TO BE MADE BY THE COURT RENDERING IT OR BY THE HIGHEST COURT OF THE LAND.— To reiterate *Land Bank*, "[t]he finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party." The 15-day period for respondent and her mother to file a motion for reconsideration should be reckoned from February 9, 2016, when respondent's counsel, Atty. Ginete, received a copy of the Order through his representative, Capuno. As no motion for reconsideration was filed on respondent and her mother's behalf until April 12, 2016, the December 28, 2015 Order had lapsed into finality. *Gatmaytan v. Dolor* extensively discussed finality of judgments and final orders in relation to the timely filing of motions for reconsideration: [A] judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "nothing is more settled in law." Once a case is decided with finality,

the controversy is settled and the matter is laid to rest. Accordingly, [a final judgment] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void. x x x. In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final x x x. In turn, Rule 37, Section 1, in relation to Rule 41, Section 3 of the 1997 Rules of Civil Procedure, allows for 15 days from notice of a judgment or final order within which a Motion for Reconsideration may be filed.

6. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE NEGLIGENCE OF COUNSEL BINDS THE CLIENT, EVEN MISTAKES IN THE APPLICATION OF PROCEDURAL RULES, EXCEPT WHEN THE RECKLESS OR GROSS NEGLIGENCE OF THE COUNSEL DEPRIVES THE CLIENT OF DUE PROCESS OF LAW.— Unfortunately for respondent, Atty. Ginete's withdrawal and disavowal, and the subsequent Motion for Reconsideration were too late. She had already become bound by her counsel's negligence and all its consequences. It is not only improper, but outright unethical—a grave abuse of discretion—for courts to facilitate remedies that have been foregone by a counsel's negligence. As this Court has explained: The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law." The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the

plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued. x x x. Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices. This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE REGIONAL TRIAL COURTS; APPEALS; DUTY OF CLERK OF COURT OF THE LOWER COURT UPON PERFECTION OF APPEAL; CLERKS OF COURT ARE INDISPENSABLE IN ENABLING PARTIES TO PERFECT APPEALS BY RECORD ON APPEAL, SUCH THAT, IN THOSE CASES WHERE RECORDS ARE FOUND TO BE INCOMPLETE, THEY ARE TASKED TO TAKE SUCH MEASURES AS MAY BE REQUIRED TO COMPLETE THE RECORDS; DISMISSAL OF THE APPEAL FOR FAILURE TO INCLUDE THE RECORD OF APPEAL, NOT PROPER WHERE SUCH FAILURE WAS DUE TO THE BRANCH CLERK OF COURT'S NON-FEASANCE AND BAD FAITH.— The finality of the December 28, 2015 Order renders moot the need for petitioner's further appeal. Nevertheless, it is worth considering that Judge Patrimonio-Soriaso also gravely abused her discretion in dismissing petitioner's appeal in the face of, not only the branch clerk of court's nonfeasance, but what appears to be the clerk of court's bad faith. Rule 41, Section 10 of the 1997 Rules of Civil Procedure spells out the duties of a lower courts' clerk of court after the perfection of an appeal x x x. The 1997 Rules of Civil Procedure makes clerks of court indispensable in enabling parties to perfect appeals by record on appeal. So crucial are they that, in those cases where records are found to be incomplete, they are tasked "to take such measures as may be required to complete the records." As petitioner noted, her inability to complete and attach the record on appeal was not her fault, but that of the Regional Trial Court's Clerk of Court, who, even after receiving money as payment for photocopying, desisted on completing it

on account of respondent's opposition. Granting that it was imperative and licit for the Clerk of Court to personally receive money to defray the costs of photocopying, doing so nevertheless placed the Clerk of Court in a position that only heightened the duties imposed by Rule 41, Section 10. It is only more damning that the Clerk of Court would renege on the undertaking at respondent's mere instance and without respondent even making a proper submission to the Regional Trial Court. It was then serious error for Judge Patrimonio-Soriaso to look the other way and ignore her branch clerk of court's impropriety. It was grave abuse of discretion for her to rule that petitioner's Appeal must be dismissed for failing to include a record on appeal when such failure was attributable to the fault of her own subordinate. In so doing, she enabled a violation of Rule 41, Section 10, and ultimately enabled an injustice by preventing petitioner's recourse to further remedy.

8. LEGAL ETHICS; JUDGES; A JUDGE WHO OBSTINATELY DISREGARDS ESTABLISHED RULES OF PROCEDURE DOES NOT MERELY ERR IN JUDGMENT, BUT COMMITS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION; JUDGES ARE EXPECTED TO EXHIBIT MORE THAN JUST A CURSORY ACQUAINTANCE WITH STATUTES AND PROCEDURAL LAWS, AND MUST APPLY THEM PROPERLY IN GOOD FAITH AS JUDICIAL COMPETENCE REQUIRES NO LESS.— The standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal are clear. They are long-settled and countlessly repeated in jurisprudence. All that was left for Judge Patrimonio-Soriaso to do was to apply them. That she did not proceed to plainly apply these unmistakable standards is mind-boggling. Judge Patrimonio-Soriaso uncaringly bypassed basic rules of procedure in reversing her own final Order and in dismissing petitioner's Appeal. A judge who obstinately disregards established rules of procedure does not merely err in judgment but commits grave abuse of discretion: [M]anifest disregard of the basic rules and procedures constitutes a grave abuse of discretion. In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and

established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law," or in essence, grave abuse of discretion amounting to lack of jurisdiction. Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less. Judges should be heedful of procedural rules and ensure that no undue advantage is extended to litigants. Thus, Judge Patrimonio-Soriaso should have been circumspect in performing her functions.

9. ID.; ID.; THE EXERCISE OF JUDICIAL FUNCTIONS DOES NOT MERELY INVOLVE A COLD, MECHANICAL APPLICATION OF THE LAW, OR A ROUTINARY RESOLUTION OF ISSUES; RATHER, IT ULTIMATELY CALLS FOR THE DISPENSATION OF JUSTICE; A JUDGE WHO FAILS TO CARRY OUT HER BASIC, SOLEMN DUTY, DISREGARDS SETTLED NORMS AND FACILITATES AN INJUSTICE, COMMITS GRAVE ABUSE OF DISCRETION.— What was at stake here was not a palatial estate bequeathed to a privileged heir. Rather, it was a modest dwelling on a 108 square-meter Tondo lot. These were all that Corazon could pass on to the one person she intimately loved and with whom she spent 48 years making that house a home. Purita could have lived to, even if only briefly, occupy as her own the meager bequest that Corazon could extend. Yet, by vacillating on her own ruling, Judge Patrimonio-Soriaso saw to it that Purita would never know that dwelling as her own even as she breathed her last. The exercise of judicial functions does not merely involve a cold, mechanical application of the law, or a routinary resolution of issues. Rather, it ultimately calls for the dispensation of justice. It is a human affair with very real, palpable, and potentially damaging consequences for those who stand to be affected. Judge Teresa Patrimonio-Soriaso woefully failed to carry out her basic, solemn duty as a judge. She callously disregarded settled norms and ultimately facilitated an injustice. It is equally woeful that the Court of Appeals never corrected her abuse of discretion.

APPEARANCES OF COUNSEL

Raul A. Mora for petitioner.
Michael E. Vargas for respondent.

D E C I S I O N

LEONEN, *J.*:

Obstinate disregard of basic and established rule of law or procedure is not mere error of judgment. It amounts to evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. It is grave abuse of discretion correctible by *certiorari*.

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Decision[2] and Resolution[3] of the Court of Appeals be reversed and set aside.

The assailed Decision found no grave abuse of discretion on the part of Regional Trial Court Judge Teresa Patrimonio-Soriaso (Judge Patrimonio-Soriaso) in issuing the November 25, 2016[4] and August 7, 2017[5] orders in Spec. Pro. No. 08-119593. Her November 25, 2016 Order set aside her prior December 28, 2015 Order and denied probate to two (2) holographic wills ostensibly executed by Corazon M. San Juan (Corazon)—the same wills that her original December 28, 2015

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[1] *Rollo,* pp. 8-43.

[2] *Id.* at 243-258. The February 6, 2019 Decision was penned by Associate Justice Jhosep Y. Lopez and was concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante of the First Division, Court of Appeals, Manila.

[3] *Id.* at 281-282. The May 15, 2019 Resolution was penned by Associate Justice Jhosep Y. Lopez and was concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante of the First Division, Court of Appeals, Manila.

[4] *Id.* at 121-134.

[5] *Id.* at 163-167.

Order admitted to probate.[6] Her August 7, 2017 Order denied petitioner Filipina D. Abutin's (Filipina) Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.[7] The assailed Resolution denied Filipina's Motion for Reconsideration.[8]

Corazon, who, as a matter of public knowledge, had been in a same-sex relationship with Purita Dayao (Purita),[9] passed away on March 23, 2008.[10] She died without any surviving ascendants or descendants. She left behind a 108 square-meter lot in Tondo, Manila, on which a residential house was constructed. Corazon and Purita lived on this house for 48 years, along with Purita's daughter, Filipina.[11]

On July 7, 2008, Purita and Filipina filed before the Regional Trial Court of Manila, a Petition for the probate of three (3) holographic wills ostensibly executed and left by Corazon. The first will was dated December 23, 2007; the second, March 10, 2008; and the third was not dated. Albeit phrased differently, each of the wills bequeathed to Purita and Filipina all of Corazon's properties which she referred to as "*lote, bahay at lahat ng aking maiiwan,*" (House, lot, and all I will leave behind).[12]

On September 2, 2008, Corazon's sister, Julita San Juan (Julita), and Corazon's niece, respondent Josephine San Juan (Josephine), filed an Opposition to Purita and Filipina's Petition for Probate.[13]

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[6] *Id.* at 134.

[7] *Id.* at 167.

[8] *Id.* at 282.

[9] *Id.* at 177, Petition for *Certiorari* to the Court of Appeals.

[10] *Id.* at 244.

[11] *Id.* at 177.

[12] *Id.* at 245.

[13] *Id.* at 246.

During trial, three (3) witnesses authenticated Corazon's handwriting and signature: Cecilia San Juan, who testified that she was familiar with Corazon's signature and handwriting; Norma Manabat who testified on personally witnessing Corazon write and sign a will; and a document expert from the National Bureau of Investigation's Questioned Documents Section, Romero Magcuro (Magcuro). Magcuro testified on his findings that the handwriting and signatures on the purported wills were made by one and the same person as those who made the handwriting and signatures on the documents presented as containing Corazon's authentic signature and handwriting.[14]

In an Order dated December 28, 2015,[15] the Regional Trial Court, through Judge Patrimonio-Soriaso, admitted to probate the wills dated December 23, 2006 and March 10, 2008. Both parties, through their respective counsels—Atty. Raul A. Mora for Purita and Filipina, and Atty. Adorlito B. Ginete (Atty. Ginete) for Julita and Josephine—were served copies of this Order by registered mail.[16]

Sometime in March 2016, Purita and Filipina, realizing that the Order should have attained finality as there was no Motion for Reconsideration filed in the interim, inquired, through a representative, with the Regional Trial Court on when Atty. Ginete received a copy of the December 28, 2015 Order. Their representative was told to come back on another day. On another inquiry, their representative was given information on how inquiry could be made with the Post Office concerning Atty. Ginete's receipt.[17] Subsequently, Purita and Filipina obtained a Certification[18] from the Office of the Postmaster that the copy for Julita and Josephine were received on behalf of Atty. Ginete by a certain Rodnelito Capuno (Capuno) on February 9, 2016.

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[14] *Id.* at 247. See also, *rollo*, pp. 58-60, NBI Handwriting Examination Report.

[15] *Id.* at 61-72.

[16] *Id.* at 73.

[17] *Id.* at 17.

[18] *Id.* at 86.

On April 6, 2016, Atty. Ginete filed a Manifestation with Motion to withdraw appearance.[19] He disavowed receiving a copy of the December 28, 2015 Order and explained that he only found out about it when informed by Josephine.[20] He explained that he was withdrawing his appearance because he was running as mayor of Sta. Teresita, Batangas.[21]

Convinced that the December 28, 2015 Order had attained finality, Purita and Filipina filed a Motion for Entry of Judgment and Writ of Execution[22] on April 7, 2016. Even as this Motion was pending, on April 12, 2016, Julita and Josephine, through their new counsel, Atty. Melchor V. Mibolos (Atty. Mibolos) filed a Motion for Reconsideration[23] of the December 28, 2015 Order.

On April 19, 2016, Purita and Filipina filed a Motion to Stricken-Out (sic) the Motion for Reconsideration.[24] They insisted that the December 28, 2015 Order had attained finality. On May 2, 2016, they filed their Opposition to the Motion for Reconsideration.[25] Attached to this Opposition were "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno], his driver."[26]

At around this point, Julita passed away."[27]

On May 20, 2016, Josephine filed a Reply[28] to Purita and Filipina's Opposition. Attached to this was Atty. Ginete's

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[19] *Id.* at 87-88.

[20] *Id.* at 87.

[21] *Id.* at 249.

[22] *Id.* at 89-91.

[23] *Id.* at 92-102.

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

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

[26] *Id.* at 250.

[27] *Id.*

[28] *Id.* at 113-115.

Affidavit[29] insisting that Capuno was not authorized to receive mail for him and that he himself "used to get mail matters from the mail box."[30]

On June 9, 2016, Purita and Filipina filed their Rejoinder.[31] Sometime after this, Purita passed away.[32]

On November 25, 2016, the Regional Trial Court issued an Order[33] setting aside its December 28, 2015 Order and denying probate to the wills dated December 23, 2006 and March 10, 2008.

On January 11, 2017, Filipina filed her Notice of Appeal.[34] On February 20, 2017, Josephine filed a Manifestation with Motion[35] asking that Filipina's Notice of Appeal be dismissed as it was unaccompanied by the record on appeal.

On February 25, 2017, Filipina filed her Opposition[36] to Josephine's Manifestation with Motion explaining that she was unable to furnish the record on appeal because the Clerk of Court of the Regional Trial Court, who had already received from her ₱2,000.00 for the photocopying of the relevant documents, told her that the completion of the records was "stopped" because Josephine opposed it.[37] This Opposition was accompanied by Filipina's Motion to Admit Record on Appeal.

In an Order[38] dated August 7, 2017, the Regional Trial Court denied Filipina's Motion to Admit Record on Appeal, and dismissed her appeal for failing to include the record on appeal.

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

[30] *Id.*

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

[32] *Id.* at 250.

[33] *Id.* at 121-134.

[34] *Id.* at 135-136.

[35] *Id.* at 137-139.

[36] *Id.* at 141-143.

[37] *Id.* at 251.

[38] *Id.* at 163-167.

Following the denial of her Motion for Reconsideration, Filipina filed a Petition for *Certiorari*[39] before the Court of Appeals.

In its assailed February 6, 2019 Decision,[40] the Court of Appeals dismissed Filipina's Rule 65 Petition. In its assailed May 15, 2019 Resolution,[41] the Court of Appeals denied Filipina's Motion for Reconsideration.

Aggrieved, Filipina filed the present Petition.[42]

For resolution are the issues of:

First, whether or not Regional Trial Court Judge Patrimonio-Soriaso committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing her own December 28, 2015 Order allowing probate of the holographic wills dated December 23, 2006 and March 10, 2008; and

Second, whether or not Judge Patrimonio-Soriaso committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner Filipina D. Abutin's appeal for failing to include the record on appeal.

I

The standards for issuing a writ of *certiorari* are settled. "[A] petition for *certiorari* is a remedy directed not only to correct errors of jurisdiction, 'but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government[.]'"[43]

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[39] *Id.* at 176-204.

[40] *Id.* at 243-258.

[41] *Id.* at 281-282.

[42] *Id.* at 8-39.

[43] *Lim v. Lim*, G.R. No. 214163, July 1, 2019, < https://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/65389> [Per *J.* Leonen, Third Division].

Grave abuse of discretion is the "evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."[44] It is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[45] To qualify, "[m]ere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty[.]"[46]

It was serious error for the Court of Appeals to not issue the writ of *certiorari* sought by petitioner. Judge Patrimonio-Soriaso so recklessly disregarded long-settled standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal. In so doing, she acted in manifest disregard of what is contemplated and impelled by law, effectively evading her positive, solemn duty as a judge. She gravely abused her discretion.

II (A)

It is settled that the Regional Trial Court sent to respondent's counsel, Atty. Ginete, a copy of its December 28, 2015 Order. This was sent through registered mail to an address which is equally settled to have been Atty. Ginete's mailing address. All that remains in dispute is whether receipt of that Order by Capuno, amounts to valid service upon Atty. Ginete and, ultimately, upon respondent and her mother.

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[44] *Veloso v. Commission on Audit*, 672 Phil. 419, 432 (2011) [Per *J.* Peralta, *En Banc*] citing *Yap v. Commission on Audit*, 633 Phil. 174 (2010) [Per *J.* Leonardo-de Castro, *En Banc*]. See also *Villanueva v. Commission on Audit*, 493 Phil. 887 (2005) [Per *J.* Chico-Nazario, *En Banc*].

[45] *Development Bank of the Philippines v. Commission on Audit*, 530 Phil. 271, 278 (2007) [Per *J.* Puno, *En Banc*], citing *Tañada v. Angara*, 338 Phil. 546, 604 (1997) [Per *J.* Panganiban, *En Banc*].

[46] *Id.*

It has been respondent's consistent claim that receipt by Capuno does not amount to valid service, as Capuno was supposedly never authorized to receive mail matter for Atty. Ginete.[47]

Respondent's contention fails to impress.

Rule 13, Section 2 of the 1997 Rules of Civil Procedure defines service as "the act of providing a party with a copy of the pleading or paper concerned." It further stipulates that, unless otherwise ordered, service upon a party's counsel effectively works as service upon the actual party:

> SECTION 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.
>
> Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

When a party is represented by counsel, "notices of all kinds, including motions, pleadings, and orders must be served on said counsel and notice to him is notice to client."[48] *Delos Santos v. Elizalde*[49] explained the rationale for this:

> To reiterate, service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers. The reason is simple — the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only

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[47] *Rollo*, pp. 116-117.

[48] *People v. Gabriel*, 539 Phil. 252, 256-257 (2006) [Per J. Sandoval-Guttierez, Second Division] citing *GCP-Manny Transport Services, Inc. v. Principe*, 511 Phil. 176 (2005) [Per J. Austria-Martinez, Second Division].

[49] 543 Phil. 12 (2007) [Per J. Velasco, Second Division].

with one person in the interest of orderly procedure — either the lawyer retained by the party or the party him/herself ifs/he does not intend to hire a lawyer.[50]

Under Rule 13, Section 5, service may either be personal or by mail.[51] However, should personal service or service by mail be unavailable, service may be made through substituted service.[52]

Rule 13, Section 9 specifically governs service of judgments, final orders, or resolutions, such as Judge Patrimonio-Soriaso's December 28, 2015 Order:

SECTION 9. *Service of judgments, final orders, or resolutions*. — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Rule 13, Section 11 expresses a preference for personal service: "[w]henever practicable, the service and filing of pleadings and other papers shall be done personally." Rule 13, Section 6 specifies how personal service is done:

SECTION 6. *Personal service*. — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge

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[50] *Id.* at 26.

[51] RULES OF COURT, Rule 13, Sec. 5 provides:

SECTION 5. *Modes of service*. — Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

[52] RULES OF COURT, Rule 13, Section 8:

SECTION 8. *Substituted service*. — If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

When resorted to, service by mail or substituted service "must be accompanied by a written explanation why the service or filing was not done personally."[53] This requirement applies "[e]xcept with respect to papers emanating from the court."[54]

Service by mail is preferably done through registered mail. Service through registered mail is done "by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered."[55] Service by ordinary mail may be resorted to only "[i]f no registry service is available in the locality of either the sender or the addressee."[56]

Rule 13, Section 10 provides standards for determining when personal service and service by mail, whether by registered mail or ordinary mail. Are deemed complete:

SECTION 10. *Completeness of service.* — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. *Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.* (Emphasis supplied)

Registered mail is then complete upon actual receipt or five (5) days after the postmaster's initial notice. An addressee is

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[53] RULES OF COURT, Rule 13, Sec. 11.

[54] RULES OF COURT, Rule 13, Sec. 11.

[55] RULES OF COURT, Rule 13, Sec. 7.

[56] RULES OF COURT, Rule 13, Sec. 7.

given only a limited period to act on a notice as "[t]he purpose is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure."[57]

Land Bank of the Philippines v. Heirs of Fernando Alsua[58] clarified what amounts to completed service by registered mail when actual delivery is made. Citing *Laza v. Court of Appeals*,[59] it ruled that delivery "to [any] person of sufficient discretion to receive"[60] was sufficient.

In *Land Bank*, petitioner Land Bank of Philippines (Land Bank) contended that service of a regional trial court's order of dismissal, which had been effected through registered mail, could only have been completed upon receipt of its actual counsel. Thus, it claimed that initial receipt by a security guard was ineffectual to start the 15-day period for filing a motion for reconsideration. This Court rejected Land Bank's contention and noted that, in several prior decisions, delivery to persons who were not expressly authorized to receive mail matter on behalf of the addressee was deemed sufficient. It added that prior instances when delivery of mail had been made to that security guard further weakened Land Bank's claims. It also noted that it is the responsibility of those receiving mail matter "to devise a system for the receipt of mail intended for them."[61] Failing in this, intended recipients would only have themselves to blame if mail matter otherwise duly delivered "to a person of sufficient discretion to receive [it]" still fails to find the specific addressee at such a time as would allow him or her to opportunely act on it:[62]

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[57] *Niaconsult, Inc. v. National Labor Relations Commission*, 334 Phil. 16, 21 (1997) [Per J. Mendoza, Second Division].

[58] 548 Phil. 680 (2007) [Per J. Tinga, Second Division].

[59] 336 Phil. 631 (1997) [Per J. Hermosisima, Jr., First Division].

[60] *Land Bank of the Philippines v. Heirs of Fernando Alsua*, 548 Phil. 680, 685 (2007) [Per J. Tinga, Second Division].

[61] *Id.* at 684.

[62] *Id.* at 684-685.

All that the rules of procedure require in regard to service by registered mail is to have the postmaster deliver the same to the addressee himself or to a person of sufficient discretion to receive the same.

Thus, in prior cases, a housemaid, or a bookkeeper of the company, or a clerk who was not even authorized to receive the papers on behalf of its employer, was considered within the scope of "a person of sufficient discretion to receive the registered mail." The paramount consideration is that the registered mail is delivered to the recipient's address and *received by a person who would be able to appreciate the importance of the papers delivered to him, even if that person is not a subordinate or employee of the recipient or authorized by a special power of attorney*.

In the instant case, the receipt by the security guard of the order of dismissal should be deemed receipt by petitioner's counsel as well.

Petitioner's *admission that there were instances in the past when the security guard received notices for petitioner [Land Bank] only underscores the fact that the security guard who received the order of dismissal fully realized his responsibility to deliver the mails to the intended recipient*. Noteworthy also is the fact that the security guard did not delay in handing over the order of dismissal and immediately forwarded the same to petitioner's counsel the following day. Petitioner has only itself to blame if the security guard took it upon himself to receive notices in behalf of petitioner and its counsel despite lack of proper guidelines, as alleged by petitioner. In *NIA Consult, Inc. v. NLRC*, the Court pointed out that it was the responsibility of petitioners and their counsel to devise a system for the receipt of mail intended for them. *The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party*.[63] (Emphasis supplied)

The incidents of this case are acutely similar with those in *Land Bank*. Capuno was certified by the Office of the Postmaster to have actually received a copy of Judge Patrimonio-Soriaso's

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[63] *Id.* at 685-686 citing *Laza v. Court of Appeals*, 336 Phil. 631 (1997) [Per *J*. Hermosisima, Jr., First Division]; *Pabon v. National Labor Relations Commission*, 357 Phil. 7 (1998) [Per *J*. Martinez, Second Division]; *G and G Trading Corporation v. Court of Appeals*, 242 Phil. 195 (1988) [Per *J*. Gancayco, First Division]; and *Niaconsult, Inc. v. National Labor Relations Commission*, 334 Phil. 16 (1997) [Per *J*. Mendoza, Second Division].

December 28, 2015 Order on February 9, 2016.[64] Petitioner and her mother attached "several registry return receipts of service of pleadings which were addressed to Atty. Ginete, but were actually received for him by [Capuno]"[65] to the Opposition they filed to respondent and her mother's Motion for Reconsideration.[66] The Court of Appeals itself noted that, while Atty. Ginete disclaimed Capuno's authority to receive mail matter for him, "he did not refute the evidence presented by [petitioner] that several registry return receipts. . . bore Capuno's name and signature."[67] The Court of Appeals was even constrained to concede that this "indicat[ed] that [Capuno] has been customarily receiving decisions or orders from the courts."[68]

How the Court of Appeals could make the observations that it did—on top of the evidence adduced by petitioner and her mother, against which Atty. Ginete could offer nothing but bare denials—and yet proceed to deny petitioner's Rule 65 Petition, is perplexing. From all indications, Capuno had long been authorized by Atty. Ginete to receive papers and processes on his behalf. Consistent with this, Capuno effectively and validly received a copy of Judge Patrimonio-Soriaso December 28, 2015 Order on Atty. Ginete's behalf. Rule 13's standards on what amounts to completed service by registered mail were satisfied the moment Capuno received the Order on February 9, 2016.

II (B)

To reiterate *Land Bank*, "[t]he finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of a party."[69] The 15-day period for respondent

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[64] *Rollo*, p. 86.

[65] *Id.* at 250.

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

[67] *Id.* at 256.

[68] *Id.*

[69] *Land Bank of the Philippines v. Heirs of Fernando Ulsua*, 548 Phil. 680, 686 (2007) [Per *J.* Tinga, Second Division].

and her mother to file a motion for reconsideration should be reckoned from February 9, 2016, when respondent's counsel, Atty. Ginete, received a copy of the Order through his representative, Capuno. As no motion for reconsideration was filed on respondent and her mother's behalf until April 12, 2016, the December 28, 2015 Order had lapsed into finality.

Gatmaytan v. Dolor[70] extensively discussed finality of judgments and final orders in relation to the timely filing of motions for reconsideration:

> [A] judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "nothing is more settled in law." Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Accordingly,
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> > [a final judgment] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.
>
> Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void.
>
> This elementary rule finds basis in "public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case.
>
> In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final:
>
> > Section 2. Entry of Judgments and Final Orders. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall

[70] 806 Phil. 1 (2017) [Per *J.* Leonen, Second Division].

contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

In turn, Rule 37, Section 1, in relation to Rule 41, Section 3 of the 1997 Rules of Civil Procedure, allows for 15 days from notice of a judgment or final order within which a Motion for Reconsideration may be filed.

Rule 37, Section 1 reads:

Section 1. Grounds of and Period for Filing Motion for New Trial or Reconsideration. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (Emphasis supplied)

For its part, Rule 41, Section 3 reads:

Section 3. Period of Ordinary Appeal. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[71]

[71] *Id.* at 8-10 citing *Industrial Timber Corp. v. Ababon*, 515 Phil. 805, 816 (2006) [Per J. Ynares-Santiago, First Division]; *Filipro, Inc. v. Permanent*

Respondent and Atty. Ginete only offered excuses, the credibility of which are diminished by undisputed facts.

It is damaging enough for respondent's case that the Motion for Reconsideration was long-delayed and not filed until April 12, 2016. To make matters worse, it was only filed after petitioner and her mother filed a Motion for Entry of Judgment and Writ of Execution[72] on April 7, 2016. This raises doubts on whether respondent and Atty. Ginete's replacement acted out of bona fide intent to file a motion for reconsideration at the soonest time possible, or were merely impelled to act by the Motion for Entry of Judgment and Writ of Execution. In any case, even if this doubt were to be resolved in their favor, it remains that a long time had passed before February 9, 2016, enough for the December 28, 2015 Order to attain finality. This is precisely why petitioner and her mother sought the execution of the Order.

Even the timing of Atty. Ginete's appraisal of the Regional Trial Court of his withdrawal as counsel is dubious. Though avowedly withdrawing to pursue his candidacy for mayor of Sta. Teresita, Batangas,[73] he did not register his withdrawal until April 6, 2016—practically just a month from the May 9, 2016 elections, and far too delayed from the period for filing candidacy. Atty. Ginete's utmost good faith could have been demonstrated had he promptly informed the Regional Trial Court of his candidacy and ensuing withdrawal. That he only did so months after the period for filing certificates of candidacy, so close to the May 9, 2016 election, and only after petitioner and her mother had made queries about the finality of the Order and obtained a Certification[74] from the Office of the Postmaster

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Savings and Loan Bank, 534 Phil. 551, 560 (2006) [Per *J.* Ynares-Santiago, First Division]; *Siy v. National Labor Relations Commission*, 505 Phil. 265, 273 (2005) [Per *J.* Corona, Third Division]; and *Equatorial Realty Development v. Mayfair Theater, Inc.*, 387 Phil. 885, 895 (2000) [Per *J.* Pardo, First Division].

[72] *Rollo*, pp. 89-91.

[73] *Id.* at 249.

[74] *Id.* at 86.

that such Order had been mailed to and received for Atty. Ginete, makes it more likely that his withdrawal was part of a belated attempt to cure his failure to discharge his duties as counsel. His withdrawal, his affidavit and disavowal of Capuno's authority, and his replacement's filing of a Motion for Reconsideration only after petitioner and her mother moved for execution appear to have all been orchestrated to undo the consequences of Atty. Ginete's negligence.

Unfortunately for respondent, Atty. Ginete's withdrawal and disavowal, and the subsequent Motion for Reconsideration were too late. She had already become bound by her counsel's negligence and all its consequences. It is not only improper, but outright unethical—a grave abuse of discretion—for courts to facilitate remedies that have been foregone by a counsel's negligence. As this Court has explained:

> The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."
>
> The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.
>
> It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.
>
> The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her

role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.[75]

Respondent would have this Court believe that judgment was void and could not have lapsed into finality. As basis, she points to the Order's supposedly misplaced reliance on National Bureau of Investigation document expert Romero Magcuro's testimony.[76] Further, she cites *Heirs of Borres v. Abela*,[77] which stated that "[a] void judgment never acquires finality."[78]

Respondent's reference to *Heirs of Borres* conveniently omits its discussion which reveals that a decision was found to be void, not because of an error in that decision—which is respondent's basis in this case—but because it was penned by a retired judge. The relevant portions of *Heirs of Borres'* discussion reads:

The January 30, 1995 Decision could never attain finality for being void. It was penned by Judge Alovera after his retirement when he no longer had the authority to decide cases. We take judicial notice of this Court's Decision in Administrative Case No. 4748 dated August 4, 2000, where the Court en banc disbarred Judge Alovera for gross misconduct, violation of the lawyer's oath and the Code of Professional Responsibility, thus:

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[75] *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 23-24 (2015) [Per *J.* Leonen, Second Division].

[76] *Rollo*, pp. 295-296.

[77] 554 Phil. 502 (2007) [Per *J.* Ynares-Santiago, Third Division].

[78] *Id.* at 518.

. . . . . .

From the foregoing, it is clear that the proceedings in Civil Case No. V-6186 were attended with irregularities. The hearing on December 10, 1993 was simulated; the January 30, 1995 Decision was penned by Judge Alovera after he retired; and the decision was never entered in the book of judgments as mandated in the rules. Thus, petitioners' contention that the decision has become final and executory lacks merit.

Under the circumstances, the Borres heirs cannot claim rights under the decision nor can they insist on its binding character. In *Nazareno v. Court of Appeals*, we held:

> [A] decision penned by a judge after his retirement cannot be validly promulgated; it cannot acquire a binding effect as it is null and void. Qoud ab initio non valet, in tractu temporis non convalescit.
>
> In like manner, a decision penned by a judge during his incumbency cannot be validly promulgated after his retirement. When a judge retired all his authority to decide any case, i.e., to write, sign and promulgate the decision thereon also "retired" with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement. . .
>
> A void judgment never acquires finality. Hence, while admittedly, the petitioner in the case at bar failed to appeal timely the aforementioned decision of the Municipal Trial Court of Naic, Cavite, it cannot be deemed to have become final and executory. In contemplation of law, that void decision is deemed nonexistent. Thus, there was no effective or operative judgment to appeal from. In *Metropolitan Waterworks & Sewerage System vs. Sison*, this Court held that:
>
> ". . . [A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid, In other words, a void judgment is regarded as a nullity,

> and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial."
>
> Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: ". . . it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."

The above ruling was reiterated in *Hilado v. Chavez* where we also held that no rights can be obtained or divested from a void judgment. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void.[79]

The material incidents in this case, as well as the supposed error adverted to by respondent in the December 28, 2015 Order are not at all similar to the factual bases that led to the determination in *Heirs of Borres*, or any of its cited cases. This Court takes exception to respondent counsel's selective quotation of *Heirs of Borres* which borders on misrepresentation, tending to mislead a reader into believing that mere error in judgment attributed to the December 28, 2015 Order makes it void, even if such error has nothing to do with the legitimacy of Judge Patrimonio-Soriaso's and/or the Regional Trial Court's authority in rendering that Order.

II (C)

The preceding discussion suffices to put an end to this case. The finality of the December 28, 2015 Order renders moot the need for petitioner's further appeal. Nevertheless, it is worth considering that Judge Patrimonio-Soriaso also gravely abused her discretion in dismissing petitioner's appeal in the face of, not only the branch clerk of court's nonfeasance, but what appears to be the clerk of court's bad faith.

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[79] *Id.* at 514-519.

Rule 41, Section 10 of the 1997 Rules of Civil Procedure spells out the duties of a lower courts' clerk of court after the perfection of an appeal:

SECTION 10. *Duty of clerk of court of the lower court upon perfection of appeal*. — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

(a) To verify the correctness of the original record or the record on appeal, as the case may be aid to make certification of its correctness;

(b) To verify the completeness of the records that will be, transmitted to the appellate court;

(c) If found to be incomplete, to take such measures as may be required to complete the records, availing of the authority that he or the court may exercise for this purpose; and

(d) To transmit the records to the appellate court.

If the efforts to complete the records fail, he shall indicate in his letter of transmittal the exhibits or transcripts not included in the records being transmitted to the appellate court, the reasons for their non-transmittal, and the steps taken or that could be taken to have them available.

The clerk of court shall furnish the parties with copies of his letter of transmittal of the records to the appellate court.

The 1997 Rules of Civil Procedure makes clerks of court indispensable in enabling parties to perfect appeals by record on appeal. So crucial are they that, in those cases where records are found to be incomplete, they are tasked "to take such measures as may be required to complete the records."

As petitioner noted, her inability to complete and attach the record on appeal was not her fault, but that of the Regional Trial Court's Clerk of Court, who, even after receiving money as payment for photocopying, desisted on completing it on account of respondent's opposition.[80] Granting that it was

[80] *Rollo*, p. 251.

imperative and licit for the Clerk of Court to personally receive money to defray the costs of photocopying, doing so nevertheless placed the Clerk of Court in a position that only heightened the duties imposed by Rule 41, Section 10. It is only more damning that the Clerk of Court would renege on the undertaking at respondent's mere instance and without respondent even making a proper submission to the Regional Trial Court.

It was then serious error for Judge Patrimonio-Soriaso to look the other way and ignore her branch clerk of court's impropriety. It was grave abuse of discretion for her to rule that petitioner's Appeal must be dismissed for failing to include a record on appeal when such failure was attributable to the fault of her own subordinate. In so doing, she enabled a violation of Rule 41, Section 10, and ultimately enabled an injustice by preventing petitioner's recourse to further remedy.

II (D)

The standards on service of papers and processes on parties and their counsels, finality of judgements, and the duties of clerks of court in preparing records on appeal are clear. They are long-settled and countlessly repeated in jurisprudence. All that was left for Judge Patrimonio-Soriaso to do was to apply them. That she did not proceed to plainly apply these unmistakable standards is mind-boggling.

Judge Patrimonio-Soriaso uncaringly bypassed basic rules of procedure in reversing her own final Order and in dismissing petitioner's Appeal. A judge who obstinately disregards established rules of procedure does not merely err in judgment but commits grave abuse of discretion:[81]

> [M]anifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.
>
> In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure."

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[81] *Crisologo v. JEWM Agro-Industrial Corporation*, 728 Phil. 315 (2014) [Per *J.* Mendoza, Third Division].

Such level of ignorance is not a mere error of judgment. It amounts to "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law," or in essence, grave abuse of discretion amounting to lack of jurisdiction.

Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[82]

Judges should be heedful of procedural rules and ensure that no undue advantage is extended to litigants. Thus, Judge Patrimonio-Soriaso should have been circumspect in performing her functions.

What was at stake here was not a palatial estate bequeathed to a privileged heir. Rather, it was a modest dwelling on a 108 square-meter Tondo lot. These were all that Corazon could pass on to the one person she intimately loved and with whom she spent 48 years making that house a home. Purita could have lived to, even if only briefly, occupy as her own the meager bequest that Corazon could extend. Yet, by vacillating on her own ruling, Judge Patrimonio-Soriaso saw to it that Purita would never know that dwelling as her own even as she breathed her last.

The exercise of judicial functions does not merely involve a cold, mechanical application of the law, or a routinary resolution of issues. Rather, it ultimately calls for the dispensation of justice. It is a human affair with very real, palpable, and potentially damaging consequences for those who stand to be affected. Judge Teresa Patrimonio-Soriaso woefully failed to carry out her basic, solemn duty as a judge. She callously disregarded settled norms and ultimately facilitated an injustice.

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[82] *Id.* at 328 citing *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, 689 Phil. 134 (2012), [*Per Curiam, En Banc*]; *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, 580 Phil. 135, 140 (2008) [Per *J.* Quisumbing, Second Division]; *Enriquez v. Judge Caminade*, 519 Phil. 781 (2006) [Per *C.J.* Panganiban, First Division]; and *Abbariao v. Beltran*, 505 Phil. 510 (2005) [Per *J.* Panganiban, Third Division].

It is equally woeful that the Court of Appeals never corrected her abuse of discretion.

WHEREFORE, the assailed Court of Appeals' February 6, 2019 Decision and May 15, 2019 Resolution in CA-G.R. S.P. No. 153795 are **REVERSED** and **SET ASIDE**. The Regional Trial Court's December 28, 2015 Order in Sp. Proc. No. 08-119593 is **REINSTATED**.

SO ORDERED.

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

Gesmundo, J., on official leave.

EN BANC

[A.C. No. 11870. July 7, 2020]

HEIRS OF ODYLON UNITE TORRICES, represented by Sole Heir MIGUEL B. TORRICES, *complainant, vs.* **ATTY. HAXLEY M. GALANO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; NOTARIZATION; CONSIDERED AS AN ACT INVESTED WITH SUBSTANTIVE PUBLIC INTEREST, AS IT RESULTS TO THE CONVERSION OF A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, THEREBY MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.— Essentially, the conferment of a notarial commission embodies the correlative duty to observe the basic requirements in the performance of notarial duties with utmost care to avoid the erosion of the public's confidence in the integrity of a notarized document. Lest it be

forgotten, notarization is an act invested with substantive public interest, as it results to the conversion of a private document into a public instrument, thereby making it admissible in evidence without further proof of its authenticity. By law, a notarized document is entitled to full faith and credit.

2. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; ACKNOWLEDGMENT; THE NOTARY PUBLIC MUST REQUIRE THE PRESENCE OF THE PARTIES EXECUTING THE INSTRUMENT AND MUST ENSURE THAT THE PARTIES APPEARING ARE THE SAME PERSONS WHO EXECUTED IT.— [T]o preserve the sanctity of a notarized document, the Notary Public must require the presence of the parties executing the instrument. In addition, the Notary Public must ensure that the parties appearing in the document are the same persons who executed it, that they signed freely and voluntarily, and that the provisions embodied in the instrument express their true agreement. These may not be achieved unless the parties are physically present before the Notary Public. In this regard, Section 1 of the 2004 Rules on Notarial Practice highlights the importance of having the affiant appear in person before the Notary Public x x x. [A] Notary Public is prohibited from performing a notarial act in the absence of the signatories to the instrument. The notarization of a document in the absence of the parties is a breach of duty. This is clear from Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice x x x. It becomes all too apparent that Atty. Galano transgressed the most fundamental rules in the notarization of documents. He notarized the Deed of Absolute Sale without requiring the presence of the purported vendor Dominga and her husband Miguel, whose signatures falsely appeared on the document. Worse, he committed falsehoods by stating in the notarial acknowledgment that Dominga and Miguel personally appeared before him on July 26, 2012, which was utterly impossible considering that they had been dead twenty years prior to such date of notarization. The fact of their demise was established from their respective Death Certificates which are attached to the records of the case.

3. ID.; ID.; MUST OBSERVE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES WITH UTMOST CARE AND DILIGENCE.— [N]otaries public must dutifully abide by the Lawyer's Oath and the Code of Professional

Responsibility. Likewise, they must avoid committing falsehoods or consent to the doing of any. They must stand as vanguards against any illegal and immoral arrangements in the execution of documents. It bears stressing that "notarization is not an empty, meaningless, routinary act," but one that is invested with substantive public interest. Thus, notaries public must observe the basic requirements in the performance of their duties with utmost care and diligence. Those who fail to abide by the rules must be sanctioned accordingly.

APPEARANCES OF COUNSEL

Leovillo C. Agustin for complainant.

R E S O L U T I O N

GAERLAN, *J.*:

This resolves the Petition for Disbarment[1] filed by the Heirs of Odylon Unite Torrices (Heirs of Torrices) against Atty. Haxley Galano (Atty. Galano) for violation of Rule 10.01 of the Code of Professional Responsibility, Oath of Lawyers and the 2004 Rules on Notarial Practice.[2]

The Antecedents

On July 23, 2012, Atty. Galano, in his capacity as a commissioned Notary Public in the Province of Cagayan, notarized a Deed of Absolute Sale purportedly executed between Dominga Unite Torrices (Dominga), married to Miguel G. Torrices (Miguel), as vendor, and Felipe U. Tamayo, married to Divina Tamayo, as vendee. The Deed of Absolute Sale involved a parcel of land under Original Certificate of Title No. P-4993(S) – Free Patent No. 367865 located at Barangay Fugu, Ballesteros, Cagayan, containing an area of 7,303 square meters. The property was sold for a consideration of ₱200,000.00. The Deed of Absolute Sale was entered in Atty. Galano's Notarial

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

[2] *Id.* at 3.

Register as Doc. No. 1130, Page No. 226, Book No. XXIII, Series of 2012.[3]

However, the Heirs of Torrices questioned the authenticity of the Deed of Absolute Sale, considering that the alleged vendor Dominga died on June 6, 1974, while her husband Miguel, whose signature likewise appeared on the said Deed, passed away in the early 1970s.[4] The Heirs of Torrices accused Atty. Galano of conspiring with the vendees by making it appear that Dominga and Miguel were still alive when the Deed of Absolute Sale was notarized.

This spurred a Petition for Disbarment[5] against Atty. Galano for violation of Rule 10.01 of the Code of Professional Responsibility,[6] Oath of Lawyers, and the 2004 Rules on Notarial Practice under A.M. No. 02-8-13-SC.

Atty. Galano failed to submit his answer to the petition for disbarment.[7]

IBP Report and Recommendation

On June 29, 2015, Integrated Bar of the Philippines (IBP) Commissioner Eduardo R. Robles (Commissioner Robles) issued a Report and Recommendation,[8] where he stated that Atty. Galano violated the 2004 Rules on Notarial Practice by notarizing the Deed of Absolute Sale without requiring the presence of the signatories Dominga and Miguel. Commissioner Robles likewise opined that Atty. Galano committed a violation of

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[3] *Id.*

[4] *Id.*

[5] *Id.* at 2-6.

[6] CODE OF PROFESSIONAL RESPONSIBILITY.

Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[7] *Rollo*, p. 119.

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

the Revised Penal Code by falsely affirming that the parties physically appeared before him.[9] Accordingly, Commissioner Robles recommended Atty. Galano's suspension from the legal profession for a period of three years.[10]

IBP Board of Governors Resolution

In a Resolution[11] dated June 30, 2015, the IBP Board of Governors adopted the Recommendation of IBP Commissioner Robles.

The dispositive portion of the said Resolution states:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and considering Respondent's violation of the 2004 Rules on Notarial Practice, Atty. Haxley M. Galano is hereby ***SUSPENDED from the practice of law for three (3) years.***[12]

Issue

The issue raised in the instant case is whether or not Atty. Galano is administratively liable for violating the rules on notarial practice, as well as Rule 10.01 of the Code of Professional Responsibility, and the Lawyer's Oath.

Ruling of the Court

The Court agrees with the finding that Atty. Galano is administratively liable, but modifies the penalty recommended by the IBP.

Essentially, the conferment of a notarial commission embodies the correlative duty to observe the basic requirements in the performance of notarial duties with utmost care to avoid the

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[9] *Id.*

[10] *Id.* at 120.

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

[12] *Id.* at 117.

erosion of the public's confidence in the integrity of a notarized document.[13] Lest it be forgotten, notarization is an act invested with substantive public interest, as it results to the conversion of a private document into a public instrument, thereby making it admissible in evidence without further proof of its authenticity.[14] By law, a notarized document is entitled to full faith and credit.[15]

Accordingly, to preserve the sanctity of a notarized document, the Notary Public must require the presence of the parties executing the instrument.[16] In addition, the Notary Public must ensure that the parties appearing in the document are the same persons who executed it, that they signed freely and voluntarily, and that the provisions embodied in the instrument express their true agreement.[17] These may not be achieved unless the parties are physically present before the Notary Public.[18]

In this regard, Section 1 of the 2004 Rules on Notarial Practice highlights the importance of having the affiant appear in person before the Notary Public, *viz.*:

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

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

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

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

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[13] *De Jesus v. Atty. Sanchez-Maliit*, 738 Phil. 480, 491-492 (2014), citing *Lustestica v. Atty. Bernabe*, 643 Phil. 1, 9 (2010).

[14] *Id.* at 491.

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

[16] *Anudon v. Atty. Cefra*, 753 Phil. 421, 429-430 (2015).

[17] *Id.* at 430.

[18] *Id.*

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

In the same vein, a Notary Public is prohibited from performing a notarial act in the absence of the signatories to the instrument. The notarization of a document in the absence of the parties is a breach of duty. This is clear from Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice which states that:

SEC. 2. Prohibitions.

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document—

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

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

It becomes all too apparent that Atty. Galano transgressed the most fundamental rules in the notarization of documents. He notarized the Deed of Absolute Sale without requiring the presence of the purported vendor Dominga and her husband Miguel, whose signatures falsely appeared on the document. Worse, he committed falsehoods by stating in the notarial acknowledgment that Dominga and Miguel personally appeared before him on July 26, 2012, which was utterly impossible considering that they had been dead twenty years prior to such date of notarization. The fact of their demise was established from their respective Death Certificates which are attached to the records of the case.

Significantly, in a long line of cases, the Court sternly disciplined notaries public who notarized instruments

notwithstanding the fact that the persons whose signatures appeared thereon were already dead.[19]

All told, notaries public must dutifully abide by the Lawyer's Oath and the Code of Professional Responsibility. Likewise, they must avoid committing falsehoods or consent to the doing of any. They must stand as vanguards against any illegal and immoral arrangements in the execution of documents.[20] It bears stressing that "notarization is not an empty, meaningless, routinary act,"[21] but one that is invested with substantive public interest.[22] Thus, notaries public must observe the basic requirements in the performance of their duties with utmost care and diligence.[23] Those who fail to abide by the rules must be sanctioned accordingly.

WHEREFORE, premises considered, respondent Atty. Haxley M. Galano is found **GUILTY** of notarizing the Deed of Absolute Sale dated July 23, 2012 in the absence of the affiants, and is **SUSPENDED** from the practice of law for two years. Further, his notarial commission, if still existing, is **REVOKED** and he is **PERPETUALLY DISQUALIFIED** from reappointment as Notary Public.

Atty. Haxley M. Galano is **DIRECTED** to report the date he receives this Resolution to enable this Court to determine when his suspension shall take effect.

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

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[19] *Atty. Linco v. Atty. Lacebal*, 675 Phil. 160 (2011); *Magaway v. Atty. Avecilla*, 791 Phil. 385 (2016); *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1 (2015); *Ang v. Atty. Gupana*, 726 Phil. 127 (2014).

[20] *Magaway v. Atty. Avecilla*, *supra* at 390.

[21] *Atty. Linco v. Atty. Lacebal*, *supra* at 167.

[22] *Id.*

[23] *Id.*

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.

EN BANC

[G.R. No. 194530. July 7, 2020]

THE DEPARTMENT OF FOREIGN AFFAIRS, represented by Undersecretary RAFAEL E. SEGUIS, FRANKLIN M. EBDALIN, MA. CORAZON YAP-BAHJIN, EVA G. BETITA, JOCELYN BATOON-GARCIA, and LEO HERRERA-LIM, for themselves and in behalf of other DFA personnel with whom they share a common and general interest, *petitioners, vs.* **THE COMMISSION ON AUDIT,** *respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); THE COMMISSION *EN BANC* HAS THE POWER TO PROMULGATE ITS OWN RULES CONCERNING PLEADINGS AND PRACTICE BEFORE IT OR BEFORE ANY OF ITS OFFICES, PROVIDED SUCH RULES SHALL NOT DIMINISH, INCREASE, OR MODIFY SUBSTANTIVE RIGHTS.— The former 1997 COA Revised Rules of Procedure did not contain provisions on the imposition and collection of filing fees on cases filed before the COA or in any of its offices in the exercise of its quasi-judicial functions. In order to address this deficiency, the Commission *en banc* issued the assailed Resolution, which pertinently provides: xxx the Commission Proper resolves, as it is hereby resolved, to authorize the

adjudicating bodies/offices of this Commission, in the exercise of its original and appellate jurisdictions, to impose and collect filing fees on the following cases: 1. Appeals from notices of suspension, disallowance or charge; 2. Appeals for relief from accountability; 3. Money claims, except if the claimant is a government agency; 4. Requests for condonation x x x. The power of the Commission *en banc* to promulgate the Resolution is sanctioned by the 1987 Constitution. Section 6, Article IX-A thereof expressly grants each Constitutional Commission *en banc* to promulgate its own rules concerning pleadings and practice before it or before any of its offices. The Constitution is quick to add, however, that such rules shall not diminish, increase, or modify substantive rights.

2. ID.; ID.; ID.; RULES OF PROCEDURE; THE PROMULGATED RULES CONCERNING PLEADINGS AND PRACTICE BEFORE THE COMMISSION ON AUDIT OR BEFORE ANY OF ITS OFFICES MUST BE ARRIVED AT ON THE BASIS OF COLLEGIAL DECISIONS AND NOT BY ONLY ONE MEMBER OF THE COMMISSION PROPER.— The requirement that a matter must be acted upon by the *en banc* of a body or tribunal has been interpreted to mean that it reaches a decision as a collegial body, and not necessarily, as an entire body. In *Heirs of Wilson P. Gamboa v. Teves*, the Court had interpreted the provisions in the Securities Regulation Code, which state that only the Securities and Exchange Commission (SEC) *en banc* can adopt rules and regulations and can issue opinions, to mean that any opinion of individual Commissioners or SEC legal officers does not constitute a rule or regulation of the SEC and is *ultra vires*. Similarly, in *FASAP v. PAL*, the Court held that whether it is sitting *en banc* or in division, it acts as a collegial body. By virtue of the collegiality, even the Chief Justice alone cannot promulgate or issue any decision or order. Thus, Section 6, Article IX-A of the Constitution is so worded so as to impress that the promulgated rules concerning pleadings and practice before the Commission or before any of its offices are arrived at on the basis of collegial decisions and not by only one member of the Commission Proper.

3. ID.; ID.; ID.; ID.; ID.; THE ESSENCE OF COLLEGIALITY IN THE COMMISSION ON AUDIT IS NOT LOST EVEN IF ONLY TWO MEMBERS THEREOF HAVE RESOLVED

TO PROMULGATE PROCEDURAL RULES, AS IT IS NOT NECESSARY THAT THE ENTIRE COMPLEMENT OF THE COMMISSION BE PRESENT OR SITTING ON THE BENCH IN ORDER TO CONSTITUTE A COMMISSION SITTING *EN BANC*.— The essence of collegiality in the Commission is not lost even if only two members thereof have resolved to promulgate procedural rules. It is not necessary that the entire complement of the Commission be present or sitting on the bench in order to constitute a Commission sitting *en banc*. This is the teaching in the ruling of the Louisiana Supreme Court in *Dauzat v. Allstate Insurance Company* x x x. x x x. **We find that it is not necessary that the entire complement of the court—here, six judges—be present or sitting on the bench in order to constitute a sitting *en banc*. All that is required is a majority of the complement of the court; x x x.** It is well to note that, in fact, the composition of the Constitutional Commissions regularly comes down to only two at some point by virtue of the Constitution's design of a system of rotational plan or the staggering of terms in the Commission membership. Under this system, the appointment of Commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years. The system has assured that the Commissions are never a composition of one, but are, at the very least, always consisting of two members. This, to the mind of the Court, only goes to show that the situation of a two-member Commission as an act of the *en banc*. To suggest otherwise that there is no *en banc* if one of the positions is unfilled would be tantamount to paralyzing the Commissions. This is not a logical intendment of the Constitution.

4. ID.; ID.; ID.; ID.; APPEAL FROM A NOTICE OF DISALLOWANCE; CONSTITUTIONALITY OF COA RESOLUTION NO. 2008-005 WHICH AUTHORIZES THE IMPOSITION AND COLLECTION OF FILING FEES ON, AMONG OTHERS, APPEALS FROM NOTICES OF SUSPENSION, DISALLOWANCE OR CHARGE, UPHELD; THE MANDATORY PAYMENT OF FILING FEES IS AN ALLOWABLE LIMITATION TO THE RIGHT TO APPEAL, AND DOES NOT VIOLATE THE PARTIES' RIGHT TO DUE PROCESS.— Petitioners find it unfair that they are being hailed to defend themselves from the disallowances

and yet, their right to an appeal for the first instances before the Director is conditioned on the payment of filing fees. The Court finds no violation of petitioners' Constitutional right to due process in this regard. For one, settled is the rule that filing fees, when required, are assessed and become due for each initiatory pleading filed. The payment of filing fees in a judicial and quasi-judicial set up has always been recognized as essential in our jurisdiction, and has always been recognized as an allowable limitation to the right to appeal. Secondly, petitioners were already given a meaningful opportunity to be heard even before their appeals to the Director were returned for non-payment of docket fees. The Rules of Procedure of the COA, including the assailed Resolution herein, was promulgated in the exercise of the Commission's rule-making power granted by the Constitution. This is no different from the Court's own rule-making power and its promulgation of the Rules of Court in the exercise thereof, which Rules has never been viewed as a devaluation of a litigant's due process rights. The assailed Resolution recognizes its similarity with the Rules of Court, holding in one of its whereas clauses that "the imposition and collection of filing fees is part and parcel of the rules on pleadings and practice even under the Rules of Court to cover partially the quasi-judicial cost of services to be rendered."

5. ID.; ID.; ID.; ID.; ID.; THE AUDITEES MAY APPEAL THE NOTICE OF DISALLOWANCE, SUBJECT TO THE PAYMENT OF LEGAL FEES; THE RIGHT TO APPEAL IS NOT A CONSTITUTIONAL, NATURAL OR INHERENT RIGHT, BUT A STATUTORY PRIVILEGE OF STATUTORY ORIGIN AND, THEREFORE, AVAILABLE ONLY IF GRANTED OR PROVIDED BY STATUTE; AS SUCH, THE LAW MAY VALIDLY PROVIDE LIMITATIONS OR QUALIFICATIONS TO THE EXERCISE THEREOF.— [P]etitioners, as auditees, are in the same plane as that of a defendant in a case being hailed to court by a plaintiff. The defendant is always given his day in court. Should the outcome of the trial or proceeding be unfavorable to the defendant, he has every right to ask for reconsideration or elevate the case on appeal, subject to the payment of the corresponding docket fees. This avenue is likewise open to an auditee. Should he fail to have the AOM reconsidered and an ND is subsequently issued, the auditee is given the right

to appeal said ND. The exercise of this right to appeal may be conditioned on the payment of legal fees, but this is hardly iniquitous. The Court has held, time and again, that the right to appeal is not a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. The law may then validly provide limitations or qualifications thereto.

6. ID.; ID.; ID.; ID.; ID.; IF NUMEROUS NOTICES OF DISALLOWANCE WERE ISSUED AGAINST A GOVERNMENT OFFICIAL, HE OR SHE MAY CONSOLIDATE HIS OR HER APPEALS FOR THESE DISALLOWANCES IN ONE SINGLE APPEAL, PROVIDED THAT THE OBSERVANCE OF THE REGLEMENTARY PERIODS FOR EACH NOTICE OF DISALLOWANCE ALLOW IT, AND HE OR SHE HAS A SIMILAR ARGUMENT OR DEFENSE IN ALL DISALLOWANCES, SUBJECT TO THE PAYMENT OF FILING FEES, WHICH SHALL BE ASSESSED ON THE BASIS OF AGGREGATE AMOUNT OF THE DISALLOWED TRANSACTIONS SUBJECT OF THE APPEAL.— The assailed Resolution provides that an appeal from a notice of disallowance may be filed by the appellant subject to the payment of filing fees. A disallowance is defined as the disapproval in audit of a transaction, particularly a disbursement, either in whole or in part. If numerous notices of disallowance were issued against a government official, this only means that there were different transactions involved. These transactions could be of varying nature, could have been made from different allowances or funds, or could have been disbursed on different periods. These transactions could have also been disallowed for various reasons, such as for being irregular, unnecessary, excessive or extravagant. Thus, a government official may be slapped with different notices of disallowance as an accountable officer under the law. The consolidation of his or her appeals for these disallowances in one single appeal remains an available option, provided that the observance of the reglementary periods for each notice of disallowance would allow it, and more so if he or she has a similar argument or defense in all disallowances. This is a reasonable and viable practice which is akin to a joinder of causes of action in ordinary civil actions. After all, invariably, the ultimate prayer in every

disallowance is to be relieved of liability. This consolidation, notwithstanding, the reasonable interpretation of the provision on filing fees in the Resolution is that these are assessed on the basis of the *aggregate amount* of the disallowed transactions subject of the appeal. Notably, this is the procedure in civil actions for the recovery of sum of money or damages, as well as in criminal actions where an information is considered as an initiatory pleading and therefore necessitates one filing fee.

7. ID.; ID.; ID.; ID.; ID.; ONLY ONE FILING FEE SHALL BE PAID FOR EVERY APPEAL, REGARDLESS OF THE NUMBER OF PETITIONERS, AS FILING FEES ARE PAID NOT TO ENRICH THE COA AS A QUASI-JUDICIAL TRIBUNAL, BUT TO MERELY DEFRAY ITS EXPENSES IN THE HANDLING OF CASES, AND AVOID TREMENDOUS LOSSES TO THE AGENCY AND TO THE GOVERNMENT AS WELL; NOTICES OF DISALLOWANCES ISSUED AGAINST MANY EMPLOYEES OF ONE GOVERNMENT AGENCY CAN BE PAID BY THE AGENCY IN LUMP SUM.— [T]he provision in the assailed Resolution stating that "[t]he appellant/petitioner/claimant/complainant in any of the above cases shall pay a filing fee" should be interpreted to mean that only one filing fee shall be paid for every appeal, regardless of the number of petitioners. Again, this is the more equitable interpretation, considering that filing fees are paid not to enrich the judiciary, or in this case the COA as a quasi-judicial tribunal, but to merely defray its expenses in the handling of cases, and consequently, avoid tremendous losses to the agency and to the government as well. In fact, the filing fee being capped at Ten Thousand Pesos (₱10,000.00) no matter the amount involved in the disallowed transaction, proves that it is reasonably intended to cover costs of legal work required to resolve the case. The provision in the 2009 COA Revised Rules of Procedures on filing fees, as amended by COA Resolution No. 2013-016, likewise supports this interpretation x x x. Thus, as applied here, petitioners may include the 39 NDs in one appeal and the single payment of a filing fee corresponding to the then prevailing schedule or the appropriate ceiling in the assailed Resolution should suffice to perfect the appeal. In particular, as regards the question of petitioners on whether NDs issued against many employees of one government agency can be paid by the agency

in lump sum, subject to the ₱10,000.00 ceiling, the answer is in the affirmative.

8. ID.; ID.; ID.; THE BURDEN OF PROVING THE VALIDITY OR LEGALITY OF THE GRANT OF ALLOWANCE OR BENEFITS LIES WITH THE GOVERNMENT AGENCY OR ENTITY GRANTING THE ALLOWANCE OR BENEFIT AND THE EMPLOYEE CLAIMING THE SAME; THE NON-PARTICIPATION OF THE EMPLOYEES WHO ACTUALLY RECEIVED THE DISALLOWED BENEFITS DOES NOT PREVENT THE COURT FROM DETERMINING THE ISSUE OF WHETHER THE COA GRAVELY ABUSED ITS DISCRETION IN DECLARING THE ENTITY'S ISSUANCE AS ILLEGAL.—[O]n the legal standing of a government agency, the Court in previous cases has recognized that the burden of proving the validity or legality of the grant of allowance or benefits likewise lies with the government agency or entity granting the allowance or benefit, alongside the employee claiming the same. The Court in *Philippine Health Insurance Corp. v. Commission on Audit* explained the legal standing of government agencies in appealing disallowances by the COA in this wise: In this regard, the Court finds that petitioner PHIC certainly possesses the legal standing to file the instant action. Petitioner comes before the Court invoking its power to fix the compensation of its employees and personnel enunciated under the National Health Insurance Act. Accordingly, when respondent disallowed petitioner's grant of certain allowances in its exercise of said power, it effectively and directly challenged petitioner's authority to grant the same. Thus, petitioner must be granted the opportunity to justify its issuances by presenting the basis on which they were made. x x x. The non-participation of the particular employees who actually received the disallowed benefits does not prevent the Court from determining the issue of whether the COA gravely abused its discretion in declaring the entity's issuance as illegal. x x x.

APPEARANCES OF COUNSEL

DFA Office of Legal Affairs for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for *Certiorari* and Prohibition with [Prayer for] Issuance of a Writ of Preliminary Injunction[1] (Petition) filed under Rule 65 of the Rules of Court seeking to nullify Commission on Audit (COA or Commission) Resolution No. 2008-005[2] dated February 15, 2008 (assailed Resolution) for being unconstitutional. The Petition also seeks to nullify COA Decision No. 2009-089[3] dated September 22, 2009 and COA Decision No. 2010-090[4] dated October 21, 2010 (assailed Decisions).

The assailed Resolution imposes the collection of filing fees for: (1) appeals from notices of suspension, disallowance or charge, and relief from accountability; (2) money claims, except if the claimant is a government agency; and (3) requests for condonation. The assailed Decisions, on the other hand, ruled against the motions of petitioners to suspend the implementation of the assailed Resolution.

The Facts

Between the period of September 24 to October 27, 2008, the COA Resident Auditor in the Department of Foreign Affairs (DFA) issued nineteen (19) Notices of Disallowances (NDs) on the payment of terminal leave benefits for retired DFA employees in the total amount of ₱33,038,107.61. The disallowances pertained to the payment of unused leave credits in excess of the maximum 360 days, and overpayment resulting

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[1] *Rollo*, pp. 27-44.

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

[3] *Id.* at 12-21.

[4] *Id.* at 7-11. Resolution denying the motion for reconsideration of COA Decision No. 2009-089.

from deducting leave credits used prior to January 1, 1978 from leaves currently earned instead of deducting the same from the corresponding leave credits earned prior to January 1, 1978, in violation of the Foreign Service Act.[5] These disallowances were the subject of Audit Observation Memorandum (AOM) No. 2008-13 dated July 18, 2008.[6]

On November 27, 2008, the personnel of the Philippine Embassy in London received NDs from the Supervising Auditor for twenty (20) personnel representing their overseas and living quarter allowances for the period of January to December 2007 in the total amount of ₱7,221,324.94. The disallowances were on the ground that the collection rate, instead of the prevailing market rate, was used in converting the allowances from US dollar to the local currency, in violation of Executive Order No. 461.[7] These disallowances were the subject of AOM No. 2008-21 dated July 29, 2008.[8]

In both cases, the DFA appealed the NDs. In accordance with Rule V of the 1997 COA Revised Rules of Procedure, the appeals were elevated by the Resident Auditor to the Director. However, in a Memorandum dated February 12, 2009, the Resident Auditor returned without action the appeals for failure to comply with the payment of filing fees prescribed by the Resolution.[9]

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

[6] *Id.* at 12.

[7] *Id.* at 32-33, 143. Petitioners also alleged that on December 12, 2008, the Resident Auditor also issued seventeen (17) NDs to the personnel of the Philippine Embassy in Paris, requiring the refund of the total amount of ₱9,108,031.15 representing the difference between the salaries and allowances paid using the collection rate and the salaries and allowances using the prevailing market rate. Apart from these, NDs were also issued against personnel of the Philippine Embassies in Rome, Seoul, Osaka, Greece, Berlin, and Tokyo. *Id.* at 33-34, 144.

[8] *Id.* at 12.

[9] *Id.* at 32, 144.

The returned, unacted upon appeals prompted the DFA to file a motion before the COA to suspend the implementation of the Resolution on the grounds that: (1) it violates Article IX-A, Section 6 of the Constitution; (2) it is vague and subject to different interpretations, and thus, implementing rules are necessary to guard against abuse; and (3) the requirement of payment of the filing fees before the COA Resident Auditor takes cognizance of the appeals violates the due process clause and derogates substantive rights. The motion also prayed that the Resident Auditor or other concerned COA officers be directed to accept the appeals filed by the DFA without payment of the filing fees pending resolution of the motion.[10]

The COA in Decision No. 2009-089 denied the motion for lack of merit and directed the aggrieved parties under the NDs to pay the filing fees as a requisite before the Resident Auditor may take cognizance of their appeals. The COA held that the approval of the Resolution by only two members of the Commission Proper did not contravene Article IX-A, Section 6 of the Constitution,[11] which provides:

> SECTION 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase, or modify substantive rights.

The COA explained that there were only two sitting members of the Commission Proper when the Resolution was promulgated. The term of then COA Chairman Guillermo N. Carague had expired and the President had yet to appoint his replacement. Still, the Resolution was promulgated *en banc*, albeit by only two members of the Commission Proper, since that was the full composition thereof at that time. Additionally, the Constitution could not have intended that the exercise of the authority under Section 6, Article IX-A, should be suspended until such time that the President has filled up the vacated position.[12]

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

[11] *Id.* at 15.

[12] *Id.*

With regard to the apprehension of the DFA that the Resolution was open to various interpretations and abuse, the COA dismissed the same as highly speculative. It stressed that the filing fees are not paid to the auditors but to the COA Cashier at the Treasury Division, Finance Sector of the Commission and go straight to the funds of the Commission. The COA also characterized the argument of the DFA as one invoking the void for vagueness doctrine, which was inapplicable since it applies only to free speech cases. The COA also stressed that the motion failed to rebut the presumption of validity in favor of the Resolution.[13]

As to the last ground raised by the DFA, the COA disagreed that the payment of filing fees violates or derogates the right to be heard of an appellant. The COA pointed out that ordinarily, when an irregular transaction is discovered during audit, an AOM is issued to the head of office or his duly authorized representative requesting for the submission of a justification or comment on the matter. This proves that the head of office or his duly authorized representative, for himself or for the other parties who participated in the transaction, is given the opportunity to be heard. The COA likewise held that the right to appeal is not a constitutional right, whether it be before the regular courts or an administrative agency.[14]

The DFA filed a motion, praying for the: (1) reconsideration of Decision No. 2009-089; (2) suspension of the implementation of the assailed Resolution, including Section 5, Rule IX of the 2009 COA Revised Rules of Procedure re-stating the same; and (3) a definitive clarification on the computation of the filing fees and authority for the DFA to pay the same on behalf of the employees without risk of the payment being disallowed in audit.[15]

The COA, in Decision No. 2010-090, denied the DFA's motion.[16] The COA found as absurd the contention of the DFA

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[13] *Id.* at 16-17.

[14] *Id.* at 18.

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

[16] *Id.* at 11.

that the Commission should have insisted to the President to fill the vacancy in its ranks. It emphasized that the authority to fill the vacancy in appointments of Constitutional Commissions is exclusively vested in the President. The power of appointment is likewise discretionary.[17]

The COA also reiterated that the imposition and collection of filing fees cannot be subject to abuse because they are not paid to the head of the auditing unit of the agency-auditee, but to the COA Cashier at the Treasury Division, Finance Sector, COA, or at the Regional Field Office of the COA Regional Office, as the case may be. The COA again found the apprehensions of the DFA to be hypothetical, at best, considering that it had not actually even attempted to comply with the Resolution.[18]

Moreover, the COA disagreed that the right to due process is devalued with the requirement to pay filing fees. The imposition and collection of filing fees were pursuant to the authority granted to the Commission by the Constitution and even the Rules of Court consider the same to be part and parcel of the rules on pleadings and practice to partially cover the cost of adjudication services to be rendered.[19]

With reference to the concern as to who shall pay the filing fees, the COA held that the agency cannot use government funds to pay the filing fees on behalf of aggrieved parties. The NDs are their liability and not of the agency.[20]

Issues

The sole issue raised in this Petition is whether the Resolution is unconstitutional for violating the guarantee of due process of law, for being excessive and oppressive, and for having been issued with grave abuse of discretion.

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[17] *Id.* at 9.

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

[19] *Id.* at 10.

[20] *Id.*

The Court's Ruling

The Petition is dismissed.

The former 1997 COA Revised Rules of Procedure did not contain provisions on the imposition and collection of filing fees on cases filed before the COA or in any of its offices in the exercise of its quasi-judicial functions. In order to address this deficiency, the Commission *en banc* issued the assailed Resolution, which pertinently provides:

> x x x the Commission Proper resolves, as it is hereby resolved, to authorize the adjudicating bodies/offices of this Commission, in the exercise of its original and appellate jurisdictions, to impose and collect filing fees on the following cases:
>
> 1. Appeals from notices of suspension, disallowance or charge
> 2. Appeals for relief from accountability
> 3. Money claims, except if the claimant is a government agency
> 4. Requests for condonation
>
> The appellant/petitioner/claimant/complainant in any of the above cases shall pay a filing fee, as follows:
>
> | **Amount Involved** | **Filing Fee** |
> |---|---|
> | ₱1,000,000.00 and below | ₱1,000.00 or 1/10 of 1% (0.1%) of the amount involved in the case whichever is lower |
> | Above ₱1,000,000.00 | Additional ₱1,000.00 for every ₱1,000,000.00 or a fraction thereof but not to exceed ₱10,000.00 |
>
> In addition, a Legal Research Fund of one percent (1%) of the filing fee herein imposed but in no case lower than Ten Pesos shall be collected pursuant to Section 4, Republic Act No. 3870, as amended, and as reiterated under Letter of Instruction No. 1182 dated December 16, 1981.
>
> The fees shall be paid at the Treasury Division, Finance Sector, this Commission, at the same time the pleading is filed in any of the adjudicating bodies/offices of this Commission. For appealed cases

emanating from the region, the fee may be paid at the Regional Finance of the nearest COA Regional Office. A copy of the official receipt shall be attached to the pleading otherwise, the adjudicating bodies/ offices shall not take action thereon.[21]

The power of the Commission *en banc* to promulgate the Resolution is sanctioned by the 1987 Constitution. Section 6, Article IX-A thereof expressly grants each Constitutional Commission *en banc* to promulgate its own rules concerning pleadings and practice before it or before any of its offices. The Constitution is quick to add, however, that such rules shall not diminish, increase, or modify substantive rights.

Petitioners argue, however, that the Resolution is in violation of Section 6, Article IX-A of the Constitution because it was not promulgated by the *en banc* consisting of the Chairman and two Commissioners, but by only two sitting members, the Acting Chairman and one Commissioner. Petitioners also posit that the Resolution diminishes a party's substantive right to due process because it requires payment of filing fees as a condition precedent to the Commission's giving of due course to his or her appeal. These contentions are incorrect.

An en banc does not mean full membership of the Commission

The requirement that a matter must be acted upon by the *en banc* of a body or tribunal has been interpreted to mean that it reaches a decision as a collegial body, and not necessarily, as an entire body. In *Heirs of Wilson P. Gamboa v. Teves*,[22] the Court had interpreted the provisions in the Securities Regulation Code, which state that only the Securities and Exchange Commission (SEC) *en banc* can adopt rules and regulations and can issue opinions, to mean that any opinion of individual Commissioners or SEC legal officers does not constitute a rule or regulation of the SEC and is *ultra vires*. Similarly, in *FASAP v. PAL*,[23] the Court held that whether it is sitting *en banc* or in

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

[22] 696 Phil. 276 (2012).

[23] G.R. No. 178083, March 13, 2018.

division, it acts as a collegial body. By virtue of the collegiality, even the Chief Justice alone cannot promulgate or issue any decision or order. Thus, Section 6, Article IX-A of the Constitution is so worded so as to impress that the promulgated rules concerning pleadings and practice before the Commission or before any of its offices are arrived at on the basis of collegial decisions and not by only one member of the Commission Proper.

This essence of collegiality in the Commission is not lost even if only two members thereof have resolved to promulgate procedural rules. It is not necessary that the entire complement of the Commission be present or sitting on the bench in order to constitute a Commission sitting *en banc*. This is the teaching in the ruling of the Louisiana Supreme Court in *Dauzat v. Allstate Insurance Company*,[24] to wit:

> Ballentine's Law Dictionary, Third Edition, 1969, recites, "en banc (French) On the bench. See full bench." Under full bench, we find, "The Court with all the qualified judges sitting in a case, particularly an appellate court." **It is to be noted that Ballentine tells us to see *full bench* but does not define *en banc* as a *full bench***. "Words and Phrases" defines "*Banc*" as follows, "Bench; the place where the court regularly sits; the full court." *Banc* is defined in Black's Law Dictionary, as follows:
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> > "Banc. Bench; the place where a court permanently or regularly sits; the seat of judgment; as *banc le roy*, the king's bench; *banc le common pleas*, the bench of common pleas.
> >
> > "The full bench, full court. A 'sitting *in banc*' is a meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from the sitting of a single judge at the *assises* or at *nisi prius* and from trials at bar. Cowell."
>
> In 1920, the Supreme Court of Colorado consisted of seven judges. The Constitution provided that the Court may sit *en banc* or in two or more departments as the court might, from time to time, determine. **In speaking of *en banc*, the Colorado Supreme Court in *Mountain States Telephone & Telegraph Co. v. People*, 68 Colo. 487, 190 P. 513, March 2, 1920, June 7, 1920, stated, "Under a constitutional**

[24] 242 So. 2d 539 (1970).

provision such as ours, a majority of the members of the court constitute the court en banc, and a majority of the court as thus constituted, of course may decide. * * *" See, *F. T. C. v. Flotill Products, Inc.*, 389 U.S. 179, 88 S.Ct. 401, 19 L.Ed.2d 398.

x x x x x x x x x

In a per curiam in *Jackson v. United Gas Public Service Co.*, 196 La. 1, 198 So. 633, April 29, 1940, this Court interpreted the above sections as follows:

> "This motion by the plaintiffs, appellants, to vacate and set aside the judgments rendered in this case and to restore the case to the calendar of this court is refused on the ground that the judgment is final and the motion is therefore out of order. **There is nothing in Sections 4, 5 or 6 of Article VII of the Constitution or in any other section in the Constitution requiring that all of the seven members of the court shall be present and participate in the hearing and deciding of every case. All that the Constitution requires in that respect is in Section 4 of Article VII, declaring that the court shall be composed of seven members, four of whom shall concur to render a judgment when the court is sitting en banc, meaning when the court is not sitting in sections.**"

We find that the above reasoning in the Jackson case and the definitions quoted can be applied herein in determining the number of judges necessary to constitute an *en banc* sitting of a Court of Appeal. The court cannot sit in panels, divisions, or sections when sitting *en banc*. We find that it is not necessary that the entire complement of the court—here, six judges—be present or sitting on the bench in order to constitute a sitting *en banc*. All that is required is a majority of the complement of the court; four judges would constitute a majority of the Court of Appeal, Third Circuit. Of course, the entire court may sit, and it is possible that an extra judge or lawyer called in by the court to break a deadlock may also sit with the entire court. Herein, the Court of Appeal, Third Circuit, sitting en banc with five members present was competent to render judgments in the present controversies. Such judgments, however, had to be rendered by majority vote.[25] (Emphasis supplied)

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[25] *Id.* at 545-546.

It is well to note that, in fact, the composition of the Constitutional Commissions regularly comes down to only two at some point by virtue of the Constitution's design of a system of rotational plan or the staggering of terms in the Commission membership. Under this system, the appointment of Commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years.[26] The system has assured that the Commissions are never a composition of one, but are, at the very least, always consisting of two members. This, to the mind of the Court, only goes to show that the situation of a two-member Commission is an expected outcome and it is fair to assume that the Constitution would therefore sanction an act of a two-member Commission as an act of the *en banc*. To suggest otherwise that there is no *en banc* if one of the positions is unfilled would be tantamount to paralyzing the Commissions. This is not a logical intendment of the Constitution.

Mandatory payment of filing fees does not violate the due process clause of the appellant

Petitioners find it unfair that they are being hailed to defend themselves from the disallowances and yet, their right to an appeal for the first instance before the Director is conditioned on the payment of filing fees. The Court finds no violation of petitioners' Constitutional right to due process in this regard. For one, settled is the rule that filing fees, when required, are assessed and become due for each initiatory pleading filed.[27] The payment of filing fees in a judicial and quasi-judicial set up has always been recognized as essential in our jurisdiction, and has always been recognized as an allowable limitation to the right to appeal. Secondly, petitioners were already given a meaningful opportunity to be heard even before their appeals to the Director were returned for non-payment of docket fees.

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[26] *Funa v. COA*, 686 Phil. 571, 587 (2012).

[27] *Chua v. The Executive Judge, Metropolitan Trial Court, Manila*, 718 Phil. 698, 703 (2013).

The Rules of Procedure of the COA, including the assailed Resolution herein, was promulgated in the exercise of the Commission's rule-making power granted by the Constitution. This is no different from the Court's own rule-making power and its promulgation of the Rules of Court in the exercise thereof, which Rules has never been viewed as a devaluation of a litigant's due process rights. The assailed Resolution recognizes its similarity with the Rules of Court, holding in one of its whereas clauses that "the imposition and collection of filing fees is part and parcel of the rules on pleadings and practice even under the Rules of Court to cover partially the quasi-judicial cost of services to be rendered."[28] On this score, *Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees*[29] is instructive:

> The Rules of Court was promulgated in the exercise of the Court's rule-making power. **It is essentially procedural in nature as it does not create, diminish, increase or modify substantive rights. Corollarily, Rule 141 is basically procedural. It does not create or take away a right but simply operates as a means to implement an existing right.** In particular, it functions to regulate the procedure of exercising a right of action and enforcing a cause of action. In particular, it pertains to the procedural requirement of paying the prescribed legal fees in the filing of a pleading or any application that initiates an action or proceeding.
>
> Clearly, therefore, the payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. **In particular, it is part of the rules concerning pleading, practice and procedure in courts.** Indeed, payment of legal (or docket) fees is a jurisdictional requirement. It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject-matter or nature of the action. Appellate docket and other lawful fees are required to be paid within the same period for taking an appeal. Payment of docket fees in full within the prescribed period is mandatory for the perfection

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[28] *Rollo*, p. 22.

[29] 626 Phil. 93 (2010).

of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[30] (Emphasis supplied)

Moreover, it bears emphasis that the disallowances in this case were the subject of separate AOMs. An AOM is an initiatory step in the investigative audit to determine the propriety of disbursements made.[31] In the ordinary course of audit, the Auditor issues an AOM in the proper form, requesting the head of office or his duly authorized representative to submit justification or comment thereon within fifteen (15) days from receipt of the memorandum.[32]

The comment or justification of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion.[33] The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made.[34] Clearly, at this level, the auditee is already given the opportunity to defend himself from the charges of irregular disbursements.

Petitioners were given this very opportunity. After post-audit of the subject transactions, the Resident Auditor issued separate AOMs thereon, indicating his observations and recommendations and requested the management's reply or comments thereto. Unsatisfied with the management's justifications, the Resident Auditor issued the subject NDs.[35] The Commission correctly concluded that petitioners had the opportunity to present their side prior to the disallowance of the subject transactions. Hence, in this regard, there can be no denial of due process, for settled

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

[31] See *Corales v. Republic*, 716 Phil. 432, 449 (2013).

[32] *Id.* at 449-450, citing COA Memorandum Circular No. 2002-053.

[33] *Id.*

[34] *Id.* at 450.

[35] *Rollo*, p. 18.

is the rule that in administrative proceedings, procedural due process only requires that the party be given the opportunity or right to be heard.[36]

Verily, petitioners, as auditees, are in the same plane as that of a defendant in a case being hailed to court by a plaintiff. The defendant is always given his day in court. Should the outcome of the trial or proceeding be unfavorable to the defendant, he has every right to ask for reconsideration or elevate the case on appeal, subject to the payment of the corresponding docket fees. This avenue is likewise open to an auditee. Should he fail to have the AOM reconsidered and an ND is subsequently issued, the auditee is given the right to appeal said ND. The exercise of this right to appeal may be conditioned on the payment of legal fees, but this is hardly iniquitous. The Court has held, time and again, that the right to appeal is not a constitutional, natural or inherent right. It is a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. The law may then validly provide limitations or qualifications thereto.[37]

The computation or assessment of the filing fees under the Resolution is not ambiguous

Petitioners argue that the application and computation of filing fees is not clear in the language of the Resolution. They posed the following questions: (1) does a government official against whom numerous notices of disallowances were issued have to pay for each and every notice of disallowance issued against him?; (2) can he consolidate his arguments for all those notices of disallowances in one appeal, hence, paying only one filing fee?; and (3) can notices of disallowance issued against many employees of one government agency be paid by the agency in lump sum, subject to the ₱10,000.00 ceiling?

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[36] *Reyes v. Commission on Elections*, 712 Phil. 192, 216 (2013).

[37] See *Kimberly Clark (Phils.), Inc. v. Facundo*, G.R. No. 144885, July 12, 2006 (Unsigned Resolution).

The alleged confusion of petitioners is more imagined than real.

The assailed Resolution provides that an appeal from a notice of disallowance may be filed by the appellant subject to the payment of filing fees. A disallowance is defined as the disapproval in audit of a transaction, particularly a disbursement, either in whole or in part.[38] If numerous notices of disallowances were issued against a government official, this only means that there were different transactions involved. These transactions could be of varying nature, could have been made from different allowances or funds, or could have been disbursed on different periods. These transactions could have also been disallowed for various reasons, such as for being irregular, unnecessary, excessive or extravagant.

Thus, a government official may be slapped with different notices of disallowance as an accountable officer under the law. The consolidation of his or her appeals for these disallowances in one single appeal remains an available option, provided that the observance of the reglementary periods for each notice of disallowance would allow it, and more so if he or she has a similar argument or defense in all disallowances.[39] This is a reasonable and viable practice which is akin to a joinder of causes of action in ordinary civil actions. After all, invariably, the ultimate prayer in every disallowance is to be relieved of liability.

This consolidation, notwithstanding, the reasonable interpretation of the provision on filing fees in the Resolution is that these are assessed on the basis of the *aggregate amount* of the disallowed transactions subject of the appeal.[40] Notably,

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[38] 2009 COA REVISED RULES OF PROCEDURE, Rule I, Sec. 4(n).

[39] The Court takes notice of numerous petitions from the decisions of the COA Proper where the subjects of the appeals are several NDs contained in a single appeal by one or more petitioners, *i.e.*, *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459 (2017); *De Jesus v. Commission on Audit*, 466 Phil. 912 (2004); *Dadole v. Commission on Audit*, 441 Phil. 532 (2002).

[40] This appears to be the current practice in COA as well. In COA Decision No. 2016-462 (Petition for Review of Mr. Raymundo G. Padrones, Jr., Acting

this is the procedure in civil actions for the recovery of sum of money or damages,[41] as well as in criminal actions where an information is considered as an initiatory pleading and therefore necessitates one filing fee.[42]

Moreover, the provision in the assailed Resolution stating that "[t]he appellant/petitioner/claimant/complainant in any of

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Executive Assistant V, Provincial Government of Palawan, *et al*., of the Letter dated April 28, 2014 of Regional Director Narcisa T. Marapao, Commission on Audit Regional Office No. IV-B, which was treated as a decision affirming 18 Notices of Disallowance, all dated July 18, 2013, on the various procurements of the province in the total amount of ₱12,075,423.39), 18 NDs covering irregularities in procurement were issued by the Supervising Auditor against the local government officials of the Province of Palawan. In the computation of the filing fees by the COA, through the Regional Director, the aggregate or total amount of the 18 NDs to the tune of ₱12,075,423.39 was used as the base amount. Petitioners paid ₱10,000.00 as filing fees, relying on the schedule of filing fees under the 2009 COA Revised Rules of Procedure. The Regional Director denied the appeal for insufficient filing fees, noting that COA Resolution No. 2013-016 was already in effect and the ceiling imposed on filing fees was increased to ₱20,000.00. The letter of the Regional Director stated:

> Under COA Resolution No. 2013-016 dated August 23, 2013, [the filing fees for the] Appeals from Notice of Disallowance or Charge, Request for [R]elief from Accountability, Condonation and Write-off shall be 1/10 of 1% of the amount involved, provided the total filing fee shall not exceed ₱20,000, thus, the amount of Ten Thousand pesos (₱10,000) you have paid as payment of filing and research fees is insufficient since the amount to be paid is ₱12,075.42 plus ₱120.75 Legal Research Fund (1% of the filing fee) totalling ₱12,196.17. x x x

Despite the reply from the Regional Director, the petitioners therein failed to pay the deficiency in the filing fees. Thus, the COA Proper ruled that the Regional Director did not acquire jurisdiction on the appeal of the petitioners. The 18 NDs, sought to be appealed from already became final and executory as provided under Section 8, Rule IV of the 2009 COA Revised Rules of Procedure and Section 22.1 of the Rules and Regulations on Settlement of Accounts.

[41] See *Fedman Development Corporation v. Agcaoili*, 672 Phil. 20, 28 (2011).

[42] See *Chua v. The Executive Judge, Metropolitan Trial Court, Manila*, *supra* note 27, at 703.

the above cases shall pay a filing fee"[43] should be interpreted to mean that only one filing fee shall be paid for every appeal, regardless of the number of petitioners. Again, this is the more equitable interpretation, considering that filing fees are paid not to enrich the judiciary, or in this case the COA as a quasi-judicial tribunal, but to merely defray its expenses in the handling of cases, and consequently, avoid tremendous losses to the agency and to the government as well.[44] In fact, the filing fee being capped at Ten Thousand Pesos (₱10,000.00) no matter the amount involved in the disallowed transaction, proves that it is reasonably intended to cover costs of legal work required to resolve the case. The provision in the 2009 COA Revised Rules of Procedure on filing fees, as amended by COA Resolution No. 2013-016,[45] likewise supports this interpretation as it now reads:

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[43] *Rollo*, p. 22.

[44] See *Emnace v. Court of Appeals, et al.*, 422 Phil. 10 (2001).

[45] SUBJECT: Amendment of Commission on Audit Resolution No. 2008-005 dated February 15, 2008 entitled "Imposition and collection of filing fees on cases filed before the Commission on Audit in the exercise of its quasi-judicial function."

x x x x x x x x x

WHEREAS, the Commission Proper, in its Regular Meeting dated June 11, 2013, resolved to set a cap on filing fees, and at the same time consider that the cap of [₱10,000.00] is, by current standards, very low, compared to the amount involved and the required legal work to resolve the case;

NOW, THEREFORE, the Commission Proper resolves to adjust the cap imposed on [filing] fees on the following:

Nature	**Filing fees**
Appeals from notices of disallowance or charge, requests for relief from accountability, condonation, and write-off	1/10 of 1% of the amount involved, provided the total filing fee shall not exceed ₱20,000.00
Money claims and approval of sale	1/10 of 1% of the amount involved, provided the total filing fee shall not exceed ₱50,000.00, subject to certain exceptions as may be approved by the Commission Proper

SECTION 5. ***Payment of Filing Fee***. – **Every petition/appeal** filed before an adjudicating body/office of this Commission pertaining to the cases enumerated below shall be imposed a filing fee equivalent to 1/10 of 1% of the amount involved, but not exceeding ₱10,000.00:

a) appeal from audit disallowance/charge
b) appeal from disapproval of request for relief from accountability
c) money claim, except if the claimant is a government agency
d) request for condonation of settled claim or liability except if between government agencies[.] (Emphasis supplied)

Thus, as applied here, petitioners may include the 39 NDs in one appeal and the single payment of a filing fee corresponding to the then prevailing schedule or the appropriate ceiling in the assailed Resolution should suffice to perfect the appeal.[46] In particular, as regards the question of petitioners on whether NDs issued against many employees of one government agency can be paid by the agency in lump sum, subject to the ₱10,000.00 ceiling, the answer is in the affirmative. Parenthetically, on the legal standing of a government agency, the Court in previous cases has recognized that the burden of proving the validity or legality of the grant of allowance or benefits likewise lies with the government agency or entity granting the allowance or benefit, alongside the employee claiming the same.[47] The Court in *Philippine Health Insurance Corp. v. Commission on Audit*[48] explained the legal standing of government agencies in appealing disallowances by the COA in this wise:

In this regard, the Court finds that petitioner PHIC certainly possesses the legal standing to file the instant action. Petitioner comes before the Court invoking its power to fix the compensation of its employees and personnel enunciated under the National Health Insurance Act. Accordingly, when respondent disallowed petitioner's grant of certain allowances in its exercise of said power, it effectively and directly

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[46] See *De Zuzuarregui, Jr. v. Court of Appeals*, 255 Phil. 760 (1989).

[47] *Philippine Health Insurance Corp. v. Commission on Audit*, 801 Phil. 427, 447 (2016), citing *Maritime Industry Authority v. COA*, 745 Phil. 288, 330-331 (2015).

[48] *Id.*

challenged petitioner's authority to grant the same. Thus, petitioner must be granted the opportunity to justify its issuances by presenting the basis on which they were made. As petitioner pointed out, whatever benefit received by the personnel as a consequence of PHIC's exercise of its alleged authority is merely incidental to the main issue, which is the validity of PHIC's grant of allowances and benefits. In fact, in light of numerous disallowances being made by the COA, it is rather typical for a government entity to come before the Court and challenge the COA's decision invalidating such entity's disbursement of funds. The non-participation of the particular employees who actually received the disallowed benefits does not prevent the Court from determining the issue of whether the COA gravely abused its discretion in declaring the entity's issuance as illegal. x x x[49]

All told, the assailed Resolution does not violate a person's right to due process, and correlatively, the Constitutional mandate that free access to the courts and quasi-judicial bodies shall not be denied to any person by reason of poverty. Save for truly indigent litigants, the Constitution does not provide that judicial access must be free at all times or that payment of judicial costs or legal fees as a requirement is an absolute anathema. Thus, provisions in the Rules of Court are in place to address a litigant's indigency and there is no reason why these cannot apply suppletorily in the proceedings before the COA.[50]

WHEREFORE, the Petition is **DISMISSED**. The constitutionality of Commission on Audit Resolution No. 2008-005 dated February 15, 2008 is **UPHELD**. The Commission

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[49] *Id.* at 446-447.

[50] The 1997 COA REVISED RULES OF PROCEDURE, Rule XIV, Sec. 1 provides:

RULE XIV
Miscellaneous Provisions

SECTION 1. *Supplementary Rules*. — In the absence of any applicable provision in these rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.

x x x x x x x x x

on Audit Decision No. 2009-089 dated September 22, 2009 and Decision No. 2010-090 dated October 21, 2010 are **AFFIRMED**.

SO ORDERED.

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

EN BANC

[G.R. No. 199582. July 7, 2020]

JULIE PARCON-SONG, *petitioner, vs.* **LILIA B. PARCON, joined by her husband JOAQUIN A. PARCON, MAYBANK PHILIPPINES, INC. (formerly PNB Republic Bank), and the REGISTER OF DEEDS OF QUEZON CITY,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE COURT'S JURISDICTION IS LIMITED TO ERRORS OF LAW, AS IT IS NOT ITS FUNCTION TO EXAMINE THE EVIDENCE ALL OVER AGAIN; IF THE LOWER COURTS' FINDINGS ARE NOT SHOWN TO BE UNSUPPORTED BY EVIDENCE OR BASED ON A GROSS MISAPPREHENSION OF FACTS, THEIR FACTUAL CONCLUSIONS SHALL BE RESPECTED.— Both the existence of the trust and respondent Maybank's authority to operate in the Philippines as a foreign bank are questions of fact. These are not proper to raise in a Rule 45 petition, which generally only entertains questions of law. This Court's jurisdiction is limited to errors of law. It is not our function to examine the evidence all over again. If the

lower courts' findings are not shown to be unsupported by evidence or based on a gross misapprehension of facts, their factual conclusions shall be respected. Here, both lower courts found that respondent Maybank is a foreign bank authorized by the Monetary Board to operate in the Philippine banking system. The Regional Trial Court further ruled that no trust existed between petitioner and her parents. The Court of Appeals also noted that the title was clean, registered in the name of Lilia Parcon, and had no annotations of liens, encumbrances, or adverse claims. There is no evidence that these findings were unsupported or manifestly erroneous.

2. ID.; EVIDENCE; BURDEN OF PROOF; THE PARTY WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT, AS BARE ALLEGATIONS WARRANT NO MERIT; IT IS INCUMBENT UPON THE PLAINTIFF WHO IS CLAIMING A RIGHT TO PROVE HIS CASE, AND THE DEFENDANT TO PROVE ITS OWN ALLEGATIONS TO BUTTRESS ITS CLAIM THAT IT IS NOT LIABLE.— Petitioner contested [the] findings, yet she did not present any proof to establish her allegations. It is a basic evidentiary rule that "[t]he party who alleges a fact has the burden of proving it." Bare allegations warrant no merit. In *Republic v. Estate of Hans Menzi*: It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable. The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an "avoidance" of the claim. Thus, this Court affirms the lower courts' findings as to the absence of the trust and the authority of respondent Maybank to operate as a foreign bank in the Philippines.

3. CIVIL LAW; MORTGAGE; DOCTRINE OF MORTGAGEE IN GOOD FAITH; A MORTGAGE IS DEEMED VALID IF THE MORTGAGEE RELIED IN GOOD FAITH ON WHAT APPEARS ON THE FACE OF THE CERTIFICATE OF TITLE, EVEN IF THE MORTGAGOR FRAUDULENTLY ACQUIRED THE TITLE TO THE PROPERTY; WHEN AN INNOCENT MORTGAGEE WHO RELIES UPON THE CORRECTNESS OF A CERTIFICATE OF TITLE CONSEQUENTLY ACQUIRES RIGHTS OVER THE MORTGAGED PROPERTY, THE COURTS CANNOT DISREGARD SUCH RIGHTS.— Under the doctrine of mortgagee in good faith, a mortgage is deemed valid if the mortgagee relied in good faith on what appears on the face of the certificate of title. This is so even if the mortgagor fraudulently acquired the title to the property. In *Cabuhat v. Court of Appeals*: However, it is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. . . . Just as an innocent purchaser for value may rely on what appears in the certificate of title, a mortgagee has the right to rely on what appears in the title presented to him, and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the said certificate. Furthermore, it is a well-entrenched legal principle that when an innocent mortgagee who relies upon the correctness of a certificate of title consequently acquires rights over the mortgaged property, the courts cannot disregard such rights.

4. ID.; ID.; ID.; ID.; IF THE CERTIFICATE OF TITLE INDICATES NOTHING THAT WILL RAISE CONCERN, AND THE MORTGAGEE IS UNAWARE OF ANY DEFECT IN THE TITLE OR ANY OTHER PROBLEMATIC CIRCUMSTANCE SURROUNDING THE PROPERTY, THE MORTGAGEE IS NOT REQUIRED TO FURTHER INVESTIGATE; RATIONALE; THE BURDEN OF DISCOVERY OF INVALID TRANSACTIONS RELATING TO THE PROPERTY COVERED BY A TITLE APPEARING REGULAR ON ITS FACE IS SHIFTED FROM THE THIRD PARTY RELYING ON THE TITLE TO THE CO-OWNERS OR THE PREDECESSORS OF THE

TITLE HOLDER, AS THE LATTER ARE MORE INTIMATELY KNOWLEDGEABLE ABOUT THE STATUS OF THE PROPERTY AND ITS HISTORY.— Generally, if the certificate of title indicates nothing that will raise concern, and the mortgagee is unaware of any defect in the title or any other problematic circumstance surrounding the property, the mortgagee is not required to further investigate. The rationale for this doctrine is the public's interest in sustaining the certificate of title's indefeasibility "as evidence of the lawful ownership of the land or of any encumbrance" on it. In *Andres v. Philippine National Bank*: The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.

5. ID.; ID.; ID.; ID.; WHEN THE PURCHASER OR THE MORTGAGEE IS A BANK, A HIGHER STANDARD IS IMPOSED BEFORE IT IS CONSIDERED A MORTGAGEE IN GOOD FAITH, AS IT CANNOT SIMPLY RELY ON THE FACE OF THE CERTIFICATE OF TITLE ALONE, BUT MUST FURTHER INVESTIGATE THE PROPERTY TO ENSURE THE GENUINENESS OF THE TITLE; A BANK IS CONSIDERED A MORTGAGEE IN GOOD FAITH IF IT INSPECTED AND INVESTIGATED THE PROPERTY IN ACCORDANCE WITH THE STANDARDS IMPOSED ON BANKS.— [W]hen the mortgagee is a bank, a higher standard is imposed before it is considered a mortgagee in good faith. Banks cannot simply rely on the title alone, but must further investigate the property to ensure the genuineness of the title. In *Land Bank of the Philippines v. Belle Corporation*: When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more

strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of a bank's operations. It is of judicial notice that the standard practice for banks before approving a loan is to send its representatives to the property offered as collateral to assess its actual condition, verify the genuineness of the title, and investigate who is/are its real owner/s and actual possessors. x x x. Thus, a bank is a mortgagee in good faith if it inspected and investigated the property in accordance with the standards imposed on banks.

6. ID.; ID.; ID.; ID.; A BANK SHOULD NOT NECESSARILY BE MADE LIABLE IF IT DID NOT INVESTIGATE OR INSPECT THE PROPERTY, IF THE CIRCUMSTANCES REVEAL THAT AN INVESTIGATION WOULD STILL NOT YIELD A DISCOVERY OF ANY ANOMALY, OR ANYTHING THAT WOULD AROUSE SUSPICION ON THE MORTGAGED PROPERTY.— [T]his Court rules that a bank should not necessarily be made liable if it did not investigate or inspect the property. If the circumstances reveal that an investigation would still not yield a discovery of any anomaly, or anything that would arouse suspicion, the bank should not be liable. Here, both lower courts consistently held that Transfer Certificate of Title No. 107064 was clean. It was registered in the name of respondent Lilia Parcon and bore no annotations evidencing any trust, lien, or encumbrance on the property. The title was not forged or fake. There is likewise no showing that respondent Maybank was aware of any defect or any other conflicting right on the title when the property was mortgaged to it. There is no factual finding on whether respondent Maybank actually inspected the property. The Court of Appeals

simply ruled that the inspection is not necessary and respondent Maybank's reliance on the clean title was sufficient. Similarly, the Regional Trial Court found that it cannot be prejudiced by rights over the property not duly annotated in the title. Regardless, the circumstances show that had respondent Maybank conducted an investigation, it would still not have discovered any issue on the mortgaged property.

7. ID.; ID.; ID.; ID.; FINDINGS THAT THE REAL ESTATE MORTGAGE IS VALID, AFFIRMED.— Petitioner has the burden to prove that she is in actual possession of the property — a burden she failed to discharge. By her account, petitioner allegedly purchased the property from PACE Realty Investment, Inc. using her own money, but used her mother's name to acquire it. Thus, in 1994, the title was registered in respondent Lilia Parcon's name. Petitioner admitted that she let her parents and siblings occupy the property and gave them financial support. Clearly, the ones in actual possession of the property were the Parcon Spouses and petitioner's siblings. Thus, had respondent Maybank investigated the property, it would still not have found any issue. Petitioner had several chances to substantiate her claims. The Regional Trial Court had initially dismissed the case because of her failure to prosecute. When she moved for reconsideration, the trial court reinstated the case and allowed her to present her evidence. Nonetheless, she was unable to continue her direct testimony and did not conduct a cross-examination because her counsels failed to appear. Thus, the trial court deemed her to have waived her right to formally offer her evidence. Without clear and convincing evidence that petitioner's claims are facts, respondent Maybank remains a mortgagee in good faith. Hence, this Court affirms the lower courts' finding that the mortgage is valid.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; REPUBLIC ACT NO. 4882 OR AN ACT TO AUTHORIZE THE MORTGAGE OF PRIVATE REAL PROPERTY IN FAVOR OF ANY INDIVIDUAL, CORPORATION, OR ASSOCIATION SUBJECT TO CERTAIN CONDITIONS, WHICH AMENDED REPUBLIC ACT NO. 133; A MORTGAGEE WHO IS PROHIBITED FROM ACQUIRING PUBLIC LANDS MAY POSSESS THE PROPERTY FOR FIVE YEARS AFTER DEFAULT AND FOR THE PURPOSE OF

FORECLOSURE, BUT IT MAY NOT BID OR TAKE PART IN THE FORECLOSURE SALE AND ACQUISITION OF THE MORTGAGED PROPERTIES.— Respondent Maybank's acquisition of the property is void. At the time of the foreclosure sale, the governing law provided that foreign banks may not participate in the foreclosure and acquisition of mortgaged properties. As a foreign bank, respondent Maybank is authorized to operate in the Philippine banking system, with the same rights and privileges as Philippine banks. Under Republic Act No. 8791, or the General Banking Law, the entry of foreign banks is governed by Republic Act No. 7721, or the Foreign Bank Liberalization Act. x x x. Prior to its amendment in 2014, the Foreign Bank Liberalization Act was silent on whether foreign banks can foreclose mortgages and acquire mortgaged properties. Generally, for matters not covered by the Foreign Bank Liberalization Act, the provisions of the General Banking Law applied to foreign banks. The General Banking Law allowed banks to foreclose real estate mortgages and to acquire real properties mortgaged to it in good faith. x x x. However, a more specific rule is found in Republic Act No. 4882, which amended Republic Act No. 133. It states: SECTION 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, but the mortgage or his successor in interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession *and shall not bid or take part in any sale of such real property in case of foreclosure* x x x. Thus, a mortgagee who is prohibited from acquiring public lands may possess the property for five years after default and for the purpose of foreclosure. However, it may not bid or take part in any foreclosure sale of the real property.

9. ID.; ID.; ID.; THE APPLICABLE LAW THAT GOVERNS THE FORECLOSURE SALE OF THE REAL PROPERTY TO THE RESPONDENT BANK IS REPUBLIC ACT NO. 4882, NOT REPUBLIC ACT NO. 10641 WHICH ALLOWS

A FOREIGN BANK TO PARTICIPATE IN FORECLOSURE SALES OF REAL PROPERTY MORTGAGED TO IT AND POSSESS IT, SUBJECT TO LIMITATIONS; THE SALE TO RESPONDENT FOREIGN BANK OF THE REAL PROPERTY MORTGAGED TO IT IS INVALID, AS IT CANNOT BID OR TAKE PART IN ANY FORECLOSURE SALE AND ACQUISITION OF THE PROPERTY.— In 2014, Congress enacted Republic Act No. 10641 to amend the Foreign Bank Liberalization Act. The amendment allowed the full entry of foreign banks in the Philippines, though it maintained the State policy to keep the financial system effectively controlled by Filipinos. Notably, it gave authorized foreign banks the same functions, privileges, and limitations as domestic banks of the same category. Likewise, any right, privilege, or incentive granted to foreign banks is extended to Philippine banks. Thus, a new provision on foreclosure proceedings was added: SEC. 9. *Participation in Foreclosure Proceedings*. x x x. Thus, a foreign bank can now participate in foreclosure sales of real property mortgaged to it, and even possess it. There are limitations, namely: (a) the possession must be limited to five years; (b) the property title shall not be transferred to it; and (c) within the five-year period, it must transfer its rights to a qualified Philippine national. In case a foreign bank fails to transfer the property, it will be liable to pay half of 1 % per annum of the foreclosure price until it transfers the property. Clearly, under Republic Act No. 10641, foreign banks may now foreclose and acquire mortgaged properties. However, Republic Act No. 10641, which was enacted in 2014, does not apply in this case. Here, the loans were obtained and the real estate mortgage was executed and annotated on the title in 1995. The default on the loans, the foreclosure of the mortgage, and the property acquisition took place in 2001. The law then in place was Republic Act No. 4882. Consequently, respondent Maybank was still a mortgagee disqualified to acquire lands in the Philippines. It may possess the mortgaged property after default and solely for foreclosure, but it cannot bid or take part in any foreclosure sale. Thus, the sale to respondent Maybank is invalid.

10. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIARY; POWER OF JUDICIAL REVIEW; REQUISITES.— Before this Court may determine the

constitutionality of a government act, the requisites for judicial review must be satisfied. In *In Re: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*: The power of judicial review, like all powers granted by the Constitution, is subject to certain limitations. Petitioner must comply with all the requisites for judicial review before this court may take cognizance of the case. The requisites are: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. The fourth requisite is relevant here.

11. ID.; ID.; ID.; ID.; THE QUESTION OF CONSTITUTIONALITY OF A LAW WILL ONLY BE PASSED UPON BY THE COURT IF IT IS PROPERLY RAISED AND PRESENTED IN THE CASE, AND INDISPENSABLE TO THE RESOLUTION OF THE CASE, THAT IS, THE ISSUE OF CONSTITUTIONALITY MUST BE THE VERY *LIS MOTA* PRESENTED; COURTS AVOID RULING ON CONSTITUTIONAL QUESTIONS AND ARE OBLIGATED TO PRESUME THAT THE ACTS OF CONGRESS ARE VALID, UNLESS THE CONTRARY IS CLEARLY SHOWN.— Courts are obligated to presume that the acts of Congress are valid, unless the contrary is clearly shown. Thus, courts avoid resolving the constitutionality of a law if the case can be ruled on other grounds. The question of constitutionality will only be passed upon if it is indispensable to the resolution of the case, but it cannot be raised collaterally. This Court ruled: Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. . . . The constitutional issue, however, (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. x x x. In *Spouses Mirasol v. Court of Appeals*, this Court explained that the presumption of constitutionality is

anchored on the doctrine of separation of powers. Courts should not assume that legislative and execute acts were done without thoughtful consideration: x x x. As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved. x x x. In this case, the applicable law that governed the sale is not Republic Act No. 10641. The foreclosure took place in 2001, prior to the enactment of Republic Act No. 10641 in 2014. Republic Act No. 10641 is not in question; thus, its constitutionality cannot be addressed.

12. ID.; ID.; ID.; ID.; THE COURT WILL NOT RESOLVE THE CONSTITUTIONALITY OF A LAW WHERE IT IS NOT THE VERY *LIS MOTA* OF THE CASE; EXCEPTIONS; NOT PRESENT; THE POWER OF THE COURTS TO ACT ON ANY GRAVE ABUSE OF DISCRETION BY ANY GOVERNMENT BRANCH OR INSTRUMENTALITY DOES NOT LICENSE THIS COURT TO ISSUE ADVISORY OPINIONS; THE CONSTITUTIONALITY OF SECTION 9 OF REPUBLIC ACT NO. 10641 WILL NOT BE RESOLVED BY THE COURT, AS IT IS NOT THE VERY *LIS MOTA* OF THE CASE AT BAR.— [T]his case was filed for annulment of title, reconveyance of the transfer certificate of title, annulment of mortgage and foreclosure proceedings, and declaration of family home. All the issues may be resolved without determining the constitutionality of Republic Act No. 10641. The judicial review requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is rooted in two constitutional principles: first, the principle of deference; and second, the principle of reasonable caution in striking down an act by a co-equal political branch of government. Article VIII, Section 1 of the Constitution, which specifies that courts may act on any grave abuse of discretion by any government branch or instrumentality, does not license this Court to issue advisory opinions. Apart from

an actual case or controversy, this Court must be satisfied that the reliefs prayed for require the resolution of a constitutional issue. There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it. This case is no exception. We decline to resolve the constitutionality of Section 9 of Republic Act No. 10641 as it is not the very *lis mota* of the case. The relief can be granted simply by examining the applicable statute. Besides, there was no constitutional violation so urgently egregious that it should outweigh our reasonable policy of deference to the two other constitutional branches of government.

HERNANDO, *J., concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; REPUBLIC ACT NO. 133 OR AN ACT TO AUTHORIZE THE MORTGAGE OF PRIVATE REAL PROPERTY IN FAVOR OF ANY INDIVIDUAL, CORPORATION, OR ASSOCIATION SUBJECT TO CERTAIN CONDITIONS, AS AMENDED BY REPUBLIC ACT NO. 4882, APPLIES TO THE CASE AT BAR, NOT REPUBLIC ACT NO. 10641 OR AN ACT ALLOWING THE ENTRY OF FOREIGN BANKS IN THE PHILIPPINES.— Maybank harked upon Republic Act No. 10641 (RA 10641), or *An Act Allowing the Entry of Foreign Banks in the Philippines, Amending for the Purpose Republic Act No. 7721*. RA 10641 allowed foreign banks to foreclose and acquire mortgaged real properties in the Philippines. RA 10641 was enacted in 2014. Established facts, however, show that Maybank acquired the subject real property by bidding and

taking part in its foreclosure sale in 2001. Thus, Maybank's insistence on RA 10641 is fruitless. The prevailing law that must be applied at the time of the sale is Republic Act No. 133, or *An Act to Authorize the Mortgage of Private Real Property in Favor of Any Individual, Corporation, or Association Subject to Certain Conditions*. Its Section 1, as amended by Republic Act No. 4882, provides x x x. "Sec. 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, **but the mortgagee or his successor in interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession and shall not bid or take part in any sale of such real property in case of foreclosure**.

2. ID.; ID.; ID.; ID.; A FOREIGN CORPORATION CANNOT ACQUIRE LANDS LOCATED IN THE PHILIPPINES, AND ANY TRANSFER TO ITS NAME OTHER THAN BY HEREDITARY SUCCESSION OF SUCH LANDS IS VOID.— Section 7, Article XII of the 1987 Constitution declares that private lands are transferrable only to individuals or entities qualified to hold or acquire lands of the public domain: 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. It is long-settled that only Filipinos, whether individuals or corporate entities, may own Philippine lands. As the basic exception to its general rule, Section 7 itself recognizes transfers to foreigners by way of hereditary successions. Maybank, admittedly a foreign corporation 98%-owned by a Malaysian entity, obtained the subject real property in a foreclosure sale. Not being Filipino, it cannot acquire lands located in the Philippines, and any transfer to its name other than by hereditary succession of such lands, including the subject real property, is void.

3. ID.; ID.; ID.; ID.; THE SALE OF A REAL PROPERTY TO A NON-FILIPINO ENTITY WHICH IS DISQUALIFIED

FROM TAKING PART IN A PUBLIC BIDDING, CONTRAVENES PUBLIC POLICY AND THEREFORE VOID *AB INITIO*; AGREEMENTS THAT VIOLATE THE CONSTITUTION AND PUBLIC POLICY ARE INEXISTENT AND VOID FROM THE BEGINNING.— Transactions made in violation of the Constitution, like this one in present consideration, are void. Also, contracts that trample upon public interest are contrary to public policy. Public biddings are imbued with public interest. *Power Sector Assets and Liabilities and Management Corporation v. Pozzolanic Philippines Incorporated* explains: By its very nature, public bidding aims to protect public interest by giving the public the best possible advantages through open competition. Thus, competition must be legitimate, fair and honest. In the field of government contract law, competition requires not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, and the same undertaking, but also that it be **legitimate, fair and honest and not designed to injure or defraud the government**. An essential element of a publicly bidded contract is that "**all bidders must be on equal footing**, not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidded upon. Maybank disregarded the rules of public bidding by taking part therein despite its disqualification. It even emerged as the highest bidder. Necessarily, Maybank gained an undue advantage over all other foreign corporations who may have been interested in the subject property, and even colored the foreclosure proceedings with an anomalous tinge of favoritism. The resultant sale to a non-Filipino entity like Maybank from the said public bidding contravenes public policy and therefore void. Agreements that violate the Constitution and public policy are inexistent and void from the beginning. The Civil Code declares so, *viz*: ART. 1409. The following contracts are inexistent and void from the beginning: (1) **Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy**; x x x Withal, the sale of the subject real property to Maybank is void *ab initio*.

APPEARANCES OF COUNSEL

Jose S. Maronilla for petitioner.

Martinez Vergara Gonzalez & Serrano for Bankers Association of the Philippines.

Santiago and Vidad Law Offices for Maybank Philippines, Inc.

D E C I S I O N

LEONEN, *J.*:

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court Decision[4] dismissing Julie Parcon-Song's (Julie) Complaint for annulment of title, reconveyance of transfer certificate of title, annulment of mortgage and foreclosure proceedings, and declaration of family home.[5]

Julie is the daughter of Spouses Joaquin and Lilia Parcon (the Parcon Spouses).[6] In 1995, the Parcon Spouses obtained two loans from Maybank Philippines, Inc. (Maybank).[7] As security, they executed a real estate mortgage over a parcel of

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[1] *Rollo*, pp. 8-36. Filed under Rule 45 of the Rules of Court.

[2] *Id.* at 37-47. The August 7, 2011 Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias of the Second Division, Court of Appeals, Manila.

[3] *Id.* at 48-49. The November 28, 2011 Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Stephen C. Cruz and Elihu A. Ybañez of the Special Former Second Division, Court of Appeals, Manila.

[4] *Id.* at 76-89. The Decision was penned by Judge Thelma A. Ponferrada of the Regional Trial Court of Quezon City, Branch 104.

[5] *Id.* at 76.

[6] *Id.* at 38.

[7] *Id.* at 38 and 40.

land covered by Transfer Certificate of Title No. 107064, registered in the name of Lilia Parcon.[8] The real estate mortgage was annotated on the title.[9]

In 2001, when the Parcon Spouses defaulted on their loans, Maybank foreclosed the mortgage. In the foreclosure proceedings, Maybank emerged as the highest bidder, and thus, was issued a certificate of sale.[10] The certificate of sale was registered with the Register of Deeds.[11]

On March 4, 2003, Julie filed a Complaint praying that the following be declared void: (1) Transfer Certificate of Title No. 107064; (2) the real estate mortgage dated November 28, 1995 in favor of Maybank; and (3) the foreclosure proceedings. She likewise sought that the property be reconveyed to her as its true and lawful owner. Julie also prayed for a declaration of family home and that Maybank be ordered to pay damages.[12]

Julie asserted that she had purchased the property from PACE Realty Investment, Inc. in August 1983, paying it in full. By way of trust, she used her mother's name to acquire the property.[13] Thus, in 1994, the title was registered in Lilia Parcon's name.[14]

Julie claimed that since then, Lilia Parcon has claimed ownership over the property. She contended that her parents merely ignored her repeated demands to reconvey the property. She also alleged that the property was mortgaged in favor of Maybank without her consent.[15]

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[8] *Id.* at 40.

[9] *Id.* at 86.

[10] *Id.* at 39 and 41.

[11] *Id.* at 41.

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

[13] *Id.* at 38.

[14] *Id.* at 39.

[15] *Id.* at 39.

The Parcon Spouses did not file an answer, and thus, were declared in default.[16]

For its part, Maybank argued in its Answer that it was a mortgagee in good faith and for value. It alleged that it verified the property with the Register of Deeds of Quezon City, and it found no defect or anything suspicious about the genuineness and execution of the title. By way of counterclaim, it also sought damages and attorney's fees.[17]

Initially, the Regional Trial Court dismissed the case after Julie had failed to prosecute. On reconsideration, however, it eventually allowed her to present evidence. Yet, Julie was still unable to continue her direct testimony and conduct cross-examination as her counsels failed to appear. Thus, the trial court deemed her to have waived her right to formally offer her evidence.[18]

In the trial proceedings, Julie moved for the judicial admission that Maybank is a foreign corporation, disqualified under the Constitution to own private lands. The Regional Trial Court took judicial notice of Maybank's Articles of Incorporation and General Information Sheet.[19]

Eventually, the Regional Trial Court, in its July 14, 2008 Decision,[20] dismissed Julie's Complaint. It found that the mortgage was valid and that there was no implied or express trust on the property.[21] It ruled that since the title was not annotated, Maybank cannot be affected by any interest Julie had over the property.[22]

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[16] *Id.*

[17] *Id.* at 40.

[18] *Id.* at 81-83.

[19] *Id.* at 87.

[20] *Id.* at 76.

[21] *Id.* at 86.

[22] *Id.* at 87.

The trial court further found that the foreclosure proceedings were valid, barring Julie from seeking the sale's cancellation.[23] Additionally, it ruled that the evidence showing that Maybank was a Malaysian-owned foreign corporation had no relevance to the validity of the sale.[24]

The Court of Appeals, in its August 17, 2011 Decision,[25] affirmed the Regional Trial Court Decision.

The Court of Appeals found that the title to the property was clean, not forged or fake, with no registered liens and encumbrances, and registered in the mortgagor's name, Lilia Parcon.[26] Thus, it ruled, Maybank could very well rely on the title as a mortgagee in good faith, and did not need to further investigate.[27]

The Court of Appeals also ruled that the extrajudicial sale was valid as the applicable law, Act No. 3135, only required that the mortgage be registered. It explained that while a family home is generally exempt from execution, but if it was mortgaged to secure a debt, then it may be subject to execution, forced sale, or attachment.[28]

Finally, the Court of Appeals found that Maybank, a foreign bank, was still given a license to operate in the Philippines, which satisfied the requirement to protect Philippine equity. It cited Section 8 of Republic Act No. 7721, which accorded foreign banks equal treatment as domestic banks, in ruling that Maybank had the right to acquire the mortgaged property in foreclosure proceedings.[29]

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[23] *Id.* at 88.

[24] *Id.* at 87.

[25] *Id.* at 37-47.

[26] *Id.* at 44.

[27] *Id.* at 45.

[28] *Id.* at 46 citing FAMILY CODE, Art. 155.

[29] *Id.* at 45.

In its November 28, 2011 Resolution,[30] the Court of Appeals denied the Motion for Reconsideration. Thus, Julie filed this Petition.[31]

Petitioner argues that the real estate mortgage is void as she is the property's real owner. She claims that she paid for it with her own money and her parents were only holding the property in trust for her—facts that her parents supposedly did not dispute.[32]

Petitioner also claims that respondent Maybank is not a mortgagee in good faith.[33] She posits that had the bank investigated, it would have discovered that she, not her parents, had been in open and adverse possession of the property. Instead, the bank only relied on the title, which she says is a sign of bad faith.[34]

Petitioner also contends that as a foreign corporation, respondent Maybank is prohibited under Article XII, Section 3 of the 1987 Constitution from owning real property in the Philippines.[35] She further questions the bank's mode of entry as a foreign bank in the Philippine banking system, saying it did not comply with Section 2 of Republic Act No. 7721.[36] As

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

[31] *Id.* at 8-36.

[32] *Id.* at 28.

[33] *Id.* at 29.

[34] *Id.* at 32.

[35] *Id.* at 19 and 22.

[36] *Id.* at 25-26. Republic Act No. 7721 (1994), Sec. 2 provides:

SECTION 2. *Modes of Entry*. — The Monetary Board may authorize foreign banks to operate in the Philippine banking system through any of the following modes of entry: (i) by acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing bank; (ii) by investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority: Provided, That a foreign bank may avail itself of only one (1) mode of entry: Provided, further, That a foreign bank or a

such, the equal treatment accorded to Philippine banks and foreign banks under Section 8 does not apply.[37]

In its Comment,[38] respondent Maybank asserts that it is a mortgagee in good faith as it had inspected the property. Petitioner allegedly failed to prove that it did not do so.[39]

Respondent Maybank also claims that it is a foreign bank authorized to operate in the Philippines under Section 2(i) of Republic Act No. 7721.[40] It further claims that its operations were justified by Section 73 of Republic Act No. 8791.[41] It asserts that it was granted a license by the Monetary Board to operate as a foreign bank, and is thus accorded equal treatment as domestic banks. As such, it can foreclose and acquire mortgaged properties.[42] It notes that its ownership of the mortgaged property is only temporary, as it is required to dispose of its foreclosed asset within five years after its acquisition.[43]

Since this case raised the issue of the constitutionality of the property acquisition, it was referred to the Court *En Banc*.[44] In an August 8, 2017 Resolution, the Court *En Banc* accepted the case and directed the Office of the Solicitor General to comment.[45]

In its Comment,[46] the Office of the Solicitor General posits that the respondent Maybank's foreclosure of the mortgage and acquisition of the property did not violate the Constitution.[47]

Philippine corporation may own up to a sixty percent (60%) of the voting stock of only one (1) domestic bank or new banking subsidiary.

[37] *Id.* at 27.

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

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

[40] *Id.* at 106 and 113.

[41] *Id.* at 106 and 113, Comment.

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

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

[44] *Id.* at 154, Resolution dated August 2, 2017.

[45] *Id.* at 156.

[46] *Id.* at 167-183.

[47] *Id.* at 169, OSG Comment.

It notes that the foreign bank may operate in the Philippines.[48] It adds that the bank had entered the Philippine banking system by purchasing Philippine National Bank-Republic Bank from the Philippine government,[49] which meant it has the same functions, privileges, and limitations as all Philippine banks.[50]

The Office of the Solicitor General adds that Republic Act No. 10641 has allowed foreign banks to bid and take part in foreclosure sales of real property mortgaged to them and to possess it within five years.[51]

The Office of the Solicitor further notes that the constitutional prohibition on alien ownership of lands does not apply in this case, as respondent Maybank did not become the absolute owner of the property.[52] Unlike a domestic bank,[53] a foreign bank does not acquire the property as an absolute owner, but only as a possessor with a "special right and duty to sell"[54] the property to a qualified Philippine national within five years. Even if no redemption is made within a year of registration of the certificate of sale, a foreign bank still cannot encumber, transform, or destroy the property it acquired in a foreclosure sale.[55]

The Office of the Solicitor General maintains that the national patrimony remains preserved, because Republic Act Nos. 4882

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[48] *Id.* at 171.

[49] *Id.* at 171 citing Republic Act No. 8791 (2000), Sec. 73 amending Republic Act No. 7721 (1994), Sec. 2.

[50] *Id.* at 171 citing Republic Act No. 7721 (1994), Sec. 8.

[51] *Id.* at 172. Under Republic Act No. 4882, foreign entities were allegedly prohibited from taking possession of mortgaged property except upon default and only for the sole purpose of foreclosure. *See also* Republic Act No. 10641 (2013), Sec. 9; BSP Circular No. 858, series of 2014; and of the Manual of Regulations for Banks, Subsection X311.4.

[52] *Id.* at 175.

[53] *Id.* at 176.

[54] *Id.*

[55] *Id.*

and 10641 prohibit title transfers to foreign banks and require them to sell the foreclosed property to qualified Philippine nationals.[56]

On June 5, 2018, this Court ordered the Monetary Board of the Bangko Sentral ng Pilipinas (Bangko Sentral) and the Bankers Association of the Philippines (the Bankers Association) to each comment on whether the foreclosure and acquisition of respondent Maybank's properties, a fully-owned foreign corporation, is allowed under the Constitution.[57]

Bangko Sentral maintains that foreign banks are authorized to foreclose mortgages on real property, but are not allowed to acquire or own real properties.[58] It explains that engaging in banking business is distinct from owning or acquiring land in the Philippines. The business of foreign banks in the Philippines is governed by Republic Act No. 7721, as amended by Republic Act No. 10641, while owning or acquiring land is regulated under the Public Land Act and the 1987 Constitution.[59]

Citing the Senate and House's bicameral conference on the bill that soon became the General Banking Law, Bangko Sentral distinguishes the policy on foreign ownership of land from that of banks. It explains that the prohibition on land ownership is stricter because unlike land, the foreign ownership of a bank is still limited by its engaging of business in Philippine money.[60] It likewise asserts that the liberalization of entry of foreign banks is not meant to allow foreign ownership of land.[61]

Bangko Sentral also states that Republic Act No. 7721, as amended by Republic Act No. 10641, is constitutional. It explains

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[56] *Id.*

[57] *Id.* at 184.

[58] *Id.* at 244, BSP Comment.

[59] *Id.* at 238-241.

[60] *Id.* at 238-240.

[61] *Id.* at 240.

that the law, as affirmed in special laws and rules, only allows foreign banks to foreclose real estate mortgages and possess foreclosed land,[62] but not to consolidate title over the properties.[63]

For its part, the Bankers Association maintains that respondent Maybank's foreclosure, bid, certificate of sale, and possession of the property are not void.[64] It contends that foreign banks are not prohibited from participating in foreclosure proceedings and possessing land, as long as they hold the title within the limits allowed under banking laws.[65] In any case, it adds, the matter is addressed if the land is subsequently transferred to a Philippine national.[66]

The Bankers Association also points out that since the foreclosure happened before Republic Act No. 10641 was passed, the original Republic Act No. 7721 applies in this case.[67]

On Republic Act No. 7721, the Bankers Association elaborates that the law provides equal treatment to foreign banks and grants them functions and privileges similar to domestic banks, including the right to extrajudicially foreclose a security under a valid loan agreement.[68]

The Bankers Association points out that the loan business component, a core function of banks, will be rendered ineffective if banks are prevented from enforcing their rights as secured creditors. Likewise, to deny foreclosure and acquisition rights to foreign banks will disincentivize their entry, which is contrary to the policy behind Republic Act No. 7721.[69] It likewise asserts that it will also benefit the economy, particularly small and

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[62] *Id.* at 241.

[63] *Id.* at 241-242 citing Section 3 of Republic Act No. 10574 (1192).

[64] *Id.* at 259, BAP Comment.

[65] *Id.* at 258.

[66] *Id.* at 259.

[67] *Id.* at 252.

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

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

medium enterprises, if more lending and borrowing is encouraged.[70] Furthermore, to disallow foreign banks from doing so may let unscrupulous persons to take advantage of this prohibition by borrowing from foreign banks, defaulting, and defeating enforcement proceedings with impunity.[71]

The Bankers Association also adds that under Section 6 of Republic Act No. 10641, foreign banks may bid and take part in foreclosure sales of land mortgaged to them and to conditionally possess the property.[72] Thus, while land ownership is still limited to Philippine nationals, the law is not unduly restrictive on the operations of foreign banks.[73]

Finally, the Bankers Association contends that the five-year period allowing foreign banks to possess the property is the same period allowed under the General Banking Law for all banks to dispose of foreclosed real properties. It surmises that this general rule is the reason why Republic Act No. 7721 was silent on such power of foreign banks.[74] In any case, it points out that this power has been made explicit in Republic Act No. 10641.[75]

For this Court's resolution are the following issues:

First, whether or not respondents Joaquin and Lilia Parcon are holding the property in trust for petitioner Julie Parcon-Song;

Second, whether or not respondent Maybank Philippines, Inc. is a mortgagee in good faith;

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[70] *Id.* at 256.

[71] *Id.* at 259.

[72] *Id.* at 255-256 citing the Bangko Sentral's "Frequently Asked Questions" on Amendments to Relevant Provisions of the Manual of Regulations for Banks implementing Republic Act No. 10641.

[73] *Id.* at 257.

[74] *Id.* at 258.

[75] *Id.* at 259.

Third, whether or not respondent Maybank Philippines, Inc. is a foreign bank authorized by the Monetary Board to operate in the Philippine banking system; and

Finally, whether or not respondent Maybank Philippines, Inc.'s foreclosure and acquisition of the properties are authorized under the Constitution despite it being a fully-owned foreign corporation.

I

This Court will no longer rule on the first and third issues.

Both the existence of the trust and respondent Maybank's authority to operate in the Philippines as a foreign bank are questions of fact. These are not proper to raise in a Rule 45 petition, which generally only entertains questions of law.[76]

This Court's jurisdiction is limited to errors of law. It is not our function to examine the evidence all over again. If the lower courts' findings are not shown to be unsupported by evidence or based on a gross misapprehension of facts, their factual conclusions shall be respected.[77]

Here, both lower courts found that respondent Maybank is a foreign bank authorized by the Monetary Board to operate in the Philippine banking system.[78] The Regional Trial Court further ruled that no trust existed between petitioner and her parents.[79] The Court of Appeals also noted that the title was clean, registered in the name of Lilia Parcon, and had no annotations of liens, encumbrances, or adverse claims.[80]

There is no evidence that these findings were unsupported or manifestly erroneous. Petitioner contested these findings,

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

[77] *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 256-257 (2007) [Per *J.* Chico-Nazario, Third Division] citing *Philippine Airlines, Inc. v. Court of Appeals*, 341 Phil. 624 (1997) [Per *J.* Regalado, Second Division].

[78] *Rollo*, pp. 45 and 87.

[79] *Id.* at 86.

[80] *Id.* at 44.

yet she did not present any proof to establish her allegations.[81] It is a basic evidentiary rule that "[t]he party who alleges a fact has the burden of proving it."[82] Bare allegations warrant no merit.[83] In *Republic v. Estate of Hans Menzi*:[84]

> It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.
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> The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an "avoidance" of the claim. [85] (Citations omitted)

Thus, this Court affirms the lower courts' findings as to the absence of the trust and the authority of respondent Maybank to operate as a foreign bank in the Philippines.

II

Likewise, the real estate mortgage is valid.

Under the doctrine of mortgagee in good faith, a mortgage is deemed valid if the mortgagee relied in good faith on what appears on the face of the certificate of title. This is so even

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[81] *Id.* at 28.

[82] *Republic v. Estate of Hans Menzi*, 512 Phil. 425, 457 (2005) [Per *J.* Tinga, *En Banc*].

[83] *Id.*

[84] 512 Phil. 425 (2005) [Per *J.* Tinga, *En Banc*].

[85] *Id.* at 456-457.

if the mortgagor fraudulently acquired the title to the property.[86] In *Cabuhat v. Court of Appeals*:[87]

> However, it is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value. . . .
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> x x x x x x x x x
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> Just as an innocent purchaser for value may rely on what appears in the certificate of title, a mortgagee has the right to rely on what appears in the title presented to him, and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the said certificate. Furthermore, it is a well-entrenched legal principle that when an innocent mortgagee who relies upon the correctness of a certificate of title consequently acquires rights over the mortgaged property, the courts cannot disregard such rights.[88] (Citations omitted)

Generally, if the certificate of title indicates nothing that will raise concern, and the mortgagee is unaware of any defect in the title or any other problematic circumstance surrounding the property, the mortgagee is not required to further investigate.[89]

The rationale for this doctrine is the public's interest in sustaining the certificate of title's indefeasibility "as evidence of the lawful ownership of the land or of any encumbrance"[90] on it. In *Andres v. Philippine National Bank*:[91]

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[86] See *Claudio v. Spouses Saraza*, 767 Phil. 857 (2015) [Per J. Mendoza, Second Division].

[87] 418 Phil. 451 (2001) [Per J. Ynares-Santiago, First Division].

[88] *Id.* at 456.

[89] See *Claudio v. Spouses Saraza*, 767 Phil. 857 (2015) [Per J. Mendoza, Second Division].

[90] *Id.* at 867 citing *Cavite Development Bank v. Lim*, 381 Phil. 355 (2000) [Per J. Mendoza, Second Division].

[91] 745 Phil. 459 (2014) [Per J. Leonen, Second Division].

The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.[92] (Citation omitted)

However, when the mortgagee is a bank, a higher standard is imposed before it is considered a mortgagee in good faith. Banks cannot simply rely on the title alone, but must further investigate the property to ensure the genuineness of the title.[93] In *Land Bank of the Philippines v. Belle Corporation*:[94]

When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, simply because the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of a bank's operations. It is of judicial notice that the standard practice for banks before approving a loan is to send its representatives

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[92] *Id.* at 473.

[93] *Land Bank of the Phils. v. Belle Corp.*, 768 Phil. 368 (2015) [Per *J.* Peralta, Third Division].

[94] 768 Phil. 368 (2015) [Per *J.* Peralta, Third Division].

to the property offered as collateral to assess its actual condition, verify the genuineness of the title, and investigate who is/are its real owner/s and actual possessors.[95] (Citations omitted)

Likewise, in *Andres*:

> The general rule allows every person dealing with registered land to rely on the face of the title when determining its absolute owner. . . .
>
> x x x x x x x x x
>
> However, the banking industry belongs to a different category than private individuals. Banks are considered businesses impressed with public interest, requiring "high standards of integrity and performance." Consequently, banks must exercise greater care, prudence, and due diligence in their property dealings. The standard operating practice for banks when acting on a loan application is "to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof."[96] (Citations omitted)

Thus, a bank is a mortgagee in good faith if it inspected and investigated the property in accordance with the standards imposed on banks.

However, this Court rules that a bank should not necessarily be made liable if it did not investigate or inspect the property. If the circumstances reveal that an investigation would still not yield a discovery of any anomaly, or anything that would arouse suspicion, the bank should not be liable.

Here, both lower courts consistently held that Transfer Certificate of Title No. 107064 was clean. It was registered in the name of respondent Lilia Parcon and bore no annotations evidencing any trust, lien, or encumbrance on the property. The title was not forged or fake. There is likewise no showing that respondent Maybank was aware of any defect or any other

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[95] *Id.* at 385-386.

[96] *Andres v. Philippine National Bank*, 745 Phil. 459, 474-475 (2014) [Per *J.* Leonen, Second Division].

conflicting right on the title when the property was mortgaged to it.[97]

There is no factual finding on whether respondent Maybank actually inspected the property. The Court of Appeals simply ruled that the inspection is not necessary and respondent Maybank's reliance on the clean title was sufficient.[98] Similarly, the Regional Trial Court found that it cannot be prejudiced by rights over the property not duly annotated in the title.[99]

Regardless, the circumstances show that had respondent Maybank conducted an investigation, it would still not have discovered any issue on the mortgaged property.

Petitioner has the burden to prove that she is in actual possession of the property—a burden she failed to discharge.

By her account, petitioner allegedly purchased the property from PACE Realty Investment, Inc. using her own money, but used her mother's name to acquire it.[100] Thus, in 1994, the title was registered in respondent Lilia Parcon's name.[101] Petitioner admitted that she let her parents and siblings occupy the property and gave them financial support.[102]

Clearly, the ones in actual possession of the property were the Parcon Spouses and petitioner's siblings.[103] Thus, had respondent Maybank investigated the property, it would still not have found any issue.

Petitioner had had several chances to substantiate her claims. The Regional Trial Court had initially dismissed the case because of her failure to prosecute. When she moved for reconsideration,

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[97] *Rollo*, p. 44.

[98] *Id.*

[99] *Id.* at 87.

[100] *Id.* at 38.

[101] *Id.* at 39.

[102] *Id.* at 76.

[103] *Id.* at 76-77.

the trial court reinstated the case and allowed her to present her evidence. Nonetheless, she was unable to continue her direct testimony and did not conduct a cross-examination because her counsels failed to appear. Thus, the trial court deemed her to have waived her right to formally offer her evidence.

Without clear and convincing evidence that petitioner's claims are facts, respondent Maybank remains a mortgagee in good faith. Hence, this Court affirms the lower courts' finding that the mortgage is valid.

III

Petitioner questions the constitutionality of respondent Maybank's foreclosure and acquisition of the mortgaged property, arguing that it violates the prohibition on alien ownership of real property under Article XII, Section 3 of the 1987 Constitution.[104]

We decline to rule on the constitutionality of the foreclosure. This case may be resolved on the basis of a statute.

III (A)

Respondent Maybank's acquisition of the property is void. At the time of the foreclosure sale, the governing law provided that foreign banks may not participate in the foreclosure and acquisition of mortgaged properties.

As a foreign bank, respondent Maybank is authorized to operate in the Philippine banking system, with the same rights and privileges as Philippine banks.[105] Under Republic Act No. 8791, or the General Banking Law, the entry of foreign banks is governed by Republic Act No. 7721, or the Foreign Bank Liberalization Act.[106]

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[104] *Id.* at 19 and 22.

[105] Republic Act No. 7721 (1994), Secs. 2 and 8, as amended by Republic Act No. 10641 (2013).

[106] Republic Act No. 8791 (2000), Sec. 72.

Enacted in 1994,[107] the underlying policy of the Foreign Bank Liberalization Act is to develop a more "stable, competitive, efficient, and dynamic banking and financial system"[108] by encouraging greater foreign participation. It allowed foreign banks to operate in the Philippine banking system through any of the following modes of entry:

> (i) by acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing bank; (ii) by investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority[.][109]

Under this provision, a foreign bank may own up to 60% of the voting stock of only one domestic bank or new banking subsidiary.[110]

Nonetheless, the law maintained the State policy to keep the financial system "effectively controlled by Filipinos."[111] It mandated the Monetary Board to always ensure that "the control of seventy percent (70%) of the resources or assets of the entire banking system is held by domestic banks which are at least majority-owned by Filipinos[.]"[112]

Prior to its amendment in 2014, the Foreign Bank Liberalization Act was silent on whether foreign banks can foreclose mortgages and acquire mortgaged properties.

Generally, for matters not covered by the Foreign Bank Liberalization Act, the provisions of the General Banking Law applied to foreign banks.[113] The General Banking Law allowed

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[107] An Act Liberalizing the Entry of Scope of Operations of Foreign Banks in the Philippines and For Other Purposes.

[108] Republic Act No. 7721 (1994), Sec. 1.

[109] Republic Act No. 7721 (1994), Sec. 2.

[110] Republic Act No. 7721 (1994), Sec. 2.

[111] Republic Act No. 7721 (1994), Sec. 1.

[112] Republic Act No. 7721 (1994), Sec. 3.

[113] Republic Act No. 8791 (2000), Sec. 77 provides:

banks to foreclose real estate mortgages and to acquire real properties mortgaged to it in good faith. Its Section 52 provides:

SECTION 52. *Acquisition of Real Estate by Way of Satisfaction of Claims*. — Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

52.1. Such as shall be mortgaged to it in good faith by way of security for debts;

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Any real property acquired or held under the circumstances enumerated in the above paragraph *shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: Provided, however, That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section.* (25a) (Emphasis supplied)

However, a more specific rule is found in Republic Act No. 4882, which amended Republic Act No. 133. It states:

SECTION 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, but the mortgage or his successor in interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession *and shall not bid or take part in any sale of such real property in case of foreclosure: Provided*, That said mortgagee or successor in interest may take

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SECTION 77. *Laws Applicable*. — In all matters not specifically covered by special provisions applicable only to a foreign bank or its branches and other offices in the Philippines, any foreign bank licensed to do business in the Philippines shall be bound by the provisions of this Act, all other laws, rules and regulations applicable to banks organized under the laws of the Philippines of the same class, except those that provide for the creation, formation, organization or dissolution of corporations or for the fixing of the relations, liabilities, responsibilities, or duties of stockholders, members, directors or officers of corporations to each other or to the corporation.

possession of said property after default in accordance with the prescribed judicial procedures for foreclosure and receivership and in no case exceeding five years from actual possession.[114] (Emphasis supplied)

Thus, a mortgagee who is prohibited from acquiring public lands may possess the property for five years after default and for the purpose of foreclosure. However, it may not bid or take part in any foreclosure sale of the real property.

In 2014, Congress enacted Republic Act No. 10641 to amend the Foreign Bank Liberalization Act. The amendment allowed the full entry of foreign banks in the Philippines,[115] though it maintained the State policy to keep the financial system effectively controlled by Filipinos.[116] Notably, it gave authorized foreign banks the same functions, privileges, and limitations as domestic banks of the same category. Likewise, any right, privilege, or incentive granted to foreign banks is extended to Philippine banks.[117] Thus, a new provision on foreclosure proceedings was added:

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[114] Republic Act No. 4882 (1967), Sec. 1, amending Republic Act No. 133 (1947).

[115] Section 1 of Republic Act No. 10641 allowed foreign banks to enter the banking system: "(i) by acquiring, purchasing or owning up to one hundred percent (100%) of the voting stock of an existing bank; (ii) by investing in up to one hundred percent (100%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or (iii) by establishing branches with full banking authority."

[116] Sections 2 and 3 of Republic Act No. 10641 provide that the financial system will still be effectively controlled by Filipinos by: (i) refining the guidelines before a foreign bank may be allowed to operate; and (ii) mandating that the Monetary Board ensure at all times that the control of 60% of the resources or assets of the entire banking system is held by domestic banks which are at least majority-owned by Filipinos.

[117] Republic Act No. 10641 (2014), Sec. 5 provides:

SECTION 8. *Equal Treatment*. — Foreign banks authorized to operate under Section 2 of this Act, shall perform the same functions, enjoy the same privileges, and be subject to the same limitations imposed upon a Philippine bank of the same category. . . .

SEC. 9. *Participation in Foreclosure Proceedings*. — Foreign banks which are authorized to do banking business in the Philippines through any of the modes of entry under Section 2 hereof shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession: *Provided*, That in no event shall title to the property be transferred to such foreign bank. In case said bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should the bank fail to transfer such property within the five (5)-year period, it shall be penalized one half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national.[118]

Thus, a foreign bank can now participate in foreclosure sales of real property mortgaged to it, and even possess it. There are limitations, namely: (a) the possession must be limited to five years; (b) the property title shall not be transferred to it; and (c) within the five-year period, it must transfer its rights to a qualified Philippine national. In case a foreign bank fails to transfer the property, it will be liable to pay half of 1% per annum of the foreclosure price until it transfers the property.

Clearly, under Republic Act No. 10641, foreign banks may now foreclose and acquire mortgaged properties.

However, Republic Act No. 10641, which was enacted in 2014, does not apply in this case. Here, the loans were obtained and the real estate mortgage was executed and annotated on the title in 1995.[119] The default on the loans, the foreclosure of the mortgage, and the property acquisition took place in 2001.[120]

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Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates under this Act, shall be equally enjoyed by and extended under the same conditions to Philippine banks.

[118] Republic Act No. 10641 (2014), Sec. 6.

[119] *Rollo*, p. 40.

[120] *Id.* at 39 and 41.

The law then in place was Republic Act No. 4882. Consequently, respondent Maybank was still a mortgagee disqualified to acquire lands in the Philippines. It may possess the mortgaged property after default and solely for foreclosure, but it cannot bid or take part in any foreclosure sale.

Thus, the sale to respondent Maybank is invalid.

III (B)

Evidently, this case could be resolved without tackling whether a foreign bank's participation in a foreclosure sale of real property is constitutionally allowed. This Court shall follow the dictates of the constitutional policy of avoidance.

Before this Court may determine the constitutionality of a government act, the requisites for judicial review must be satisfied. In *In Re: Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement*:[121]

> The power of judicial review, like all powers granted by the Constitution, is subject to certain limitations. Petitioner must comply with all the requisites for judicial review before this court may take cognizance of the case. The requisites are:
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> (1) there must be an actual case or controversy calling for the exercise of judicial power;
>
> (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
>
> (3) the question of constitutionality must be raised at the earliest opportunity; and
>
> (4) the issue of constitutionality must be the very *lis mota* of the case.[122] (Citation omitted)

The fourth requisite is relevant here. Courts are obligated to presume that the acts of Congress are valid, unless the contrary

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[121] 751 Phil. 30 (2015) [Per J. Leonen, *En Banc*].

[122] *Id.* at 36.

is clearly shown. Thus, courts avoid resolving the constitutionality of a law if the case can be ruled on other grounds.[123] The question of constitutionality will only be passed upon if it is indispensable to the resolution of the case,[124] but it cannot be raised collaterally.[125] This Court ruled:

> Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. . . . The constitutional issue, however, (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.[126] (Citation omitted)

These principles were further discussed in *Ty v. Trampe*:[127]

> Having already definitively disposed of the case through the resolution of the foregoing two issues, we find no more need to pass upon the third. It is axiomatic that the constitutionality of a law, regulation, ordinance or act will not be resolved by courts if the controversy can be, as in this case it has been, settled on other grounds. In the recent case of *Macasiano vs. National Housing Authority*, this Court declared:
>
> > "It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota*

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[123] *Planters Products, Inc. v. Fertiphil Corp.*, 572 Phil. 270 [Per J. Reyes, R.T., Third Division] citing *Lim v. Pacquing*, 310 Phil. 722 (1995) [Per J. Padilla, *En Banc*].

[124] *Tarrosa v. Gabriel C. Singson*, 302 Phil. 588 (1994) [Per J. Quiason, *En Banc*] citing *Fernandez v. Torres*, 289 Phil. 972 (1992) [Per J. Feliciano, *En Banc*].

[125] *Laude v. Ginez-Jabalde*, 773 Phil. 490 (2015) [Per J. Leonen, *En Banc*].

[126] *Planters Products, Inc. v. Fertiphil Corporation*, 572 Phil. 270, 291 (2008) [Per J. R. T. Reyes, Third Division].

[127] 321 Phil. 81 (1995) [Per J. Panganiban, *En Banc*].

presented. To reiterate, the essential requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) *the resolution of the constitutional question must be necessary to the decision of the case*." (Italics supplied)

The aforequoted decision in *Macasiano* merely reiterated the ruling in *Laurel vs. Garcia*, where this Court held:

"The Court does not ordinarily pass upon constitutional questions unless these questions are properly raised in appropriate cases and their resolution is necessary for the determination of the case[.] *The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other found such as the application of a statute or general law*[.]"[128] (Emphasis in the original, citations omitted)

In *Spouses Mirasol v. Court of Appeals*,[129] this Court explained that the presumption of constitutionality is anchored on the doctrine of separation of powers. Courts should not assume that legislative and executive acts were done without thoughtful consideration:

As regards the *second issue*, petitioners contend that P.D. No. 579 and its implementing issuances are void for violating the due process clause and the prohibition against the taking of private property without just compensation. Petitioners now ask this Court to exercise its power of judicial review.

Jurisprudence has laid down the following requisites for the exercise of this power: First, there must be before the Court an actual case calling for the exercise of judicial review. Second, the question before the Court must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity, and lastly, the issue of constitutionality must be the very *lis mota* of the case.

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[128] *Id.* at 103.

[129] 403 Phil. 760 (2001) [Per *J.* Quisumbing, Second Division].

As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.

The present case was instituted primarily for accounting and specific performance. The Court of Appeals correctly ruled that PNB's obligation to render an accounting is an issue, which can be determined, without having to rule on the constitutionality of P.D. No. 579. In fact there is nothing in P.D. No. 579, which is applicable to PNB's intransigence in refusing to give an accounting. The governing law should be the law on agency, it being undisputed that PNB acted as petitioners' agent. In other words, the requisite that the constitutionality of the law in question be the very *lis mota* of the case is absent. Thus we cannot rule on the constitutionality of P.D. No. 579.[130] (Citations omitted)

In this case, the applicable law that governed the sale is not Republic Act No. 10641. The foreclosure took place in 2001, prior to the enactment of Republic Act No. 10641 in 2014. Republic Act No. 10641 is not in question; thus, its constitutionality cannot be addressed.

Moreover, this case was filed for annulment of title, reconveyance of the transfer certificate of title, annulment of mortgage and foreclosure proceedings, and declaration of family home. All the issues may be resolved without determining the constitutionality of Republic Act No. 10641.

The judicial review requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is rooted in two constitutional principles: first, the principle of deference; and second, the principle of reasonable caution in striking down an act by a co-equal political branch of government.

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[130] *Id.* at 773-774.

Article VIII, Section 1 of the Constitution, which specifies that courts may act on any grave abuse of discretion by any government branch or instrumentality, does not license this Court to issue advisory opinions. Apart from an actual case or controversy, this Court must be satisfied that the reliefs prayed for require the resolution of a constitutional issue.

There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it.

This case is no exception. We decline to resolve the constitutionality of Section 9 of Republic Act No. 10641 as it is not the very *lis mota* of the case. The relief can be granted simply by examining the applicable statute. Besides, there was no constitutional violation so urgently egregious that it should outweigh our reasonable policy of deference to the two other constitutional branches of government.

WHEREFORE, this Court **PARTIALLY GRANTS** the Petition. The August 17, 2011 Decision and November 28, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 93681 is **MODIFIED**. Transfer Certificate of Title No. 107064 in the name of respondent Lilia Parcon and the real estate mortgage dated November 28, 1995 in favor of respondent Maybank Philippines, Inc. are deemed **VALID**. Petitioner Julie Parcon-Song's prayer to transfer the property to her as its true and lawful owner is **DENIED**. However, the foreclosure sale of the property in favor of respondent Maybank Philippines, Inc. is declared **VOID**, without prejudice to another foreclosure sale under Republic Act No. 10641 if warranted.

SO ORDERED.

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

Hernando, J., see concurring opinion.

Gesmundo, J., on official leave.

CONCURRING OPINION

HERNANDO, *J.:*

I fully concur in the disquisitions of the *ponencia* of Our esteemed colleague, Mr. Justice Marvic Mario Victor F. Leonen. I hasten to add, however, a brief discussion as to why the sale of the subject real property to Maybank is void *ab initio*.

Maybank harked upon Republic Act No. 10641 (RA 10641), or *An Act Allowing the Entry of Foreign Banks in the Philippines, Amending for the Purpose Republic Act No. 7721*. RA 10641 allowed foreign banks to foreclose and acquire mortgaged real properties in the Philippines. Section 6 thereof states:

Section 6. A new provision in Section 9 is hereby inserted in the same Act, in lieu of the original provisions of Section 9 repealed by Section 11 of Republic Act No. 10000. Section 9 shall now read as follows:

"SEC. 9. *Participation in Foreclosure Proceedings.* — **Foreign banks which are authorized to do banking business in the Philippines** through any of the modes of entry under Section 2 hereof **shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession: *Provided*, That in no event shall title to the property be transferred to such foreign bank**. In case said bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should the bank fail to transfer such property within the five (5)-year period, it shall be penalized one half (1/2) of one percent (1%) per annum of

> the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national." (Emphasis supplied.)

RA 10641 was enacted in 2014. Established facts, however, show that Maybank acquired the subject real property by bidding and taking part in its foreclosure sale in 2001. Thus, Maybank's insistence on RA 10641 is fruitless. The prevailing law that must be applied at the time of the sale is Republic Act No. 133, or *An Act to Authorize the Mortgage of Private Real Property in Favor of Any Individual, Corporation, or Association Subject to Certain Conditions*. Its Section 1, as amended by Republic Act No. 4882,[1] provides:

Section 1. Section one Republic Act Numbered One hundred thirty-three as heretofore amended by Republic Act Numbered Forty-three hundred eighty-one, is hereby further amended to read as follows:

> "Sec. 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, **but the mortgagee or his successor in interest, <u>if disqualified to acquire or hold lands of the public domain in the Philippines</u>, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession and shall not bid or take part in any sale of such real property in case of foreclosure**: Provided, That said mortgagee or successor in interest may take possession of said property after default in accordance with the prescribed judicial procedures for foreclosure and receivership and in no case exceeding five years from actual possession." (Emphasis and underscoring supplied.)

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[1] An Act to Amend Section One of Republic Act Numbered One Hundred Thirty-Three, Entitled "An Act to Authorize the Mortgage of Private Real Property in Favor of Any Individual, Corporation, or Association Subject to Certain Conditions," as Amended by Republic Act Numbered Forty-Three Hundred Eighty-One; approved June 17, 1967 and published October 30, 1967.

Section 7, Article XII of the 1987 Constitution declares that private lands are transferrable only to individuals or entities qualified to hold or acquire lands of the public domain:

> 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.

It is long-settled that only Filipinos, whether individuals or corporate entities, may own Philippine lands.[2] As the basic exception to its general rule, Section 7 itself recognizes transfers to foreigners by way of hereditary successions.

Maybank, admittedly a foreign corporation 98%-owned by a Malaysian entity, obtained the subject real property in a foreclosure sale. Not being Filipino, it cannot acquire lands located in the Philippines, and any transfer to its name other than by hereditary succession of such lands, including the subject real property, is void.

Transactions made in violation of the Constitution, like this one in present consideration, are void.

Also, contracts that trample upon public interest are contrary to public policy.[3] Public biddings are imbued with public interest. *Power Sector Assets and Liabilities and Management Corporation v. Pozzolanic Philippines Incorporated*[4] explains:

> By its very nature, public bidding aims to protect public interest by giving the public the best possible advantages through open competition. Thus, competition must be legitimate, fair and honest. In the field of government contract law, competition requires not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, and the same undertaking, but

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[2] Per *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Borromeo v. Descallar*, 599 Phil. 332 (2009); *Frenzel v. Katito*, 453 Phil. 885 (2003); and *Halili v. Court of Appeals*, 350 Phil. 906 (1998).

[3] Per *Power Sector Assets and Liabilities and Management Corporation v. Pozzolanic Philippines Incorporated*, 671 Phil. 731; citing *Ongsiako v. Gamboa*, 86 Phil. 50 (1950).

[4] *Id.*

also that it be **legitimate, fair and honest and not designed to injure or defraud the government**. An essential element of a publicly bidded contract is that "**all bidders must be on equal footing**, not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidded upon.[5] (Emphasis supplied and citations omitted.)

Maybank disregarded the rules of public bidding by taking part therein despite its disqualification. It even emerged as the highest bidder. Necessarily, Maybank gained an undue advantage over all other foreign corporations who may have been interested in the subject property, and even colored the foreclosure proceedings with an anomalous tinge of favoritism. The resultant sale to a non-Filipino entity like Maybank from the said public bidding contravenes public policy and therefore void.

Agreements that violate the Constitution and public policy are inexistent and void from the beginning. The Civil Code declares so, *viz.*:

> ART. 1409. The following contracts are inexistent and void from the beginning:
>
> (1) **Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy**;
>
> x x x x x x x x x
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived. (Emphasis supplied.)

Withal, the sale of the subject real property to Maybank is void *ab initio*.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Petition in part, in consonance further with the reasons and dispositions of the *ponencia*.

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[5] *Id.* at 753-754.

FIRST DIVISION

[G.R. No. 221874. July 7, 2020]

AGRIFINA DULTRA *VDA. DE* CAÑADA, *petitioner, vs.* **CRESENCIA BACLOT, substituted by SANCHITO BACLOT, ROBERTO CAÑADA, ALFREDA PORTUGUEZ, RENATO CAÑADA, RONALDO CAÑADA, RONEL CAÑADA and RIZALINO CAÑADA,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE OF THE PHILIPPINES; CO-OWNERSHIP; WHEN A MAN AND A WOMAN, WHO ARE NOT INCAPACITATED TO MARRY EACH OTHER, LIVE TOGETHER AS HUSBAND WIFE, WITHOUT MARRIAGE, OR THEIR MARRIAGE IS VOID FROM THE BEGINNING, PROPERTIES ACQUIRED BY EITHER OR BOTH OF THEM DURING THEIR COHABITATION SHALL BE GOVERNED BY THE RULES ON CO-OWNERSHIP; ARTICLE 144 OF THE CIVIL CODE DOES NOT APPLY WHEN THE COHABITATION AMOUNTS TO ADULTERY OR CONCUBINAGE.— [W]hen Sancho and Cresencia cohabited in 1952, it is the Civil Code of the Philippines which was in effect. Generally, what is applicable is Article 144 of the same Code which states that: Art. 144 When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership. However, as pronounced in *Tumlos v. Spouses Fernandez*, Article 144 of said law applies only to a relationship between a man and a woman who are not incapacitated to marry each other, or to one in which the marriage of the parties is void from the beginning. In other words, the provision does not apply when the cohabitation amounts to adultery or concubinage. In this case, Sancho and Cresencia entered into a common-law marriage while the former's marriage with petitioner was valid and subsisting. Clearly, Sancho was incapacitated to marry.

2. ID.; THE FAMILY CODE; CO-OWNERSHIP; IN CASE OF COHABITATION WHERE ONE OF THE PARTIES IS INCAPACITATED TO MARRY, THE OWNERSHIP OF THE PROPERTIES ACQUIRED BY BOTH OF THE PARTIES THROUGH THEIR ACTUAL JOINT CONTRIBUTION SHALL BE OWNED BY THEM IN COMMON IN PROPORTION TO THEIR RESPECTIVE CONTRIBUTIONS; NO CO-OWNERSHIP AND NO PRESUMPTION OF EQUAL SHARES ABSENT PROOF OF ACTUAL CONTRIBUTION OF THE PARTY.— As Article 144 of the Civil Code is inapplicable, the cohabitation between Sancho and Cresencia is governed by Article 148 of the Family Code, which has "filled the hiatus in Article 144 of the Civil Code." The retroactive application of Article 148 of the Family Code is sanctioned by law, provided that vested rights remained unimpaired. [T]he ownership of the properties *jointly* acquired by the parties who are cohabiting under the circumstances provided is relative to their respective contributions, requiring actual proof. In the absence of proof of their quantifiable actual contribution, their contributions are deemed equal. However, if proof of *actual contribution per se* was not shown, co-ownership will not arise. To expound: Under Article 148, only the properties acquired by both of the parties through their *actual joint contribution of money, property or industry* shall be owned by them in common in proportion to their respective contributions. It must be stressed that the actual contribution is required by this provision, in contrast to Article 147 which states that efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. *If the actual contribution of the party is not proved, there will be no co-ownership* and no presumption of equal shares.

3. ID.; ID.; ID.; IN CASE OF COHABITATION WHERE ONE OF THE PARTIES IS VALIDLY MARRIED TO ANOTHER, THE PROPERTY REGISTERED UNDER THE NAME OF ONE OF THE PARTIES ALONE SHALL BE DECLARED HER EXCLUSIVE PROPERTY, WHERE THERE IS NO PROOF WHICH WOULD DEMONSTRATE THAT THE OTHER PARTY CONTRIBUTED IN THE PURCHASE THEREOF; WHILE IT IS TRUE THAT A

CERTIFICATE OF TITLE IS NOT A CONCLUSIVE PROOF OF OWNERSHIP AS ITS ISSUANCE DOES NOT FORECLOSE THE POSSIBILITY THAT SUCH PROPERTY MAY BE CO-OWNED BY THE PERSONS NOT NAMED THEREIN, THE CLAIMANT MUST NONETHELESS PROVE HIS/HER TITLE IN THE CONCEPT OF AN OWNER.— In this case, as aptly observed by the CA, the subject properties were registered in the name of Cresencia alone, except for the property in the name of Sanchito, who is the son of Cresencia and Sancho. While it is true that a certificate of title is not a conclusive proof of ownership as its issuance does not foreclose the possibility that such property may be co-owned by persons not named therein, the claimant must nonetheless prove his/her title in the concept of an owner. As it is, respondents failed to put forth evidence that Sancho is a co-owner. That Cresencia is a mere dressmaker who cannot afford the subject properties is a scorch to her industry and a condescending presumption. x x x. Here, the subject properties were under the name of Cresencia alone. Failure to show that Sancho made actual contributions in the purchase of the same, the Court is bound to declare that Cresencia is the exclusive owner of the subject properties. In obvious terms, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Thus, contrary to the assertions of petitioner, she has the burden of proving their claim over the subject properties, registered in the name of Cresencia. In the absence of evidence which would demonstrate that Sancho had contributed in the acquisition of the properties registered in the name of Cresencia, the Court cannot declare petitioner and her children as entitled thereto.

APPEARANCES OF COUNSEL

Lucagbo Rojas Abad Law Offices for petitioner.
Benjamin G. Guimong for respondents.

RESOLUTION

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

Before this Court is a Petition for Review on *Certiorari*,[1] dated January 11, 2016 assailing the Decision[2] dated June 17, 2015 and the Resolution[3] dated October 5, 2015 of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. CV No. 03018-MIN which dismissed the complaint for recovery of ownership and possession of properties, accounting, and damages filed by Agrifina Cañada (petitioner) against Cresencia Baclot (Cresencia).

The Relevant Antecedents

Spouses Sancho and Agrifina Cañada (Spouses Cañada) were legally married on September 4, 1937 in Cagayan de Oro City. Their union begot six children, namely: Elsa, Norma, Estrella, Yolanda, Rogelio, and Anacleta.[4]

However, 15 years into the marriage, the Spouses Cañada parted ways. Sancho left the conjugal abode in 1952.[5]

Not long thereafter, Sancho entered into a common-law relationship with Cresencia with whom he begot seven children, namely: Sanchito, Roberto, Alfreda, Renato, Ronaldo, Ronel, and Rizalino, all surnamed Cañada.[6]

The feud among Cresencia and petitioner aggressively materialized when Sancho died intestate on February 10, 1973.[7]

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[1] *Rollo*, pp. 23-37.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting (now a Member of the Court) and Pablito A. Perez, concurring; *id.* at 65-84.

[3] *Id.* at 94-95.

[4] *Id.* at 66.

[5] *Id.*

[6] *Id.*

[7] *Id.*

As appointed Administrator of the intestate estate of Sancho, petitioner filed a complaint for recovery of ownership and possession of properties, accounting, and damages with application for injunction against Crescencia on May 16, 1994.[8]

In her Complaint,[9] petitioner sought to recover six parcels of land (subject properties), which were alleged to be owned by Sancho:

1. Commercial land acquired by Sancho Cañada from Maria Gurro in 1957, which was covered by Transfer Certificate of Title (TCT) No. T-2190 in the name of Cresencia Baclot;
2. Cocoland with all the improvements thereon, which is located in Cabinti-an, Magsaysay, Misamis Oriental and covered by Tax Declaration No. 17678;
3. Cocoland, together with improvements thereon, located in Cabinti-an, Magsaysay, Misamis Oriental and covered by Tax Declaration No. 17677;
4. Cocoland, together with improvements thereon, located in Kitobao, Magsaysay, Misamis Oriental and covered by Tax Declaration No. 17676;
5. Cocoland, together with improvements thereon, located in Mingcawayan, Magsaysay, Misamis Oriental and covered by Tax Declaration N. 17675; and
6. Agricultural land, together with improvements thereon, located in Malang Camay, Magsaysay, Misamis Oriental.[10]

Petitioner later filed an Amended Complaint[11] to include her children and a second Amended Complaint to recover additional five properties (subject properties), to wit:

1. Agricultural land located in Mahayahay, Talisay, Gingoog City covered by Tax Declaration No. 14881 in the name of Crescencia Baclot;

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[8] *Id.*

[9] *Id.* at 38-41.

[10] *Id.* at 39.

[11] *Id.* at 42-43.

2. Agricultural land located in Barangay 17, National Highway, Gingoong City and covered by Tax Declaration No. 14282;

3. Lot No. 11, Cad. 295, located in Talisay, Gingoog City and declared in the name of Crescencia Baclot;

4. Lot No. 4, Cad. 295, located in Talisay, Gingoog City and declared in the name of Crescenia Baclot; and

5. Lot No. 10, Cad. 295, located in Talisay, Gingoog City and declared in the name of Crescencia Baclot.[12]

were likewise filed.

Cresencia filed an Answer with Special/Affirmative Defenses and Counterclaim,[13] essentially denying that the subject properties were owned by Sancho as she bought them through diligence, industry, and effort.

On July 27, 2004, Cresencia died. She was substituted by her heirs, Roberto, Sanchito, Alfreda, Renato, Ronel, Ronaldo, and Rizalino Cañada (respondents) as defendants.[14]

Seventeen (17) years and nine months after, the Regional Trial Court (RTC) of Gingoong City, Misamis Oriental, Branch 27 rendered a Decision[15] dated March 13, 2012, ruling in favor of petitioner.

Banking on mere testimony of Estrella Cañada Saguit, daughter of the Spouses Cañada, the RTC held that the subject properties rightfully belonged to the intestate estate of Sancho as there was insufficient evidence showing that Cresencia had the capacity to acquire the same. Sweepingly, the RTC ordered the delivery of the subject properties to the lawful heirs of Sancho, referring to petitioner and his children with the latter.

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[12] *Id.* at 51.

[13] *Id.* at 46-48.

[14] *Id.* at 68.

[15] Penned by Judge Rustico D. Paderanga; *id.* at 50-59.

The decretal portion reads:

WHEREFORE, all premises considered and upon sheer preponderance of evidence, the court enters judgment for the plaintiffs as against defendants ordering and enjoining defendants to return, deliver and restore possession to the plaintiffs the following properties, to wit:

1. Commercial land acquired by Sancho Cañada Maria Gurro in 1957, all in the name of Cresencia Baclot located at Poblacion, Gingoog City, with all improvements thereon having an area of 684 sq.m. and presently covered by TCT No. T-2190;
2. Cocoland with all the improvements thereon located at Cabanti-an, Magsaysay, Misamis Oriental covered by Tax Declaration No. 17678s. 1974;
3. Cocoland together with all the improvements thereon situated at Cabanti-an, Magsaysay, Misamis Oriental with an area of 3.0000 hectares and declared under Tax Declaration No. 17677s. 1974;
4. Cocoland with all the improvements thereon located at Kitobao, Magsaysay, Misamis Oriental with an area of 11.2990 hectares and declared under Tax Declaration No. 17676 s. 1974;
5. Coconut land together with all the improvements thereon consisting of 3.8700 hectares located at Mingcawayan, Magsaysay, Misamis Oriental and covered by Tax Declaration No. 17675 s. 1974;
6. Unassessed agricultural land together with all the improvements thereon, with an area of 30 hectares located a[t] Malong, Gamay, Magsaysay, Misamis Oriental;
7. Agricultural land located in Mahayahay, Talisay, Gingoog City covered by Tax Declaration No. 14881 in the name of Cresencia Baclot;
8. Agricultural land located in Barangay 17, National Highway, Gingoog City covered by Tax Declaration No. 14282 in the name of Sanchito Canada;
9. Lot No. 11, Cad. 295, a four-hectare property located in Talisay, Gingoog City and declared in the name of Sanchito Canada;
10. Lot No. 4, Cad 295, a two-hectare property located in Talisay, Gingoog City and declared in the name of Cresencia Baclot;

11. Lot No. 10, Cad 295, a five-hectare property located in Talisay, Gingoog City and declared in the name of Cresencia Baclot.

Defendants are also directed to make an accounting of the fruits received from the properties beginning from the time of the death of Sancho Canada until the present and to pay plaintiffs attorney's fees in the amount of Php 25,000.00 and Php5,000.00 as litigation expenses.

SO ORDERED.[16]

Respondents filed a Motion for Reconsideration (MR), which was denied in a Resolution[17] dated June 4, 2012.

The matter was elevated to the CA. In an appeal, respondents impugned the judgment of the RTC and insisted that the subject properties were all registered in the name of Cresencia; hence, the delivery of the same to the intestate estate of Sancho was erroneous.[18]

In a Decision[19] dated June 17, 2015, the CA reversed the earlier disposition of the RTC. That Sancho and Cresencia entered into a cohabitation while the former's first marriage was still subsisting was recognized as undisputed by the CA. What it remains to be resolved was the ownership of the accumulated properties allegedly acquired by Sancho during his cohabitation with Cresencia.

On this note, the CA diligently explained and identified the ownership of each of the subject properties so as to apply the provisions of Article 148 of the Family Code. The CA found that the subject properties were actually not 11 in number, but only nine. That none of the nine was proven by petitioner as owned by Sancho was observed by the CA. The documentary evidence presented failed to show that these properties were owned by Sancho and Cresencia in common, as a result of their *actual contribution*. The fact that the properties were all

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[16] *Id.* at 59.

[17] *Id.* at 60-62.

[18] *Id.* at 69-70.

[19] *Supra* note 2.

registered in the name of Cresencia, except for one in the name of Sanchito, negated the petitioner's claim. Thus:

> FOR THESE REASONS, the appealed Decision dated 12 March 2012 of the Regional Trial Court, Branch 27, Gingoog City in Civil Case NO. 94-391 is REVERSED and SET ASIDE, and in its place judgment is rendered by having the Complaint DISMISSED for lack of merit.
>
> SO ORDERED.[20]

Aggrieved by such disposition, petitioner filed a Motion for Reconsideration, which was denied in a Resolution[21] dated October 5, 2015.

Hence, this petition.

Essentially, petitioner harps her ownership, as well as that of Sancho's legal heirs, over the subject properties on the fact that Cresencia's financial means as a dressmaker made it impossible to acquire such properties.

In their Comment,[22] respondents insisted on their ownership over the property in the absence of proof that Sancho actually contributed in the acquisition of the subject properties.

In their Reply,[23] petitioner reiterated her allegations made in the petition.

The Court resolves.

Preliminarily, when Sancho and Cresencia cohabited in 1952, it is the Civil Code of the Philippines which was in effect. Generally, what is applicable is Article 144 of the same Code which states that:

> Art. 144 When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through

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[20] *Id.* at 83-84.

[21] *Supra* note 3.

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

[23] *Id.* at 137-141.

their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

However, as pronounced in *Tumlos v. Spouses Fernandez*,[24] Article 144 of said law applies only to a relationship between a man and a woman who are not incapacitated to marry each other, or to one in which the marriage of the parties is void from the beginning. In other words, the provision does not apply when the cohabitation amounts to adultery or concubinage.

In this case, Sancho and Cresencia entered into a common-law marriage while the former's marriage with petitioner was valid and subsisting. Clearly, Sancho was incapacitated to marry.

As Article 144 of the Civil Code is inapplicable, the cohabitation between Sancho and Cresencia is governed by Article 148 of the Family Code, which has "filled the hiatus in Article 144 of the Civil Code."[25] The retroactive application of Article 148 of the Family Code is sanctioned by law, provided that vested rights remained unimpaired.[26]

On this note, Article 148 of the Family Code states:

Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in

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[24] G.R. No. 137650, April 12, 2000.

[25] SEMPIO-DY, *HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES*, 23 (1995 ed.)

[26] ART. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith. (144a)

Simply put, the ownership of the properties *jointly* acquired by the parties who are cohabiting under the circumstances provided is relative to their respective contributions, requiring actual proof. In the absence of proof of their quantifiable actual contribution, their contributions are deemed equal. However, if proof of *actual contribution per se* was not shown, co-ownership will not arise. To expound:

> Under Article 148, only the properties acquired by both of the parties through their *actual joint contribution of money, property or industry* shall be owned by them in common in proportion to their respective contributions. It must be stressed that the actual contribution is required by this provision, in contrast to Article 147 which states that efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. *If the actual contribution of the party is not proved, there will be no co-ownership* and no presumption of equal shares.[27]

In this case, as aptly observed by the CA, the subject properties were registered in the name of Cresencia alone, except for the property in the name of Sanchito, who is the son of Cresencia and Sancho. While it is true that a certificate of title is not a conclusive proof of ownership as its issuance does not foreclose the possibility that such property may be co-owned by persons not named therein,[28] the claimant must nonetheless prove his/her title in the concept of an owner. As it is, respondents failed to put forth evidence that Sancho is a co-owner. That Cresencia is a mere dressmaker who cannot afford the subject properties is a scorch to her industry and a condescending presumption.

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[27] *Agapay v. Palang,* G.R. No. 116668, 276 SCRA 340, July 28, 1997.

[28] See *Lee Tek Sheng v. Court of Appeals,* G.R. No. 115402, July 15, 1998.

Neither can respondents find refuge in the case of *Adriano v. Court of Appeals*[29] to bolster their claim. In said case, the claimed property was registered under the names of a man who was incapacitated to marry at the time of the acquisition and a woman who was his paramour. In the absence of proof that the woman contributed in the acquisition of the property, the Court held that between the two, the man was declared as owner of the property. Consequently, the same was considered as conjugal property of the man and his wife.

In fact, a holistic reading of *Adriano* even establishes the decision of the Court to declare Cresencia as the sole owner of the subject properties.

Here, the subject properties were under the name of Cresencia alone. Failure to show that Sancho made actual contributions in the purchase of the same, the Court is bound to declare that Cresencia is the exclusive owner of the subject properties.

In obvious terms, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue.[30] Thus, contrary to the assertions of petitioner, she has the burden of proving their claim over the subject properties, registered in the name of Cresencia.

In the absence of evidence which would demonstrate that Sancho had contributed in the acquisition of the properties registered in the name of Cresencia, the Court cannot declare petitioner and her children as entitled thereto.

WHEREFORE, premises considered, the instant petition is hereby **DENIED.** Accordingly, the Decision dated June 17, 2015 and the Resolution dated October 5, 2015 of the Court of Appeals-Cagayan de Oro City in CA-G.R. CV No. 03018-MIN are **AFFIRMED.**

SO ORDERED.

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

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[29] G.R. No. 124118, March 27, 2000.

[30] See *Saguid v. Court of Appeals,* 451 Phil. 825-838 (2003).

FIRST DIVISION

[G.R. No. 222450. July 7, 2020]

MIGUEL LUIS R. VILLAFUERTE, Governor of the Province of Camarines Sur, FORTUNATO PEÑA, Vice-Governor of the Province of Camarines Sur, ATTY. AMADOR L. SIMANDO, WARREN SEÑAR, GILMAR S. PACAMARRA, EMMANUEL H. NOBLE, GIOVANNI SEÑAR, RUDITO ESPIRITU, JR., JORGE BENGUA, FABIO FIGURACION, NELSON JULIA, Members of the *Sangguniang Panlalawigan* of Camarines Sur, *petitioners*, *vs.* **CONSTANTINO H. CORDIAL, JR., Mayor of Caramoan, Camarines Sur and IRENE R. BREIS, Vice-Mayor of Caramoan, Camarines Sur,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; WHEN COURTS SHARE ORIGINAL AND CONCURRENT JURISDICTION, THE PARTIES ARE MANDATED TO INITIALLY FILE THEIR PETITIONS BEFORE LOWER RANK COURTS.— In the issuances of the extraordinary writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the Court, the CA, and the RTC share original and concurrent jurisdiction. However, in accordance with the doctrine of hierarchy of courts, the parties are mandated to initially file their petitions before lower rank courts. As imprinted in the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*, the Court expounded on this constitutional imperative by emphasizing the structure of our judicial system — the trial courts decide on questions of fact and law in the first instance; the intermediate courts resolve both questions of fact and law; and the Court generally decides only questions of law. As a constitutional mechanism, the doctrine of hierarchy of courts is established to enable the Court to concentrate on its constitutional tasks, guided by the judicial compass in disposing of matters without need for factual determination. In a rare instance, the Constitution itself mandates the exercise of judicial power over a case even with the existence of factual

issues. Such sole exception is stated in Section 18, Article VII of the Constitution, that is, when the matter involved is the review of sufficiency of factual basis of the President's proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*. Although several exceptions were carved out from the general rule of the observance of hierarchy of courts, the nature of the question raised by the parties shall be one of law. In other words, resort to the Court is permitted only when the issues are purely legal. Likewise relevant is Section 4, Rule 41 of the Rules of Court, which allows direct resort to the Court from the RTC *via* a petition for review on *certiorari* under Rule 45 of said Rules when the issues raised are questions of law.

2. POLITICAL LAW; ADMINISTRATIVE LAW; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; COURTS MUST ALLOW ADMINISTRATIVE AGENCIES TO CARRY OUT THEIR FUNCTIONS AND DISCHARGE THEIR RESPONSIBILITIES WITHIN THE SPECIALIZED AREAS OF THEIR RESPECTIVE COMPETENCE, SUCH THAT RELIEF TO THE COURTS OF JUSTICE IS NOT SANCTIONED WHEN THE LAW PROVIDES FOR REMEDIES AGAINST THE ACTION OF AN ADMINISTRATIVE BOARD, BODY, OR OFFICER.— It is notable that respondents sought relief from the RTC to nullify the action of the *Sangguniang Panlalawigan* of Camarines Sur. Instead of filing an appeal before the Office of the President, which is the available remedy to respondents under Republic Act No. 7160 or the Local Government Code of 1991 (LGC), they filed a petition for *certiorari* and prohibition. As raised by the petitioners in their Memoranda/Comments before the RTC, respondents failed to exhaust administrative remedies. The thrust of the rule on exhaustion of administrative remedies is that the courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. Generally, relief to the courts of justice is not sanctioned when the law provides for remedies against the action of an administrative board, body, or officer. The availability of such remedy prevents the petitioners from resorting to a petition for *certiorari* and prohibition, being extraordinary remedies. However, exceptions to this rule allow the deviation from such procedural rule. Among which is when the question raised is purely legal in nature, as in this case.

3. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION REQUIREMENT; ALL STATUTES, INCLUDING THOSE OF LOCAL APPLICATION AND PRIVATE LAWS, SHALL BE PUBLISHED AS A CONDITION TO THEIR EFFECTIVITY BUT INTERPRETATIVE REGULATIONS AND THOSE MERELY INTERNAL IN NATURE NEED NOT BE PUBLISHED.— *Ignorantia juris non excusat*. That every person is presumed to know the law is a conclusive presumption. However, before one may be bound by a law, he must be fully and categorically informed of its contents. For this purpose, the Civil Code clearly mandates the publication of "laws" x x x. This is fundamentally the essence of due process. The significance of publication is illuminated in the 1985 landmark case of *Tañada v. Tuvera*. The Court, speaking through Justice Escolin, emphasized that laws of "public nature" or of "general applicability" must be published. In the *1986 Tañada* case, the Court resolved petitioners' MR, seeking clarification as to the scope of "law of public nature" or "general applicability," among others. The Court, thus, definitively expounded that "laws" should refer to *all* laws. After all, a law which has no impact on the public is considered invalid for several reasons, *e.g.*, intrusion of privacy or *ultra vires* act of the legislature. Thus, an indirect effect of a particular law to the public does not necessarily call for the dispensability of the publication requirement. Therefore, the Court was forthright in stating that "all statutes, including those of local application and private laws, shall be published as a condition for their effectivity." However, the Court clarified that "interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public" and "letters of instruction issued by administrative superiors relative to guidelines to be followed by their subordinates in the performance of their duties" need not be published. Interpretative regulations are merely annotative; and internal rules are directly related to the conduct of government personnel, and not the public in general.

4. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); EFFECTIVITY OF ORDINANCES OR RESOLUTIONS; A MUNICIPAL ORDINANCE OR

RESOLUTION WHICH IS NEITHER PENAL IN NATURE NOR A TAX MEASURE NEED NOT BE PUBLISHED.— [T]he nature of municipal ordinances or resolutions which require publication is embodied in Sections 59, 188, and 511 of the LGC x x x. In the instant case, what was being assailed is Resolution No. 13-2013, which provides for the rules of procedure concerning the conduct of investigation against municipal officials in said province, issued by the *Sangguniang Panlalawigan* of Camarines Sur. Clearly, it is neither penal in nature as it does not provide for any sanction or punishment nor a tax measure. It is merely interpretative of Title II, Chapter 4 of the LGC, which outlines the procedure when a disciplinary action is instituted against an elective local official. Based on the foregoing, Resolution No. 13-2013 need not be published.

5. **REMEDIAL LAW; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED BY LAW AND IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.—** [T]he RTC erroneously concluded that the element of publication is an essential element of the *Sangguniang Panlalawigan* of Camarines Sur's jurisdiction over the proceedings of the case. The publication requirement on laws accomplishes the constitutional mandate of due process. In the 1985 and 1986 *Tañada* cases, the Court explained that the object of Article 2 of the Civil Code is to give notice to the public of the laws to allow them to properly conduct themselves as citizens. That omission of publication of laws is tantamount to denying the public of knowledge and information of the laws that govern it; hence, a violation of due process. Effectivity of laws, thus, depends on their publication. Without such notice and publication, the conclusive presumption cannot apply. Jurisdiction over the subject matter, on the other hand, is conferred by law and is determined by the allegations in the complaint. Sections 61 and 62 of the LGC, as well as Sections 125 and 126 of its Implementing Rules and Regulations or Administrative Order No. 270, provide that the *Sangguniang Panlalawigan* of Camarines Sur has jurisdiction over complaints filed against any erring municipal official within its jurisdiction. Upon the filing of said complaint, the *Sangguniang Panlalawigan* shall require the filing of the respondent's verified answer. Investigation shall ensue accordingly. In this case, the allegations in the Complaint filed by Mabulo, *et al.* against the respondents,

as local municipal officials of Caramoan, Camarines Sur, vested the *Sangguniang Panlalawigan* of Camarines Sur of jurisdiction over the case. As it is, the RTC failed to discern the import of the publication requirement. Publication or lack of it is relevant in determining the observance of due process.

APPEARANCES OF COUNSEL

Janis Ian B. Regaspi-Cleofe for petitioners.
Ernesto M. Alarcon for respondents.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated January 13, 2015 and the Order[3] dated December 15, 2015 of the Regional Trial Court (RTC) of San Jose, Camarines Sur, Branch 30 which annulled the Orders dated October 28, 2014[4] and December 12, 2014,[5] and the Resolution[6] dated December 16, 2014 of the *Sangguniang Panlalawigan* of Camarines Sur which denied the Motion to Dismiss filed by Mayor Constantino H. Cordial, Jr. and Vice-Mayor Irene R. Breis (respondents) on the ground of lack of jurisdiction.

The Relevant Antecedents

On July 18, 2014, respondents, as incumbent officials of Caramoan, Camarines Sur, were administratively charged with

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[1] *Rollo*, pp. 3-30.

[2] Penned by Judge Noel D. Paulite; *id.* at 31-39.

[3] *Id.* at 48-51.

[4] *Id.* at 86.

[5] *Id.* at 95-97.

[6] *Id.* at 98-103.

Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of Service docketed as Administrative Case No. 003-2014 by Chief of Task Force *Sagip Kalikasan* Fermin M. Mabulo (Mabulo), Municipal Councilors Eduardo B. Bonita and Lydia Obias, and former Municipal Councilor Romeo Marto. The complaint was lodged before the *Sangguniang Panlalawigan* of Camarines Sur, through its Special Committee on Administrative Cases (Special Committee) headed by Atty. Amador Simando.[7]

In said Complaint,[8] it was alleged that the respondents, through the *Sangguniang Bayan* of Caramoan, Camarines Sur, passed Resolution No. 48 which requested for the removal of Task Force *Sagip Kalikasan* in the entire Municipality of Caramoan, Camarines Sur without the conduct of deliberation. Prior to said incident, the Task Force *Sagip Kalikasan* conducted an inspection in *Barangay* Gata, Caramoan, Camarines Sur because of reported mining activities. Upon inspection, the team found 30 people engaged in illegal mining activities, holes where minerals were being extracted, and machinery and equipment for mining and extraction. The Chief of the Task Force, Mabulo, asked those involved if they had the necessary permits; and as they failed to show him any, he asked them to cease from operating.

However, days after the inspection, the aforementioned Resolution was passed by the *Sangguniang Bayan* of Caramoan, Camarines Sur.[9]

In response to the Complaint, respondents filed a Motion for Extension to File Answer.[10] However, instead of filing their Answer, respondents filed a Motion to Dismiss,[11] assailing the jurisdiction of the Special Committee, as well as its Rules of

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[7] *Id.* at 32.

[8] *Id.* at 66-76.

[9] *Id.* at 70.

[10] *Id.* at 77-78.

[11] *Id.* at 79-84.

Procedure on the Investigation of Administrative and Disciplinary Cases against Elected Municipal Officials as embodied in Resolution No. 13, Series of 2013 (Resolution No. 13-2013) for lack of publication.

In an Order[12] dated October 28, 2014, the *Sangguniang Panlalawigan* dismissed the motion for lack of merit. The *Sangguniang Panlalawigan* maintained that the publication was duly complied with as Resolution No. 151, Series of 2013, which incorporated Resolution No. 13-2013, was duly published.

Respondents filed a Motion for Reconsideration (MR) asserting that with the publication of the Rules of Procedure only on October 9, 16 and 23, 2014, it became effective only on November 8, 2014, the 16th day following its publication as held in the case of *Tañada v. Tuvera*,[13] interpreting the Article 2 of the Civil Code of the Philippines.[14]

Said MR was denied in an Order[15] dated December 12, 2014. The *Sangguniang Panlalawigan* of Camarines Sur maintained that the publication requirement anent ordinances and resolutions of local government units was governed by the Local Government Code, and not by the Civil Code as pronounced in *Tañada*.

Corollary, the *Sangguniang Panlalawigan* of Camarines Sur issued a Resolution[16] dated December 16, 2014, recommending that respondents be placed under preventive suspension for a period of 60 days.

Aggrieved by the turn of events, respondents filed a petition for *certiorari* and prohibition with prayer for the issuance of Temporary Restraining Order, Preliminary Injunction, and Prohibitory Injunction before the RTC.

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[12] *Supra* note 4.

[13] G.R. No. 63915, April 24, 1985.

[14] *Rollo*, p. 95.

[15] *Supra* note 5.

[16] *Supra* note 6.

In their Petition,[17] respondents insisted, among others, that the Rules of Procedure as embodied in Resolution No. 13-2013 must be published; and failure to observe such requirement not only rendered said Resolution ineffective, but likewise removed the jurisdiction of the *Sangguniang Panlalawigan* of Camarines Sur over the proceedings.

In a Decision[18] dated January 13, 2015, the RTC construed that the lack of publication of the Rules of Procedure embodied in Resolution No. 13-2013 stripped off the *Sangguniang Panlalawigan* of Camarines Sur of jurisdiction over the conduct of the administrative hearing against respondents.

The Issue

Essentially, the issue in this case is whether or not the non-publication of Resolution No. 13-2013 divested the *Sangguniang Panlalawigan* of Camarines Sur of jurisdiction over the proceedings of the case.

The Court's Ruling

Notably, petitioners resorted to the Court *via* a Petition for Review on *Certiorari* in assailing the ruling of the RTC.

In the issuances of the extraordinary writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the Court, the CA, and the RTC share original and concurrent jurisdiction. However, in accordance with the doctrine of hierarchy of courts, the parties are mandated to initially file their petitions before lower rank courts. As imprinted in the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*,[19] the Court expounded on this constitutional imperative by emphasizing the structure of our judicial system — the trial courts decide on questions of fact and law in the first instance; the intermediate courts resolve both questions of fact and law; and the Court generally decides only questions of law.

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[17] *Rollo*, pp. 52-67.

[18] *Supra* note 2.

[19] G.R. No. 217158, March 12, 2019.

As a constitutional mechanism, the doctrine of hierarchy of courts is established to enable the Court to concentrate on its constitutional tasks, guided by the judicial compass in disposing of matters without need for factual determination.

In a rare instance, the Constitution itself mandates the exercise of judicial power over a case even with the existence of factual issues. Such sole exception is stated in Section 18, Article VII of the Constitution, that is, when the matter involved is the review of sufficiency of factual basis of the President's proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Although several exceptions were carved out from the general rule of the observance of hierarchy of courts, the nature of the question raised by the parties shall be one of law. In other words, resort to the Court is permitted only when the issues are purely legal.

Likewise relevant is Section 4, Rule 41 of the Rules of Court, which allows direct resort to the Court from the RTC *via* a petition for review on *certiorari* under Rule 45 of said Rules when the issues raised are questions of law.

In this case, petitioners assail the ruling of the RTC in maintaining that Resolution No. 13-2013 requires publication; and that the absence of such publication stripped off the *Sangguniang Panlalawigan* of jurisdiction over the case. Clearly, the determination of the publication requirement is a question of law.

On this note, the Court likewise deems it proper to discuss the rule on the exhaustion of administrative remedies.

It is notable that respondents sought relief from the RTC to nullify the action of the *Sangguniang Panlalawigan* of Camarines Sur. Instead of filing an appeal before the Office of the President,[20]

[20] Sec. 67. *Administrative Appeals*. — Decisions in administrative cases may, within thirty (30) days from receipt thereof, be appealed to the following: (a) The *sangguniang panlalawigan*, in the case of decisions of the *sangguniang panlungsod* of component cities and the sangguniang bayan; and (b) The

which is the available remedy to respondents under Republic Act No. 7160 or the Local Government Code of 1991 (LGC), they filed a petition for *certiorari* and prohibition. As raised by the petitioners in their Memoranda/Comments before the RTC,[21] respondents failed to exhaust administrative remedies.

The thrust of the rule on exhaustion of administrative remedies is that the courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[22] Generally, relief to the courts of justice is not sanctioned when the law provides for remedies against the action of an administrative board, body, or officer.[23] The availability of such remedy prevents the petitioners from resorting to a petition for *certiorari* and prohibition, being extraordinary remedies.

However, exceptions to this rule allow the deviation from such procedural rule. Among which is when the question raised is purely legal in nature, as in this case.

The Court now resolves.

Ignorantia juris non excusat. That every person is presumed to know the law is a conclusive presumption. However, before one may be bound by a law, he must be fully and categorically informed of its contents.[24] For this purpose, the Civil Code clearly mandates the publication of "laws":

> ART. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.

Office of the President, in the case of decisions of the *sangguniang panlalawigan* and the *sangguniang panlungsod* of highly urbanized cities and independent component cities. Decisions of the Office of the President shall be final and executory.

[21] *Rollo*, p. 34.

[22] See *The Iloilo City Zoning Board of Adjustment and Appeals v. Gegato-Abecia Funeral Homes, Inc.*, 462 Phil. 803 (2003).

[23] *Id.*

[24] *Supra* note 13.

This is fundamentally the essence of due process.

The significance of publication is illuminated in the 1985 landmark case of *Tañada v. Tuvera*.[25] The Court, speaking through Justice Escolin, emphasized that laws of "public nature" or of "general applicability" must be published. In the 1986 *Tañada*[26] case, the Court resolved petitioners' MR, seeking clarification as to the scope of "law of public nature" or "general applicability," among others. The Court, thus, definitively expounded that "laws" should refer to *all* laws. After all, a law which has no impact on the public is considered invalid for several reasons, *e.g.*, intrusion of privacy or *ultra vires* act of the legislature.[27] Thus, an indirect effect of a particular law to the public does not necessarily call for the dispensability of the publication requirement.

Therefore, the Court was forthright in stating that "all statutes, including those of local application and private laws, shall be published as a condition for their effectivity."[28]

However, the Court clarified that "interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public" and "letters of instruction issued by administrative superiors relative to guidelines to be followed by their subordinates in the performance of their duties" need not be published. Interpretative regulations are merely annotative; and internal rules are directly related to the conduct of government personnel, and not the public in general.

On a different plane, however, are municipal ordinances which are not covered by the Civil Code, but by the LGC.

On this note, the nature of municipal ordinances or resolutions which require publication is embodied in Sections 59, 188, and 511 of the LGC:

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[25] *Id.*

[26] *Tañada v. Tuvera*, G.R. No. 63915, December 29, 1986.

[27] *Id.*

[28] *Id.*

SEC. 59. Effectivity of Ordinances or Resolutions.

x x x x x x x x x

(c) The gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinances shall be made in all municipalities and cities of the province where the Sanggunian of origin is situated.

(d) In the case of highly urbanized cities, the main features of the ordinance or resolution duly enacted or adopted shall, in addition to being posted, be published once in a local newspaper of general circulation within the city: Provided, That in the absence thereof the ordinance or resolution shall be published in any newspaper of general circulation.

x x x x x x x x x

SEC. 188. Publication of Tax ordinances and Revenue Measures. — Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue shall be published in full for three (3) consecutive days in a newspaper of local circulation: Provided, however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

x x x x x x x x x

SEC. 511. Posting and Publication of Ordinances with Penal Sanctions. — (a) ordinances with penal sanctions shall be posted at prominent places in the provincial capitol, city, municipal or Barangay hall, as the case may be, for a minimum period of three (3) consecutive weeks. Such ordinances shall also be published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned, except in the case of Barangay ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.

(b) Any public officer or employee who violates an ordinance may be meted administrative disciplinary action, without prejudice to the filing of the appropriate civil or criminal action.

(c) The secretary to the Sanggunian concerned shall transmit official copies of such ordinances to the chief executive officer of the Official Gazette within seven (7) days following the approval of the said ordinance for publication purposes. The Official Gazette may publish ordinances with penal sanctions for archival and reference purposes.

In the instant case, what was being assailed is Resolution No. 13-2013, which provides for the rules of procedure concerning the conduct of investigation against municipal officials in said province, issued by the *Sangguniang Panlalawigan* of Camarines Sur. Clearly, it is neither penal in nature as it does not provide for any sanction or punishment nor a tax measure. It is merely interpretative of Title II, Chapter 4 of the LGC, which outlines the procedure when a disciplinary action is instituted against an elective local official. Based on the foregoing, Resolution No. 13-2013 need not be published.

Also, it bears stressing that the RTC erroneously concluded that the element of publication is an essential element of the *Sangguniang Panlalawigan* of Camarines Sur's jurisdiction over the proceedings of the case.

The publication requirement on laws accomplishes the constitutional mandate of due process. In the 1985 and 1986 *Tañada* cases, the Court explained that the object of Article 2 of the Civil Code is to give notice to the public of the laws to allow them to properly conduct themselves as citizens. That omission of publication of laws is tantamount to denying the public of knowledge and information of the laws that govern it; hence, a violation of due process. Effectivity of laws, thus, depends on their publication. Without such notice and publication, the conclusive presumption cannot apply.

Jurisdiction over the subject matter, on the other hand, is conferred by law and is determined by the allegations in the complaint.[29]

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[29] See *Concorde Condominium, Inc. v. Baculio*, 781 Phil. 174 (2016).

Sections 61 and 62[30] of the LGC, as well as Sections 125 and 126[31] of its Implementing Rules and Regulations or Administrative Order No. 270, provide that the *Sangguniang Panlalawigan* of Camarines Sur has jurisdiction over complaints filed against any erring municipal official within its jurisdiction. Upon the filing of said complaint, the *Sangguniang Panlalawigan* shall require the filing of the respondent's verified answer. Investigation shall ensue accordingly.

In this case, the allegations in the Complaint[32] filed by Mabulo, *et al.* against the respondents, as local municipal officials of Caramoan, Camarines Sur, vested the *Sangguniang Panlalawigan* of Camarines Sur of jurisdiction over the case.

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[30] Sec. 61. *Form and Filing of Administrative Complaints*. — A verified complaint against any erring local elective official shall be prepared as follows:

x x x x x x x x x

(b) A complaint against any elective official of a municipality shall be filed before the Sangguniang Panlalawigan whose decision may be appealed to the Office of the President; and

x x x x x x x x x

Sec. 62. *Notice of Hearing*. — (a) Within seven (7) days after the administrative complaint is filed, the Office of the President or the sanggunian concerned, as the case may be, shall require the respondent to submit his verified answer within fifteen (15) days from receipt thereof, and commence the investigation of the case within ten (10) days after receipt of such answer of the respondent.

[31] Art. 125. *Form and Filing of Administrative Complaints*. — A verified complaint against any erring elective local official shall be prepared and filed as follows:

x x x x x x x x x

b) Against any elective official of a municipality, before the *sangguniang panlalawigan* whose decision may be appealed to the Office of the President.

x x x x x x x x x

Art. 126. *Hearings*. — (a) Within seven (7) days after the administrative complaint is filed, the Office of the President or the *sanggunian concerned*, as the case may be, shall require the respondent to submit his verified answer within fifteen (15) days from receipt thereof, and commence the investigation of the case within ten (10) days after receipt of such answer of the respondent.

[32] *Rollo*, pp. 68-76.

As it is, the RTC failed to discern the import of the publication requirement. Publication or lack of it is relevant in determining the observance of due process.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Decision dated January 13, 2015 and the Order dated December 15, 2015 of the Regional Trial Court of San Jose, Camarines Sur, Branch 30 are **REVERSED** and **SET ASIDE**.

The Orders dated October 28, 2014 and December 12, 2014, and the Resolution dated December 16, 2014 issued by the *Sangguniang Panlalawigan* of Camarines Sur are hereby **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 222471. July 7, 2020]

ESTRELLA K. VENADAS, *petitioner, vs.* **BUREAU OF IMMIGRATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; ISSUANCE OF FORMAL CHARGE; THE OFFICER-IN-CHARGE'S (OIC) LACK OF DISCRETION IN THE APPOINTMENT AND DISCIPLINE OF EMPLOYEES, DOES NOT RENDER THE FORMAL CHARGE WHICH HE ISSUED AGAINST AN EMPLOYEE

AN ABSOLUTE NULLITY, BUT A DEFECT THAT IS SUSCEPTIBLE TO WAIVER AND ESTOPPEL.— The CSC anchored its decision, not on whether or not Venadas had full and proper notice of the charges and given sufficient opportunity to answer, but on whom the Revised Rules on Administrative Cases in the Civil Service cites as the proper person to issue a Formal Charge, *i.e.*, the disciplining authority. x x x. Relative to the power of discipline, "the OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC." Given that "[a]bsent any contrary statutory provision, the power to appoint carries with it the power to remove or to discipline," the CSC interpreted it as beyond the authority of Atty. Ledesma, as a mere OIC, to issue the Formal Charge against Venadas. We, nonetheless, find that under the present circumstances, it does not render the Formal Charge an absolute nullity. It is a defect that is susceptible to waiver and estoppel.

2. ID.; ID.; ID.; ID.; THE OFFICER-IN-CHARGE (OIC) WAS NOT ENTIRELY UNAUTHORIZED TO ISSUE AND SIGN THE FORMAL CHARGE, AS HE WAS PRESUMED TO BE ACTING UNDER THE CLOAK OF THE AUTHORITY OF THE DEPARTMENT OF JUSTICE AND UNDER THE SUPERVISION OF THE COMMISSIONER OF THE BUREAU OF IMMIGRATION.— The CSC failed to consider that Atty. Ledesma issued the Formal Charge only upon recommendation of Senior State Prosecutor Ong, after the latter conducted the preliminary investigation. Thus, it is an act which was not solely dependent on Atty. Ledesma's discretion as OIC on the sufficiency of the charges and evidence. Recall that it is an OIC's lack of discretion in the appointment and discipline of employees that makes it incumbent that such matter be deferred to one possessed of such authority. Although the task of signing the Formal Charge devolved upon Atty. Ledesma, the fate of the complaint remained at the discretion of the head of the bureau. Both the BI Commissioner and the DOJ Secretary are disciplining authorities over BI employees. In this instance, the OIC may be presumed to be acting under the cloak of the DOJ's authority and under the supervision of the BI Commissioner.

3. ID.; ID.; ID.; ADMINISTRATIVE DUE PROCESS; THE ESSENCE OF DUE PROCESS IS SIMPLY TO BE HEARD, OR AS APPLIED TO ADMINISTRATIVE PROCEEDINGS, A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE, OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF; RESPONDENT CANNOT BE ALLOWED TO CHANGE TACK AFTER OBTAINING AN UNFAVORABLE DECISION, WHERE HE WAS FULLY AND PROPERLY NOTIFIED OF THE CHARGES AND THE EVIDENCE, GIVEN AMPLE OPPORTUNITY TO CONTRADICT THE ACCUSATIONS AGAINST HIM, VIGOROUSLY PARTICIPATED THROUGHOUT THE ADMINISTRATIVE PROCEEDINGS, AND SUBMITTED TO THE JURISDICTION OF THE DISCIPLINING AUTHORITY.— As to holding Venadas in estoppel, records disclose that Venadas vigorously and mindfully participated throughout the administrative proceedings, despite the attempt to downplay an active role. Venadas' submissions were also considered, even if it failed to controvert evidence of culpability. Furthermore, Venadas appears to have been ably represented by counsel. Thus, it would be an error to say that Venadas was not heard on the specific accusations or not given ample opportunity to present evidence in defense. Indeed: The essence of due process is simply to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied. Again, "the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard." Here, Venadas was fully and properly notified of the charges and the evidence. It was only the signatory of the Formal Charge that could be made an issue. The bureau also gave ample opportunity for Venadas to contradict the accusations, a right that was fully exercised and exhausted. In view of Venadas' active participation and submission to the BI's jurisdiction, Venadas must not be allowed to belatedly change tack only after obtaining an unfavorable decision.

4. ID.; ID.; ID.; ID.; STRINGENT TECHNICAL RULES OF PROCEDURE AND EVIDENCE IS NOT REQUIRED IN ADMINISTRATIVE PROCEEDINGS; THE FUNDAMENTAL NOTION THAT ONE'S TENURE IN GOVERNMENT SPRINGS EXCLUSIVELY FROM THE TRUST REPOSED BY THE PUBLIC MEANS THAT CONTINUANCE IN OFFICE IS CONTINGENT UPON THE EXTENT TO WHICH ONE IS ABLE TO MAINTAIN THAT TRUST.— It must be remembered that this involves an administrative case bearing on Venadas' fitness to continue being employed with a government agency. In this regard, it was adequately shown that Venadas is unworthy of trust at the expense of the agency with which she is identified. "The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust." There is no merit in Venadas' invocation of more stringent technical rules of procedure and evidence as this is neither a criminal nor a civil case. The transgression of particular concern here is not the failure to return the complainant's money, but the abuse of an insider's access to payroll documents. Even Venadas' assertion that the incriminating evidence against her were not certified true copies is ridiculous, given that these were falsified to lend credence to the money lending scheme. The evidence included not just photocopies of commercial documents, but prints of text messages and various photos of the complainant and the respondent together. The point is that false copies of internal documents wound up in the hands of an outsider; hence, the BI and DOJ's concurring conclusion that Venadas took advantage of being an employee of the BI to lend credibility to a bogus investment scheme.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; JUDICIAL REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE AGENCIES IN THE EXERCISE OF THEIR QUASI-JUDICIAL POWERS, GUIDING PRINCIPLES.— We recall the guidelines laid down by this Court for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial powers: First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned. Following the foregoing, we are not inclined to make an exception in this case, considering that the CA concurs with the factual findings of both the BI and the DOJ, the merits of which the CSC did not even tackle.

6. ID.; ID.; ESTOPPEL; ESTOPPEL BY LACHES BARS A PARTY FROM INVOKING LACK OF JURISDICTION IN AN UNJUSTLY BELATED MANNER ESPECIALLY WHEN IT ACTIVELY PARTICIPATED DURING TRIAL; RESPONDENT IS ESTOPPED FROM ASSAILING THE FORMAL CHARGE ON APPEAL.— [V]enadas was indeed already estopped from assailing the Formal Charge on appeal. "Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial." At any rate, Atty. Ledesma was not entirely unauthorized to issue the Formal Charge and it cannot be said that Venadas was denied due process of law.

7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CORRUPTION, AS AN ELEMENT OF GRAVE MISCONDUCT, CONSISTS IN THE ACT OF AN OFFICIAL OR FIDUCIARY PERSON WHO UNLAWFULLY AND WRONGFULLY USES HIS STATION OR CHARACTER TO PROCURE SOME BENEFIT FOR HIMSELF OR FOR ANOTHER PERSON,

CONTRARY TO DUTY AND THE RIGHTS OF OTHERS; PENALTY OF DISMISSAL FROM THE SERVICE, IMPOSED UPON THE RESPONDENT FOR GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— The penalty of dismissal from the service, with its accessory penalties, must be sustained. "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." There is also no question that Venadas' conduct is prejudicial to the best interest of the service, as it tarnished the image and integrity of the government agency with which she is connected.

8. LEGAL ETHICS; ATTORNEYS; ZEAL FOR A CLIENT'S CAUSE SHOULD NOT BE AT THE EXPENSE OF COUNSEL'S DUTY AS AN OFFICER OF THE COURT; COUNSEL FOR PETITIONER, ADMONISHED FOR THE RECKLESS AND UNSUBSTANTIATED ACCUSATIONS AGAINST THE COURT OF APPEALS AND THE *PONENTE* OF THE DECISION UNDER REVIEW. — [C]ounsel for petitioner is admonished for the reckless and unsubstantiated accusations against the CA and the *ponente* of the decision under review. Zeal for a client's cause should not be at the expense of counsel's duty as an officer of the court. Merely citing that the case was unloaded to the *ponente*, whom news reports happened to name as among legislators investigated by the Secretary of Justice on the use of PDAF allocations, is a long stretch to impute undue interest in a case or horse trading in the CA. Counsel should know better than to brandish about serious accusations without proof, not the least when it involves the integrity of courts and magistrates.

APPEARANCES OF COUNSEL

Francis B. Beltran for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

This is a Petition filed under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) November 3, 2015 Decision[1] and January 20, 2016 Resolution[2] in CA-G.R. SP No. 135988, which reversed the Civil Service Commission (CSC) May 6, 2014 Decision[3] and reinstated the February 12, 2013 Resolution[4] of the Department of Justice (DOJ). The DOJ affirmed the dismissal from service of petitioner Estrella K. Venadas (Venadas), an Administrative Aide II of respondent Bureau of Immigration (BI), for grave misconduct and conduct prejudicial to the best interest of the service.

The facts follow.

On February 11, 2007, Venadas enticed a new acquaintance, Emyly Lim-Ines (Ines), to invest in a money lending enterprise allegedly operated by Venadas within the BI. Venadas supposedly extended loans to co-employees at amounts based on their overtime pay at 10% interest, and collected the cash advance from the BI's cashier upon release. In return for the investment, Ines was promised 5% or half of the interest collected.[5]

To bolster the representations, Venadas showed Ines some Landbank checks payable to "BI Employees" and/or "BI Employees — Estrella Venadas" and copies of payslips of employees. The scheme was allegedly carried out with the help of Disbursing Officer Percida Binalay and Finance Officer Atty.

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 126-131.

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

[3] *Id.* at 36-143.

[4] Penned by former DOJ Secretary Leila M. De Lima; *id.* at 477-485.

[5] *Id.* at 126-127.

Marcela Malaluan at the Cash Section of the BI. For credibility, Venadas claimed to have close ties with Landbank personnel, as well as former DOJ Secretary Raul Gonzales and Congressman Mikey Arroyo. Thus, persuaded, Ines gave Venadas money in exchange for post-dated checks. For a time, Venadas was able to timely remit Ines' supposed share of the interest earned.[6]

In November of 2008, Ines decided to withdraw the investment and demanded its return. Venadas, however, failed to return the money and gave excuses, claiming that the BI became strict in releasing employees' salaries. The checks issued by Venadas, payable to Ines, were also dishonored by the bank. To reassure Ines that the money was forthcoming, Venadas gave Ines copies of Landbank checks with serial numbers 0000830301 to 301-EE.[7] Ines decided to verify the checks after Venadas' continued failure to return the money invested. Landbank — PEZA branch informed Ines that Landbank check numbers 0000830301 to 301-EE were not genuine.[8]

Upon learning that the checks bore the forged signature of the disbursing officer and that there was no such money-lending scheme within the BI, Ines lodged a Complaint[9] with the bureau against Venadas on April 3, 2009. In the administrative complaint, Ines accused Venadas of enriching herself by abusing or taking advantage of her position in the BI through false pretenses and other deceitful acts, including possible forgery and/or falsification of documents.

An investigation ensued and concerned parties were directed to answer the allegations. In an Answer[10] dated April 24, 2009, Venadas denied the accusations and countered that it was Ines who offered to invest in Venadas' beauty salon, lotto outlet,

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[6] *Id.* at 832.

[7] *Id.*

[8] *Id.* at 127.

[9] *Id.* at 238-244.

[10] *Id.* at 380-382.

and pharmacy. Venadas also denied showing or issuing any checks to Ines, or showing Ines any payroll documents of the BI.

Upon recommendation of Senior State Prosecutor Peter Lim Ong (Senior State Prosecutor Ong), then Officer-in-charge (OIC) Atty. Ronaldo P. Ledesma (Atty. Ledesma) issued a Formal Charge[11] on July 30, 2010 against Venadas for grave misconduct and conduct prejudicial to the best interest of the service. Consequently, Venadas was also preventively suspended for ninety days. Venadas moved for reconsideration of the charges, but the motion was denied.[12]

On March 23, 2011, BI Commissioner Ricardo A. David, Jr. (Commissioner David) found Venadas guilty of grave misconduct and conduct prejudicial to the best interest of the service, imposing the penalty of dismissal from the service with all accessory penalties.[13] Venadas sought reconsideration of Commissioner David's decision, but the motion did not prosper.[14]

Aggrieved, Venadas appealed the BI decision to the DOJ Secretary. Venadas posited that an OIC is not authorized by law to exercise the power of discipline, for which reason the Formal Charge was defective for having been issued by an OIC. The appeal was denied by the DOJ Secretary through a February 12, 2013 Resolution.[15]

The DOJ ruled that: the alleged defect of the Formal Charge was deemed waived for not having been raised at the earliest opportunity despite Venadas' active participation in the proceedings; photocopies of documents may be admissible in evidence in administrative cases; and, technical rules of procedure are not strictly applied in administrative cases for

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[11] *Id.* at 393.

[12] *Id.* at 394-403.

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

[14] *Id.*

[15] *Supra* note 4.

as long as the person charged is given fair opportunity to be heard and present evidence. Finally, the DOJ sustained the conclusion that Venadas indeed took advantage of being employed with the BI to gain access to guarded files.

On June 6, 2013, Commissioner David issued an Order implementing the DOJ resolution that affirmed Venadas' dismissal from the service.[16]

Undeterred, Venadas appealed anew before the CSC, which set aside the resolution of the DOJ Secretary in a May 6, 2014 Decision.[17] Without touching on the merits of the administrative complaint, the CSC ruled that an OIC, such as Atty. Ledesma, enjoys limited powers in the discharge of its functions. Considering that an OIC is not authorized to issue appointments which only the head of office or disciplining authority can exercise, it reasoned that an OIC is not authorized to issue a Formal Charge and an order of preventive suspension. The CSC viewed this to be a deprivation of Venadas' right to due process.

The BI questioned the CSC's reversal of the DOJ resolution *via* a Rule 43 petition before the CA, which the latter found meritorious. The CA agreed with the BI that Venadas is estopped from raising questions as to the alleged defect of the Formal Charge after actively participating in the proceedings before the bureau. Thus, in the decision subject of this review, the CA set aside the CSC's decision and upheld the DOJ's resolution.[18]

On November 23, 2015, Venadas filed a Motion for Reconsideration[19] of the CA decision, as well as a Motion for Inhibition[20] against CA Associate Justice Danton Q. Bueser and other members of its then Special 14th Division. The CA

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[16] *Rollo*, p. 834.

[17] *Supra* note 3.

[18] *Supra* note 1.

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

[20] *Id.*

denied Venadas' Motion for Reconsideration for lack of merit through the presently assailed January 20, 2016 Resolution.[21]

Undaunted, Venadas now invokes this Court's extraordinary review power over the CA's decision and resolution, insisting that the alleged defect in the Formal Charge renders it a nullity that is not susceptible to waiver or estoppel.[22] Venadas denies assailing belatedly the OIC's authority for the first time on appeal or having actively participated in a formal investigation.[23] The petition also assails the decision of the BI commissioner and resolution of the DOJ, contending that the finding of guilt lacked adequate evidence and was based on unauthenticated photocopies.[24] It further imputes grave abuse of discretion on the CA in allegedly ignoring the motion for inhibition filed by Venadas and accuses the *ponente* of the decision of undue interest in the case.[25]

On August 11, 2016, the BI, through the Office of the Solicitor General (OSG), filed its Comment[26] on the current petition. The OSG highlighted that only legal issues may be raised in a petition for review on *certiorari*, but Venadas also raises issues requiring an examination of the evidence presented before the BI.[27] As argued by the OSG, not only was Venadas' guilt substantially established, but that Venadas was properly charged and accorded due process during the administrative proceedings.[28] Furthermore, resolution of the motion for inhibition is discretionary on the part of the CA, and Venadas' accusation of horse trading in the CA is reckless and without basis.[29]

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[21] *Supra* note 2.

[22] *Rollo*, p. 95.

[23] *Id.* at 96.

[24] *Id.* at 96-97.

[25] *Id.* at 97.

[26] *Id.* at 830-852.

[27] *Id.* at 840.

[28] *Id.* at 842-849.

[29] *Id.* at 850-852.

The issue for our resolution, through the lens of a Rule 45 mode of review, is whether or not the CA erred in ruling that Venadas was already estopped from making an issue of the fact that the Formal Charge was issued by an OIC.

We deny the petition for failing to present any serious error warranting a reversal of the CA's disposition.

The CSC anchored its decision, not on whether or not Venadas had full and proper notice of the charges and given sufficient opportunity to answer, but on whom the Revised Rules on Administrative Cases in the Civil Service cites as the proper person to issue a Formal Charge, *i.e.*, the disciplining authority.

> Section 20. Issuance of Formal Charge; Contents. - After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge/s, a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge/s in writing, under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge/s, and a notice that he/she may opt to be assisted by a counsel of his/her choice.

Relative to the power of discipline, "the OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC."[30] Given that "[a]bsent any contrary statutory provision, the power to appoint carries with it the power to remove or to discipline,"[31] the CSC interpreted it as beyond the authority of Atty. Ledesma, as a mere OIC, to issue the Formal Charge against Venadas. We, nonetheless, find that under the present circumstances, it does not render the Formal

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[30] *Dr. Posadas v. Sandiganbayan*, G.R. Nos. 168951 & 169000, November 27, 2013, citing CSC Res. 1692, Oct. 20, 1978.

[31] *Atty. Aguirre v. De Castro*, G.R. No. 127631, December 17, 1999.

Charge an absolute nullity. It is a defect that is susceptible to waiver and estoppel.

The CSC failed to consider that Atty. Ledesma issued the Formal Charge only upon recommendation of Senior State Prosecutor Ong, after the latter conducted the preliminary investigation. Thus, it is an act which was not solely dependent on Atty. Ledesma's discretion as OIC on the sufficiency of the charges and evidence. Recall that it is an OIC's lack of discretion in the appointment and discipline of employees that makes it incumbent that such matter be deferred to one possessed of such authority. Although the task of signing the Formal Charge devolved upon Atty. Ledesma, the fate of the complaint remained at the discretion of the head of the bureau. Both the BI Commissioner and the DOJ Secretary are disciplining authorities over BI employees. In this instance, the OIC may be presumed to be acting under the cloak of the DOJ's authority and under the supervision of the BI Commissioner.

Venadas misappreciates *Salva v. Valle*,[32] an insubordination case wherein the respondent faculty member was merely issued memorandum orders by the state university president, a far cry from the Formal Charge contemplated under CSC rules. In *Salva*, the memoranda were grossly insufficient both in form and in substance, such that the respondent had no real opportunity to be heard. In that case, even the Commission on Higher Education took a contrary view to the state university's Board of Regents and opined that due process was not observed.

As to holding Venadas in estoppel, records disclose that Venadas vigorously and mindfully participated throughout the administrative proceedings, despite the attempt to downplay an active role. Venadas' submissions were also considered, even if it failed to controvert evidence of culpability. Furthermore, Venadas appears to have been ably represented by counsel. Thus, it would be an error to say that Venadas was not heard on the specific accusations or not given ample opportunity to present evidence in defense. Indeed:

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[32] G.R. No. 193773, April 2, 2013.

The essence of due process is simply to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.[33]

Again, "the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard."[34] Here, Venadas was fully and properly notified of the charges and the evidence. It was only the signatory of the Formal Charge that could be made an issue. The bureau also gave ample opportunity for Venadas to contradict the accusations, a right that was fully exercised and exhausted. In view of Venadas' active participation and submission to the BI's jurisdiction, Venadas must not be allowed to belatedly change tack only after obtaining an unfavorable decision.

It must be remembered that this involves an administrative case bearing on Venadas' fitness to continue being employed with a government agency. In this regard, it was adequately shown that Venadas is unworthy of trust at the expense of the agency with which she is identified. "The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust."[35]

There is no merit in Venadas' invocation of more stringent technical rules of procedure and evidence as this is neither a criminal nor a civil case. The transgression of particular concern here is not the failure to return the complainant's money, but the abuse of an insider's access to payroll documents. Even Venadas' assertion that the incriminating evidence against her

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[33] *Pat-og v. Civil Service Commission*, G.R. No. 198755, June 5, 2013.

[34] *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013, citing *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005.

[35] *Office of the Ombudsman v. Regalado*, G.R. Nos. 208481-82, February 7, 2018.

were not certified true copies is ridiculous, given that these were falsified to lend credence to the money lending scheme. The evidence included not just photocopies of commercial documents, but prints of text messages and various photos of the complainant and the respondent together. The point is that false copies of internal documents wound up in the hands of an outsider; hence, the BI and DOJ's concurring conclusion that Venadas took advantage of being an employee of the BI to lend credibility to a bogus investment scheme.

We recall the guidelines laid down by this Court for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial powers:

> First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence.
>
> Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.[36]

Following the foregoing, we are not inclined to make an exception in this case, considering that the CA concurs with the factual findings of both the BI and the DOJ, the merits of which the CSC did not even tackle.

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[36] *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532, 172544-45, November 20, 2013, citing *Montemayor v. Bundalian*, 453 Phil. 158, 167 (2003).

All told, Venadas was indeed already estopped from assailing the Formal Charge on appeal. "Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial."[37] At any rate, Atty. Ledesma was not entirely unauthorized to issue the Formal Charge and it cannot be said that Venadas was denied due process of law.

The penalty of dismissal from the service, with its accessory penalties, must be sustained. "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."[38] There is also no question that Venadas' conduct is prejudicial to the best interest of the service, as it tarnished the image and integrity of the government agency with which she is connected.

Finally, counsel for petitioner is admonished for the reckless and unsubstantiated accusations against the CA and the *ponente* of the decision under review. Zeal for a client's cause should not be at the expense of counsel's duty as an officer of the court.[39] Merely citing that the case was unloaded to the *ponente*, whom news reports happened to name as among legislators investigated by the Secretary of Justice on the use of PDAF allocations, is a long stretch to impute undue interest in a case or horse trading in the CA. Counsel should know better than to brandish about serious accusations without proof, not the least when it involves the integrity of courts and magistrates.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

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

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[37] *Amoguis v. Ballado*, G.R. No. 189626, August 20, 2018.

[38] *Office of the Ombudsman v. Faller*, G.R. No. 215994, June 6, 2016.

[39] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 11.04 - A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

FIRST DIVISION

[G.R. No. 225226. July 7, 2020]

THE CITY OF MAKATI, *petitioner, vs.* **THE MUNICIPALITY OF BAKUN and LUZON HYDRO CORPORATION,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; THE COURT OF TAX APPEALS (CTA) HAS APPELLATE JURISDICTION OVER LOCAL TAX CASES DECIDED BY THE REGIONAL TRIAL COURT IN THE EXERCISE OF THE LATTER'S ORIGINAL JURISDICTION.—** [T]he CTA has appellate jurisdiction over local tax cases decided by the RTC in the exercise of the latter's original jurisdiction [as provided under] Sec. 7, paragraph (a) (3) of R.A. No. 1125, as amended by R.A. No. 9282, x x x That the case filed before the RTC was in the mode of a special civil action for interpleader does not detract from its nature as a local tax case, involving as it does the application of the rules on situs on the payment of local business taxes. There is no need to distinguish it from other local tax cases "considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power."

2. **TAXATION; LOCAL BUSINESS TAXES; RIGHT OF A LOCAL GOVERNMENT UNIT TO PARTICIPATE IN THE 70% PORTION OF BUSINESS TAX; THE BUSINESS OFFICE MUST BE A PROJECT OFFICE.—** We now address the core issue of whether LHC's Makati office was a project office or a mere administrative office, in order to determine whether [respondent's] or not it had a right to participate in the 70% portion of LHC's business tax. x x x [T]he CTA took into account where LHC's sales, transactions and operations were undertaken. Having noted that these did not take place at the Makati office, the tax court concluded that it was a mere administrative office. x x x The subject tax is a tax on business, particularly one that is expressly imposed on gross sales recorded.

> x x x The rules on tax allocation in relation to tax situs under Sec. 150 of R.A. No. 7160 come into play when a business subject to it does not operate a branch or sales office outside of its principal office where all sales are recorded, but has a factory, project office, plant, or plantation situated in different localities, whether or not sales are made in these localities. Thus, even if no sales were recorded or undertaken at LHC's Makati office, Makati would have been entitled to share with LHC's power plant sites in the 70% portion of the business tax if it could be shown that the Makati office was a project office of LHC akin to a factory. The enumeration itself — factory, project office, plant, or plantation — reveals the character of the office contemplated by the provision. These are offices directly involved in production or operations; hence, the inescapable conclusion that LHC's Makati office was a mere administrative office.

APPEARANCES OF COUNSEL

Anthony T. Zamora for petitioner.
Puno & Puno for Luzon Hydro Corporation.
Benguet Provincial Legal Office for Municipality of Bakun.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* under Rule 45 seeking the reversal of the Decision[1] in CTA EB Case No. 1179 rendered by the Court of Tax Appeals (CTA) *En Banc* on January 14, 2016 and its Resolution[2] dated June 8, 2016 denying reconsideration.

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[1] Penned by Associate Justice Cielito N. Mindara-Grullo, with Presiding Justice Ramon C. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen Ringpis-Liban, concurring; *rollo*, pp. 37-51.

[2] *Id.* at 52-55.

The case sprang from a special civil action for interpleader under Rule 62, with prayer for preliminary injunction and/or temporary restraining order, filed before the Regional Trial Court (RTC) of Makati City, Branch 134 on January 16, 2007.[3] Luzon Hydro Corporation (LHC) sought to compel the City of Makati (Makati), the Municipality of Alilem (Alilem), and the Municipality of Bakun (Bakun) to litigate among themselves their conflicting claims on LHC's liability for local business tax under Republic Act (R.A.) No. 7160.[4]

LHC operates a hydroelectric power plant harnessing the Bakun River that runs through the Provinces of Ilocos Sur and Benguet. The major components of the facility, such as the power station and switch yard are situated in Alilem, Ilocos Sur. Other structures, such as the conveyance tunnel, penstock, weir, intakes, and desander are located in Bakun, Benguet. LHC maintained an office in Makati City.[5]

Until 2003, LHC enjoyed a six-year tax holiday as an entity engaged in a pioneer area of investment registered with the Board of Investments. In 2004, LHC began paying local business taxes to Alilem, Bakun, and Makati. LHC pays Alilem the 30% portion of its local business tax allocated for the site of the principal office, conformably with Section (Sec.) 150 of R.A. No. 7160,[6] given that Alilem is specified as the location of

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[3] *Id.* at 56.

[4] LOCAL GOVERNMENT CODE OF 1991.

[5] *Rollo*, p. 56.

[6] Section 150. *Situs of the Tax.* —

(a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other **businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall**

LHC's principal office in its Articles of Incorporation. For three years since 2004, the 70% portion of the local business tax was equally apportioned among Alilem, Bakun, and Makati, such that each local government unit (LGU) received 23.33% — Alilem and Bakun as power plant sites and Makati as a "project office" site.[7] It is the sharing in the 70% portion that became the bone of contention among the three LGUs.

Via Resolution No. 168-2004 dated September 20, 2004, Bakun questioned the sharing scheme and claimed the entire 70% portion of the local business tax. The matter was submitted to the Bureau of Local Government and Finance (BLGF) for determination.[8]

On February 8, 2006, the BLGF opined that only Bakun and Alilem should share in the 70% portion of LHC's local business tax because LHC's Makati office was a mere "administrative office" and not among the sites enumerated in Sec. 150 of R.A. No. 7160.[9] According to the BLGF, Makati can only collect the mayor's permit fee and other regulatory fees under its existing local tax ordinances.[10]

Consequently, Bakun passed Resolution No. 134-2006 requiring LHC to prospectively comply with the BLGF opinion,

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be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality;

(b) The following **sales allocation** shall apply to manufacturers, assemblers, contractors, **producers**, and exporters **with factories, project offices, plants, and plantations in the pursuit of their business**:

(1) **Thirty percent (30%) of all sales recorded in the principal office** shall be taxable by the city or municipality **where the principal office is located**; and

(2) **Seventy percent (70%) of all sales recorded in the principal office** shall be taxable by the **city or municipality where the** factory, **project office, plant**, or plantation is located. (Emphasis supplied)

x x x x x x x x x

[7] *Rollo*, p. 39.

[8] *Id.*

[9] *Supra* note 6.

[10] *Rollo*, pp. 39-40.

and assessed LHC deficiency taxes for the years 2004 to 2006. Alilem followed suit and issued Resolution No. 07-02, also requiring LHC to comply with the BLGF opinion. Makati, on the other hand, informed LHC that it would still assess the latter's local business tax notwithstanding the BLGF opinion. To resolve the ensuing uncertainty, LHC filed the action for interpleader.[11]

The RTC of Makati City found that LHC's Makati office was a "project office," which entitled Makati to an equal share with LHC's power plant sites from the 70% portion of LHC's business tax. In view, however, of Makati's representation[12] on the witness stand that it was willing to have its share in the tax reduced, as long as its share is not completely done away with, the RTC reduced its share to 20% instead. Thus, in a Decision[13] dated April 20, 2012, the RTC of Makati City, Branch 134, disposed:

> WHEREFORE, premises considered, the petition for interpleader is hereby given due course. Defendants Municipalities of Alilem and Bakun as well as the City of Makati are all declared entitled to the 70% business tax allocation of the plaintiff to be distributed starting taxable year 2012, as follows:
>
> Municipality of Alilem — 25% (as site of the plant)
> Municipality of Bakun — 25% (as site of the plant)
> City of Makati — 20% (as "project office")
>
> SO ORDERED.[14]

Bakun moved for reconsideration, which was denied by the RTC on September 12, 2012, prompting the said municipality to file a petition for review before the CTA.[15]

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[11] *Id.* at 40.

[12] *Id.* at 68.

[13] Penned by Presiding Judge Perpetua Atal-Paño; *id.* at 56-69.

[14] *Id.* at 69.

[15] *Id.* at 83.

Finding this time that LHC's Makati office was merely an "administrative office" where none of LHC's sales were recorded or undertaken, the CTA Special First Division issued a Decision[16] on November 8, 2013, disposing:

> **WHEREFORE**, the Petition for Review dated November 14, 2012 filed by petitioner Municipality of Bakun is **PARTIALLY GRANTED**. Accordingly, the Decision dated April 20, 2012 and the Order dated September 12, 2012 of the RTC in Civil Case No. 07-049 are hereby **REVERSED** and **SET ASIDE**. The Municipalities of Bakun and Alilem are hereby declared the only local government units entitled to equally share in the 70% allocation made by LHC for the payment of its local business [tax].
>
> **SO ORDERED**.[17]

Makati sought reconsideration of the CTA Special First Division's Decision on December 23, 2013, while Bakun moved for its partial reconsideration on January 15, 2014. Both these motions were denied for lack of merit in a Resolution[18] dated April 30, 2014. Aggrieved by the tax court's reversal of the RTC's decision, Makati filed a Petition for Review[19] before the CTA *En Banc*.

Concurring with its Special First Division's findings and conclusion, the CTA *En Banc* arrived at the currently assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the petition is **DENIED** for lack of merit. The Decision of the Special First Division of this Court in CTA AC No. 100, promulgated on November 8, 2013 and its Resolution, promulgated on April 30, 2014, are hereby **AFFIRMED**. No pronouncement as to costs.
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> **SO ORDERED**.[20]

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[16] *Id.* at 79-95.

[17] *Id.* at 94.

[18] *Id.* at 110-116.

[19] *Id.* at 117-136.

[20] *Id.* at 51.

Makati moved for reconsideration of the CTA *En Banc's* Decision, which was denied for lack of merit on June 8, 2016 *via* its now assailed Resolution.[21]

Undeterred, Makati filed the present petition submitting the following for our review:

I. WHETHER OR NOT THE COURT OF TAX APPEALS *EN BANC* AND [ITS SPECIAL FIRST DIVISION] GRAVELY ERRED IN IGNORING THE FINDINGS OF [FACT] OF THE TRIAL COURT, RTC-MAKATI CITY, BRANCH 134, WHICH CONDUCTED THE HEARINGS AND TRIALS OF THE PRESENT CASE, WHEREIN IT WAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE IN THE HONORABLE REGIONAL TRIAL COURT THAT LUZON HYDRO CORPORATION'S ("LHC") OFFICE IN MAKATI CITY IS A PRODUCER/POWER GENERATION OFFICE OR "PROJECT OFFICE," NOT A MERE ADMINISTRATIVE OFFICE[;]

II. WHETHER OR NOT THE COURT OF TAX APPEALS *EN BANC* AND [ITS SPECIAL FIRST DIVISION] GRAVELY ERRED IN APPLYING LOCAL FINANCE CIRCULAR NO. 03-95 ENTITLED "PRESCRIBING GUIDELINES GOVERNING THE POWER OF CITIES AND MUNICIPALITIES TO IMPOSE BUSINESS TAX ON CONSTRUCTION CONTRACTORS PURSUANT TO SECTION 143(e), REPUBLIC ACT NO. 7160, x x x" dated MAY 22, 1995 TO SUPPORT ITS RULING THAT THE OFFICE OF LHC IN MAKATI IS NOT A PROJECT OFFICE[;]

III. WHETHER OR NOT THE BLGF OPINION DATED 08 MARCH 2006 HAS NO BINDING AND MANDATORY EFFECT[;]

IV. WHETHER OR NOT THE COURT OF TAX APPEALS *EN BANC* AND [ITS SPECIAL FIRST DIVISION] GRAVELY ERRED IN RULING IN FAVOR OF A PARTY, MUNICIPALITY OF ALILEM, WHICH DID NOT EVEN FILE AN APPEAL BEFORE THE COURT OF TAX

[21] *Supra* note 2.

APPEALS, AND THEREFORE, AS FAR AS MUNICIPALITY OF ALILEM IS CONCERNED, THE DECISION DATED 20 APRIL 2012 RENDERED BY THE HONORABLE RTC-MAKATI CITY SHOULD HAVE BECOME FINAL AND EXECUTORY[; AND]

V. WHETHER OR NOT THE COURT OF TAX APPEALS *EN BANC* AND [ITS SPECIAL FIRST DIVISION] GRAVELY ERRED IN TAKING COGNIZANCE OF THE PRESENT APPEAL FROM A "SPECIAL CIVIL ACTION FOR INTERPLEADER," WHICH IS NOT WITHIN THE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS.[22]

On October 12, 2016, Bakun filed its Comment[23] on the current petition, reiterating that LHC's Makati office was a mere "administrative office" and consequently not entitled to share in LHC's local business tax allocation.

LHC also filed a Comment[24] on the petition on October 20, 2016 maintaining that the CTA had jurisdiction over the case, involving as it did an appeal from a decision of the RTC in a local tax case. LHC also informs us that it ceased any business presence in Makati as of March 31, 2013. Furthermore, it had consigned its local business tax allocations up to 2012 with the RTC of Makati City. Thus, LHC asserts that it had fully settled its local business taxes from 2004 up to the present, either directly paid to the LGUs or consigned with the RTC.

We put the matter to rest.

Certainly, the CTA has appellate jurisdiction over local tax cases decided by the RTC in the exercise of the latter's original jurisdiction. Sec. 7, paragraph (a) (3) of R.A. No. 1125, as amended by R.A. No. 9282,[25] provides:

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[22] *Rollo*, pp. 18-20.

[23] *Id.* at 180-188.

[24] *Id.* at 190-198.

[25] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A

Section 7 of the same Act is hereby amended to read as follows:

SEC. 7. Jurisdiction. — The [Court of Tax Appeals] shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x x x x

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.]

x x x x x x x x x

That the case filed before the RTC was in the mode of a special civil action for interpleader does not detract from its nature as a local tax case, involving as it does the application of the rules on situs on the payment of local business taxes. There is no need to distinguish it from other local tax cases "considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power."[26]

We now address the core issue of whether LHC's Makati office was a project office or a mere administrative office, in order to determine whether or not it had a right to participate in the 70% portion of LHC's business tax.

A careful reading of the assailed decision does not yield the conclusion that the CTA relied on the BLGF's opinion in ascertaining the nature of LHC's Makati office, as Bakun and Alilem had done when they claimed a greater share in the 70% portion of the business tax as power plant sites. Instead, the

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COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2000.

[26] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 481-482, 530 (2014).

CTA took into account where LHC's sales, transactions and operations were undertaken. Having noted that these did not take place at the Makati office, the tax court concluded that it was a mere administrative office. In view of the CTA having made an independent determination on the matter, there is no need to quibble over whether or not the BLGF's opinion carries a binding effect.

To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. The authorities cited by petitioner pertain to the Court of Tax Appeals, a highly specialized court which performs judicial functions as it was created for the review of tax cases. In contrast, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others.[27]

In tackling what constitutes a project office, it was not erroneous for the CTA to cite Department of Finance-Local Finance Circular No. 3-95[28] dated May 22, 1995. On the situs of tax, Sec. 5 (a) (3) of the said circular defines a project office as "equivalent to the factory of a manufacturer." While the circular concerned applies to construction contractors, it was nonetheless addressed to all Treasurers of LGUs, clarifying the imposition of business taxes under Sec. 143 of R.A. No. 7160[29] for a uniform application. While the circular addressed a different economic activity from that of hydroelectric power generation, its definition of a project office is a sound guide for parity of reasoning. A distinction is not even called for, since both activities are covered by local taxation on business

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[27] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 415 Phil. 768, 779-780 (2001).

[28] PRESCRIBING GUIDELINES GOVERNING THE POWER OF CITIES AND MUNICIPALITIES TO IMPOSE BUSINESS TAX ON CONSTRUCTION CONTRACTORS PURSUANT TO SECTION 143 (C), REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991, AND ITS IMPLEMENTING RULES AND REGULATIONS.

[29] *Supra* note 4.

and its rules on tax situs. There is nothing in the provisions to support a less than uniform application between construction contractors and power producers. In the present case, LHC's Makati office could not be viewed as equivalent to a factory or a project office.

The subject tax is a tax on business, particularly one that is expressly imposed on gross sales recorded. For this reason, it was relevant to the CTA's discussion to consider that invoices or records of all sales are not handled by LHC's Makati office, nor does it operate any aspect or primary purpose of LHC as provided in its Articles of Incorporation.

The rules on tax allocation in relation to tax situs under Sec. 150 of R.A. No. 7160[30] come into play when a business subject to it does not operate a branch or sales office outside of its principal office where all sales are recorded, but has a factory, project office, plant, or plantation situated in different localities, whether or not sales are made in these localities. Thus, even if no sales were recorded or undertaken at LHC's Makati office, Makati would have been entitled to share with LHC's power plant sites in the 70% portion of the business tax if it could be shown that the Makati office was a project office of LHC akin to a factory. The enumeration itself — factory, project office, plant, or plantation — reveals the character of the office contemplated by the provision. These are offices directly involved in production or operations; hence, the inescapable conclusion that LHC's Makati office was a mere administrative office.

What constitutes a project office in relation to the rules on business tax situs was central to the tax court's resolution of the controversy. It was not reversible error for it to set aside the trial court's erroneous conclusion. The RTC made a conclusion of fact based on loose reference to the Makati office as a project office in various communications and in LHC's pleadings, as well as prior treatment of it as a project office. These are immaterial, given LHC's willingness to pay the

[30] *Supra* note 5.

business tax in full to any or all of the claimants. The obligation to pay taxes is one that arises from law and not from agreement or acquiescence of the parties or contending claimants. The mere label of a project office does not convert a mere administrative office into one, if the term is used in such a way that carries tax implications. The question was submitted to the tax court, which ruled on the matter based on its technical expertise. We find no reversible error in its application of the laws and rules within its competence.

Finally, we concur that Bakun and Alilem share a commonality of interest in the case. The fact that only Bakun appealed from the RTC's decision in the interpleader case does not preclude Alilem from benefiting in a judgment favoring Bakun. The site of LHC's hydroelectric power plant straddles both Alilem and Bakun, and the controversy involved the same question of law. When a party's right is inseparable with another who did not appeal a judgment, *Maricalum Mining Corporation v. Remington Industrial Sales Corporation*[31] stated it succinctly:

> Indeed, one party's appeal from a judgment will not inure to the benefit of a co-party who failed to appeal; and as against the latter, the judgment will continue to run its course until it becomes final and executory. To this general rule, however, one exception stands out: where both parties have a commonality of interests, the appeal of one is deemed to be the vicarious appeal of the other.[32]

To insist that a court's determination that only Bakun and Alilem are legally entitled to share in the 70% portion of the business tax from LHC, should not benefit Alilem for failing to appeal, borders on the ridiculous. If we were to rule that Alilem had lost its claim, neither Bakun nor LHC would have any greater right over the amount that would have gone to Alilem but which was consigned with the RTC. Much less would Makati have any rightful claim to it because the application of the tax situs sharing scheme over local business taxes is a matter of law, whether or not a party-claimant ceases to pursue it.

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[31] 568 Phil. 219-220, 228 (2008).

[32] *Id.*

For the foregoing reasons, we affirm the assailed CTA *En Banc* decision and resolution.

WHEREFORE, finding no reversible error in the January 14, 2016 Decision and the June 8, 2016 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case No. 1179, the instant petition is **DENIED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225600. July 7, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **DENEL YUMOL *y* TIMPUG,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH RAPE; ELEMENTS. — Robbery with Rape is a special complex crime that contemplates a situation where the accused's original intent was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. It requires 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 characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.

2. ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI* IS AN INTERNAL ACT AND IS PRESUMED FROM THE UNLAWFUL TAKING OF THINGS; CASE AT BAR.— Intent to gain, or *animus lucrandi*, as an element of the crime

of robbery, is an internal act, hence, presumed from the unlawful taking of things. Since it was established that appellant unlawfully took away AAA's personal properties, intent to gain was deemed sufficiently proven, as well. The first three (3) elements of robbery with rape, therefore, were clearly established.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN A RAPE VICTIM'S TESTIMONY CONFORMS WITH THE MEDICAL FINDINGS OF THE EXAMINING DOCTOR, THE SAME IS SUFFICIENT TO SUPPORT A CONVICTION FOR RAPE.— AAA's testimony solidly conforms with the physical evidence through the medical findings of Dr. Rolando Marfel Ortiz that AAA sustained several abrasions on her forearm, arms, and knees, as well as laceration or tear in her hymen, that could have been caused by a forceful entry of a foreign body such as a penis. The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape.

4. ID.; ID.; CREDIBILITY; EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES IS A MATTER BEST UNDERTAKEN BY THE TRIAL COURT.— Suffice it to state 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. Hence, the Court defers and accords finality to the factual findings of trial courts especially when such findings carry the full concurrence of the Court of Appeals, as in the case at bar.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] assails the Decision[2] dated July 31, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05810 which affirmed with modification the trial court's verdict of conviction[3] against appellant Denel Yumol *y* Timpug for robbery with rape.

The Proceedings before the Trial Court

The Charge

Appellant was charged with robbery with rape under the following Information,[4] *viz.*:

That on or about the twenty-first (21st) day of October 2006, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, did then and there willfully, unlawfully and feloniously poked a gun at said (AAA),[5] a (16-year-old) minor, take, steal and carry the 3350 Nokia cellphone worth ₱3,550.00 Pesos, Philippine currency of (AAA), and on the occasion of said robbery did then and there willfully, unlawfully and feloniously commit act of sexual assault on said (AAA)

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[1] Filed under Section 13(c), Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC, *rollo*, pp. 14-16.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justice Danton Q. Bueser and Associate Justice Myra V. Garcia-Fernandez, *id.* at 2-16.

[3] Penned by Judge Norman V. Pamintuan of RTC-Olongapo City, Branch 73, Decision dated April 4, 2012, CA *rollo*, pp. 54-60.

[4] Record, p. 1.

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

by then and there undressing her and inserting his penis into the (genitalia) of said minor (AAA) against her will and consent to the damage and prejudice of said minor.

CONTRARY TO LAW.

The case was raffled to the Regional Trial Court (RTC)-Olongapo City, Branch 73 and docketed as Criminal Case No. 589-2006.

On arraignment, appellant pleaded "not guilty.[6] Trial ensued. Complainant AAA, SPO1 Norberto Ventura, SPO3 Edgar Rivera, and Dr. Rolando Marfel Ortiz testified for the prosecution. On the other hand, appellant Denel Yumol *y* Timpug testified as lone witness for the defense.

Evidence for the Prosecution

AAA testified that on October 21, 2006, between 12 o'clock midnight and 1 o'clock in the morning, she and her schoolmate were heading home from a mini concert. They boarded a jeepney going to Gordon Heights, Olongapo City. Her classmate alighted first, then she got off at the next block.[7]

As she was walking home, appellant suddenly approached her from behind, poked a gun at her back, and declared a hold-up. Appellant took her Nokia 3350 mobile phone. He then pointed a gun on her neck and ordered her to go to the nearby children's park. Once there, appellant instructed her to sit on a stair. He started kissing her lips and touching her breast. She tried to push him away but he held her face toward his. Appellant then ordered her to go to the grassy portion of the park and undress. When she refused, appellant threatened to shoot her, thus, forcing her to accede to his demands. After she had undressed, appellant lay on the ground and ordered her to mount him. He inserted his penis into her vagina and forced her to move "up and down." Thereafter, appellant instructed her to give him a fellatio while threatening her with a gun. He poked and pushed his gun against

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[6] *Id.* at 21.

[7] *Rollo,* pp. 3-4.

her head while his penis was inside her mouth. He then ordered her to mount him anew and move "up and down" again. While in that position, appellant was constantly inserting his finger into her vagina. She felt a harrowing pain in her vagina caused by appellant's sexual assault.[8]

After satisfying his lust, appellant told her to put on her clothes and walk toward the nearby school. He took the remaining fifty-peso bill and sim card from her clothing. When they reached the school, appellant told her to walk straight ahead and not to look back, otherwise, he will shoot her.[9]

When she reached home, she immediately told her parents about the incident. Her parents reported the incident to the barangay officials and police authorities. The police officers accompanied her and her parents to the children's park to search for appellant, but they did not find him there. Thereafter, she was brought to James L. Gordon Memorial Hospital for medical examination.[10]

SPO1 Norberto Ventura testified that he was on duty at the Police Station 5, Olongapo City Police Office when Police Senior Inspector Camilo Pablo directed him to conduct a follow-up investigation regarding the incident. During her interview, AAA identified appellant from the pictures shown her.[11]

He and SPO3 Edgar Rivera, together with AAA, proceeded to the crime scene and gathered some information from the residents, using AAA's description of the assailant, *e.g.* fat, with semi-bald hair, and shorter left hand. A bystander, who believed that appellant matched the given description, told them of his whereabouts. Upon finding appellant, they showed him to AAA who immediately identified him as the person who assaulted her. AAA recognized appellant's voice and the same pants he was wearing at the time of the assault. He and SPO3

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[8] *Id.* at 4.

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

[10] *Id.* at 5.

[11] *Id.*

Rivera noticed several abrasions on appellant's body. They apprehended and brought appellant to the police station.[12]

SPO3 Edgar Rivera corroborated SPO1 Ventura's testimony. He testified that a senior officer dispatched them to conduct a follow-up operation on the robbery with rape incident involving AAA. A bystander informed them of the whereabouts of the person who fitted AAA's description of her assailant, who turned out to be appellant. When they located the latter, AAA positively identified him as the perpetrator of the crime. They arrested and brought appellant to the police station.[13]

Dr. Rolando Marfel Ortiz testified that he examined AAA and noted that she had several injuries on her arms, knees, and legs which indicated struggle. He also found lacerations in her hymen which could have been caused by a forceful entry.[14]

Evidence for the Defense

Appellant denied the charge. He averred that after being released from prison, he lived in his cousin's house at No. 18 Ruano Street, Gordon Heights, Olongapo City. In the evening of October 20, 2006, around 11 o'clock or 12 midnight, he was at home watching movies. The house was far from where the incident happened. At first, he thought he was arrested for vagrancy when SPO3 Rivera spotted him along Ruano Street. He later learned at the police station that a crime transpired at Gordon Heights and he was pinpointed as the perpetrator by a woman whose face was covered. He had nothing to do with the charge against him.[15]

The Trial Court's Ruling

As borne by its Decision[16] dated April 4, 2012, the trial court rendered a verdict of conviction, *viz*.:

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[12] *Id*. at 5-6.

[13] CA *rollo*, p. 57.

[14] *Rollo*, p. 5.

[15] *Id*. at 6.

[16] *Supra* note 3.

WHEREFORE, judgment is hereby rendered, finding accused Denel Yumol y Timpug alias "Den-Den" GUILTY beyond reasonable doubt of the crime of robbery with rape under Art. 294 of the Revised Penal Code, as amended by Republic Act No. 7659 and is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility of *(sic)* parole pursuant to Republic Act No. 9346. He is also ordered to return the mobile phone and the money taken from [redacted]. Should restitution be no longer possible, he shall pay her the value of the stolen mobile phone (PhP3,550.00) and value in the amount of PhP50.00. He is further directed to pay her the amounts of PhP100,000.00 as civil indemnity, PhP100,000.00 as moral damages and PhP100,000.00 as exemplary damages.

SO ORDERED.[17]

It ruled that the elements of the crime of robbery with rape were duly established. The testimonies of the prosecution witnesses proved that appellant, with intent to gain, took the victim's personal property by means of violence and intimidation and, on the occasion of the robbery, had carnal knowledge of the hapless victim with the use of force and intimidation.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of robbery with rape despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. Appellant essentially argued that his identity was not properly established and AAA's testimony is not credible. AAA could have been mistaken in identifying him as the perpetrator because she never had a clear view of the assailant's facial features considering their relative positions and the lighting condition of the place where the crime transpired. The sound of his voice cannot be accepted as a means of identification considering that he and AAA had not known each other prior to the alleged incident. The police did not present a line-up of suspects to AAA from among whom she could choose or pinpoint her assailant. They simply presented him to AAA and asked her whether he was the one who robbed and raped her.[18]

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[17] *Id.* at 60.

[18] *Id.* at 39-51.

On the other hand, the Office of the Solicitor General (OSG), through Acting Solicitor General Florin T. Hilbay, Assistant Solicitor General Ma. Cielo Se-Rondain, and Associate Solicitor Omar T. Gabrieles riposted that the prosecution proved appellant's identity and guilt beyond reasonable doubt. AAA's positive identification of appellant as the man who robbed and raped her prevails over appellant's self-serving denial and alibi.[19]

The Court of Appeals' Ruling

In its assailed Decision[20] dated July 31, 2015, the Court of Appeals affirmed with modification of the award of interest, *viz*.:

> WHEREFORE, we DENY the appeal. The decision appealed from is AFFIRMED with MODIFICATION that an interest at the rate of six percent (6%) *per annum* is imposed on all damages awarded from date of finality of the judgment until full payment.
>
> IT IS SO ORDERED.[21]

The Court of Appeals agreed with the trial court that the elements of the crime of robbery with rape are present and appellant's defense of denial and alibi must fail.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with *Resolution*[22] dated September 14, 2016, both the OSG and appellant manifested[23] that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for robbery with rape?

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[19] *Id*. at 71-87.

[20] *Supra* note 2.

[21] *Id*. at 12.

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

[23] *Id*. at 27-28, 22-24.

Ruling

We affirm.

Robbery with rape is defined and penalized under Article 294 of the Revised Penal Code (RPC), as amended by Section 9 of Republic Act No. 7659 (RA 7659),[24] *viz*.:

> **Art. 294.** *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
>
> x x x x x x x x x

Robbery with Rape is a special complex crime that contemplates a situation where the accused's original intent was to take, with intent to gain, personal property belonging to another and rape is committed on the occasion thereof or as an accompanying crime. It requires 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 characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.[25]

After a careful evaluation of the records, the Court finds no compelling reason to disturb the trial court's findings, as affirmed by the appellate court. The prosecution was able to establish all the elements of the crime beyond any shadow of doubt.

Taking of personal property was established through direct evidence

Records show that appellant, by means of violence and intimidation, took away AAA's mobile phone, money amounting

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[24] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and for Other Purposes.

[25] *People v. Bringcula y Fernandez*, 824 Phil. 585, 592 (2018).

to ₱50.00 and sim card without the latter's consent. AAA testified that appellant pointed a gun at her and took away her 3350 mobile phone. He then ordered her to go to the grassy area of a nearby children's park where he forced and threatened her to have sexual intercourse with him and to give him a *fellatio*. Thereafter, he took her remaining money and sim card, ordered her to go to a nearby school and threatened to shoot her should she look back at him.

Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act, hence, presumed from the unlawful taking of things.[26] Since it was established that appellant unlawfully took away AAA's personal properties, intent to gain was deemed sufficiently proven, as well. The first three (3) elements of robbery with rape, therefore, were clearly established.

Rape was committed by reason or on the occasion of a robbery

The prosecution had established beyond moral certainty that rape here was committed by reason or on the occasion of robbery. AAA positively identified appellant as the man who, with the use of force and intimidation, had carnal knowledge of her. She made a clear, candid and positive narration of how appellant pointed a gun on her neck, ordered her to mount him, inserted his penis inside her vagina, and directed her to make an "up and down" motion, give him *fellatio*, and once again, mount him and move "up and down," while constantly threatening to shoot her should she resist.

AAA's testimony solidly conforms with the physical evidence through the medical findings of Dr. Rolando Marfel Ortiz that AAA sustained several abrasions on her forearm, arms, and knees, as well as laceration or tear in her hymen, that could have been caused by a forceful entry of a foreign body such as a penis. The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with

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[26] *People v. Bongos*, 824 Phil. 1004, 1017 (2018).

the medical findings of the examining doctor, the same is sufficient to support a conviction for rape.[27]

So must it be.

Appellant's identity as the perpetrator was established

Appellant, nonetheless, harps on the prosecution's alleged failure to prove, with absolute certainty, his identity as the perpetrator because AAA never had a clear view of the assailant's facial features considering their relative positions and the poor lighting condition of the crime scene. His identification was purportedly marked with suggestiveness since the police officers simply presented him to AAA and asked her whether he was the one who robbed and raped her, without presenting to her a line-up of suspects from among whom she could choose or pinpoint her assailant.

We do not agree.

The natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed.[28] Precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses and victims can remember with a high degree of reliability the identity of criminals at any given time.[29]

There is ample evidence to establish appellant's identity as the perpetrator of the crime. AAA vividly recounted the incident and positively identified appellant as the one who robbed and raped her. Although the *situs criminis* was allegedly poorly lit, she had several opportunities to look at and ascertain her assailant's appearance and other physical features while the crime was being committed. For one, appellant held her face close to his when she tried to avoid his kiss. Another, when appellant was ordering her to remove her blouse, she was looking at him.[30] Too, when appellant forced her to mount him twice

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[27] *People v. Caoili*, 815 Phil. 839, 881 (2017).

[28] *People v. Pepino y Rueras*, 777 Phil. 29, 54 (2016).

[29] *People v. Esoy y Hungoy*, 631 Phil. 547, 556 (2010).

[30] TSN, May 25, 2009, pp. 7 and 12.

and make an "up and down" motion, her position gave her a better look at appellant. Having seized these opportunities, AAA was able to confidently and consistently describe appellant as fat, with semi-bald hair, shorter left hand, and small penis. She also recognized his voice and remembered the white soiled short pants he was wearing during the incident.[31]

AAA's identification of appellant cannot be deemed unreliable or improper simply because there was no police line-up. For there is no law requiring a police line-up as essential to proper identification. Even without a police line-up, there could still be proper identification as long as the police did not suggest such identification to the witness. Of paramount importance in dispelling any doubts as to the proper identification of appellant is AAA's positive identification of him in open court.[32]

Indeed, AAA's identification of appellant was proper, spontaneous and independent. Any *indicia* of suggestiveness is dispelled by the fact that AAA recognized appellant from a set of photos presented to her by the police and she had already given to the police officers a clear and accurate description of appellant even before the latter was arrested just a few hours right after the commission of the crime.

Both the trial court and the Court of Appeals found AAA's testimony to be clear, straightforward, convincing, credible, and satisfactory. Notably, although AAA was not able to repel appellant's violent and sexual acts out of fear for her life, she immediately reported her ordeal to her parents, the barangay officials and the police officers and promptly submitted herself to physical examination. Her swift and courageous actions against appellant are eloquent proofs that she was truly wronged and she wanted the wrongdoer to be punished accordingly. This further bolstered her credibility. Too, there was no showing that AAA was impelled by any improper motive to falsely testify against appellant.

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[31] *Rollo*, p. 8; TSN, May 25, 2009, pp. 12-14.

[32] *People v. Lubong*, 388 Phil. 474, 483 (2000); *People v. Bangcado*, 399 Phil. 768, 775 (2000).

Suffice it to state 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.[33] Hence, the Court defers and accords finality to the factual findings of trial courts especially when such findings carry the full concurrence of the Court of Appeals, as in the case at bar.[34]

Appellant's defenses boil down to denial and alibi. These are the weakest of all defenses - - - easy to contrive but difficult to disprove. As between AAA's credible and positive identification of appellant as the person who robbed and raped her against her will, on one hand, and appellant's bare denial and alibi, on the other, the former indubitably prevails.[35]

Penalty

All told, the Court of Appeals did not err in affirming the trial court's verdict of conviction. In accordance with Article 294 of the Revised Penal Code, as amended by RA 7659, in relation to Republic Act No. 9346 (RA 9346), appellant shall suffer *reclusion perpetua* without eligibility for parole.

As for the monetary awards, the Court sustains the grant of ₱100,000.00 civil indemnity, moral damages, and exemplary damages or ₱100,000.00 each pursuant to ***People v. Jugueta.***[36] These amounts shall earn interest of six (6) percent *per annum* from finality of judgment until fully paid.[37]

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[33] *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 184 (2017).

[34] *Heirs of Spouses Liwagon, et al. v. Heirs of Spouses Liwagon*, 748 Phil. 675, 689 (2014).

[35] *Etino v. People*, 826 Phil. 32, 48 (2018); *People v. Candellada*, 713 Phil. 623, 637 (2013).

[36] 783 Phil. 806 (2016).

[37] *People v. Belmonte y Sumagit*, 813 Phil. 240, 251 (2017); *People v. Samuya*, 758 Phil. 584, 593 (2015).

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated July 31, 2015 in CA-G.R. CR-HC No. 05810 is **AFFIRMED**. Appellant **DENEL YUMOL *y* TIMPUG** is found **GUILTY** of robbery with rape and sentenced to *reclusion perpetua* without eligibility for parole.

Appellant **DENEL YUMOL *y* TIMPUG** is **ORDERED TO RETURN** to **AAA** the amount of ₱50.00 and the mobile phone or its value (₱3,550.00), where restitution is no longer possible. He is further **DIRECTED TO PAY AAA** the amounts of ₱100,00.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. Interest at the rate of six percent (6%) *per annum* is imposed on all the damages awarded in this case from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

EN BANC

[G.R. No. 230185. July 7, 2020]

EDDA V. HENSON, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF COURT ORDERS OR RESOLUTIONS; IN THE ABSENCE OF A PROPER AND ADEQUATE NOTICE TO THE COURT OF A CHANGE OF ADDRESS, THE SERVICE OF THE ORDER OR RESOLUTION OF A COURT UPON THE PARTIES MUST BE MADE AT THE LAST ADDRESS

OF THEIR COUNSEL OF RECORD.— First off, respondent COA-CP contends that the instant Petition should be dismissed outright for late filing. x x x Petitioner, on the other hand, counters that in the absence of proof, such as an affidavit attesting that a copy of the December 27, 2016 Resolution was indeed served on her counsel on January 17, 2017 through personal service, and again, on January 26, 2017 through registered mail, the reckoning of the period to file the instant Petition should be March 13, 2017, the actual date of receipt of her counsel. x x x [P]etitioner contends that the counting of the period should commence on March 13, 2017 in the absence of proof that service was made on January 17 and 26, 2017. Petitioner, however, fails to realize that the burden of proving the timeliness of the instant Petition lies with her, not respondent COA-CP. It is incumbent upon her to prove, first, that the service made on her counsel's former address was ineffectual because her counsel was able to promptly inform respondent COA-CP of her change of address, and second, that her counsel received the December 27, 2016 Resolution only on March 13, 2017. These she failed to do. It bears stressing that "in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel of record." Hence, in case there is a change in address, it is the duty of the lawyer to promptly inform the court and the parties of such change to ensure that all official and judicial communications sent by mail will reach him. Here, based on the letters attached to her Compliance, it appears that petitioner's counsel belatedly informed respondent COA-CP of her change of address. Thus, the service made by respondent COA-CP on January 17 and 26, 2017 at the old address of petitioner's counsel are deemed valid and effectual.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; THE ESSENCE OF DUE PROCESS IS SIMPLY THE OPPORTUNITY TO BE HEARD, OR TO EXPLAIN ONE'S SIDE, OR TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— Invoking her right to due process, petitioner puts in issue the failure of respondent COA-CP to promptly resolve her case within the prescribed period under the Constitution as it took respondent

COA-CP thirteen (13) years before finally deciding the case on December 13, 2011. x x x The essence of due process, as the Court has consistently ruled, is simply the opportunity to be heard, or to explain one's side, or to seek a reconsideration of the action or ruling complained of; thus, for as long as the party was afforded the opportunity to defend himself/herself, there is due process. Here, as aptly pointed out by respondent COA-CP, petitioner was not denied due process as she was able to exhaust all legal remedies available to her and that she was informed of the basis of the disallowance. As to the length of time that the case was pending before respondent COA-CP, this does not in any way affect the validity of the ND.

3. ID.; ID.; GOVERNMENT PROJECTS; LIABILITY FOR DISALLOWED AMOUNTS; A PUBLIC OFFICER SHALL BE HELD LIABLE FOR THE DISALLOWED AMOUNTS WHEN THERE IS NEGLIGENCE OR BAD FAITH ON HER PART.— Citing the ruling of the Court in *Arias v. Sandiganbayan*, petitioner also insists that she should not be held liable for the disallowed amounts considering that she merely relied on the findings of those under her and the expertise of those in-charge. She also avers that she should not be held liable in the absence of negligence or bad faith on her part. Petitioner's reliance on the *Arias* case is misplaced. The instant case x x x involves a disallowance. And unlike in *Arias*, petitioner herein was the Administrator when the public bidding was conducted up to the time when payment was issued to Argus. Hence, petitioner cannot evade liability. Neither can petitioner claim that there was no negligence or bad faith on her part considering that there were blatant violations of the rules on public bidding, which petitioner as Administrator should have been aware of.

APPEARANCES OF COUNSEL

Eugenia A. Borlas for petitioner.
The Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the December 13, 2011 Decision[2] and the December 27, 2016 Resolution[3] of respondent Commission on Audit (COA)-Commission Proper (CP).

Factual Antecedents

The Intramuros Administration (IA) is a government agency created under Presidential Decree (PD) No. 1616 on April 10, 1979.[4] Under its charter, it is mandated to undertake the orderly restoration and development of Intramuros as a monument to the Hispanic Period of the Philippine history.[5]

In December 1991, under the administration of petitioner Edda V. Henson (petitioner), IA held a public bidding for the construction of three (3) houses (House Nos. 5, 6, and 7) in Plaza San Luis Cultural Commercial Complex.[6] Three bidders participated in the bidding.[7] All their bids, however, exceeded the Agency Approved Estimate (AAE) of the project in the amount of ₱13,187,162.90.[8] But because of time constraints and to avoid the possible reversion of the funds intended for the project, the Bidding and Awards Committee (BAC) of IA

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[1] *Rollo*, pp. 3-16.

[2] *Id.* at 25-34; penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] *Id.* at 17-24; penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

[4] *Id.* at 25.

[5] *Id.*

[6] *Id.* at 26.

[7] *Id.*

[8] *Id.*

opted not to conduct a second bidding, and instead, negotiated with the lowest bidder, Argus Development Corporation (Argus), to reduce its bid to ₱13,187,162.90.[9] Argus agreed on the condition that IA would supply construction materials in the amount of not less than ₱3,391,000.00 and that the architectural details would be downgraded.[10]

Contracts for Phase I in the amount of ₱9,863,237.40 and Phase II in the amount of ₱3,323,925.50 were executed by the parties on December 27, 1991 and May 15, 1992, respectively.[11]

Supplemental contracts were also executed for Variation Order No. 1 on October 8, 1992 in the amount of ₱3,377,071.84 and for Variation Order No. 2 on January 26, 1993 in the amount of ₱1,457,069.71 in view of the conversion of the pension houses into a boutique hotel, and later, into a hotel laboratory school.[12]

On March 23, 1993, Argus completed the project and was paid a total of ₱18,001,977.77.[13]

On September 18, 1996, as requested by the then incoming Administrator of IA, Atty. Karlo Q. Butiong, a COA audit team was created to conduct a post-inspection of the project and a re-examination of related documents in view of the inherent and hidden defects in the construction of the project.[14]

On June 5, 1997, Notice of Disallowance (ND) No. 97-0001-101 (92-93) was issued disallowing the amount of ₱2,328,186.00, broken down as follows:[15]

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 26-27.

Reasons for Disallowance	**Amount Disallowed**
Contract cost of Phase II of the Project amounting to ₱3,323,925.50 exceeded the COA estimate by 3% due to over-estimate in unit costs and quantities of some pay items	₱80,781.62
Supplemental contract cost for Variation Order No. 1 amounting to ₱3,377,071.84 exceeded the COA estimate by 23.36% due to over-and-under estimate in unit cost and quantities of additive and deductive pay items	[₱]639,523.72
Supplemental contract cost for Variation Order No. 2 amounting to ₱1,457,069.71 exceeded the COA estimate by 68.28% due to some mathematical error and unsupported claim in Variation Order No. 1	[₱]591,259.50
Cost of construction materials supplied by the agency which were confirmed included in the bill of materials but were not deducted from the payments to the contractor	[₱]1,016,621.16
Total	**₱2,328,186.00**[16]

Held liable were petitioner for approving the payment and Pelagio R. Alcantara (Alcantara), Chief of Urban Planning and Community Development Office, for certifying the legality of the expenses which were incurred under his supervision.[17]

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[16] *Id.* at 27.

[17] *Id.*

On March 6, 1998, both petitioner and Alcantara sought reconsideration.[18] They likewise requested that they be furnished copies of the documents upon which the ND was based.[19]

Ruling of the Regional Director

On March 31, 1998, the Director of the National Government Audit Office (NGAO) II rendered a Decision upholding the disallowance.[20]

Unfazed, petitioner and Alcantara appealed to respondent COA-CP arguing that the disallowance was not supported by evidence considering that the auditor failed to conduct an actual canvass of the materials used in the construction; that they were denied due process as the audit team failed to disclose its findings within a reasonable time; and that there was no negligence or bad faith on their part.[21]

In his Answer, the then Director of NGAO II contended that the appeal was belatedly filed as it was filed beyond the six (6)-month period.[22]

Ruling of respondent COA-CP

Although it found that the appeal was indeed belatedly filed, respondent COA-CP, nevertheless, took cognizance of the appeal in the interest of substantial justice.[23]

Respondent COA-CP partially granted the appeal as it found that petitioner and Alcantara were not afforded due process in accordance with COA Memorandum No. 97-012 dated March 31, 1997.[24] Apparently, while the source of the reference values

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[18] *Id.*

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

[20] *Id.* at 28.

[21] *Id.*

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

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

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

or base prices were disclosed to petitioner and Alcantara, the audit team failed to furnish them with authenticated copies of the source documents such as the Canvass Sheets, the price quotations, and other supporting documents to allow them to compare the prices and to refute the disallowances or justify the legality of the purchases, item by item.[25] The auditor also failed to conduct an actual canvass of the prices of specific items purchased and instead relied on the price data supplied by the Price Evaluation Division–Technical Services Office.[26] Consequently, respondent COA-CP reconsidered the disallowed amounts of ₱80,781.62 and ₱639,523.72 in the contract costs for Phase II and Variation Order No. 1.[27]

Respondent COA-CP, however, affirmed the disallowed amounts of ₱1,016,621.16, representing the cost of construction materials supplied by IA which were included in the bill of materials but were not deducted from the payment made to Argus, and ₱591,259.50, representing the excess contract costs due to mathematical error and unsupported claim in Variation Order No.1.[28]

Respondent COA-CP also found that the provisions of the law on public bidding were not complied with.[29] Thus, aside from petitioner and Alcantara, it also held liable for the disallowance the Project Construction Manager, Bibiano M. Valbuena; the BAC Chairman, Merceditas C. de Sahagun; and the BAC members, namely, Dominador C. Ferrer, Jr., Augusto P. Rustia, Pelagio R. Alcantara, Jr., and Manuela T. Waquiz.[30]

The dispositive portion of the December 13, 2011 Decision reads:

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[25] *Id.*

[26] *Id.* at 31.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 32-33.

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

WHEREFORE, foregoing premises considered, the herein appeal is **PARTIALLY GRANTED**. The amount of disallowance is hereby reduced from ₱2,328,186.00 to ₱1,607,880.66 in view of the reconsidered amount of ₱720,305.34. Accordingly, ND No. 97-0001-101 (92-93) dated June 5, 1997 is hereby modified to the amount of ₱1,607,880.66. Likewise, the Project Construction Manager and the BAC Chairman and members are included as persons liable, namely, Mr. Valbuena, Ms. de Sahagun, Messrs. Ferrer, Jr., Rustia, and Alcantara, and Ms. Waquiz.

The ATL, IA, is hereby instructed to issue the corresponding Notice of Settlement of Suspension/Disallowance/Charge for the reconsidered disallowance amounting to ₱720,305.34 and the Supplemental ND in the amount of ₱1,607,880.66 to the aforementioned persons liable. The Director, Cluster D- Economic Services, National Government Sector, this Commission, shall supervise and monitor the implementation of this decision.[31]

Petitioner moved for reconsideration but the same was unavailing.

Hence, petitioner filed the instant Petition raising the following issues:

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO DISCLOSE THEIR FINDINGS TO THE PETITIONER, DECIDE THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION WITHIN REASONABLE TIME;

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISALLOWANCE IN THE AMOUNT OF P1,016,621 REPRESENTING THE COST OF CONSTRUCTION MATERIALS SUPPLIED BY THE AGENCY; [AND]

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING PETITIONER AS ONE OF THOSE LIABLE TO THE DISALLOWANCE OF [P]591,259 ALLEGEDLY UNSUPPORTED CLAIM IN VARIATION ORDER NO. 1 DUE TO MATHEMATICAL ERROR.[32]

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[31] *Id.* at 33.

[32] *Id.* at 8.

The Court's Ruling

The Petition must fail.

Timeliness of the Petition

First off, respondent COA-CP contends that the instant Petition should be dismissed outright for late filing. Respondent COA-CP alleges that the instant Petition was belatedly filed because as per records, a copy of the December 27, 2016 Resolution was earlier served at the address of record of petitioner's counsel by personal service on January 17, 2017, and again, by registered mail on January 26, 2017; that said copy was not received by petitioner's counsel because she had already moved out; and that a certified true copy of the Decision was resent to petitioner's counsel at her new address only because of her letter belatedly informing respondent COA-CP of the change of address.[33]

Petitioner, on the other hand, counters that in the absence of proof, such as an affidavit attesting that a copy of the December 27, 2016 Resolution was indeed served on her counsel on January 17, 2017 through personal service, and again, on January 26, 2017 through registered mail, the reckoning of the period to file the instant Petition should be March 13, 2017, the actual date of receipt of her counsel.[34] She also claims that a mere photocopy of the logbook[35] of respondent COA-CP indicating that service was made on her counsel on January 17, 2017, and again, on January 26, 2017 will not suffice.[36]

The Court sides with respondent COA-CP.

In the case of *Gatmaytan v. Sps. Dolor*,[37] the Court gave no credence to the allegation of the petitioner that her counsel received a copy of the decision on a later date for lack of

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[33] *Id.* at 71-82.

[34] *Id.* at 110-111.

[35] *Id.* at 50.

[36] *Id.* at 110.

[37] 806 Phil. 1 (2017).

evidentiary basis. In that case, the petitioner claimed that the Court of Appeals erroneously reckoned the date of service on an earlier date as the service on that date was ineffectual having been made on her counsel's former address. Though the Court, in that case, found that the service earlier made to petitioner's counsel was indeed ineffectual, it nevertheless affirmed the dismissal of the appeal due to the failure of the petitioner to discharge the burden of proving the actual date of receipt of her counsel. The Court emphasized that the burden of proving a fact lies on the party who alleges it and that mere allegation does not suffice.

Similarly, in this case, petitioner contends that the counting of the period should commence on March 13, 2017 in the absence of proof that service was made on January 17 and 26, 2017. Petitioner, however, fails to realize that the burden of proving the timeliness of the instant Petition lies with her,[38] not respondent COA-CP. It is incumbent upon her to prove, first, that the service made on her counsel's former address was ineffectual because her counsel was able to promptly inform respondent COA-CP of her change of address, and second, that her counsel received the December 27, 2016 Resolution only on March 13, 2017. These she failed to do.

It bears stressing that "in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel of record."[39] Hence, in case there is a change in address, it is the duty of the lawyer to promptly inform the court and the parties of such change to ensure that all official and judicial communications sent by mail will reach him.[40]

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[38] See *Andaya v. National Labor Relations Commission*, 266 Phil. 277, 282 (1990).

[39] *Garrucho v. Court of Appeals*, 489 Phil. 150, 156 (2005).

[40] *Vill Transport Service, Inc. v. Court of Appeals*, 271 Phil. 25, 32 (1991).

Here, based on the letters[41] attached to her Compliance, it appears that petitioner's counsel belatedly informed respondent COA-CP of her change of address. Thus, the service made by respondent COA-CP on January 17 and 26, 2017 at the old address of petitioner's counsel are deemed valid and effectual.

Besides, even if the Court disregards this procedural defect or lapse in the interest of substantial justice, the Petition would still be dismissed for lack of merit.

Due process

Invoking her right to due process, petitioner puts in issue the failure of respondent COA-CP to promptly resolve her case within the prescribed period under the Constitution as it took respondent COA-CP thirteen (13) years before finally deciding the case on December 13, 2011.[42] She likewise maintains that she was deprived of due process because she was not given copies of the documents used by the Technical Services Office of the Commission to allow her to properly and intellectually prepare her pleadings.[43]

The essence of due process, as the Court has consistently ruled, is simply the opportunity to be heard, or to explain one's side, or to seek a reconsideration of the action or ruling complained of; thus, for as long as the party was afforded the opportunity to defend himself/herself, there is due process.[44]

Here, as aptly pointed out by respondent COA-CP, petitioner was not denied due process as she was able to exhaust all legal remedies available to her and that she was informed of the basis of the disallowance.[45] As to the length of time that the

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[41] *Rollo*, pp. 45-49.

[42] *Id.* at 10.

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

[44] *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1015 (2017).

[45] *Rollo*, pp. 84-89.

case was pending before respondent COA-CP, this does not in any way affect the validity of the ND.

As to the fact that petitioner was not furnished authenticated copies of the source documents, this no longer has any bearing on the instant Petition considering that respondent COA-CP, in its December 13, 2011 Decision, already reconsidered the disallowed amounts of ₱639,523.72, representing the excess contract costs of Phase II, and ₱80,781.62, representing the excess contract cost for Variation Order No. 1, for failure of the audit team to comply with COA Memorandum No. 97-012 dated March 31, 1997, which requires that copies of the documents establishing the audit findings of over-pricing should be made available to the management of the audited agency in the interest of fairness, transparency and due process.

Liability for the disallowed amounts

Citing the ruling of the Court in *Arias v. Sandiganbayan*,[46] petitioner also insists that she should not be held liable for the disallowed amounts considering that she merely relied on the findings of those under her and the expertise of those in-charge.[47] She also avers that she should not be held liable in the absence of negligence or bad faith on her part.[48]

Petitioner's reliance on the *Arias* case is misplaced.

To begin with, the case of *Arias* is a criminal case for violation of Section 3, paragraph (e), of the Anti-Graft and Corrupt Practices Act, in connection with the overpricing of a land purchased by the government as a right of way for its *Manggahan* Floodway Project in Pasig, Rizal.

Second. The factual milieus therein are not in all fours with the instant case. In that case, Arias, the auditor who approved in audit the acquisition and payment of the lands, was acquitted by the Court because it found no other ground to sustain a

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[46] 259 Phil. 794 (1989).

[47] *Rollo*, pp. 10-13.

[48] *Id.* at 14.

conspiracy charge except for his mere signature or approval appearing on a voucher. In acquitting Arias, the Court took into consideration the fact that he joined the office only after the properties were purchased and the fact that he had no choice but to rely on his subordinates given the volume of documents involved in that case.

The instant case, on the other hand, involves a disallowance. And unlike in *Arias*, petitioner herein was the Administrator when the public bidding was conducted up to the time when the payment was issued to Argus. Hence, petitioner cannot evade liability.

Neither can petitioner claim that there was no negligence or bad faith on her part considering that there were blatant violations of the rules on public bidding, which petitioner as Administrator should have been aware of. As found by respondent COA-CP, the following violations were committed:

1. The BAC pre-qualified Argus to participate in the bidding when it was apparent in its license with the Philippine Contractors Accreditation Board that it was under the "small" category with allowable range of contract cost up to ₱3,000,000.00 only.

2. The BAC did not declare a failure of bidding when the bids offered by the three bidders exceeded the AAE for the project.

3. The BAC simply negotiated with the lowest bidder among the three bidders, to lower its bids to conform to the AAE with certain conditions and ultimately recommended the award of the contract for the project to Argus.[49]

Aside from these violations, respondent COA-CP also found that Argus did not actually lower its bid from ₱16,578,757.00 to ₱13,187,162.90 as the difference of ₱3,391,594.10 matched the cost of the materials supplied by IA as requested by Argus.[50]

Finally, regarding the remaining disallowance in the total amount of ₱1,607,880.66, the Court finds the same in order.

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

[50] *Id.* at 33.

The amount of ₱1,016,621.16, representing the cost of construction materials supplied by IA was disallowed because this was included in the bill of materials but not deducted from the payment made to the contractor.[51] As to the amount of ₱591,259.50, this was disallowed due to mathematical error and unsupported claim in Variation Order No. 1.[52]

In view of the foregoing, no grave abuse of discretion can be imputed to respondent COA-CP as to its finding that petitioner is one of those liable for the disallowed amount.

WHEREFORE, the Petition is hereby **DISMISSED**. The December 13, 2011 Decision and the December 27, 2016 Resolution of respondent Commission on Audit-Commission Proper are **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 232844. July 7, 2020]

HEIRS OF NELSON CABRERA BUENAFLOR, namely, PURA R. BUENAFLOR, KARINA R. BUENAFLOR, KENNETH R. BUENAFLOR, PAUL R. BUENAFLOR and MARK R. BUENAFLOR, *petitioners, vs.* **FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN**, *respondent*.

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[51] *Id.* at 31.

[52] *Id.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; THE DEMISE OF THE RESPONDENT IN ADMINISTRATIVE CASES DOES NOT GENERALLY PRECLUDE THE FINDING OF ADMINISTRATIVE LIABILITY.—** Buenaflor's death during the pendency of the instant case does not necessarily preclude the disposition of his reconsideration or appeal with finality. Certainly, the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof because a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. The Court reiterates that the demise of the respondent in administrative cases does not generally preclude the finding of administrative liability, and while there are jurisprudentially recognized exceptions to the rule, none are present in this case. x x x [T]he resolution of an administrative case may continue notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs, as in this case.

2. **ID.; ID.; AN ACT REGULATING THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT (RA 9184); NO VIOLATION AS THE ISSUANCE OF CONSOLIDATED GUIDELINES ON QUEDANCOR SWINE PROGRAM (CG-QSP) IN CASE AT BAR DOES NOT INVOLVE THE PROCESS OF PROCUREMENT OF GOODS, CONSULTING SERVICES AND CONTRACTING FOR INFRASTRUCTURE PROJECTS.—** [T]here was no violation of R.A. No. 9184 because the Consolidated Guidelines on QUEDANCOR Swine Program (CG-QSP) issued by Buenaflor does not, in any way, shape or form, involve the process of procurement of goods, consulting services, and contracting for infrastructure projects. Moreover, QUEDANCOR, through Buenaflor, sought the opinion of the Office of the Government Corporate Counsel (OGCC) specifically on the application of the provisions of R.A. No. 9184 to the QSP. In an Opinion No. 21 Series of 2006, the OGCC stated that QUEDANCOR was not engaged in procurement since it was the borrowers who will procure or acquire the goods or inputs from an accredited

IS and the payment for which will come from the respective loans from QUEDANCOR. Therefore, according to the OGCC, R.A. No. 9184 will not apply to the QSP. Verily, the unlawful act upon which the present administrative case is based on does not, in fact, exist. In the absence of substantial evidence to support a finding of administrative liability, the present case against the late Buenaflor must perforce be dismissed.

APPEARANCES OF COUNSEL

Algainy P. Alug for petitioners.
The Solicitor General for respondent.

D E C I S I O N

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

This Petition[1] filed under Rule 45 of the Rules of Court assails the Decision[2] dated January 18, 2017 and the Resolution[3] dated July 13, 2017, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 138415. The CA found no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the Ombudsman (Ombudsman) in rendering its Decision[4] dated January 27, 2014 finding Nelson Cabrera Buenaflor (Buenaflor) guilty of Grave Misconduct.

The Facts

On March 18, 2004, Buenaflor, then President and Chief Executive Officer of Quedan and Rural Credit Guarantee Corporation (QUEDANCOR),[5] issued Memorandum Circular

[1] *Rollo*, pp. 10-46.

[2] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob, concurring; *id.* at 59-69.

[3] *Id.* at 72.

[4] Penned by Associate Special Prosecutor III Anna Isabel G. Aurellano and approved by Ombudsman Conchita Carpio Morales; *id.* at 134-151.

[5] A government-owned and controlled corporation created under Republic

No. 270[6] also known as the Consolidated Guidelines on QUEDANCOR Swine Program (CG-QSP) establishing a credit program to support the swine industry by providing affordable credit for swine raisers to aid them on their fattening and breeding activities. Under the QSP, QUEDANCOR would issue Purchase Orders (POs) to the borrowers upon approval of their loan application.[7] The borrowers then present the POs to an accredited Input Supplier (IS) for the delivery of swine inputs such as hogs, gilts, medicines, feeds, and technical assistance.[8] Thereafter, upon receipt of the swine inputs, the borrowers sign a Joint Acceptance and Delivery Receipt (Receipt).[9] By virtue of said Receipt, the IS collects payment from QUEDANCOR and the sum paid by the latter shall be the borrowers' loan amount.[10]

One such QUEDANCOR-accredited IS was Metro Livestock, Incorporated (MLI). QUEDANCOR, through its Regional Office No. 4 and Calapan District Office, issued a Certificate of Accreditation No. R-IV-IS-009[11] to MLI on August 25, 2003.

Subsequently, the Field Investigation Office (FIO) of the Ombudsman filed a Complaint[12] dated June 23, 2009 charging Buenaflor and several other officials and employees of QUEDANCOR for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service under Rule IV, Section 52A (1) and (20) of the Civil Service Commission Resolution No. 99-1936 entitled *Uniform Rules on Administrative Cases in the Civil Service*.

Act No. 7393, entitled *Quedan and Rural Credit Guarantee Corporation Act*, enacted on April 13, 1992; *id.* at 276-290.

[6] *Id.* at 343-350.

[7] *Id.* at 62.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 419.

[12] *Id.* at 159-176.

In said complaint, the FIO alleged, *inter alia*, that the implementation of the QSP in the province of Oriental Mindoro was tainted with irregularities. Specifically, QUEDANCOR's failure to comply with the requirements of competitive bidding pursuant to Section 10 of Republic Act (R.A.) No. 9184[13] when it awarded contracts amounting to a total of ₱48,606,750.00 in favor of MLI.[14] Moreover, the FIO stated that MLI was allowed to participate in the QSP despite non-compliance with the accreditation and eligibility requirements, and limited financial and technical capabilities.[15] According to the FIO, there were borrowers who confirmed that MLI committed a series of breach thereby affecting the quality of their produce and expected income such as late or non-delivery of feeds and medicines; poor quality of piglets/gilts and non-replacement thereof; insufficient technical assistance; lack of assurance of the quality of inputs being delivered; and difficulty of reimbursing the amount advanced by borrowers for the purchase of feeds/ medicines when deliveries were late.[16] The FIO added that its findings were corroborated by the Commission on Audit (COA) in its Audit Observation Memorandum dated February 29, 2008.[17] The complaint was docketed as OMB-C-A-09-0690-K.

In his Counter-Affidavit,[18] Buenaflor argued that there was no violation of existing laws since the provisions on competitive bidding under R.A. No. 9184 applies only if there was actual procurement of infrastructure projects, goods, and consulting services by any branch or instrumentality of the government.

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[13] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as the "Government Procurement Reform Act," approved on January 10, 2003.

[14] *Rollo*, p. 165.

[15] *Id.* at 166.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 426-451.

He claimed that QUEDANCOR did not engage in any procurement and that the CG-QSP did not contemplate any procurement of goods. Thus, he prayed that the administrative charge against him be dismissed.

The Ombudsman Ruling

In its Decision dated January 27, 2014, the Ombudsman found Buenaflor and five others namely Luis Ramon Paez Lorenzo, Jr., Wilfredo Borreros Domo-Ong, Romeo Cabibi Lanciola, Nellie Mintu Ilas, and Jesus M. Simon, administratively liable for Grave Misconduct. Buenaflor, in particular, for signing, approving, and issuing the CG-QSP.[19] The dispositive portion reads:

> WHEREFORE, this Office finds substantial evidence to hold x x x [Buenaflor] x x x GUILTY of GRAVE MISCONDUCT, x x x and hereby orders their DISMISSAL from office with FORFEITURE of retirement benefits, and perpetual disqualification from reemployment in government service.
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> x x x x x x x x x
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> SO ORDERED.[20]

The Ombudsman denied the Motion for Reconsideration filed by Buenaflor in an Order[21] dated November 4, 2014.

Hence, Buenaflor filed an appeal before the CA.

The CA Ruling

In the herein assailed Decision, the CA sustained the finding of the Ombudsman that the QSP was, in reality, a loan in kind and not in money. As such, the CA opined that QUEDANCOR should have complied with the requirements of public bidding under R.A. No. 9184. On Buenaflor's contention that he was denied due process as he was found guilty of Grave Misconduct when the charge was for Serious Dishonesty and Conduct

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[19] *Id.* at 145.

[20] *Id.* at 149-150.

[21] *Id.* at 152-158.

Prejudicial to the Best Interest of the Service, the CA concurred with the ruling of the Ombudsman in that the designation of the offense with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt.[22]

Consequently, Buenaflor's counsel filed a Motion for Reconsideration[23] dated February 16, 2017 and a Manifestation[24] dated March 17, 2017 informing the CA that Buenaflor died on June 11, 2016[25] due to Congested Heart Failure.

In a one-page Resolution dated July 13, 2017, the CA denied the motion for reconsideration.

Unsatisfied, Buenaflor's heirs filed the present Petition for Review on *Certiorari* asserting their common interest in the retirement benefits of the late Buenaflor which were ordered forfeited by the Ombudsman and affirmed by the CA.[26]

The Issue

The basic issue is whether the late Buenaflor may be held administratively liable for issuing the CG-QSP.

The Court's Ruling

There is merit in the Petition.

At the outset, Buenaflor's death during the pendency of the instant case does not necessarily preclude the disposition of his reconsideration or appeal with finality. Certainly, the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof because a contrary rule would be fraught with injustices and pregnant

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[22] *Id.* at 65-66.

[23] *Id.* at 674-679.

[24] *Id.* at 681-682.

[25] See Certificate of Death; *id.* at 683.

[26] *Id.* at 11.

with dreadful and dangerous implications.[27] The Court reiterates that the demise of the respondent in administrative cases does not generally preclude the finding of administrative liability, and while there are jurisprudentially recognized exceptions[28] to the rule, none are present in this case.

In one case[29] the Court proceeded to resolve respondent public official's administrative case notwithstanding his death to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death, as against a possible forfeiture thereof should his guilt have been duly established at the investigation.

Indeed, the resolution of an administrative case may continue notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs, as in this case.[30]

On the merits, the Court notes that the present issue is not novel and has already been settled in the case of *People v. Sandiganbayan, First Division*,[31] which involved essentially the same set of facts. In said case, the Court held that the CG-QSP is outside the scope of R.A. No. 9184 as there was no procurement involved, *viz.*:

Section 5(n) of RA 9184 defines procurement as the "acquisition of Goods, Consulting Services, and contracting for Infrastructure

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[27] *Arabani, Jr. v. Arabani*, A.M. Nos. SCC-10-14-P, SCC-10-15-P & SCC-11-17, November 12, 2019 (Minute Resolution).

[28] 1) [W]hen due process may be subverted; 2) on equitable and humanitarian reasons; and 3) the penalty imposed or imposable would render the proceedings useless. (*Civil Service Commission v. Juen*, 793 Phil. 344, 353 (2016)).

[29] *Office of the Ombudsman v. Pacuribot*, G.R. No. 193336, September 26, 2018, citing *Hermosa v. Paraiso*, 159 Phil. 417 (1975).

[30] *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities, Tagum City, Davao del Norte*, 720 Phil. 23, 52 (2013).

[31] G.R. No. 214068, July 22, 2019 (Minute Resolution).

Projects" by a procuring entity, and includes the lease of goods and real estate.

Here, QUEDANCOR merely provides credit facilities by which [borrowers] may avail of loans in connection with their swine businesses. [T]he CG-QSP simply laid down the step-by-step procedure to be followed in extending such loans, as follows:

> The CG-QSP, which was actually issued by x x x Buenaflor, was designed to establish a credit program for swine raisers. True to its objective, the guidelines provided mechanisms on how the beneficiaries may avail of the credit facility. Paragraph 3.11.1 of the CG-QSP outlines the program's basic lending mechanisms, as follows:
>
> a. The [borrower] shall apply for loan with QUEDANCOR.
>
> b. Upon loan approval, QUEDANCOR issues PO to the [borrower].
>
> c. [B]orrower presents the PO to accredited IS x x x for the delivery inputs.
>
> d. IS coordinates with the QUEDANCOR-LMG (Loans Management Group) for inspection of required facilities of the borrower. The LMG must see to it that the borrower's facilities such as pigpens, feeding trough, waste disposal system, etc. are in place. If in order, QUEDANCOR issues Authority to Load to IS.
>
> e. IS delivers inputs to [borrower].
>
> Payment to the IS by Quedancor is conditioned upon the presentation of the joint acceptance and delivery receipt showing that the [borrower] had received the inputs from the IS.
>
> **From the foregoing process, along with the rest of the provisions in the CG-QSP, it is clear that the only aim of x x x Buenaflor for the issuance of the CG-QSP is to provide a swine program for the [borrowers] and to set a general policy and procedure on how the beneficiaries will go about it**[.]

To recall, QUEDANCOR is a financial institution created principally for the purposes of inventory financing of production inputs and facilities. In this regard, based on the foregoing guidelines,

QUEDANCOR, by lending money to [borrowers], cannot be said to have engaged in the procurement or acquisition of goods or services from input suppliers. As aptly observed by the [Sandiganbayan]:

> x x x Public bidding was precluded in the CG-QSP not to purposely skirt the requirements of RA 9184, but because there were reasons to rely on that the purchase of swine inputs was not within the ambit of the Procurement Act. The CG-QSP intended to provide the [borrowers] a "loan in money" and not a "loan in kind." Had the CG-QSP envisioned a "loan in kind," it would have included provisions for the establishment and maintenance of storage and inventories. As the Court sees it, the aim for the policy that Quedancor should be the one to pay the chosen IS instead of directly giving the loan proceeds to the borrower was to ensure that the borrowed money was truly [channeled] to the purpose for which the loan was intended.

Thus, petitioner's argument that respondents are liable for dispensing with the public bidding requirement in the CG-QSP has no more leg to stand on. (Emphasis and underscoring supplied)[32]

Simply stated, there was no violation of R.A. No. 9184 because the CG-QSP issued by Buenaflor does not, in any way, shape or form, involve the process of procurement of goods, consulting services, and contracting for infrastructure projects.

Moreover, QUEDANCOR, through Buenaflor, sought the opinion of the Office of the Government Corporate Counsel (OGCC) specifically on the application of the provisions of R.A. No. 9184 to the QSP. In an Opinion No. 21[33] Series of 2006, the OGCC stated that QUEDANCOR was not engaged in procurement since it was the borrowers who will procure or acquire the goods or inputs from an accredited IS and the payment for which will come from the respective loans from QUEDANCOR. Therefore, according to the OGCC, R.A. No. 9184 will not apply to the QSP.

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[32] *Id.*

[33] Signed by Government Corporate Counsel Agnes VST Devanadera; *rollo*, pp. 483-485.

Verily, the unlawful act upon which the present administrative case is based on does not, in fact, exist. In the absence of substantial evidence to support a finding of administrative liability, the present case against the late Buenaflor must perforce be dismissed.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision dated January 18, 2017 and the Resolution dated July 13, 2017 rendered by the Court of Appeals in CA-G.R. SP No. 138415 are hereby **REVERSED** and **SET ASIDE**. The administrative case against the late Nelson Cabrera Buenaflor is hereby **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 233319. July 7, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO ATAMOSA, RENE P. ALCALA, RENATO MARTIZANO *alias* BOBONG and TEDDY BENEDICTO,** *accused,* **RENE P. ALCALA**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS.— Article 248 of the Revised Penal Code (RPC), as amended, defines and penalizes the crime of Murder x x x. [T]o sustain a conviction for murder, the prosecution must prove the following essential elements, to wit: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances

mentioned in Article 248 of the RPC; and (4) the killing does not amount to parricide or infanticide.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UTMOST CREDENCE IS GENERALLY GIVEN TO THE FACTUAL FINDINGS AND ASSESSMENT OF THE CREDIBILITY OF WITNESSES MADE BY THE TRIAL COURT, ESPECIALLY WHEN UPHELD BY THE COURT OF APPEALS, BECAUSE IT IS THE TRIAL COURT WHICH HAD THE OPPORTUNITY TO OBSERVE THE DEPORTMENT OF WITNESSES ON THE STAND.— The issues raised are essentially factual, calling for a review of the evidence presented. Being a non-trier of facts, the Court generally gives utmost credence to the findings of fact and assessment of the credibility of witnesses made by the RTC, especially when upheld by the CA. The reason is because it is the RTC which had the opportunity to observe the deportment of witnesses on the stand which is not reflected on the written submissions of the parties. Hence, the findings of the RTC, as affirmed by the CA, are accorded with finality unless a fact or circumstance was overlooked, misunderstood or misappreciated which, if properly considered, would alter the results of the case. Such does not exist in this case.

3. CRIMINAL LAW; TREACHERY; THE ESSENCE OF TREACHERY LIES IN THE NATURE OF AN ATTACK DONE DELIBERATELY AND WITHOUT WARNING, GIVING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE.— The essence of treachery lies in the nature of an attack done deliberately and without warning — it must be done in a swift and unexpected manner, giving the hapless, unarmed and unsuspecting victim no chance to resist or escape. Based on the testimony of Lipusan, when the motorcycle driven by the victim arrived, her back seat passenger alighted from the motorcycle and suddenly stabbed the victim from behind. Then the passengers of the motorcycle who arrived earlier, helped in clubbing the victim. Later on, Alcala shot the victim. This was supported by the medical report finding incised wounds on the victim's back scapular area or shoulder blade, lumbar area and at the level of his back retinae. Also, there was a gunshot on the victim's back occipital area at the base of his skull. Inasmuch

as the wounds were directed at the back of the victim, it is then apparent that the attacks were made while the victim was not facing the assailants and, thus, was made in a sudden and unexpected manner. The number of wounds inflicted on the victim and the way they attacked underscores not only the culprits' intent to kill him, but also their intention to deny him the chance to defend himself or escape the attack.

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.*:

Before us for review is the Decision[1] of the Court of Appeals-Cagayan de Oro City (CA) in CA-G.R. CR-HC No. 01337-MIN dated March 29, 2017 which affirmed with modification the Judgment of the Regional Trial Court (RTC) of Panabo City, Branch 34, in Criminal Case No. 356-2008 finding accused-appellant Rene P. Alcala (Alcala) and his co-accused Teddy A. Benedicto (Benedicto) guilty beyond reasonable doubt of the crime of murder.

The Information filed on August 29, 2008 charged Alcala together with his three other co-accused, Pedro E. Atamosa, (Atamosa), Renato (Martizano) and Benedicto with murder, committed as follows:

That on or about November 24, 2007 in Brgy. Aundanao, Samal District, Island Garden City of Samal and within the jurisdiction of this Honorable Court, said accused, with evident premeditation, treachery, and in consideration of a price or reward, conspiring and confederating together armed with deadly weapons, to wit: knife and handgun, did then and there wilfully, unlawfully and feloniously attack

[1] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 3-24.

and wound therewith Richard Tomaquin in different parts of the body and as a result thereof, the said Richard Tomaquin died instantly.[2]

Except for Martizano who is still at-large, the three accused pleaded not guilty when arraigned.

During the trial, the prosecution presented Benito Daluno (Daluno), Heber Omandam (Omandam), Dr. Ma. Zarex Amasol (Dr. Amasol), Myrna Lipusan (Lipusan). Accused-appellant Alcala was also presented as a rebuttal witness. Their testimonies are summarized as follows:

Daluno, a laborer of accused Atamosa testified that on November 22, 2007, he went to the latter's house to collect his salary. He saw Atamosa conversing with his brother Carlos Atamosa (Carlos), together with Alcala and co-accused Benedicto. Later he joined in their conversation. They were allegedly talking about a plan to kill Richard Tomaquin (Richard). Atamosa reiterated his offer of ₱5,000.00 for him to join them. Per Atamosa's instruction, he will pretend to bring Richard to Aundanao where Alcala will be waiting. He refused to accept the offer as he is not familiar with the place. Alcala then volunteered his friend, a certain Martizano to do it instead.

On November 25, 2007 he heard of the killing of Richard, so he went to Atamosa's house and asked the latter if he really pushed through with their plan, but the latter merely smiled and left. On cross-examination, Daluno admitted that he could not remember the exact month when Atamosa made his offer for him to kill the victim or how many times the offer was made, although, he was sure that it was in 2007.[3]

Omandam, a skylab driver, testified that on November 24, 2007, before 6:00 p.m., he dropped his female passenger at a store owned by Lanie Cortes (Lanie). When he was about to leave the premises, a motorcycle driven by the victim arrived. Seated behind his back was accused Martizano, whom he knew since 1989.[4] After talking to Lanie, Richard, with Martizano

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[2] CA *rollo*, pp. 47-48.

[3] TSN, August 18, 2009, p. 5.

[4] TSN, November 17, 2009, p. 3.

still seated at the back of the motorcycle, left. He and Richard were traversing the same route until they arrived at the terminal in Peñaplata market at past 6:00 p.m., where Richard drove to the direction of Aundanao. At past 7:00 p.m., he heard the news of the killing of Richard about 8 to 9 kilometers away from where he last saw him and Martizano.[5]

Lipusan who lived near the scene of the crime testified that on November 24, 2007, at around 4:00 p.m., while she was feeding her pigs outside their house, she saw two people on a motorcycle stop under the mango tree. Thinking that it was her husband, she peeped outside to check. She was able to identify the two men as she intentionally glanced at them as she thought that it was her husband.[6] When her husband arrived at around 6:30 p.m., she told him of the two men she saw earlier. Together, they went out to verify as theft of pigs are rampant in their place. They were able to see them but did not confront the two men out of fear.[7]

When they were about to leave, they heard the arrival of a second motorcycle prompting them to hide due to the light coming from it. When the driver and the passenger alighted from the second motorcycle, she saw the passenger (Martizano) stab the driver (Richard). The two other persons (Alcala and Benedicto) who arrived earlier helped in clubbing the victim. The victim shouted as if asking for help, but he was gunned down by Alcala. After he was stabbed and shot, he rolled down the hill while his attackers boarded their motorcycle and left the scene.

Lipusan added that she was able to see the faces and can identify the three persons involved because of the light coming from the motorcycle and that she was merely 10 meters away from the crime scene.[8] She pointed Benedicto and Alcala as

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

[6] TSN, August 3, 2010, p. 9.

[7] *Id.* at 19-24.

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

the persons who first arrived, but added that the passenger of the second motorcycle Martizano was not in court. She further added that it was Alcala who shot the victim.[9]

Dr. Amasol testified on the medical examination she conducted on the body of Richard that she found to have sustained multiple gunshot wounds and multiple incise wounds on different parts of the body.[10]

The prosecution also presented Alcala as its rebuttal witness to testify on the circumstances surrounding the death of Richard and to rebut the categorical denial of his co-accused with respect to their participation and to identify the person who had direct participation on the death of the victim.

Alcala testified that on November 24, 2007 he was at the house of his employer in Sitio Bucawe. On his way home at around 4:00 p.m., he saw Benedicto and Carlos who asked him to go to the house of Atamosa. As instructed, he went to Atamosa's house who then asked him if he could drive them to Aundanao using a rented motorcycle. Later, Benedicto and Carlos arrived. He heard Benedicto informing Atamosa that he already did what the latter ordered him to do and that they will just meet at Peñaplata. The four of them left riding on a motorcycle and upon arrival at Peñaplata, Benedicto told them to meet at a particular area at 6:00 p.m. Atamosa decided that they should have their dinner first at a *carinderia* nearby. Benedicto went to the park to see if the person they were waiting for has arrived. After having their dinner, Benedicto left and when he returned, he informed Atamosa that the person they were waiting for was already at the park. Benedicto then took an orange clutch bag from Atamosa. He saw Benedicto ride on the back seat of the motorcycle driven by Richard. When Benedicto passed by them, they followed the latter aboard their motorcycle.[11]

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[9] *Id.* at 14-15, 30.

[10] TSN, March 9, 2010.

[11] TSN, March 12, 2013, pp. 5-12.

Before reaching Aundanao at around 6:00 p.m., Richard's motorcycle stopped, prompting him to stop too. When Benedicto and Richard alighted from their motorcycle, he saw Benedicto take a gun tucked on his back and pointed it at Richard who tried to grapple for the gun until a shot was fired. After he heard the shot, he saw Richard run to his motorcycle, but the latter could not reach it because the motorcycle was already on the ground. Richard then continued running until he fell on the ground. He heard Atamosa ordering Benedicto to finish off Richard. Atamosa alighted from the motorcycle and took the gun from Benedicto and then pointed the gun at Richard who pleaded for his life, but to no avail. Atamosa was about three meters from Richard when he shot the latter. He cannot recall how many times Richard was shot because he was too scared, but he was sure that Atamosa shot Richard several times as he was only three meters away from them. Carlos who was seated at the back of his motorcycle alighted and stabbed Richard several times also. He did nothing because Carlos threatened him and his family if he would tell anybody. After the incident, they went back to Atamosa's house.[12]

On the other hand, the defense presented Atamosa and Benedicto. Also presented as a witness was Simproson Navaja (Navaja) to corroborate Atamosa's testimony and Jesus Avila (Avila) to support Benedicto's testimony.

Atamosa maintained that on the date material to this case, he was just in his house tending to his fighting cock with his brother Carlos and Navaja, his laborer. He admitted knowing the prosecution witness Daluno, but he denied that the latter was at his house on said date and neither were his co-accused Alcala and Benedicto, although, he knew them. He also denied knowing his other co-accused Martizano.[13]

Atamosa also declared that he knew the victim Richard because they were neighbors and the latter used to drive him

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[12] *Id.* at 14-23, 39.

[13] TSN, October 25, 2011, pp. 4-9.

when he sells *copra* until he filed a case against the latter.[14] The case arose when Richard removed his fence made up of 30 *madre de cacao* trees. No settlement was arrived at, but according to him even if he lost the case, he did not feel aggrieved and was even happy because he no longer needs to spend for the case. After that, he no longer hired the victim as his driver.[15]

During his cross-examination, Atamosa recalled that the last time he saw Daluno was on September 1, 2007. Daluno owed him money and when he tried to collect it, Daluno got angry.[16]

Najava was presented as a witness to corroborate the testimony of Atamosa regarding the fact that the latter's co-accused, Benedicto and Alcala were not in Atamosa's residence the whole day of November 21 to November 23, 2007. On cross-examination, however, he admitted that most of the time, he was at Atamosa's piggery doing repairs which was quite far from the house, thus, he cannot really see visitors coming inside the house.

Benedicto testified that he knew Atamosa although they are not friends, but merely an acquaintance. That the whole day of November 24, 2007, he was in his own house taking care of his two children. He denied knowing his co-accused except Atamosa.

Avila, Benedicto's neighbor was presented to support the latter's claim that he was in his own house the whole day of November 24, 2007. According to Avila, he saw Benedicto doing the laundry in the morning and at around 5:00 p.m., the latter went to his own house and watched the local news on *TV Patrol*. However, on cross-examination, it was established that November 24, 2007 was a Saturday, thus, there was no *TV Patrol* or any local news on weekends. Yet, Avila insisted that he and Benedicto were watching *TV Patrol* on that date.

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

[15] TSN, March 13, 2012, pp. 7-10.

[16] TSN, October 25, 2011, pp. 20-21.

On February 12, 2014, the RTC rendered a Decision finding Alcala and his co-accused Benedicto guilty of the crime charged. It gave full faith and credence to the testimony of Lipusan who positively identified Alcala and Benedicto over their defense of denial and alibi. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered as follows, to wit:
>
> a. Finding accused Rene P. Alcala and Teddy A. Benedicto guilty beyond reasonable doubt of the offense charged. Accordingly, they are each sentenced to suffer the penalty of *reclusion perpetua* and each directed to pay the heirs of the victim Richard Tomaquin the amount of Php75,000.00 as death indemnity and another Php75,000.00 as moral damages; and
>
> b. Acquitting accused Pedro E. Atamosa of the charge due to the failure of the prosecution to establish his participation in the killing of the victim beyond reasonable doubt as discussed above. However, in this particular case, the act upon which civil liability may arise still exist.
>
> In the service of their respective sentences, accused Alcala and Benedicto are entitled to the full time they have undergone preventive imprisonment, if any, pursuant to Article 29 of the Revised Penal Code.
>
> Both accused shall serve their respective sentences at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.
>
> In view of his acquittal, accused Atamosa is forthwith ordered released from his present confinement at Davao del Norte District Jail unless his continued detention thereat is justified on some other legal grounds.
>
> The case against accused Renato Martizano is ordered archived subject to its revival once he is arrested.
>
> Done in Chambers, this 12th day of February, 2014 at Panabo City.[17]

Not satisfied with the decision, Alcala appealed the case to the CA. The CA rendered a Decision affirming with modification

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[17] CA *rollo*, p. 61.

on the amount of damages awarded. As regards the contention of Alcala that his testimony should be given more weight than that of Lipusan's testimony considering that he was even used by the prosecution as a rebuttal witness which is a strong indication that the latter has ascertained his story to be true, the CA ruled otherwise. It gave full faith and credence to Lipusan's testimony in the absence of improper motive on the part of the latter. The CA disposed the case in this wise:

> WHEREFORE, the appeal is DISMISSED. The February 12, 2014 Decision of the Regional Trial Court, Branch 34, Panabo City, in Criminal Case No. 356-2008 is AFFIRMED with MODIFICATIONS. In addition to the award of moral damages and civil indemnity of ₱75,000.00 each in favor of Richard Tomaquin's heirs, the award of exemplary damages of ₱30,000.00 is also GRANTED. All monetary awards shall earn an interest of 6% per annum from the finality of this judgment until fully paid.
>
> SO ORDERED.[18]

Appellant appealed the decision of the CA. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution dated November 6, 2017, this Court required the parties to submit their respective supplemental briefs.[19] Both parties manifested that they are no longer filing their supplemental briefs, as they are adopting all the arguments contained in their respective briefs.[20]

In his Brief, Alcala raises this lone assignment or error:

> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

In asserting his innocence, accused-appellant avers that the trial court erred in giving full credence to the testimony of the

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[18] *Rollo*, p. 24.

[19] *Id.* at 30.

[20] *Id.* at 32-35, 37-38.

[21] CA *rollo*, p. 37.

prosecution witness Lipusan to establish the fact of the case. He insists that his testimony on rebuttal should carry more weight as the prosecution had utilized him to establish the case against his co-accused. Also, he maintains that the elements of murder were not completely proven because the prosecution witness Lipusan failed to identify if the motorcycle driver she saw was really the victim and that the police officer who confirmed that Lipusan indeed verified the victim was not presented as a witness in court. Moreover, Lipusan could not have identified the assailants because it was dark.

On the other hand, the Office of the Solicitor General counters that the prosecution proved beyond reasonable doubt the guilt of Alcala. The trial court did not err in giving credence to the testimony of Lipusan over Alcala's accounts emphasizing that the matter of credibility is best left for the trial court to determine and its finding should be respected absent glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions.

The instant appeal is bereft of merit.

Article 248 of the Revised Penal Code (RPC), as amended, defines and penalizes the crime of Murder as follows:

> ART. 248. Murder. — Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or person to insure or afford impunity.

Significantly, to sustain a conviction for murder, the prosecution must prove the following essential elements, to wit: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing does not amount to parricide or infanticide.[22]

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[22] *People v. Naife*, G.R. No. 233832, July 1, 2019 (Minute Resolution).

After a thorough review of the case, we find no reason to disturb the ruling of the CA, save for the amount of damages awarded.

As correctly held by the trial court and affirmed by the CA, the prosecution was able to prove the presence of all the elements constituting the crime of murder. It is undisputed that Richard was killed and Alcala conspired with his co-accused in killing the latter. It is also shown that the killing was attended by treachery and that the victim was not related in any way to all the assailants.

In this appeal, Alcala wants this Court to determine if the prosecution was able to establish his guilt beyond reasonable doubt considering that: (1) he was utilized as a rebuttal witness by the prosecution; (2) the prosecution eyewitness Lipusan failed to identify the victim; and (3) Lipusan failed to identify all the assailants as it was dark.

The issues raised are essentially factual, calling for a review of the evidence presented. Being a non-trier of facts, the Court generally gives utmost credence to the findings of fact and assessment of the credibility of witnesses made by the RTC, especially when upheld by the CA. The reason is because it is the RTC which had the opportunity to observe the deportment of witnesses on the stand which is not reflected on the written submissions of the parties. Hence, the findings of the RTC, as affirmed by the CA, are accorded with finality unless a fact or circumstance was overlooked, misunderstood or misappreciated which, if properly considered, would alter the results of the case.[23] Such does not exist in this case.

A review of the evidence presented shows that as between Alcala and Lipusan's testimony, the Court is constrained to give due weight and credit to the latter's testimony, as found by the RTC and affirmed by the CA. In this connection, the Court quotes with approval the following disquisition by the CA on the credibility of the testimony of eyewitness Lipusan:

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[23] *Balasta v. People*, G.R. No. 242912, February 13, 2019 (Minute Resolution).

In the case of witness Lipusan, there is no sufficient basis to doubt the veracity of her testimony. There is no indication that she was moved by [ill motive] in testifying against the accused-appellant. The defense failed to show any reason why the said witness would concoct such grievous charge against Alcala considering the gravity of the offense. Neither was there any noted material inconsistency in her testimony that could raise questions on its reliability thus, strongly negating any claim that her recount of events was mere speculation. It would be implausible for someone to make up such kinds of stories against another considering the consequences it would bring against the person accused. As held in *People v. Marcina*, it would be highly unusual, likewise contrary to human nature, for a man to impute such serious crime to another person if there were no truth to his testimony.

The fact that Alcala was used as a rebuttal witness does not necessarily mean that the prosecution has taken all of his statements as absolute truth. It bears noting that Alcala's testimony was offered to rebut the categorical denial of all the accused with respect to their participation in the killing of the victim. In essence, his testimony was only to contradict the denials made by his co-accused, to whom he completely attributes the crime but maintaining that he had nothing to do with it. It is settled, however, that statements from a co-conspirator should be received with caution because it is considered as coming from a polluted source. As is usual with human nature, a culprit, confessing a crime, is likely to put the blame as far as possible on others rather than himself.

Accordingly, as between the straightforward testimony of witness Lipusan and Alcala's version of events, this Court is constrained to give due weight and credit to the former. Sans [ill will] imputed on her and considering the trial court's observation on her demeanor while testifying, which it finds suitable of belief, then there is no ground to doubt Lipusan's testimony. The absence of evidence of improper motive tends to indicate that the testimony is worthy of full faith and credence.[24] (Citation omitted)

With regard to the contention of Alcala that Lipusan was not able to identify the victim, we are not swayed.

While Lipusan may not have known the victim by name, however, she had a good look at the victim's face when the

[24] *Rollo,* pp. 15-16.

assailants left the latter on the ground lifeless. She was also present when the police officers searched on the victim's body to look for his identification in the very same area referred to by her as to where the killing happened. Likewise, Lipusan's testimony on the victim being stabbed and shot several times was verified by the autopsy report that the victim died of multiple gunshots and stabbed wounds. Lipusan declared:

> PROS. APAO:
> Q Were you able to know the identity of the victim?
>
> LIPUSAN:
> A I was able to recognize sir because I already saw him lying down, sir.
>
> Q And who was the victim?
> A I do not actually know his name but when the policemen arrived they looked for his identity sir.[25]

Even assuming that Lipusan failed to identify the victim by name, the prosecution was able to present other evidence, establishing the victim's identity. Prosecution witness Omandam positively identified Richard as the one who drove the motorcycle with Martizano as his passenger, whom he knew way back in 1989. Several minutes later, he heard the news that Richard was killed in about 8 to 9 kilometers from where he last saw them.

As to the contention of Alcala that Lipusan could not have seen the culprits as the area where the incident happened was already dark, again, we are not persuaded.

Lipusan categorically maintained that she saw the whole incident from the time Alcala together with Benedicto arrived at around 4:00 p.m. and stopped under the mango tree. She intentionally glanced at them as she thought it was her husband who arrived from work. When her husband arrived at around 6:30 p.m., she told him about the two persons in a motorcycle, so, they went out to verify as theft of pigs was rampant in their area. When they were about to leave, they heard the arrival of

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[25] *Id.* at 17.

a second motorcycle. She saw that when the driver and passenger disembarked from the motorcycle, the passenger suddenly stabbed the driver at the back. Later the two passengers of the motorcycle that earlier arrived joined in clubbing the driver. She was so sure that it was Alcala who shot the victim and her recognition of the latter was bolstered when she pointed him out and identified in open court. Lipusan added that even if the killing occurred when it was dark, she could still see the incident not only because she was just 10 meters away, but because of the light coming from the victim's motorcycle.

The Court also concurred with the findings of the RTC and the CA that the killing was attended by treachery.

The essence of treachery lies in the nature of an attack done deliberately and without warning — it must be done in a swift and unexpected manner, giving the hapless, unarmed and unsuspecting victim no chance to resist or escape.[26] Based on the testimony of Lipusan, when the motorcycle driven by the victim arrived, his back seat passenger alighted from the motorcycle and suddenly stabbed the victim from behind. Then the passengers of the motorcycle who arrived earlier, helped in clubbing the victim. Later on, Alcala shot the victim. This was supported by the medical report finding incised wounds on the victim's back scapular area or shoulder blade, lumbar area and at the level of his back retinae. Also, there was a gunshot on the victim's back occipital area at the base of his skull. Inasmuch as the wounds were directed at the back of the victim, it is then apparent that the attacks were made while the victim was not facing the assailants and, thus, was made in a sudden and unexpected manner. The number of wounds inflicted on the victim and the way they attacked underscores not only the culprits' intent to kill him, but also their intention to deny him the chance to defend himself or escape the attack.

In fine, the Court finds no error in the conviction of Alcala.

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[26] *People v. Matias*, G.R. No. 225504, January 19, 2018 (Minute Resolution).

As to the penalty imposed, we affirm the penalty of *reclusion perpetua* imposed upon Alcala. Under Article 248 of the RPC, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of civil indemnity and moral damages in the amount of ₱75,000.00 each. However, the award of exemplary damages should be modified in accordance with the prevailing jurisprudence. In *People v. Jugueta*,[27] the Court ruled that civil indemnity, moral damages, and exemplary damages should be awarded at ₱75,000.00 each in cases involving murder wherein the penalty imposed is *reclusion perpetua*, as in this case. As such, the Court deems it proper to increase the amount of exemplary damages from ₱30,000.00 to ₱75,000.00.

We also note that both the RTC and the CA did not award any actual damages in favor of the heirs of the victim. Again, in *People v. Jugueta*, it was held that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. Since prevailing jurisprudence now fixes the amount of ₱50,000.00 as temperate damages in murder cases, the Court finds it proper to award temperate damages to the heirs of Richard, in lieu of actual damages.

In view, however, that it was only Alcala who appealed to this Court, the increase of exemplary damages and the grant of temperate damages in favor of the heirs of the victim, shall only apply to Alcala following Section 11 (a), Rule 122 of the Rules of Court which provides that "an appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

WHEREFORE, the appeal is **DISMISSED** for lack of merit. The Decision dated March 29, 2017 of the Court of Appeals-

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[27] 783 Phil. 806 (2016).

Cagayan de Oro City in CA-G.R. CR-HC No. 01337-MIN finding accused-appellant Rene P. Alcala guilty beyond reasonable doubt of the crime of murder is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant is **ORDERED** to **PAY** the heirs of Richard Tomaquin ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages in lieu of actual damages. The award of other damages imposed against the accused-appellant is sustained. In addition, interest shall be imposed on all monetary awards at the rate of 6% per annum from the finality of this Resolution until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 240431. July 7, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON BOB CARANIAGAN SANICO *a.k.a.* "MARLON BOB,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.— Under Article II, Section 5 of R.A. 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 illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence

in court and is shown to be the same drugs seized from the accused." x x x Also, in illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. It is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

2. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIRED WITNESSES.— To ensure an unbroken chain of custody, Section 21 (1) of R.A. 9165 specifies: (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE MUST BE ADEQUATELY EXPLAINED AND PROVEN AS A FACT. — The Court does not lose sight of the fact that under various field conditions, compliance with the requirements under Section 21 of R.A. 9165 may not always be possible. In fact, the IRR of R.A. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. However, the explanation provided by the arresting officer falls short of the standard that would consider the action of the police officers as substantial compliance with the provisions of Section 21. To merely state that the arresting officers were not able to contact the required witnesses during the immediate inventory of the confiscated item at the place where the incident happened, thus, leading them to postpone the inventory, is far from the justifiable ground contemplated by law and jurisprudence. x x x Certainly, the

prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. **Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.** A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.

CAGUIOA, *J.*, *concurring opinion*:

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; IT IS REQUIRED THAT THE APPREHENDING TEAM CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND PHOTOGRAPH THE SAME IMMEDIATELY AFTER SEIZURE AND CONFISCATION IN THE PRESENCE OF THE ACCUSED AND REQUIRED WITNESSES; IMPORTANCE OF THE RULE, EMPHASIZED.— Section 21 of RA 9165 and its IRR plainly require the apprehending team to conduct a physical inventory of the seized items and photograph the same **immediately after seizure and confiscation** in the presence of the accused, with: (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" found in both RA 9165 and its IRR means that the physical inventory and photographing of the drugs are to be made immediately after, or at the place of, apprehension. And only if this is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this

> requirement. **By the same token, this also means that the required witnesses should already be physically present at the time or near the place 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.** Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses. x x x It is **at the time and place of arrest — or at the time and place of the drugs' "seizure and confiscation"** — that the presence of the three witnesses is most needed, **as it is their presence at the time and place of seizure and confiscation that would insulate against the police practice of planting 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

PERALTA, *C.J.*:

This is to resolve the appeal of Marlon Bob Caraniagan Sanico of the Court of Appeals *(CA)* Decision[1] dated March 23, 2018 which dismissed his appeal and affirmed the Decision[2] dated December 29, 2016 of the Regional Trial Court *(RTC)*, Branch 13, Davao City, convicting him of Violation of Section 5, Article II, Republic Act No. (*R.A.*) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The facts follow.

Around 8:30 in the morning of September 30, 2009, IO2 Janem Free Reyes of the Philippine Drug Enforcement Agency

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[1] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring; *rollo*, pp. 3-10.

[2] Penned by Presiding Judge Rowena Apao-Adlawan; CA *rollo*, pp. 43-51.

(PDEA), Region XI received an information from a confidential informant that a person named Marlon Bob was selling marijuana in Barangay Tibungco, Davao City.

Acting on the said information, IO2 Reyes formed a buy-bust operation team. A briefing was conducted at the office and IO1 Rommel Adrian dela Peña was assigned as the poseur-buyer and IO1 Julius Magdadaro as the immediate back-up. To complete the team, eight other members of the PDEA, Region XI were included. It was also agreed during the team briefing that IO1 Dela Peña would take off his bull cap as a sign that the transaction had been consummated. IO1 Dela Peña was then given one ₱100.00 bill and one ₱50.00 bill as marked money to be used in the operation. Thereafter, IO2 Reyes, being the team leader, prepared an Authority to Operate. Also, the buy-bust operation was recorded by Desk Officer Agent Fe Fuentes in the PDEA blotter book.

On the same day, around 12 noon, the team proceeded to the target area at Purok 12, Tibungco, Davao City.

The confidential informant and IO1 Dela Peña alighted first and walked towards the interior part of Purok 12 traversing a narrow footbridge atop a sea water as the house of appellant was built just above the said body of water. Appellant was already outside of his house when they reached the place. The confidential informant introduced IO1 Dela Peña to appellant, saying "*Mao ni akong amigo, sumer ni, mupalit ug dahon*" (This is my friend, he is a consumer, he will buy leaves). Appellant asked IO1 Dela Peña how much he wanted to buy and the latter replied ₱150.00 worth of marijuana. Appellant asked for the payment and IO1 Dela Peña handed the marked money to the former. When appellant received the money, he reached in his pocket and took out three (3) small items rolled in newspaper and told them that they were marijuana leaves. Immediately, thereafter, IO1 Dela Peña removed his bull cap as a signal that the transaction has been consummated.

Sensing that it was a buy-bust operation, appellant jumped into a body of water and fled, with the buy-bust team pursuing, but to no avail.

While still on the target area, IO2 Reyes ordered IO1 Dela Peña and IO1 Magdadaro to place their initials "RAQPD" and "JAM," respectively, on the confiscated items. IO1 Dela Peña placed the confiscated items inside an evidence pouch and sealed it with masking tape. The same officers placed their initials on the masking tape. Before returning to the PDEA office, the team proceeded to the barangay hall of Tibungco to report that there was a buy-bust operation and that appellant was able to evade arrest.

When the team arrived at the office, IO1 Dela Peña showed the confiscated items to Agent Fuentes, the desk officer, and the latter recorded the same on their blotter book. IO1 Dela Peña remained in custody of the confiscated items.

Around 1:00 p.m. of the following day, an inventory of the items was made in the presence of witnesses Noel Polito from the Department of Justice *(DOJ)*, Mariz Robilla from the media, and Divinagracia Morales, an elected barangay official.

Therafter, a request for laboratory examination was prepared and IO1 Dela Peña brought the request along with the specimens to the PNP Crime Laboratory in Ecoland, Davao City for quantitative and qualitative examinations. The said items were received by SPO2 Arnel Betita who weighed the same items and handed them over to PSI April dela Rosa Fabian who conducted the laboratory examination that yielded a positive result for marijuana.

The case was archived due to the fact that appellant was at-large, however, the case was eventually revived after two years when appellant was arrested in another buy-bust operation. Hence, appellant was charged with violation of Section 5, Article II of R.A. 9165 in an Information that reads as follows:

> That on or about September 30, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously sold, delivered and transferred to the poseur-buyer, IO1 Rommel Adrian Q. dela Peña, three rolled newspapers marked as A-1 to A-3 each containing dried marijuana fruiting tops weighing a total of 2.9 grams which is a dangerous drug.

CONTRARY TO LAW.[3]

Appellant was arraigned on June 2, 2012 and pleaded not guilty.

A motion for leave of court to amend the criminal information was filed on February 13, 2015 because the name of the poseur-buyer stated in the information was IO1 Julius Magdadaro instead of IO1 Rommel Adrian dela Peña which the RTC granted.

After the prosecution rested its case, appellant, through his counsel manifested that he was waiving his right to present evidence, thus, the case was submitted for decision.

On December 29, 2016, the RTC rendered its Decision convicting appellant with the crime charged in the Information. The dispositive portion of the said Decision reads as follows:

> WHEREFORE, as the prosecution was able to prove the guilt of the accused beyond reasonable doubt, judgment is hereby rendered CONVICTING accused MARLON BOB CARANIAGAN SANICO, alias "Marlon Bob" for the crime of violation of Section 5, Article II of RA 9165. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> The accused is entitled to be credited in his favor the preventive imprisonment that he has undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592.
>
> SO ORDERED.[4]

The CA denied the appeal and affirmed the decision of the RTC, thus:

> WHEREFORE, the instant Appeal is DENIED. The Decision of the Regional Trial Court, Branch 13, Davao City, dated December 29, 2016, is hereby AFFIRMED.
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> SO ORDERED.[5]

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[3] CA *rollo*, p. 43.

[4] *Id.* at 51.

[5] *Rollo*, p. 10.

The CA held that the prosecution was able to sufficiently establish the chain of custody of the confiscated item. It also ruled that there was no ill motive on the part of the buy-bust team and that the defense of appellant that he was the victim of a frame-up did not deserve merit.

Hence, this appeal.

Appellant, in his Supplemental Brief, raises the following grounds:

I.

THE PROCEDURE UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 WAS NOT COMPLIED WITH;

II.

THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* WERE NOT PRESERVED; AND

III.

THE NON-COMPLIANCE OF THE PROCEDURE CANNOT BE EXCUSED UNDER THE SAVING CLAUSE OF SECTION 21 OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165.[6]

The appeal is meritorious.

Under Article II, Section 5 of R.A. 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.[7]

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[8]

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[6] *Id.* at 34.

[7] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[8] *Id.*

It cannot be over-emphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[9] Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[10]

Also, in illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[11] It is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.[12] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[13]

Appellant claims that the PDEA agents failed to comply with the requirements set by the law because they did not conduct the inventory and have photographs taken immediately after the seizure and confiscation. According to appellant, the agents also failed to physically do the inventory and take photographs in the presence of the appellant, or his representative or counsel,

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[9] *People v. Steve, et al.*, 740 Phil. 727, 737 (2014).

[10] *People v. Alacdis, et al.*, 811 Phil. 219, 232 (2017), citing *People v. Asislo*, 778 Phil. 509 (2016).

[11] *Id.*

[12] *People v. Mirondo*, 771 Phil. 345, 357 (2015).

[13] See *People v. Ismael*, *supra* note 7.

a representative from the media, and the DOJ, and any elected public official.

To ensure an unbroken chain of custody, Section 21 (1) of R.A. 9165 specifies:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. 9165 provides:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

The records show that the above provisions were indeed, not complied with by the arresting officers. IO1 Dela Peña testified as to the circumstances why the arresting officers failed to immediately do the inventory at the scene of the buy-bust operation, thus:

PROS. MABALE:
Q: And then, what happened next after she turned them over back to you?
A: We were not able to conduct the inventory that day so we conducted the inventory the next day, ma'am.

Q: Why were you not able to conduct inventory on that day?
A: We have not secured the necessary witnesses that should be present during the inventory, ma'am.

Q: You have not secured?
A: Yes, ma'am.

Q: **Why was it that you were not able to secure witnesses?**
A: **We could not contact the witnesses that should be present during the inventory that time so we conducted the inventory the next day, ma'am.**[14]

The Court does not lose sight of the fact that under various field conditions, compliance with the requirements under Section 21 of R.A. 9165 may not always be possible.[15] In fact, the IRR of R.A. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[16]

However, from the above-testimony, the explanation provided by the arresting officer falls short of the standard that would consider the action of the police officers as substantial compliance with the provisions of Section 21. To merely state that the arresting officers were not able to contact the required witnesses during the immediate inventory of the confiscated item at the place where the incident happened, thus, leading them to postpone the inventory, is far from the justifiable ground contemplated by law and jurisprudence. In *People v. Vicente*

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[14] TSN, May 25, 2015, p. 13. (Emphases ours)

[15] *People v. Ryan Maralit*, G.R. No. 232381, August 1, 2018, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[16] See Section 21 (a), Article II, of the IRR of R.A. 9165.

Sipin y De Castro,[17] this Court provided instances where the provisions of Section 21 may be relaxed, thus:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. 9165, as amended.[18] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[19] **Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps**

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[17] G.R. No. 224290, June 11, 2018.

[18] See *People v. Macapundag*, 807 Phil. 234 (2017).

[19] See *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Jugo*, G.R. No. 231792, January 29, 2018.

they took to preserve the integrity of the seized item.[20] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[21]

This Court, therefore, finds it apt to acquit the appellant.

WHEREFORE, premises considered, the Decision dated March 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01654-MIN dismissing appellant's appeal and affirming the Decision dated December 29, 2016 of the Regional Trial Court, Branch 13, Davao City, is **REVERSED AND SET ASIDE**. Appellant Marlon Bob Caraniagan Sanico *a.k.a.* "Marlon Bob" is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Director is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

Caguioa, J., see concurring opinion.

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[20] *People v. Saragena*, 817 Phil. 117 (2017). (Emphasis supplied)

[21] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, 818 Phil. 935 (2017); *People v. Cabellon*, 818 Phil. 561 (2017); *People v. Saragena*, *supra* note 20; *People v. Saunar*, 816 Phil. 482 (2017); *People v. Sagana*, 815 Phil. 356 (2017); *People v. Segundo*, 814 Phil. 697 (2017); and *People v. Jaafar*, 803 Phil. 582 (2017).

CONCURRING OPINION

CAGUIOA, *J.*:

I concur. The *ponencia* is correct in granting the petition and acquitting the accused-appellant on the ground of reasonable doubt.

Jurisprudence is well-settled that in cases involving dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense.[1] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.[2] In turn, the manner through which the identity of the *corpus delicti* is preserved with moral certainty is through strict compliance with Section 21, Article II of Republic Act No. (RA) 9165. Thus, the existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs.[3] In particular with cases of alleged violation of Section 5, RA 9165 (Illegal Sale of Dangerous Drugs), what is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[4] Section 21 of RA 9165 states:

> 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:

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[1] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 142.

[2] *People v. Calates*, G.R. No. 214759, April 4, 2018, 860 SCRA 460, 469.

[3] *People v. Magat*, 588 Phil. 395, 402 (2008).

[4] *People v. Dumangay*, 587 Phil. 730, 739 (2008).

(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 persons from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.] (Emphasis and underscoring supplied)

Furthermore, Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to where the physical inventory and photographing of the seized items should be done: *i.e.*, at the place of seizure, or at the nearest police station, or at the nearest office of the apprehending officer/team, thus:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so

confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (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 and underscoring supplied)

Section 21 of RA 9165 and its IRR plainly require the apprehending team to conduct a physical inventory of the seized items and photograph the same **immediately after seizure and confiscation** in the presence of the accused, with: (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" found in both RA 9165 and its IRR means that the physical inventory and photographing of the drugs are to be made immediately after, or at the place of, apprehension. And only if this is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this requirement. **By the same token, this also means that the required witnesses should already be**

physically present at the time or near the place 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. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

To be sure, this has been the Court's interpretation in a number of cases.[5] For warrantless seizures, the arresting officers may accomplish the inventory and take photographs at the nearest police station, or at the nearest office of the apprehending team, but only when the prevailing circumstances render it impracticable to do so at the place of arrest.[6]

In other words, while the physical inventory and photographing are allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple. It is **at the time and place of arrest — or at the time and place of the drugs' "seizure and confiscation"** — that the presence of the three witnesses is most needed, **as it is their presence at the time and place of seizure and confiscation that would insulate against the police practice of planting evidence**.

The presence of the witnesses at the time and place of arrest and seizure is required because while buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that by the very nature of anti-narcotics operations, the need for entrapment procedures, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial

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[5] *People v. Fatallo*, G.R. No. 218805, November 7, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64858>; *People v. Callejo*, G.R. No. 227427, June 6, 2018, 865 SCRA 405.

[6] *Id.*

hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[7]

Borrowing the language of the Court in *People v. Mendoza*,[8] without the **insulating presence** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachets that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[9]

Thus, it is compliance with this most fundamental requirement — the presence of the "insulating" witnesses in the inventory conducted immediately after seizure and confiscation — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized drugs" in a buy-bust situation, which, as already explained, is by its nature, a planned operation.

To reiterate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with **at the place and time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."**

Thus, the practice of police operatives of not bringing to the intended place of arrest the representative of the DOJ, the media representative, and the elected public official, when they

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[7] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).

[8] 736 Phil. 749 (2014).

[9] *Id.* at 764.

could easily do so — and "calling them in" to the police station to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does **not** achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

In the present case, while the police officers conducted an inventory in the presence of the three required witnesses, they only did so a day after the seizure of the confiscated items. When asked to explain why, the police officers merely stated that they were unable to secure the attendance of the required witnesses on the same day — hence, they conducted the inventory the day after.[10] Without question, this does not comply with the requirement of the inventory being conducted "immediately after seizure and confiscation" **and** in the presence of the required witnesses. During this considerable lapse of time, the drugs could already have been planted — and the marking, inventory, and transfer from the police officers to the crime laboratory only proves the chain of custody of **planted** drugs.

Clearly, therefore, it is the immediate marking, inventory, and photographing of the seized items, as well as the insulating presence of the witnesses in this process, that serve to prevent switching, planting, or contaminating the seized evidence.[11] The strict observance of these requirements is further underscored in instances when drugs are seized as a result of a planned operation, such as the implementation of a search warrant or the conduct of a buy-bust operation like in the present case. There being forethought and advance preparation involved, there is little margin for error on the arresting officers' compliance with Section 21.

Based on these premises, I vote to **GRANT** the Petition.

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[10] *Ponencia*, p. 6.

[11] *People v. Mendoza*, *supra* note 8 at 761.

FIRST DIVISION

[G.R. No. 241385. July 7, 2020]

SPOUSES MARIANO CORDERO and RAQUEL CORDERO, *petitioners, vs.* **LEONILA M. OCTAVIANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; IN KEEPING WITH THE PRINCIPLE THAT RULES OF PROCEDURE ARE MERE TOOLS DESIGNATED TO FACILITATE THE ATTAINMENT OF JUSTICE, THE COURT HAS ALLOWED SEVERAL CASES TO PROCEED IN THE BROADER INTEREST OF JUSTICE DESPITE PROCEDURAL DEFECTS AND LAPSES.— We cannot overemphasize that courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just disposition of his cause. Indeed, the Court has allowed several cases to proceed in the broader interest of justice despite procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Here, there exists a clear need to prevent the commission of a grave injustice to Spouses Cordero which is not commensurate with their failure to comply with the prescribed procedure. The circumstances obtaining in this case merit the liberal application of the rule in the interest of fair play.

2. ID.; ID.; THE SUBSEQUENT AND SUBSTANTIAL COMPLIANCE OF A PARTY MAY CALL FOR THE RELAXATION OF THE RULES OF PROCEDURE.— The rationale for requiring a complete statement of material dates is to determine whether the petition is timely filed. Accordingly, the petition must show when notice of the assailed judgment or order or resolution was received; when the motion for reconsideration was filed; and, when notice of its denial was received. However, this Court may relax strict observance of the rules to advance substantial justice. x x x In this case, the

Spouses Cordero clearly stated in the petition for review before the CA the date they received the RTC Order dated June 22, 2017 denying their motion for reconsideration. Specifically, the Spouses Cordero received the Order on July 11, 2017 and timely filed the petition for review to the CA on July 26, 2017 or within 15-day reglementary period. As such, the Spouses Cordero are deemed to have substantially complied with the rules. The failure to indicate the date when they received the other orders and resolutions may be dispensed with in the interest of justice. Similarly, the CA found that Spouses Cordero violated Section 2(d), Rule 42 of the Rules of Court because they did not submit material records of the case. x x x A perusal of the petition for review, however, reveals that copies of the RTC Order dated June 22, 2017, the MCTC Decision dated May 22, 2013, and the RTC Decision dated December 7, 2016 were in fact attached as Annexes "A", "B", and "C", respectively. Hence, Spouses Cordero complied with the requirement of attaching copies of the judgments and orders of the trial courts. Moreover, these attachments are already sufficient to enable the CA to pass upon the assigned errors and to resolve the appeal even without the pleadings and other portions of the records. To be sure, the assailed decisions of the trial courts substantially summarized the contents of the omitted records. Likewise, the CA can resolve the issues by relying on the principle that the factual findings of the lower courts are entitled to great weight. It can also direct Spouses Cordero to submit additional documents or the clerk of court of the RTC and MCTC to elevate the original records of the case. Notably, the Spouses Cordero appended the pertinent pleadings and documents in their motion for reconsideration before the CA. On this point, we reiterate that there is ample jurisprudence holding that the subsequent and substantial compliance of a party may call for the relaxation of the rules of procedure.

3. ID.; CIVIL PROCEDURE; FILING OF PLEADINGS; WHEN A PLEADING IS FILED BY REGISTERED MAIL, THE DATE OF MAILING SHALL BE CONSIDERED AS THE DATE OF FILING.— [I]t is undisputed that Spouses Cordero received on January 17, 2018, a copy of the CA Resolution dated December 19, 2017 and they had 15 days from notice or until February 1, 2018 to file a motion for reconsideration. Corollarily, Spouses Cordero moved for a reconsideration.

> However, the CA denied the motion because it was filed on February 2, 2018 or one day late. Quite the contrary, we find that the motion was filed within the prescribed period. The affidavit of the clerk who caused the mailing, the registry receipt and the postmaster's certification all established that Spouses Cordero filed the motion through registered mail on February 1, 2018 and not on February 2, 2018. Applying Section 3, Rule 13 of the Rules of Court, the date of mailing shall be considered as the date of filing when a pleading is filed by registered mail. It does not matter when the court actually receives the mailed pleading.

APPEARANCES OF COUNSEL

Bedona Bedona Cabado & Endonila Law Offices for petitioners.

Defensor Teodosio Daquilanea Ventilacion & Associates Law Offices for respondent.

D E C I S I O N

LOPEZ, *J.*:

There are times when strict adherence to the rules of procedure must yield to the search for truth and the demands of substantial justice. One such instance is present in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Resolution[1] dated December 19, 2017 in CA-G.R. SP No. 11086.

ANTECEDENTS

In 2011, Leonila Octaviano, the registered owner of a land registered under Transfer Certificate of Title No. T-184403,[2] filed a complaint[3] for ejectment against Spouses Mariano and

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[1] *Rollo*, pp. 44-45; penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta.

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

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

Raquel Cordero before the Municipal Circuit Trial Court (MCTC) docketed as Civil Case No. C-538. On May 22, 2013, the MCTC ruled in favor of Leonila and ordered Spouses Cordero to vacate the premises.[4] The Spouses Cordero appealed to the Regional Trial Court (RTC).[5] On December 7, 2016, the RTC affirmed the MCTC's findings.[6] The Spouses Cordero moved for a reconsideration.[7] On June 22, 2017, the RTC denied the motion for lack of merit.[8] Aggrieved, the Spouses Cordero elevated the case to the CA through a petition for review docketed as CA-G.R. SP No. 11086.[9]

On December 19, 2017, the CA dismissed Spouses Cordero's petition because of the following defects, to wit:

> A cursory reading of the petition reveals the following infirmities:
>
> (i) Petitioners **failed to state the material date showing when the 7 December 2016 Decision was received**, in violation of Section 2 (b), Rule 42 of the Rules of Court;
>
> (ii) Petitioners **failed to append to the petition clearly legible duplicate original or true copy of the assailed 7 December 2016 Decision, as well as other pertinent portions of the records** necessary for a thorough evaluation of the case by this Court, in violation of Section 2 (d), Rule 42 of the Rules of Court.
>
> **WHEREFORE**, in view of the foregoing and pursuant to Section 3, Rule 42 of the Rules of Court, the petition is **DISMISSED**.
>
> **SO ORDERED**.[10] (Emphasis in the original.)

Spouses Cordero sought reconsideration invoking substantial compliance with rules requiring statement of material dates.

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[4] *Id.* at 73-80.

[5] *Id.* at 130-137.

[6] *Id.* at 81-85.

[7] *Id.* at 150-154.

[8] *Id.* at 71-72.

[9] *Id.* at 54-66.

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

They claimed that the failure to state the date of receipt of the RTC Decision dated December 7, 2016 is inadvertent and does not warrant the outright dismissal of their petition for review. Nevertheless, the petition indicated the date of receipt of the RTC Order dated June 22, 2017 denying their motion for reconsideration. This is sufficient to determine the timeliness of the petition.[11] As to the material records of the case, Spouses Cordero alleged that the CA overlooked the copy of the RTC Decision dated December 7, 2016 which was attached as Annex "C" in the petition for review. Also appended in the petition are the RTC Order dated June 22, 2017 and the MCTC Decision dated May 22, 2013 which will enable the CA to evaluate the merits of the case. Furthermore, Spouses Cordero subsequently submitted additional records such as the complaint, answer, memoranda and motion for reconsideration.[12]

On June 29, 2018, the CA denied Spouses Cordero's motion for reconsideration on the ground that it was filed one day late, thus:

> On 19 December 2017, We rendered a Decision dismissing petitioners' appeal and affirming the Decision rendered by the Regional Trial Court x x x in Civil Case C-538. A copy thereof was received by petitioners' counsel on 17 January 2018, x x x. Under the circumstances, petitioner[s] had until 1 February 2018, to file a motion for reconsideration.
>
> Petitioner[s], however, did not file such Motion within the period prescribed. Instead, the petitioners filed their Motion for Reconsideration on 2 February 2018.
>
> x x x x x x x x x
>
> **ACCORDINGLY**, petitioners' motion for reconsideration is hereby **DENIED**.
>
> **SO ORDERED**.[13]

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[11] *Id.* at 89-98.

[12] *Id.* at 108-154.

[13] *Id.* at 47-48.

Hence, this recourse. The Spouses Cordero argued that their motion for reconsideration was timely filed on February 1, 2018 as evidenced by the affidavit of the clerk who caused the mailing,[14] the registry receipt[15] and the postmaster's certification.[16] They reiterate that the failure to state the date of receipt of the RTC Decision dated December 7, 2016 is not fatal. Also, material records of the case were attached in the petition for review and additional documents were submitted together with their motion for reconsideration. Lastly, the Spouses Cordero maintain that a rigid application of technicalities cannot prevail at the expense of a just resolution of the case.[17]

RULING

We cannot overemphasize that courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just disposition of his cause.[18] Indeed, the Court has allowed several cases to proceed in the broader interest of justice despite procedural defects and lapses.[19] This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice.[20] Here, there exists a clear need to prevent the commission of a grave injustice to Spouses Cordero which is not commensurate with

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

[15] *Id.* at 49.

[16] *Id.* at 50.

[17] *Id.* at 16-37.

[18] *Tanenglian v. Lorenzo*, 573 Phil. 472 (2008), citing *Neypes v. Court of Appeals*, 506 Phil. 613 (2005).

[19] *Malixi v. Baltazar*, 821 Phil. 423 (2017), citing *Paras v. Judge Baldado*, 406 Phil. 589 (2001); *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187 (2005); *Manila Electric Company v. Gala*, 683 Phil. 356 (2012); *Doble v. ABB, Inc./Nitin Desai*, 810 Phil. 210 (2017); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639 (2014); *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264 (2014).

[20] *Philippine Bank of Communications v. Court of Appeals*, 805 Phil. 964 (2017).

their failure to comply with the prescribed procedure. The circumstances obtaining in this case merit the liberal application of the rule in the interest of fair play.

The rationale for requiring a complete statement of material dates is to determine whether the petition is timely filed.[21] Accordingly, the petition must show when notice of the assailed judgment or order or resolution was received; when the motion for reconsideration was filed; and, when notice of its denial was received. However, this Court may relax strict observance of the rules to advance substantial justice. In *Security Bank Corporation v. Aerospace University*,[22] the CA denied due course to the petition for failure to state the dates when the assailed order was received and the motion for reconsideration was filed. Yet, we held that "*[t]he more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration*." The case was remanded to the CA for resolution on the merits.

The doctrine was reiterated in *Acaylar, Jr. v. Harayo*,[23] *Barroga v. Data Center College of the Philippines*,[24] *Barra v. Civil Service Commission*,[25] *Sara Lee Philippines, Inc. v.*

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[21] *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals*, 608 Phil. 632 (2009).

[22] 500 Phil. 51 (2005).

[23] 582 Phil. 600 (2008). In this case, the Court held that the petitioner's failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly alleged in his Petition.

[24] 667 Phil. 808 (2011). In this case, the petition before the CA stated only the date of receipt of the NLRC's Resolution denying the motion for partial reconsideration. It failed to state when petitioner received the assailed NLRC Decision and when he filed his partial motion for reconsideration. The Court ruled that this omission is not fatal since the date of receipt of the denial of the motion for reconsideration was alleged.

[25] 706 Phil. 523 (2013). In this case, the petitioner's failure to state the date of receipt of the copy of the October 10, 2011 CSC decision is not fatal to her case since the dates are evident from the records.

Macatlang,[26] *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*;[27] and *Victoriano v. Dominguez*.[28] In this case, the Spouses Cordero clearly stated in the petition for review before the CA the date they received the RTC Order dated June 22, 2017 denying their motion for reconsideration. Specifically, the Spouses Cordero received the Order on July 11, 2017 and timely filed the petition for review to the CA on July 26, 2017 or within 15-day reglementary period.[29] As such, the Spouses Cordero are deemed to have substantially complied with the rules. The failure to indicate the date when they received the other orders and resolutions may be dispensed with in the interest of justice.[30]

Similarly, the CA found that Spouses Cordero violated Section 2 (d), Rule 42 of the Rules of Court because they did not submit

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[26] 735 Phil. 71 (2014). In this case, the Corporations alleged in their petition before the CA that when they received the Resolution of the NLRC on 6 July 2006, it can be determined whether the petition was filed within the 60-day reglementary period. And as a matter of fact, the appeal was filed on 8 September 2006, and well within the 60-day period.

[27] 781 Phil. 610 (2016). In this case, Cadiz's failure to state the date of receipt of the copy of the NLRC decision is not fatal to her case since she duly alleged the date of receipt of the resolution denying the motion for reconsideration.

[28] G.R. No. 214794, July 23, 2018, 872 SCRA 479. In this case, a perusal of the petition for review shows that Victoriano clearly specified that he received the assailed OMB MOLEO resolution denying his motion for reconsideration on October 7, 2013. More importantly, the records show that the petition was filed by registered mail on October 21, 2013, or well-within the 15-day reglementary period. Accordingly, Victoriano is deemed to have substantially complied with the rules.

[29] *Rollo*, pp. 54-55. The pertinent portion of the petition for review states:

TIMELINESS OF THE PETITION

1. **On July 11, 2017, petitioners received the Order of the Regional Trial Court, x x x, dated June 22, 2017, on Civil Case No. C-538**, x x x:

x x x x x x x x x

3. Being the aggrieved parties x x x, herein petitioners have until July 26, 2017 within which to file the instant Petition for Review x x x; (Emphasis Supplied)

[30] *Victoriano v. Dominguez*, *supra* note 28.

material records of the case. The rule requires that the petition for review before the CA shall "*be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition*."

A perusal of the petition for review, however, reveals that copies of the RTC Order dated June 22, 2017, the MCTC Decision dated May 22, 2013, and the RTC Decision dated December 7, 2016 were in fact attached as Annexes "A", "B", and "C", respectively. Hence, Spouses Cordero complied with the requirement of attaching copies of the judgments and orders of the trial courts. Moreover, these attachments are already sufficient to enable the CA to pass upon the assigned errors and to resolve the appeal even without the pleadings and other portions of the records. To be sure, the assailed decisions of the trial courts substantially summarized the contents of the omitted records.[31] Likewise, the CA can resolve the issues by relying on the principle that the factual findings of the lower courts are entitled to great weight. It can also direct Spouses Cordero to submit additional documents or the clerk of court of the RTC and MCTC to elevate the original records of the case. Notably, the Spouses Cordero appended the pertinent pleadings and documents in their motion for reconsideration before the CA. On this point, we reiterate that there is ample jurisprudence[32] holding that the subsequent and substantial

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[31] 708 Phil. 9 (2013). In this case, the Court considers the attachments of Segundina's petition for review (*i.e.*, the certified true copies of the MTC decision dated February 4, 2000, the RTC decision dated November 29, 2000, and the RTC order dated April 22, 2002) already sufficient and to still deny due course to her petition for not attaching the complaint and the answer despite the MTC decision having substantially summarized their contents was to ignore the spirit and purpose of the requirement to give sufficient information to the CA.

[32] *Mendoza v. David*, 484 Phil. 128 (2004). In this case, Mendoza failed to append the pleadings and pertinent documents in her petition to the Court

compliance of a party may call for the relaxation of the rules of procedure.[33] Yet, the CA failed to do so and insisted on the outright dismissal of the petition.

Lastly, it is undisputed that Spouses Cordero received on January 17, 2018, a copy of the CA Resolution dated December 19, 2017 and they had 15 days from notice or until February 1, 2018 to file a motion for reconsideration. Corollarily, Spouses Cordero moved for a reconsideration. However, the CA denied the motion because it was filed on February 2, 2018 or one day late. Quite the contrary, we find that the motion was filed within the prescribed period. The affidavit of the clerk who caused the mailing, the registry receipt and the postmaster's certification all established that Spouses Cordero filed the motion through registered mail on February 1, 2018 and not on February 2, 2018. Applying Section 3, Rule 13[34] of the Rules of Court, the date of mailing shall be considered as the date of filing

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of Appeals. Subsequently, Mendoza rectified her error by filing a motion for reconsideration and appending the required pleadings and documents. The Court held that instead of denying the motion for reconsideration, the Court of Appeals should have ruled on the merits of the case. Also, in *Donato v. Court of Appeals*, G.R. No. 129638, 8 December 2003, the Court of Appeals dismissed the petition because only a certified copy of the questioned decision was annexed leaving out copies of the pleadings and other material portions of the record to support the allegations of the petition. This Court reversed the Court of Appeals' dismissal of the case since copies of the pleadings and material portions of the records were attached in the petitioner's motion for reconsideration. This Court considered the subsequent submission as substantial compliance which justifies relaxation of the rule.

[33] *Jaro v. Court of Appeals*, 427 Phil. 532 (2002).

[34] Section 3 of Rule 13 reads in full:

Sec. 3. *Manner of filing*. — The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. **In the second case, the date of the mailing or motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court**. The envelope shall be attached to the record of the case. (Emphasis Supplied)

when a pleading is filed by registered mail. It does not matter when the court actually receives the mailed pleading.[35]

In all, the CA's outright dismissal of the petition for review constitutes a gross error and contravenes Spouses Cordero's right to be heard on appeal. The ends of justice will be better served if the case is determined on the merits, after full opportunity is given to all parties for ventilation of their causes and defenses, rather than on some procedural imperfections. It is far better to dispose of the case on the merits, which is a primordial end, rather than on a technicality that may result in injustice.[36]

FOR THESE REASONS, the petition is **GRANTED**. The case is **REMANDED** to the Court of Appeals which is **DIRECTED** to reinstate and give due course to the petition in CA-G.R. SP No. 11086 for a proper resolution on the merits with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 241620. July 7, 2020]

TEODORO C. RAZONABLE, JR., *petitioner, vs.* **TORM SHIPPING PHILIPPINES, INC. and TORM SINGAPORE PVT., LTD.,** *respondents*.

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[35] *Russel v. Ebasan*, 633 Phil. 384 (2010).

[36] *Heirs of Villagracia v. Equitable Banking Corp.*, 573 Phil. 212 (2008).

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; INJURY OR ILLNESS, WHEN COMPENSABLE.— The validity of petitioner's claim for total and permanent disability benefits against respondents hinges mainly on whether or not his illnesses are work-related *and* suffered during the term of his contract. Under Section 20(A) of the 2010 POEA-Standard Employment Contract (SEC), for an injury or illness to be compensable, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

2. ID.; ID.; ID.; ID.; FOR AN ILLNESS, WHETHER LISTED OR NOT AS AN OCCUPATIONAL DISEASE, AS WELL AS THE RESULTING DISABILITY, TO BE COMPENSABLE, THE SEAFARER MUST SUFFICIENTLY SHOW COMPLIANCE WITH THE CONDITIONS FOR COMPENSABILITY.— The 2010 POEA-SEC defines a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." As for illnesses not listed as an occupational disease, they may also be compensable, as they are disputably presumed to be work-related, if the seafarer is able to prove the correlation of his illness to the nature of his work and the conditions for compensability are satisfied. The illness being listed as an occupational disease under said provision of the POEA-SEC, however, does not mean automatic compensability. The first paragraph of Section 32-A expressly states that such listed occupational diseases and the resulting disability or death must satisfy all of the following general conditions to be compensable: (1) the seafarer's work must involve risks described therein; (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. In addition to the above-enumerated general

requirements under the first paragraph of Section 32-A, conditions specific to a particular occupational disease must be attendant for it to be compensable. x x x Thus, as this Court has consistently held, for an illness, whether listed or not as an occupational disease, as well as the resulting disability, to be compensable, the seafarer must sufficiently show compliance with the conditions for compensability. x x x Moreover, the seafarer seeking disability benefits must also prove that he complied with the procedures prescribed under Section 20(A)(3), which requires, among others, his submission to post-employment medical examination by a company-designated doctor within three working days from his repatriation.

3. ID.; ID.; ID.; ID.; WORK-RELATEDNESS OF DISEASES; AS TO DISEASES NOT LISTED AS OCCUPATIONAL DISEASES, NO LEGAL PRESUMPTION OF COMPENSABILITY IS ACCORDED IN FAVOR OF THE SEAFARER, AND AS SUCH, THE CLAIMANT-SEAFARER BEARS THE BURDEN OF PROVING THE POSITIVE PROPOSITION THAT THERE IS A REASONABLE CAUSAL CONNECTION BETWEEN HIS ILLNESS AND THE WORK FOR WHICH HE HAS BEEN CONTRACTED.— [A]s opposed to the matter of work-relatedness of diseases not listed as occupational diseases under Section 32-A, no legal presumption of compensability is accorded in favor of the seafarer. As such, the claimant-seafarer bears the burden of proving that the x x x conditions are met. Specifically, a seafarer claiming disability benefits must prove the positive proposition that there is a reasonable causal connection between his illness and the work for which he has been contracted. It is imperative, therefore, to determine the seafarer's actual work, the nature of his illness, and other factors that may lead to the conclusion that his actual work conditions brought about, or at least increased the risk of contracting, his complained illness.

4. ID.; ID.; ID.; ID.; ID.; CLAIMANTS FOR DISABILITY BENEFITS MUST FIRST DISCHARGE THE BURDEN OF PROVING WITH SUBSTANTIAL EVIDENCE THAT THEIR AILMENT WAS ACQUIRED AND/OR AGGRAVATED DURING THE TERM OF THEIR CONTRACT.— [C]onsistent with the basic standard in labor cases and administrative proceedings, the degree of proof required

is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion. Substantial evidence is more than a scintilla. The evidence must be real and substantial, and not merely apparent. As in any other claim, the claimant is burdened to establish his entitlement to the benefits provided by law. x x x [C]laimants for disability benefits must first discharge the burden of proving with substantial evidence that their ailment was acquired and/or aggravated during the term of their contract. They must show that they experienced health problems while at sea, the circumstances under which they developed the illness, as well as the symptoms associated by it.

5. ID.; ID.; ID.; ID.; ID.; THE PROBABILITY OF WORK-CONNECTION MUST AT LEAST BE ANCHORED ON CREDIBLE INFORMATION AND NOT MERELY ON UNCORROBORATED SELF-SERVING ALLEGATIONS AS BARE ALLEGATIONS DO NOT SUFFICE TO DISCHARGE THE REQUIRED QUANTUM OF PROOF OF COMPENSABILITY.— As consistently held by the Court, at most, petitioner's general statements as to whether his illnesses are work-related *and* suffered during the term of his contract, surmise mere possibilities, but definitely not the lenient probability required by law to be entitled to disability compensation. The probability of work-connection must at least be anchored on credible information and not merely on uncorroborated self-serving allegations as bare allegations do not suffice to discharge the required quantum of proof of compensability. To be sure, this Court is not unaware of its statements in previous cases, taking judicial notice of the working environment that seafarers, *in general*, have to deal with. Such judicial notice, however, is nothing more than an acknowledgment of the general perils encountered by seafarers on board the vessel. It does not sufficiently prove work-relatedness of a particular illness or injury, much less, prove entitlement to compensation. To reiterate for emphasis, even an established work-related illness, or one which is listed as occupational, does not entail a conclusion that the resulting disability is automatically compensable. In such a case, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under the POEA contract. Failure to do so will result in the dismissal of his claim. The Court, thus, takes this opportunity to clarify that, despite such

acknowledgment of the general working environment of seafarers, **the Court never dispensed with the required substantial evidence to prove entitlement to disability benefits under the law**.

6. ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION; CANNOT BE RELIED UPON TO REFLECT A SEAFARER'S TRUE STATE OF HEALTH SINCE IT IS NOT EXPLORATORY AND MAY JUST DISCLOSE ENOUGH FOR EMPLOYERS TO DECIDE WHETHER A SEAFARER IS FIT FOR OVERSEAS EMPLOYMENT.— In this Petition, petitioner pounds on "the medical fact that hypertensive cardiovascular disease does not develop over a short period of time." This, according to petitioner, is sufficient proof that his cardiovascular illness existed during the term of his contract considering as well that he passed his PEME before he commenced employment with respondents. This argument, however, deserves scant consideration. x x x [W]e have held, time and again, that a PEME cannot be relied upon to reflect a seafarer's true state of health since it is not exploratory and may just disclose enough for employers to decide whether a seafarer is fit for overseas employment.

APPEARANCES OF COUNSEL

Arvin C. Dolendo for petitioner.
Alton C. Durban for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated May 3, 2018 and the Resolution[3] dated August 20, 2018 of the Court

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[1] *Rollo*, pp. 12-29-A.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Romeo F. Barza and Carmelita Salandanan Manahan, *id.* at 58-66.

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

of Appeals (CA) in CA-G.R. SP No. 150042, which nullified and set aside the Decision dated November 24, 2016 of the three-man panel of the Regional Conciliation and Mediation Board (RCMB) in MVA-078-RCMB-NCR-121-03-06-2016.

In May 2014, Teodoro Razonable, Jr. (petitioner) was engaged as a Chief Engineer by Torm Shipping Philippines, Inc. on behalf of its foreign principal Torm Singapore Pvt., Ltd. (respondents). Prior to such engagement, or on May 28, 2014, he was declared fit for sea duties after undergoing a Pre-Employment Medical Examination (PEME). Thereafter, petitioner was deployed on a five-month contract from July to December 2014.[4]

On January 20, 2015, petitioner signed another five-month contract with respondents. He boarded the vessel *"Torm Almena"* on January 26, 2015. Petitioner alleged that his daily duties as a Chief Engineer involved hard manual labor and strenuous activities; that he sometimes had to stay beyond eight hours in the 40-degree-Celsius engine room; that he had no choice, but to eat the unhealthy food prepared by the vessel kitchen staff; and that he was constantly exposed to varying extreme temperatures and harsh weather conditions, as well as to physical and emotional stress on board the vessel.[5]

Petitioner claimed that sometime in May 2015, while performing his usual duties in the engine room, he started experiencing chest pains and tightness, which he initially ignored. The pain, however, persisted which prompted him to report to the ship captain on or about the last week of May 2015. However, since his contract was about to expire in a couple of days at that time, he was allegedly not sent to a doctor abroad anymore.[6]

On June 4, 2015, petitioner was signed off at a convenient port in Ghana as his contract already expired. He arrived in the Philippines on June 6, 2015. He claimed that he reported

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[4] *Id.* at 193.

[5] *Id.* at 193-194.

[6] *Id.* at 194.

to respondents two days after arrival and requested for medical assistance for his chest pains and tightness, but was allegedly advised to consult his own doctor as he was repatriated due to the expiration of his contract. Thus, he consulted with a certain Dr. Rogelio M. Martinez (Dr. Martinez), who gave him medications — Isordil Sublingual and Celebrox — after examination.[7]

In July 2015, petitioner underwent another PEME with respondents' company-designated doctor supposedly for another deployment. He was, however, found to be suffering from *"concentric left ventricular hypertrophy with global hypokinesia."* On November 14, 2015, he was subjected to the same tests, which gave the same results, but with the additional finding of *"pulmonary hypertension"* and *"ischemic myocardium (interventricular septum) and stress-induced myocardial ischemia at risk (left ventricular free wall)."* On December 5, 2015, another test revealed that petitioner is also suffering from *"complete right bundle branch block and left ventricular hypertrophy."* Due to these diagnoses, petitioner was declared unfit for sea duties.[8]

Thereafter, petitioner was referred to another healthcare facility for another PEME, wherein he was diagnosed with *"hypertensive cardiovascular disease and polycystic kidney disease."* Hence, on April 14, 2016, an UNFIT Waiver was issued.[9]

Unable to secure clearance for another deployment, petitioner claimed that he is entitled to payment of full disability benefits, arguing that his condition is work-related and that it had existed during his employment with respondents. He further argued that he is already totally and permanently disabled because his medical conditions prevented him from landing another gainful employment as Chief Engineer for more than 240 days from his repatriation.[10]

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[7] *Id.*

[8] *Id.* at 194-195.

[9] *Id.* at 195.

[10] *Id.* at 196.

For their part, respondents averred that petitioner completed his contract without any incident and, as such, was repatriated on June 4, 2015. According to respondents, there is no record of any medical complaint on the vessel, as well as upon his arrival in the Philippines. Further, petitioner did not report to the company-designated doctor for the mandatory post-employment medical examination. It was only during petitioner's re-application when it was found that he was suffering from cardiovascular and kidney diseases. Hence, he was not cleared for another deployment. Thus, respondents maintain that petitioner is not entitled to disability benefits as he completed his contract without any incident, and that he did not suffer any work-related injury or illness during the term of his employment. Respondents also pointed out that petitioner's failure to submit himself to the required post-employment medical examination with the company-designated doctor forfeits his claim for disability benefits. Respondents, further, argued that the vessel was covered by the 2006 Maritime Labor Convention which provides for a healthy dietary standard. In fine, respondents contended that petitioner's claims are grounded upon mere allegations.[11]

In a 2-1 Decision[12] dated November 24, 2016, the RCMB ruled in favor of petitioner, as follows:

WHEREFORE, PREMISES CONSIDERED, decision is hereby rendered as follows:

1. DECLARING Teodoro C. Razonable, Jr. to be unfit to work and totally and permanently disabled;

2. ORDERING [respondents] to pay Teodoro C. Razonable, Jr. his disability benefits of US$60,000.00 as provided in POEA-SEC; [and]

3. ORDERING [respondents] to pay Teodoro C. Razonable, Jr. 10% attorney's fees computed based on the total award.

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[11] *Id.* at 198.

[12] *Id.* at 193-201.

The payment of the above monetary award shall be at their peso equivalent at the time of actual payment.

All other claims are dismissed for lack of merit.

SO ORDERED.[13]

One of the panel members, Accredited Voluntary Arbitrator Gregorio B. Sialsa, penned a Dissenting Opinion[14] on the case.

With the same vote from the panel, the Decision was fortified in a Resolution[15] dated March 7, 2017, which denied respondents' motion for reconsideration.

On appeal, however, the CA reversed the RCMB, ruling that petitioner failed to provide an ounce of proof that his diseases were brought about or aggravated by his work as Chief Engineer on board respondents' vessel, thus:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. Accordingly, the assailed Decision and Resolution of the Regional Conciliation and Mediation Board dated November 24, 2016 and March 7, 2017, respectively, are NULLIFIED and SET ASIDE.

SO ORDERED.[16]

In a Resolution[17] dated August 20, 2018, the CA denied petitioner's motion for reconsideration.

Petitioner now imputes error upon the appellate court in ruling that he failed to prove his claims that his condition is work-related; that he contracted the same during his employment with respondents; and that he requested to be subjected to a post-employment medical examination with respondents' company-designated doctor to no avail. Petitioner argues that,

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[13] *Id.* at 201.

[14] *Id.* at 202-223.

[15] *Id.* at 174-175.

[16] *Id.* at 65.

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

in any case, mere probability, not ultimate degree of certainty, is sufficient to prove that his cardiovascular and renal illnesses are work-related and contracted during the term of his employment to make his condition compensable.

We resolve.

Preliminarily, it must be noted that at the core of the controversy in this petition are factual questions which, generally, are outside the Court's discretionary appellate jurisdiction under Rule 45 of the Rules of Court.[18] In view, however, of the divergent factual findings of the RCMB and the CA, the Court is constrained to re-examine the evidence on record for a judicious resolution of the controversy presented in this case.[19]

After a thorough re-evaluation of the arguments of both parties and the records of this case, the Court finds no merit in this petition.

The validity of petitioner's claim for total and permanent disability benefits against respondents hinges mainly on whether or not his illnesses are work-related *and* suffered during the term of his contract. Under Section 20 (A) of the 2010 POEA-Standard Employment Contract (SEC), for an injury or illness to be compensable, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The 2010 POEA-SEC defines a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[20] As for illnesses not listed as an occupational disease, they may also be compensable, as they are disputably presumed to be work-related, if the seafarer is able to prove the correlation of

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[18] *Status Maritime Corporation v. Spouses Delalamon*, 740 Phil. 175 (2014).

[19] See *Apines v. Elburg Shipmanagement Philippines, Inc.*, 799 Phil. 220, 238 (2016).

[20] See Number 17, Definition of Terms, POEA-SEC (2010).

his illness to the nature of his work and the conditions for compensability are satisfied.[21]

The illness being listed as an occupational disease under said provision of the POEA-SEC, however, does not mean automatic compensability.[22] The first paragraph of Section 32-A expressly states that such listed occupational diseases and the resulting disability or death must satisfy all of the following general conditions to be compensable: (1) the seafarer's work must involve risks described therein; (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.

In addition to the above-enumerated general requirements under the first paragraph of Section 32-A, conditions specific to a particular occupational disease must be attendant for it to be compensable. Say in the case of cardiovascular diseases, Section 32-A, paragraph 2 (11) provides that the same shall be considered as occupational when contracted under working conditions involving the risks described as follows:

> 11. [Cardiovascular] 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 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.

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[21] See *Malicdem v. Asia Bulk Transport, Inc.*, G.R. No. 224753, June 19, 2019.

[22] See *Manansala v. Marlow Navigation Phils., Inc.*, 817 Phil. 84, 98 (2017).

> 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.

Thus, as this Court has consistently held, for an illness, whether listed or not as an occupational disease, as well as the resulting disability, to be compensable, the seafarer must sufficiently show compliance with the conditions for compensability. Indeed, as opposed to the matter of work-relatedness of diseases not listed as occupational diseases under Section 32-A, no legal presumption of compensability is accorded in favor of the seafarer. As such, the claimant-seafarer bears the burden of proving that the above-enumerated conditions are met.[23] Specifically, a seafarer claiming disability benefits must prove the positive proposition that there is a reasonable causal connection between his illness and the work for which he has been contracted. It is imperative, therefore, to determine the seafarer's actual work, the nature of his illness, and other factors that may lead to the conclusion that his actual work conditions brought about, or at least increased the risk of contracting, his complained illness.[24]

Moreover, the seafarer seeking disability benefits must also prove that he complied with the procedures prescribed under Section 20 (A) (3), which requires, among others, his submission to post-employment medical examination by a company-designated doctor within three working days from his repatriation.

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[23] *Romana v. Magsaysay Maritime Corporation*, 816 Phil. 194, 205 (2017).

[24] *Scanmar Maritime Services, Inc. v. De Leon*, 804 Phil. 279, 288 (2017).

In all these requirements, consistent with the basic standard in labor cases and administrative proceedings, the degree of proof required is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion. Substantial evidence is more than a scintilla. The evidence must be real and substantial, and not merely apparent. As in any other claim, the claimant is burdened to establish his entitlement to the benefits provided by law.[25]

In this case, it should foremost be emphasized that petitioner was *not* medically repatriated, but was signed off due to the expiration of his contract. Petitioner was, subsequent to his repatriation and prior to his supposed subsequent re-employment with respondents, diagnosed through a PEME with a cardiovascular and renal diseases. Yet, petitioner insists on claiming full disability benefits for his illnesses, claiming that he contracted the same from *and* during his employment on board respondents' vessel.

Strikingly lacking from the records, however, are the description and proofs of the scope of his job and his actual daily tasks as a Chief Engineer that would have shown the correlation of his employment to the development and/or aggravation of his cardiovascular and renal diseases. The records are bereft of any evidence that would have given the Court at least an *iota* of proof with regard to the nature of petitioner's job on board the vessel. If at all, petitioner merely made unsubstantiated sweeping assertions about his tasks. Certainly, this Court cannot accept hook, line, and sinker petitioner's uncorroborated self-serving allegations that he rendered more than eight hours of work in the engine room with 40-degree-Celsius temperature; that he was given unhealthy food; and that he was constantly exposed to varying extreme temperatures and harsh weather conditions, as well as to physical and emotional stress on board the vessel,[26] especially when these allegations were denied by respondents.

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[25] See *Malicdem v. Asia Bulk Transport, Inc.*, *supra* note 21.

[26] See *Status Maritime Corporation v. Spouses Delalamon*, *supra* note 18.

What is more, aside from petitioner's bare allegation, there is nothing on record that would prove his claim that he experienced symptoms of his diagnosed illnesses on board the vessel. Neither is there any proof that he notified the ship captain about his alleged chest pains and tightness while on board the vessel and that he was merely ignored due to the impending expiration of his employment contract. This Court finds it incredible for a ship captain to refuse to give medical attention to a ship crew who lodges a medical complaint as serious as chest pains and tightness in the middle of the voyage merely because the latter's employment contract is about to expire.[27] Likewise, this Court is baffled by the fact that petitioner merely let go of his alleged serious medical complaint when he could have at least requested for medication, demanded a thorough medical attention, in the *interim* or insisted on being brought to a doctor at the nearest port considering the alleged seriousness of his condition. What is clear in this case is the fact that petitioner finished his contract without any evidence of injury or health problem suffered on board.

Again, claimants for disability benefits must first discharge the burden of proving with substantial evidence that their ailment was acquired and/or aggravated during the term of their contract. They must show that they experienced health problems while at sea, the circumstances under which they developed the illness, as well as the symptoms associated by it.[28]

As consistently held by the Court, at most, petitioner's general statements as to whether his illnesses are work-related *and* suffered during the term of his contract, surmise mere possibilities, but definitely not the lenient probability required by law to be entitled to disability compensation. The probability of work-connection must at least be anchored on credible information and not merely on uncorroborated self-serving allegations as bare allegations do not suffice to discharge the required quantum of proof of compensability.[29]

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[27] See *Pelayo v. Aarema Shipping and Trading Co., Inc.*, 520 Phil. 896 (2006).

[28] *Scanmar Maritime Services, Inc. v. De Leon*, *supra* note 24.

[29] *Id.*

To be sure, this Court is not unaware of its statements in previous cases, taking judicial notice of the working environment that seafarers, *in general*, have to deal with.[30] Such judicial notice, however, is nothing more than an acknowledgment of the general perils encountered by seafarers on board the vessel. It does not sufficiently prove work-relatedness of a particular illness or injury, much less, prove entitlement to compensation. To reiterate for emphasis, even an established work-related illness, or one which is listed as occupational, does not entail a conclusion that the resulting disability is automatically compensable. In such a case, the seafarer, while not needing to prove the work-relatedness of his illness, bears the burden of proving compliance with the conditions of compensability under the POEA Contract. Failure to do so will result in the dismissal of his claim.[31] The Court, thus, takes this opportunity to clarify that, despite such acknowledgment of the general working environment of seafarers, **the Court never dispensed with the required substantial evidence to prove entitlement to disability benefits under the law**.

It is plainly observable in the Court's ruling in *Leoncio v. MST Marine Services (Phils.), Inc.*,[32] that it did not merely rely upon the judicial notice it took as to the exposure of seafarers to varying temperatures, harsh weather conditions, and homesickness in awarding disability benefits. In fact, in said case, the Court concluded that the claimant-seafarer, hired as a Chief Cook, "proved, by substantial evidence, his right to be paid the disability benefits he claims." This is so because, as found by the Court, the claimant seafarer therein was able to clearly show that he had an existing condition known to his

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[30] *Leoncio v. MST Marine Services (Phils.), Inc.*, G.R. No. 230357, December 6, 2017, 848 SCRA 305; *Skippers United Pacific, Inc. and/or Ikarian Moon Shipping Co., Ltd. v. Lagne*, G.R. No. 217036, August 20, 2018; *Fil-Pride Shipping Company, Inc. v. Balasta*, 728 Phil. 297 (2014); *Paringit v. Global Gateway Crewing Services, Inc.*, G.R. No. 217123, February 6, 2019.

[31] *Romana v. Magsaysay Maritime Corporation*, *supra* note 23.

[32] *Supra* note 30.

employer, had repeatedly suffered symptoms of his condition on board the vessel during his more than 18 years of employment with the same employer, and was medically repatriated therefor, among others.

In *Skippers United Pacific, Inc. and/or Ikarian Moon Shipping Co., Ltd. v. Lagne*,[33] the claimant-seafarer was likewise medically repatriated. The Court also found that he was able to enumerate in detail and prove his duties and responsibilities as an Oiler. He was also able to prove that he suffered symptoms (pain on his anus, chest pains, and difficulty in breathing whenever he carries heavy weight and performs laborious tasks as part of his job) on board the vessel. Thus, the Court reasonably concluded that the claimant-seafarer was able to meet the required degree of proof, *i.e.*, substantial evidence, that his illness is compensable as it is work-connected and suffered during the term of his contract.

The medically-repatriated claimant-seafarer in the case of *Fil-Pride Shipping Company, Inc. v. Balasta*,[34] wherein the Court also took judicial notice of the seafarers' homesickness and exposure to the perils of the sea, alleged in detail and proved his specific tasks as an Able Seaman, and that he experienced symptoms of his illness which can be reasonably linked to the tasks he performed on board the vessel. Moreover, the Court observed that the employer failed to refute the seafarer's allegations that "in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals, dust, fumes/emissions, and other irritant agents; that he performed strenuous tasks such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that he was constantly exposed to varying temperatures of extreme hot and cold as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, he was required to perform overtime work; and that the work of an Able Seaman is both

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[33] *Id.*

[34] *Id.*

physically and mentally stressful." In the instant case, respondents vehemently denied petitioner's allegations.

The Court, in *Paringit v. Global Gateway Crewing Services, Inc.*,[35] also acknowledged that "there is very little that seafarers can do to better their working conditions upon boarding a ship." The Court's grant of disability benefits was, however, not merely based on this premise. Rather, such grant was, in actual fact, grounded upon compliance with the requirements of compensability. Substantial evidence was found to have established that: (1) therein claimant-seafarer, hired as a Chief Mate, was "diagnosed with heart-disease, anemia, [and] renal dysfunction"; (2) he fell ill while he was aboard the vessel, which resulted to his medical repatriation; (3) he complied with the procedures prescribed under the POEA-SEC as he submitted himself to a post-employment medical examination conducted by a company-designated physician; (4) his illness[36] is one of the enumerated occupational diseases or that his illness is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A of the POEA-SEC for an occupational disease or a disputably presumed work-related disease to be compensable. Further, the Court found that the claimant-seafarer complied with the condition under Section 32-A, paragraph 11 (d): claimant-seafarer being a known hypertensive complied with the prescribed medications and doctor-recommended lifestyle changes," among others.

In this case, while petitioner's illnesses, as well as the fact that the same may be listed as occupational diseases, are undisputed, there was failure to establish with substantial evidence that the same were suffered during the term of his contract, him being repatriated for completion of contract without any reported injury or health issue actually militates against his claim of having suffered illnesses on board the vessel. It

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[35] *Id.*

[36] "Congestive Heart Failure; Hypertensive Cardiovascular Disease; Valvular Heart Disease; Anemia Secondary to Upper GI Bleeding Secondary to Bleeding Peptic Ulcer Disease."

was also not established that he complied with the procedures prescribed under Section 20 (A) of the POEA-SEC or with regard to the required submission to post-employment medical examination as he merely made general self-serving statements regarding the same. Likewise, it was not established that the conditions under the first paragraph of Section 32-A and paragraph 2 (11) thereof were complied with considering that petitioner did not present substantial evidence, showing his specific tasks on board the vessel and the connection thereof to his illnesses.

Notably, the one-page handwritten certification dated June 10, 2015 issued by Dr. Martinez cannot be considered sufficient to support petitioner's claims as it contains nothing but a statement that petitioner "underwent treatment due to severe chest pains last June 8, 2015"; that he was given medications therefor; and that he was advised to rest and to undergo further laboratory examinations. No clinical abstract of his findings was presented. Worse, there was no showing that petitioner subjected himself to further laboratory examination as advised, which may imply negligence on his part.

In this Petition, petitioner pounds on "the medical fact that hypertensive cardiovascular disease does not develop over a short period of time." This, according to petitioner, is sufficient proof that his cardiovascular illness existed during the term of his contract considering as well that he passed his PEME before he commenced employment with respondents. This argument, however, deserves scant consideration. Foremost, we have held, time and again, that a PEME cannot be relied upon to reflect a seafarer's true state of health since it is not exploratory and may just disclose enough for employers to decide whether a seafarer is fit for overseas employment.[37] Moreover, as correctly found by the CA, there is no proven indication that petitioner was already suffering from an ailment at the time of the termination of his contract with respondents. As we have previously ruled, thus, it would be too presumptive for the Court,

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[37] *Madridejos v. NYK-Fil Ship Management, Inc.*, 810 Phil. 704 (2017).

in this case, to contemplate even the probability that petitioner contracted his illnesses while on board the vessel.[38] The burden, to reiterate, is upon the seafarer to prove his entitlement to the claimed benefits.

In sum, there is nothing on record upon which a conclusion that petitioner contracted his illnesses during his employment on board the vessel and that he contracted his illnesses in relation to his work environment and the risks involved in his daily tasks as a Chief Engineer. On the contrary, what is clear in the records is that petitioner's repatriation was not due to any medical reason, but due to the completion of his contract. His cardiovascular and renal illnesses, which rendered him unfit for sea duty surfaced only after his sign-off from the vessel and during a PEME for another deployment.

With the utter dearth of proof advancing petitioner's cause, we find no error on the part of the CA in ruling that petitioner failed to substantiate his claim of compensability. It is apt to be reminded, at this juncture, that "the constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. Justice is, in every case, for the deserving, and it must be dispensed with in the light of established facts, the applicable law, and existing jurisprudence."[39] Such liberal construction in favor of seafarers must not be taken to sanction the award of compensation and disability benefits in the face of evident failure to substantially establish compensability,[40] lest we set a dangerous precedent of awarding compensation and benefits based merely on unsubstantiated general allegations and common knowledge, tantamount to giving undue full coverage insurance to any and all circumstances that any seafarer may suffer.

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[38] See *Rosario v. Denklav Marine Services Ltd.*, G.R. No. 166906, March 16, 2005.

[39] See *Status Maritime Corporation v. Spouses Delalamon, supra* note 18.

[40] See *Malicdem v. Asia Bulk Transport, Inc.*, *supra* note 21.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated May 3, 2018 and the Resolution dated August 20, 2018 of the Court of Appeals in CA-G.R. SP No. 150042 are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 242686. July 7, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZALDY SIOSON *y* LIMON,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In order to ensure Sioson's conviction for the illegal sale of dangerous drugs, the prosecution must satisfactorily establish: (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, for the charge of illegal sale of dangerous drugs; while the elements of illegal possession of dangerous drugs are: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug, for the illegal possession charge.

2. **ID.; ID.; ID.; IT IS ESSENTIAL THAT THE PROSECUTION SUCCESSFULLY DEMONSTRATE, WITH MORAL CERTAINTY, THE IDENTITY OF THE SUBJECT DRUGS, ESPECIALLY SINCE THE DANGEROUS DRUG ITSELF**

FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.— [I]n such cases of illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, it is essential that the prosecution successfully demonstrate, with moral certainty, the identity of the subject drugs, especially since the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to do so, renders the evidence for the State insufficient to prove the guilt of the accused, hence, warrants an acquittal.

3. ID.; ID.; CHAIN OF CUSTODY RULE; THE PROSECUTION HAS THE POSITIVE DUTY TO DEMONSTRATE STRICT OBSERVANCE THEREOF, AND ANY PROCEDURAL LAPSES MUST BE EXPLAINED AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE MUST BE PROVEN AS A FACT BY THE PROSECUTION.— In the case at bench, the Court is not convinced that the buy-bust team adequately complied with the chain of custody rule under Section 21(1), Article II of R.A. No. 9165, as amended by R.A. No. 10640 x x x. In recent cases, the Court has held that the prosecution has the positive duty to demonstrate strict observance of the chain of custody rule, and "[a]s such, they must have the initiative to not only acknowledge, but also justify any perceived deviations from the said procedure during the proceedings before the trial court." Stated otherwise, any procedural lapses must be explained, and the justifiable ground for non-compliance must be proven as a fact by the prosecution. Here, it cannot be denied that the apprehending officers committed a serious breach of the mandatory procedures required by law in the conduct of buy-bust operations. Corollary, reasonable doubt is cast upon the integrity of the allegedly confiscated drug specimens, and consequently, on the guilt of appellant Sioson. x x x [T]he required witnesses were not present during the marking. x x x Moreover, the inventory and taking of the photograph were not done immediately at the place where Sioson was apprehended, but only at the police station. Yet, the prosecution offered no explanation therefor. The prosecution kept silent and did not even bother to show, at the least, that these were done due to 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 x x x. Verily, compliance with the procedures laid down in Section 21(1) of R.A. No. 9165 is determinative of the integrity and evidentiary value of the *corpus*

> *delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the Court's bounden duty to acquit the accused and, perforce, overturn a conviction, as in this case.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

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

This is an appeal[1] from the May 16, 2018 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 09204 affirming the Joint Decision[3] dated March 29, 2017 of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 92 in Criminal Case Nos. 15273-74 finding accused-appellant Zaldy Sioson *y* Limon (Sioson) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The present case stemmed from two separate Information[4] dated October 28, 2015 charging Sioson with illegal sale and

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[1] See Notice of Appeal dated June 11, 2018; CA *rollo*, pp. 158-162.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Fernanda Lampas-Peralta and Amy C. Lazaro-Javier (now a Member of the Court), concurring; *id.* at 141-151.

[3] Penned by Presiding Judge Gener M. Gito; *id.* at 65-80.

[4] ***Criminal Case No. 15273*** *(violation of Section 11, Article II of R.A. No. 9165)*

illegal possession of dangerous drugs. The prosecution alleged that on October 27, 2015, members of the police force stationed in Pilar, Bataan, in coordination with the Philippine Drug Enforcement Agency, planned a buy-bust operation against Sioson based on a tip received a week prior from a confidential asset.[5] After the buy-bust team was organized, the operatives proceeded to the area of operation in *Barangay* Sta. Rosa, Pilar, Bataan together with the confidential informant. There, at around 8:15 p.m., the team saw Sioson alight from a tricycle.[6] The designated *poseur*-buyer Police Officer 1 Juncarl G. Pataweg (PO1 Pataweg) and the asset then approached Sioson and told the latter of their intent to buy *shabu* worth ₱500.00. Sioson thereafter handed over to PO1 Pataweg one plastic sachet containing white crystalline substance in exchange for the marked ₱500.00 bill.[7] Then, as the pre-arranged signal, PO1 Pataweg tapped the shoulder of Sioson and thanked him.[8] Thus, PO2 Nadzmer R. Sahibul (PO2 Sahibul), who was 10 meters away

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That on or about October 27, 2015, in Pilar, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully [have] in his possession, custody and control four (4) heat-sealed transparent plastic sachets each containing methamphetamine hydrochloride commonly known as "*shabu*" having a total weight of ZERO POINT TWO SIX ZERO FOUR (0.2604) GRAM, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 15274 *(violation of Section 5, Article II of R.A. No. 9165)*

That on or about October 27, 2015, in Pilar, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as "*shabu*" weighing ZERO POINT ZERO SEVEN NINE FIVE (0.0795) GRAM, a dangerous drug.

CONTRARY TO LAW; *id.* at 142.

[5] *Id.* at 106.

[6] *Id.* at 68.

[7] *Id.*

[8] *Id.*

from the target area, rushed to the target area and apprehended Sioson.[9] PO1 Pataweg requested Sioson to empty his pockets whereupon Sioson pulled out four other plastic sachets of *shabu*.[10] PO1 Pataweg then seized all five plastic sachets and marked them in the presence of Sioson.[11] PO2 Sahibul testified that he witnessed the marking of the seized specimen.[12] Thereafter, the buy-bust team brought Sioson to the Pilar Police Station for the conduct of the Inventory. PO1 Pataweg kept the subject evidence in his pocket from the time it was recovered from Sioson at the crime scene up to the police station.[13] PO1 Pataweg and PO2 Sahibul then conducted the inventory while PO2 De Vega took photos of the seized items as witnessed by Sioson, media representative Danny Cumilang (Cumilang), Department of Justice (DOJ) representative Emma Sangalang (Sangalang) and *barangay* official Rogelio Reyes (Reyes).[14] Upon securing the necessary request for Laboratory Examination, PO1 Pataweg and PO2 Sahibul delivered the confiscated plastic sachets for testing at the Bataan Philippine National Police Crime Laboratory, Balanga City, Bataan.[15] Forensic Chemist Police Chief Inspector Vernon Rey Santiago (PCI Santiago) received the seized items from PO1 Pataweg and conducted tests thereon.[16] In her Chemistry Report No. D-418-15-Bataan,[17] PCI Santiago stated that the contents of the plastic sachets tested positive for Methamphetamine Hydrochloride or *shabu*.[18]

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[9] *Id.*

[10] *Id.* at 69.

[11] The plastic sachets were marked with "JGP-1", "JGP-2", "JGP-3", "JGP-4", and "JGP-5;" *id.*

[12] *Id.* at 70. *See* also *Salaysay Panghukuman* of PO2 Sahibul.

[13] See TSN, March 7, 2016, pp. 13-15.

[14] CA *rollo*, p. 115.

[15] *Id.* at 116.

[16] *Id.* at 117.

[17] See Exhibit "C"; *id.* at 153.

[18] *Id.* at 117.

For his part, Sioson claimed that on October 27, 2015, while he was in Prado Siongco, Lubao, Pampanga for the wake of his aunt Edna L. Sioson, he received a text message from his friend Edgar Nuestro (Nuestro) inviting him to his house in Pilar, Bataan. At Nuestro's house, Sioson averred that six police officers suddenly barged in and physically assaulted him. He was then brought to the Pilar Municipal Hall on board a white vehicle.[19]

In a Joint Decision dated March 29, 2017, the RTC adjudged Sioson guilty as charged and sentenced him: (1) to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for violating Section 5, Article II of R.A. No. 9165; and (2) to serve a prison term of 15 years and one day as minimum to 20 years as maximum without eligibility for parole and to pay a fine of ₱300,000.00 for violating Section 11, Article II of R.A. No. 9165. The RTC found that the prosecution was able to prove, with the required quantum of proof, all the elements of the crime of illegal sale and illegal possession of dangerous drugs, and that the identity, integrity, and probative value of the sequestered drugs were preserved and kept intact by the evidence custodian until its presentation in court.[20] It brushed aside Sioson's defense of frame-up for being unsubstantiated and upheld the presumption of regularity in the performance of official duties.[21]

Upon appeal, the CA sustained the ruling of the RTC agreeing that Sioson's defense of frame-up and alibi crumbles in the face of proof beyond reasonable doubt of his violation of the Comprehensive Dangerous Drugs Act.[22]

Hence, this appeal.

The Court's Ruling

The appeal is granted.

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[19] *Id.* at 55.

[20] *Id.* at 72-78.

[21] *Id.*

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

In order to ensure Sioson's conviction for the illegal sale of dangerous drugs, the prosecution must satisfactorily establish: (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,[23] for the charge of illegal sale of dangerous drugs; while the elements of illegal possession of dangerous drugs are: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug, for the illegal possession charge.[24]

Additionally, in such cases of illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, it is essential that the prosecution successfully demonstrate, with moral certainty, the identity of the subject drugs, especially since the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to do so, renders the evidence for the State insufficient to prove the guilt of the accused, hence, warrants an acquittal.[25]

In the case at bench, the Court is not convinced that the buy-bust team adequately complied with the chain of custody rule under Section 21 (1), Article II of R.A. No. 9165, as amended by R.A. No. 10640,[26] which requires:

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

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[23] *People v. Jugo*, G.R. No. 231792, January 29, 2018.

[24] *People v. Baradi*, G.R. No. 238522, October 1, 2018.

[25] *People v. Camiñas*, G.R. No. 241017, January 7, 2019.

[26] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

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 supplied)

In recent cases, the Court has held that the prosecution has the positive duty to demonstrate strict observance of the chain of custody rule,[27] and "[a]s such, they must have the initiative to not only acknowledge, but also justify any perceived deviations from the said procedure during the proceedings before the trial court."[28] Stated otherwise, any procedural lapses must be explained, and the justifiable ground for non-compliance must be proven as a fact by the prosecution.

Here, it cannot be denied that the apprehending officers committed a serious breach of the mandatory procedures required by law in the conduct of buy-bust operations. Corollary, reasonable doubt is cast upon the integrity of the allegedly confiscated drug specimens, and consequently, on the guilt of appellant Sioson.

Both PO1 Pataweg and PO2 Sahibul attested to the following facts: (1) the seized plastic sachets were marked at the place of arrest with only Sioson present; and (2) the inventory and photography of the confiscated items were done at the police station witnessed by representatives from the media and the DOJ, and an elected public official.

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[27] *People v. Sipin*, G.R. No. 224290, June 11, 2018; *People v. Lim*, G.R. No. 231989, September 4, 2018.

[28] *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018. (Underscoring supplied)

Clearly, the required witnesses were not present during the marking. In *People v. Peliño*,[29] the Court stressed that marking of the evidence is a crucial step in a drug operation as it sets apart and identifies the illegal drug from all other materials present and/or seized at the *locus criminis*. And, the presence of the three insulating witnesses during the seizure and marking of the drugs was emphasized in *People v. Sood*[30] where the Court stated that:

> [T]he presence of the three witnesses required by Section 21 is precisely to protect and guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the seized drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of accused-appellant.

Moreover, the inventory and taking of the photograph were not done immediately at the place where Sioson was apprehended, but only at the police station.

Yet, the prosecution offered no explanation therefor. The prosecution kept silent and did not even bother to show, at the least, that these were done due to 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, such as: that their attendance was impossible because the place of arrest was a remote area; that their safety during the inventory and photography of the seized illegal drugs were threatened by an immediate retaliatory action of those who have the resources and capability to mount a counter-assault;

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[29] G.R. No. 227995, January 15, 2020 (Minute Resolution).

[30] G.R. No. 227394, June 6, 2018.

or that the elected public officials themselves were involved in the punishable acts sought to be apprehended.[31]

Verily, compliance with the procedures laid down in Section 21 (1) of R.A. No. 9165 is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation.[32] If no such reasons exist, then it is the Court's bounden duty to acquit the accused and, perforce, overturn a conviction, as in this case.

All told, the unjustified failure of the police officers to observe the rule on the chain of custody of the seized item warrants the reversal of the assailed rulings and acquit Sioson of the charges.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 16, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09204 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Zaldy Sioson *y* Limon is **ACQUITTED** of the crimes charged against him, and is **ORDERED** to be **IMMEDIATELY RELEASED**, unless he is being lawfully held in custody for any other reason. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Inting,*[*] *Lopez,* and *Delos Santos,*[**] *JJ.*, concur.

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[31] *People v. Mola*, G.R. No. 226481, April 18, 2018; see also *People v. Padua*, G.R. No. 239781, February 5, 2020 (Minute Resolution).

[32] *People v. Sood*, *supra* note 30.

[*] Designated as additional member in lieu of Chief Justice Diosdado M. Peralta per Raffle dated March 4, 2020.

[**] Designated as additional member in lieu of Justice Amy C. Lazaro-Javier per Raffle dated March 4, 2020.

FIRST DIVISION

[G.R. No. 245422. July 7, 2020]

ALLAN M. ADOR, *petitioner*, *vs*. **JAMILA AND COMPANY SECURITY SERVICES, INC., SERGIO JAMILA III and EDDIMAR O. ARCENA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS ARE GENERALLY ACCORDED MUCH RESPECT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION ESPECIALLY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTION.— The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; AN EMPLOYEE'S TEMPORARY "OFF-DETAIL" OR "FLOATING STATUS" BEYOND SIX MONTHS WITHOUT ANY VALID JUSTIFICATION AMOUNTS TO CONSTRUCTIVE DISMISSAL.— Both the NLRC and Court of Appeals found that prior to petitioner's dismissal, he was already on "floating status" from **May 12, 2012 to April 11, 2013** or for a period of almost one (1) year. In ***Tatel v. JLFP Investigation Security Agency, Inc.***, the Court expounded on the nature of "floating status" in security agency parlance x x x. Although the Labor

Code does not provide a specific provision for temporary "off-detail" or "floating status," the Court has consistently applied Article 292 of the Labor Code to set the period of employees' temporary "off-detail" or "floating status" to a **maximum of six (6) months**, x x x. Records show that petitioner's security agency only offered him to return to work and renew his documents after being on "floating status" for more than six (6) months already. Respondents themselves admitted that they required petitioner to renew his documents on **December 17, 2012** or seven (7) months reckoned from **May 12, 2012** when he was put on "floating status." Further, the three (3) notices to return to work issued by respondents were dated **June 29, 2013**, **July 31, 2013**, and **August 31, 2013**, respectively. These notices were sent to petitioner *via* registered mail after more than one (1) year had elapsed from May 12, 2012. Clearly, petitioner's "floating status" extended beyond the maximum six-month period allowed by law. x x x Clearly, petitioner's "floating status" beyond six (6) months *sans* any valid justification amounted to constructive dismissal. He had already been constructively dismissed long before the security agency served him a notice of termination under Memorandum dated September 31, 2013.

3. **ID.; ID.; ID.; JUST CAUSES; WILLFUL DISOBEDIENCE OR INSUBORDINATION; REQUISITES.—** Willful disobedience or insubordination requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful which is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

4. **ID.; ID.; ID.; ID.; ID.; NOT EVERY CASE OF INSUBORDINATION OR WILLFUL DISOBEDIENCE OF AN EMPLOYEE OF A WORK-RELATED ORDER IS PENALIZED WITH DISMISSAL, FOR THERE MUST BE REASONABLE PROPORTIONALITY BETWEEN THE WILLFUL DISOBEDIENCE AND THE PENALTY IMPOSED THEREFOR.—** The three (3) notices to report for work sent to petitioner were merely general return-to-work orders which did not specify the required details of his posting assignment. Section 5.2 of DOLE Department Order No. 14, Series of 2001 (DO 14-01) decrees that return to work orders

must include the following details: 5.2 For every assignment of a security guard/personnel to a principal, the duty detail order shall contain the following, among others: a. Description of job, work or service to be performed. b. Hours and days of work, work shift and applicable premium, overtime and night shift pay rates. x x x Notably, the notices did not indicate the required specific details under DO 14-01. They merely directed petitioner to report to the security agency's head office and explain why he failed to comply with the orders, nothing more. x x x Indeed, the notices to report for work allegedly violated by petitioner could hardly qualify as specific, reasonable, and sufficiently known to him. The allegation of insubordination here was an obvious attempt on the security agency's part to justify petitioner's dismissal from employment. Not every case of insubordination or willful disobedience of an employee of a work-related order is penalized with dismissal. There must be **"reasonable proportionality"** between the willful disobedience and the penalty imposed therefor. Clearly, there is none in this case.

5. ID.; ID.; ID.; AN ILLEGALLY OR CONSTRUCTIVELY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT OR SEPARATION PAY AND BACKWAGES, AND THESE TWO ARE EXCLUSIVE AND AWARDED CONJUNCTIVELY.— [T]he award of separation pay equivalent to one-half (1/2) month salary for every year of service under Sections 9.3 and 6.5 of DO 14-01 is only applicable when: (1) the security guard was terminated because no service agreements are available for a continuous period of six (6) months; and (2) notice of termination was served to the security guard as required under Section 9.2 of DO 14-01. Here, the security agency did not terminate petitioner based on Sections 9.3 and 6.5 of DO 14-01 but for alleged insubordination under Article 297 of the Labor Code. x x x [H]owever, the elements of insubordination are not present here. Thus, there being no authorized cause for petitioner's dismissal under DO 14-01 or Article 297 of the Labor Code, what should apply here instead are the usual remedies or relief which illegally or constructively dismissed employees are entitled to, *viz.*: (1) reinstatement or separation pay equivalent to one (1) month salary for every year of service; and (2) backwages. These two (2) are exclusive and awarded conjunctively.

6. ID.; ID.; ID.; SEPARATION PAY; GRANTED WHEN THE RELATIONSHIP BETWEEN THE EMPLOYER AND THE ILLEGALLY DISMISSED EMPLOYEE IS ALREADY STRAINED AND A CONSIDERABLE LENGTH OF TIME HAD ALREADY PASSED RENDERING IT IMPOSSIBLE FOR THE EMPLOYEE TO RETURN TO WORK.— Separation pay is granted when: a) the relationship between the employer and the illegally dismissed employee is already strained; and b) a considerable length of time had already passed rendering it impossible for the employee to return to work. A prayer for separation pay is an indication of the strained relations between the parties. Considering that petitioner himself prayed for an award of separation pay in lieu of reinstatement and eight (8) years had lapsed since he was constructively dismissed, reinstatement is rendered impracticable. We, therefore, affirm the labor arbiter's award of separation pay in lieu of reinstatement. We also affirm the denial of petitioner's other monetary claims for failure to prove he is entitled to them.

7. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; BACKWAGES; WHERE THERE IS CONSTRUCTIVE DISMISSAL, BACKWAGES MUST BE COMPUTED FROM THE TIME THE EMPLOYEE WAS UNJUSTLY RELIEVED FROM DUTY SINCE IT WAS FROM THIS POINT THAT HIS COMPENSATION WAS WITHHELD FROM HIM.— As for backwages, in ***Peak Ventures Corp. v. Heirs of Villareal***, the Court ruled that where there is constructive dismissal, backwages must be computed from the time the employee was unjustly relieved from duty since it was from this point that his compensation was withheld from him. Petitioner's **backwages**, therefore, must be **computed from May 12, 2012** or when the security agency put him on "floating status" without justifiable reason. Since separation pay is awarded here, backwages should be computed **up to the finality of this Decision**.

8. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; ONLY THE EMPLOYER-CORPORATION, AND NOT ITS OFFICERS, MAY BE HELD LIABLE FOR ILLEGAL DISMISSAL OF EMPLOYEES; EXCEPTION.— [R]espondents Sergio Jamila III and Eddimar O. Arcena should not be held personally liable

to pay petitioner's monetary awards. It is settled that a corporation has a personality distinct and separate from the persons composing it. As a general rule, only the employer-corporation, and not its officers, may be held liable for illegal dismissal of employees. The exception applies when corporate officers acted with bad faith.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Isagani S. Aguas for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 140764:

1. Decision[2] dated July 24, 2018 finding petitioner not to have been illegally or constructively dismissed; and
2. Resolution[3] dated February 18, 2019 denying petitioner's motion for reconsideration.

The Antecedents

On February 13, 2014, petitioner Allan M. Ador (Ador) sued respondents Jamila and Company Security Services, Inc., its President Sergio Jamila III (Jamila), and HR Manager Eddimar O. Arcena (Arcena) for illegal dismissal, underpayment of salary, overtime pay, holiday pay, rest day pay, service incentive leave

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[1] Petition for Review on *Certiorari* dated April 16, 2019; *rollo*, pp. 12-38.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez with the concurrences of Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi, all members of the Thirteenth Division, *rollo*, pp. 40-50.

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

pay, 13th month pay, ECOLA, night shift differential, separation pay, unpaid paternity leave benefits, moral and exemplary damages, and attorney's fees.[4]

Petitioner essentially claimed that on May 27, 2010, respondent Jamila Security hired him as security guard. He worked from Monday to Sunday for twelve (12) hours daily on a shifting basis. He did not receive holiday pay, rest day pay, night shift differential, overtime pay, 13th month pay (except ₱3,000), service incentive leave pay, and his paternity leave benefits.[5]

After he got involved in a brawling incident against a co-employee, the security agency stopped giving him posting assignments from April 2012 to April 2013.[6]

On June 11, 2013, he talked to the security agency's HR Manager Eddimar Arcena and requested for a new assignment. Arcena instructed him to first renew his security guard license and clearances. He was, however, surprised to receive three (3) notices dated June 29, 2013, July 31, 2013, and August 31, 2013 bearing respondents' plan to terminate him. The notices were sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively.[7] He reported to respondents' office every time he received the notices, but respondents refused to give him posting assignments. On September 18, 2013, after receiving the 2nd notice, he gave a letter to the security agency stating that he cannot renew the documents because he did not have money. On November 27, 2013, however, he received a Memorandum[8] dated September 31, 2013[9] terminating his employment for insubordination.[10]

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[4] *Id.* at 96.

[5] Petition for Review on *Certiorari* dated April 16, 2019, *id.* at 12-38.

[6] *Id.*

[7] *Id.* at 28.

[8] Memorandum — Re: Notice of Termination dated September 31, 2013, *id.* at 136.

[9] Could be a typographical error. September has 30 days only.

[10] *Rollo*, p. 28.

In their Position Paper,[11] respondents countered that petitioner was paid all the wages and benefits mandated by law. They submitted petitioner's payroll summary indicating the amounts he received.[12]

Petitioner was first assigned at Hyatt Hotel and Casino. His posting did not last long because he caused damage to the hotel's property and to one of the vehicles belonging to a hotel guest. He got assigned to various postings but was again subjected to several disciplinary actions for different violations of company policies. When he got re-assigned to Hyatt Hotel and Casino, he got involved in a fistfight with his co-security guard. He suffered fracture in the forearm and went on sick leave to recuperate. After he was declared fit to work, he was given augmentation assignments from May 12, 2012 to September 2012 since there were no available postings for him.[13]

When petitioner reported for work on December 17, 2012, he was directed to renew his documentary requirements before he may be given a regular assignment, *i.e.*, security guard license, barangay clearance, police clearance, PNP clearance, NBI clearance, court clearance, and neurological test result.[14] Petitioner, however, did not comply. He again reported for work on February 6, 2013 and April 11, 2013 but still failed to submit the renewed requirements.[15]

On June 29, 2013, respondents sent petitioner a 1st Notice to Report *via* registered mail informing him of a new posting assignment. Petitioner did not reply.[16] A 2nd Notice to Report dated July 31, 2013 was sent directing him to return to work and submit a written explanation on why he should not be charged with insubordination. Still, the notice was left unheeded. Thus,

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[11] Position Paper dated April 23, 2014; *id.* at 151-162.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 153.

[15] *Id.*

[16] *Id.* at 151-162.

a 3rd and Final Notice to Report dated August 31, 2013 was sent to petitioner requiring him to return to work and comply with the updated requirements; otherwise, he may be administratively charged with insubordination.[17]

On September 18, 2013,[18] petitioner went to respondents' office and submitted a written explanation informing the security agency he had no money to renew his requirements. Thereafter, respondents sent him a Memorandum of termination[19] for insubordination for ignoring the three (3) notices sent him to report back for work.[20]

During the arbitration conference on January 23, 2014, respondents informed petitioner that he was not dismissed from employment. He was only required to comply with the renewal of his documents under Republic Act No. 5487 (RA 5487) or the Private Security Agency Law[21] specifically his security guard license before an assignment order can be issued him. Respondents also told petitioner to just disregard the termination letter since he had already explained his side on September 18, 2013; but he should first submit his updated requirements so he can be given a post. Instead of renewing his documents, petitioner initiated the complaint for illegal dismissal.[22]

The Ruling of the Labor Arbiter

By Decision[23] dated June 30, 2014, Labor Arbiter Marie Josephine C. Suarez found petitioner to have been illegally dismissed, thus:

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[17] *Id.*

[18] See Court of Appeals' Decision July 24, 2018, *id.* at 47.

[19] Memorandum — Re: Notice of Termination dated September 31, 2013; *id.* at 136.

[20] Position Paper dated April 23, 2014; *id.* at 151-162.

[21] The Private Security Agency Law, Republic Act No. 5487, June 21, 1969.

[22] Position Paper dated April 23, 2014; *rollo*, pp. 151-162.

[23] *Id.* at 261-265.

WHEREFORE, premises considered, judgment is hereby rendered declaring ALLAN M. ADOR ILLEGALLY DISMISSED. JAMILA AND COMPANY SECURITY SERVICE, INC. is ordered to pay ALLAN M. ADOR:

[1] Separation pay equivalent to one month pay per year of service, starting May 27, 2010;

[2] Full backwages starting October 1, 2013[;]

Both separation pay and full backwages should be computed up to date of promulgation of this Decision.

[3] Attorney's fees equivalent to 10% of the monetary award.

Claims for underpayment of: wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, 13th month pay, ECOLA, night shift differential and other statutory workers' benefits are dismissed without prejudice.

All other claims are dismissed for lack of merit.

The total monetary award is computed in Annex "A" [₱211,315.55],[24] forming part of this Decision.

SO ORDERED.[25]

According to the labor arbiter, petitioner did not ignore the notices to report for work which caused his termination for insubordination. He was not able to reply to the notices because the same were belatedly sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively. Petitioner nonetheless reported to respondents' office each time he received the notices, but respondents refused to give him a new assignment. On September 18, 2013, petitioner submitted a written explanation stating that he cannot renew the documents because he did not have money. Still, respondents terminated his employment.[26]

Too, petitioner was not afforded procedural due process. Respondents only served him a single notice of termination

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[24] See Computation of Complainant's Monetary Award; *id.* at 266.

[25] *Id.* at 265.

[26] *Id.* at 261-265.

dated September 31, 2013.[27] No other notice was sent him. Records showed that even before petitioner received the final notice to report for work dated August 31, 2013 on October 4, 2013, he was already dismissed as of September 31, 2013.[28] Thus, respondents terminated petitioner without affording him the right to be heard.

Lastly, petitioner is entitled to separation pay equivalent to one (1) month pay per year of service and full backwages. Reinstatement is no longer viable due to the parties' strained relations.[29]

The Ruling of the National Labor Relations Commission (NLRC)

Under its Decision[30] dated December 29, 2014, the NLRC reversed, *viz.*:

> **WHEREFORE**, the labor arbiter's Decision dated June 30, 2014 is hereby set aside and a new one entered dismissing the complaint for lack of merit. However, respondents are ordered to pay complainant his separation pay computed at one-half month salary for every year of service plus ten percent (10%) attorney's fees.
>
> **SO ORDERED**.[31]

The NLRC ruled that petitioner's failure to renew his security guard license and clearances was a valid justification for respondents not to give him any posting. The NLRC, however, found that even prior to his termination petitioner had already

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[27] September 31, 2013 could be a typographical error. September has 30 days only, *id.* at 261-265.

[28] Could be a typographical error. September has 30 days only. See Memorandum — Re: Notice of Termination **dated September 31, 2013**, *id.* at 136.

[29] *Id.* at 264.

[30] Penned by Commissioner Romeo L. Go with the concurrences of Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco; *id.* at 80-87.

[31] *Id.* at 87.

been on "floating status" for a period of one (1) year from May 12, 2012 to April 11, 2013. He was, therefore, deemed constructively dismissed. Petitioner was awarded separation pay equivalent to one-half (1/2) month salary for every year of service and attorney's fees for having been compelled to litigate to protect his interest.[32]

The Ruling of the Court of Appeals

In its assailed Decision[33] dated July 24, 2018, the Court of Appeals ruled that petitioner was neither illegally nor constructively dismissed. While petitioner was on "floating status" from May 12, 2012 to April 11, 2013, no bad faith can be imputed on the security agency. It offered petitioner to go back to work within the six-month period required by law.[34] It was petitioner's fault why he was not given any assignment since he did not renew the required documents.[35] The Court of Appeals thus ruled:

WHEREFORE, the petition is **DISMISSED**.

Private respondent Jamila and Company Security Services, Inc. is neither guilty of illegal dismissal nor constructive dismissal. Private respondent is ORDERED to look for a security assignment for petitioner within a period of thirty (30) days from finality of judgment. If one is available, private respondent is ordered to notify petitioner Allan M. Ador to report to such available guard position within ten (10) days from notice. If petitioner fails to report for work within said time period, he shall be deemed to have abandoned his employment with petitioner. In such case, petitioner is not entitled to any backwages, separation pay, or similar benefits.

If no security assignment is available for petitioner within a period of thirty (30) days from finality of judgment, private respondent[s] should comply with the requirements of DOLE Department Order No. 14, Series of 2001, in relation to Art. 289 of the Labor Code,

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[32] *Id.* at 80-87.

[33] *Id.* at 40-50.

[34] *Id.* at 46.

[35] *Id.*

and serve a written notice on petitioner and the DOLE one (1) month before the intended date of termination; and pay petitioner separation pay equivalent to half[-]month pay for every year of his service.

SO ORDERED.[36]

Petitioner moved for reconsideration but it was denied under Resolution[37] dated February 18, 2019.

The Present Petition

Petitioner now faults the Court of Appeals for ruling that respondents are not guilty of illegal dismissal. He essentially argues that: (1) respondents terminated his employment *sans* just or authorized cause and in violation of the two-notice requirement; (2) the security agency's sudden recall of the notice of termination was a mere afterthought; and (3) he is entitled to his monetary claims since he was illegally dismissed.[38]

In their Comment,[39] respondents riposte that petitioner was not given a new assignment due to his own failure to renew his security guard license as required under RA 5487. There was no illegal dismissal to speak of since he was repeatedly notified that he can be terminated if he did not update his employment documents. Petitioner, nonetheless, ignored these directives. He was also afforded procedural due process since he replied to the notices to report for work on September 18, 2013.

Issue

Did the Court of Appeals err in ruling that petitioner was neither illegally nor constructively dismissed?

Ruling

The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own

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[36] *Id.* at 49.

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

[38] Petition for Review on *Certiorari* dated April 16, 2019; *id*. at 12-38.

[39] *Id*. at 395-401.

factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case.[40]

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

Petitioner was constructively dismissed

Both the NLRC and Court of Appeals found that prior to petitioner's dismissal, he was already on "floating status" from **May 12, 2012 to April 11, 2013**[41] or for a period of almost one (1) year.

In ***Tatel v. JLFP Investigation Security Agency, Inc.***,[42] the Court expounded on the nature of "floating status" in security agency parlance, *viz.*:

> **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 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

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[40] *The Peninsula Manila v. Jara*, G.R. No. 225586, July 29, 2019. Citations omitted.

[41] *Rollo*, p. 46 and p. 86.

[42] 755 Phil. 171, 183 (2015), citing *Salvaloza v. NLRC*, 650 Phil. 543, 557 (2010).

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.** (Emphasis supplied)

Although the Labor Code does not provide a specific provision for temporary "off-detail" or "floating status," the Court has consistently applied Article 292[43] of the Labor Code to set the period of employees' temporary "off-detail" or "floating status" to a **maximum of six (6) months**,[44] thus:

ART. 292 [previously 286]. *When employment not deemed terminated.* — The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Records show that petitioner's security agency only offered him to return to work and renew his documents after being on "floating status" for more than six (6) months already. Respondents themselves admitted that they required petitioner

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[43] ART. 292 [286]. *When employment not deemed terminated.* — The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[44] See *Sebuguero v. NLRC*, 318 Phil. 635-653 (1995); and *Agro Commercial Security Services Agency, Inc. v. National Labor Relations Commission*, 256 Phil. 1182 (1989).

to renew his documents on **December 17, 2012**[45] or seven (7) months reckoned from **May 12, 2012** when he was put on "floating status." Further, the three (3) notices to return to work issued by respondents were dated **June 29, 2013**, **July 31, 2013**, and **August 31, 2013**, respectively. These notices were sent to petitioner *via* registered mail after more than one (1) year had elapsed from May 12, 2012. Clearly, petitioner's "floating status" extended beyond the maximum six-month period allowed by law.

The security agency, though, insists that it cannot give petitioner a new posting assignment because his employment documents, particularly his security guard license, were expired. Records show otherwise.

As of December 17, 2012, petitioner's security guard license had not at all expired. The DILG-National Police Commission's Civil Security Group issued petitioner's security guard license on **March 29, 2012** with an expiration date on **March 29, 2015**. Petitioner's security guard license attached as **"Annex I-4"**[46] to his petition[47] before the Court of Appeals, reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT based on available records on file with this Office as of this date **SG Allan Ador y Maglinte**, is included in the list of registered private security guard/officer and his /her license to exercise private security profession paid under Special Bank Receipt (SBR) #12154664 which will expire on **March 29, 2015**.

This certification is issued upon request of subject security guard/ officer for whatever legal purpose it may serve.

Issued this **29th day of March 2012**, Camp Crame, Quezon City.

FOR THE CHIEF, SOSIA.

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[45] See Respondents' Position Paper dated April 23, 2014; *rollo*, p. 153.

[46] *Id.* at 146.

[47] *Id.* at 54-75.

Verified by:	Certified correct by:
(Sgd.) SPO3 Melinda P. Conanan Action PNCO	(Sgd.) MARY ANNA ALISDAN Police Chief Inspector Chief, Records Section[48]

The security agency clearly misled petitioner into believing that it cannot give him a new posting assignment because his security guard license had already expired. It repeatedly required petitioner to first renew his security guard license or he would not be given a new posting assignment, albeit in truth, petitioner's security guard license had not at all expired yet.

In ***Salvaloza v. NLRC***,[49] Salvaloza's security agency refused to give him assignment orders on ground that his security guard license had allegedly expired. The security agency, however, failed to show that Salvaloza's security guard license had actually expired before he was put on "floating status" which lasted for more than six (6) months. The Court ruled that Salvaloza was constructively dismissed.

Clearly, petitioner's "floating status" beyond six (6) months *sans* any valid justification amounted to constructive dismissal. He had already been constructively dismissed long before the security agency served him a notice of termination under Memorandum dated September 31, 2013.[50]

Petitioner was not guilty of insubordination

As heretofore shown, although petitioner had already been constructively terminated, the security agency still served him an actual notice of termination supposedly effective September 31, 2013.[51] The ground cited was insubordination.

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[48] Emphasis supplied; see *id.* at 146.

[49] 650 Phil. 543, 558 (2010).

[50] Memorandum — Re: Notice of Termination dated September 31, 2013; *rollo,* p. 136.

[51] Could be a typographical error. September has 30 days only.

To begin with, an employee's employment cannot be terminated more than once either actually or constructively. By whatever form the second termination may have been effected the same does not undo, nay, supersede the previous termination that had already taken place. Be that as it may, even assuming that there was no prior constructive dismissal here, petitioner's actual termination from employment effective September 31, 2013,[52] on the ground of insubordination, was still illegal.

Willful disobedience or insubordination requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful which is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[53]

Both requisites are not present here.

First. Respondents allegedly notified petitioner thrice (June 29, 2013, July 31, 2013, and August 31, 2013) to submit his updated requirements so he can be given a new posting assignment. But petitioner continuously ignored these notices.[54] Nothing is farthest from the truth. Petitioner was not able to immediately reply because the notices were only sent to him on August 23, 2013, September 6, 2013, and October 4, 2013 as shown in the stamps of the registered mails.[55] Respondents themselves admitted that the notices were sent to petitioner **only** *via* registered mail.[56]

The labor arbiter also found that petitioner went to respondents' office when he received the first two (2) notices

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[52] *Id.*

[53] *University of Manila v. Pinera*, G.R. No. 227550, August 14, 2019 (citations omitted).

[54] Position Paper dated April 23, 2014, *rollo*, pp. 151-162.

[55] *Id.* at 130-137.

[56] See Respondents' Position Paper dated April 23, 2014; *id.* at 154.

from them.[57] He went there when he received the first notice on August 23, 2013 but no assignment was given him because his documents were supposedly not updated. After receiving the second notice on September 6, 2013, he again reported to respondents' office on September 18, 2013. This time, he explained in writing that he cannot afford to renew his documents for lack of money. Petitioner relied solely on his salary as security guard to pay for the processing fees. At that time, he was not anymore receiving any salary as security guard.

Second. The three (3) notices to report for work sent to petitioner were merely general return-to-work orders which did not specify the required details of his posting assignment.[58]

Section 5.2 of DOLE Department Order No. 14, Series of 2001[59] (DO 14-01) decrees that return to work orders must include the following details:

> 5.2 For every assignment of a security guard/personnel to a principal, the duty detail order shall contain the following, among others:
>
> a. Description of job, work or service to be performed.
>
> b. Hours and days of work, work shift and applicable premium, overtime and night shift pay rates.[60]

Here, the three (3) notices to report for work are worded, as follows:

> (a) **1st Notice to Report**
>
> You are hereby directed to come to the main Office of Jamila & Company Security Services, Inc., (JCSSI), located at JCI Corporate

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[57] *Id.* at 263-264.

[58] See *Padilla v. Airborne Security Service, Inc.*, 821 Phil. 482, 489 (2017).

[59] Entitled, "Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry."

[60] *Id.*

Centre Bldg., Lantana St., Cubao, Quezon City, for posting/assignment to our client.

Report to Ms. MONETTE CATBAGAN.

For your information.[61]

(b) **2nd Notice to Report**

We sent you a Memorandum dated June 29, 2013 ordering you to come to the main Office of Jamila & Company Security Services, Inc., (JCSSI), located at JCI Corporate Centre Bldg., Lantana St., Cubao, Quezon City, for posting/assignment to our client.

However, as of this date you have not complied to our order, hence you are required to submit your letter of explanation why you should not be charged administratively for Insubordination.

For strict compliance.[62]

(c) **3rd Notice to Report**

We sent you a Memorandum dated May 31, 2013 ordering you to come to the main Office of Jamila and Company Security Services Inc., (JCSSI), located at JCI Corporate Centre Bldg., Lantana St., Cubao, Quezon City, for posting/assignment to our client.

On June 29, 2013 another Memorandum was sent requiring you to submit your letter of explanation why you should not be charged administratively for Insubordination.

As of this date we have not received any response from you, this will serve as our final notice and your failure to report to us with your explanation will be considered as a waiver [of] your right to be heard and will be charged administratively for Insubordination which is a grave offense based on [c]ompany policy with a corresponding penalty of [t]ermination.

For strict compliance.[63]

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[61] Memorandum with Subject: 1st Notice to Report dated June 29, 2013; *rollo*, p. 130.

[62] Memorandum with Subject: 2nd Notice to Report dated July 31, 2013; *id.* at 132.

[63] Memorandum with Subject: 3rd Notice to Report dated August 31, 2013; *id.* at 134.

Notably, the notices did not indicate the required specific details under DO 14-01. They merely directed petitioner to report to the security agency's head office and explain why he failed to comply with the orders, nothing more.

In ***Padilla v. Airborne Security Service, Inc.***,[64] the security agency presented a series of notices sent to Padilla to prove he was offered a new assignment. The notices, however, merely required him to report to work and explain why he had failed to do so. They did not identify any specific client to which Padilla was to be re-assigned. The Court held that the notices were nothing more than general return-to-work orders used by the security agency to cover up Padilla's constructive dismissal for having been on "floating status" for more than six (6) months.

Indeed, the notices to report for work allegedly violated by petitioner could hardly qualify as specific, reasonable, and sufficiently known to him. The allegation of insubordination here was an obvious attempt on the security agency's part to justify petitioner's dismissal from employment. Not every case of insubordination or willful disobedience of an employee of a work-related order is penalized with dismissal. There must be **"reasonable proportionality"** between the willful disobedience and the penalty imposed therefor.[65] Clearly, there is none in this case.

Award due to petitioner

For having been constructively dismissed, the NLRC awarded petitioner separation pay equivalent to one-half (1/2) month salary for every year of service. Although the NLRC did not state the basis for this award, the same conforms with Sections 9.3 and 6.5 of DO 14-01, *viz.*:

9.3 *Reserved status.* —

x x x x x x x x x

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[64] *Supra* note 58.

[65] *Gold City Integrated Port Services, Inc. (INPORT) v. National Labor Relations Commission*, 267 Phil. 863, 873 (1990).

If after a period of 6 months, the security agency/employer cannot provide work or give assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as described in subsection 6.5.

x x x x x x x x x

6.5 *Other Mandatory Benefits. —*

In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums form their coverage:

a. Maternity benefit as provided under SSS Law;
b. Separation pay if the termination of employment is for **authorized cause** as provided by law and as enumerated below:

Half-Month Pay Per Year of Service, but in no case less than One Month Pay if separation pay is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees;
4. **Lack of service assignment for a continuous period of 6 months.** (Emphasis and underlining supplied)

x x x x x x x x x

Soliman Security Services, Inc. v. Sarmiento,[66] decreed that a security guard on floating status is entitled to separation pay equivalent to one-half (1/2) month salary for every year of service when the employer opted to terminate him for **authorized cause**: that is when no assignment can be given him for a continuous period of six (6) months due to surplus of security guards and lack of service agreements. The security agency in such case

[66] 792 Phil. 708 (2016).

must comply with the provisions of Article 289[67] of the Labor Code, which mandates that a written notice be served to the employee on "floating status" and to the DOLE one (1) month before the intended date of termination. Section 9.3 of DO 14-01 decrees:[68]

> 9.2 *Notice of Termination*. — In case of termination of employment due to authorized causes provided in Articles 283 and 284 of the Labor Code and in the succeeding subsection, the employer shall serve a written notice on the security guard/personnel and the DOLE at least one (1) month before the intended date thereof.

Thus, the award of separation pay equivalent to one-half (½) month salary for every year of service under Sections 9.3 and 6.5 of DO 14-01 is only applicable when: (1) the security guard was terminated because no service agreements are available for a continuous period of six (6) months; and (2) notice of termination was served to the security guard as required under Section 9.2 of DO 14-01.

Here, the security agency did not terminate petitioner based on Sections 9.3 and 6.5 of DO 14-01 but for alleged insubordination under Article 297[69] of the Labor Code. As discussed, however, the elements of insubordination are not present here. Thus, there being no authorized cause for petitioner's dismissal under DO 14-01 or Article 297 of the Labor Code, what should apply here instead are the usual remedies or relief which illegally or constructively dismissed employees are entitled to, *viz.*: (1) reinstatement or separation pay equivalent to one (1) month salary for every year of service; and (2) backwages. These two (2) are exclusive and awarded conjunctively.[70]

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[67] Previously Article 283.

[68] *Supra* note 66, at 718.

[69] Formerly Article 282; *Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.*

[70] *Siemens v. Domingo*, 582 Phil. 86, 103 (2008).

Separation pay is granted when: a) the relationship between the employer and the illegally dismissed employee is already strained; and b) a considerable length of time had already passed rendering it impossible for the employee to return to work.[71] A prayer for separation pay is an indication of the strained relations between the parties.[72] Considering that petitioner himself prayed for an award of separation pay in lieu of reinstatement and eight (8) years had lapsed since he was constructively dismissed, reinstatement is rendered impracticable.[73] We, therefore, affirm the labor arbiter's award of separation pay in lieu of reinstatement. We also affirm the denial of petitioner's other monetary claims for failure to prove he is entitled to them.

As for backwages, in ***Peak Ventures Corp. v. Heirs of Villareal***,[74] the Court ruled that where there is constructive dismissal, backwages must be computed from the time the employee was unjustly relieved from duty since it was from this point that his compensation was withheld from him. Petitioner's **backwages**, therefore, must be **computed from May 12, 2012** or when the security agency put him on "floating status" without justifiable reason. Since separation pay is awarded here, backwages should be computed **up to the finality of this Decision**.[75]

Further, since petitioner was compelled to litigate to protect his interests,[76] the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is proper.[77]

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[71] See *Doctor, et al. v. NII Enterprise, et al.*, 821 Phil. 251, 268-269 (2017).

[72] *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018.

[73] See *A. Nate Casket Maker v. Arango*, 796 Phil. 597 (2016).

[74] 747 Phil. 320 (2014).

[75] See *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019.

[76] *Philippine National Oil Co.-Energy Development Corp. v. Buenviaje*, 788 Phil. 508 (2016).

[77] See *Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677, 681 (2017).

Considering he was represented by the Public Attorney's Office (PAO), the attorney's fees awarded here shall be deposited to the National Treasury as trust fund and may be disbursed for special allowances of authorized officials and PAO lawyers.[78]

Finally, respondents Sergio Jamila III and Eddimar O. Arcena should not be held personally liable to pay petitioner's monetary awards. It is settled that a corporation has a personality distinct and separate from the persons composing it.[79] As a general rule, only the employer-corporation, and not its officers, may be held liable for illegal dismissal of employees. The exception applies when corporate officers acted with bad faith.[80]

Here, other than their respective designations as President and HR Manager of Jamila and Company Security Services, Inc., there was no indication that Sergio Jamila III and Eddimar O. Arcena acted in bad faith relative to petitioner's termination.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 24, 2018 and the Resolution dated February 18, 2019 of the Court of Appeals in CA-G.R. SP No. 140764 are **REVERSED** and **SET ASIDE**.

Petitioner Allan M. Ador is declared to have been **constructively dismissed** from employment. Respondent Jamila and Company Security Services, Inc. is **ORDERED** to **PAY** petitioner the following:

(1) Backwages computed from May 12, 2012 until the finality of this Decision;
(2) Separation pay at the rate of one (1) month pay per year of service until the finality of this Decision; and
(3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

The total amount shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until fully paid.

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[78] *Id.*

[79] See *Bank of Commerce v. Nite*, 764 Phil. 655 (2015).

[80] See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1 (2010).

The Labor Arbiter is **ORDERED** to prepare a comprehensive computation of the monetary award and cause its implementation, with utmost dispatch.

SO ORDERED.

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

EN BANC

[G.R. No. 247471. July 7, 2020]

JOINT SHIP MANNING GROUP, INC., PHILIPPINE ASSOCIATION OF MANNING AGENCIES & SHIP MANAGERS, INC., FILIPINO ASSOCIATION FOR MARINERS' EMPLOYMENT, INC., PHILIPPINE-JAPAN MANNING CONSULTATIVE COUNCIL, INC., INTERNATIONAL MARITIME ASSOCIATION OF THE PHILIPPINES, TOP EVER MARINE MANAGEMENT, TRANS-GLOBAL MARITIME AGENCY, INC., BARKO INTERNATIONAL, INC., TARA TRADING SHIPMANAGEMENT, INC., CORP., CAPT. OSCAR D. ORBETA, MICHAEL J. ESTANIEL, CAPT. TEODORO B. QUIJANO and CAPT. JUANITO G. SALVATIERRA, JR., *petitioners, vs.* **SOCIAL SECURITY SYSTEM and the SOCIAL SECURITY COMMISSION, represented by its President and Vice Chairman, respectively, Aurora C. Ignacio,** *respondents*.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUIREMENTS.—** The power of judicial review is the power of the Courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. For a court to exercise this power, certain requirements must first be met, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

2. **ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; THE CONTROVERSY MUST BE JUSTICIABLE, THAT IS, DEFINITE AND CONCRETE, TOUCHING ON THE LEGAL RELATIONS OF PARTIES HAVING ADVERSE LEGAL INTERESTS.—** An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable—definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof, on the other; that is, it must concern a real, tangible and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

3. **ID.; ID.; ID.; ID.; ID.; REQUIREMENT OF RIPENESS; FOR A CASE TO BE CONSIDERED RIPE FOR ADJUDICATION, IT IS A PREREQUISITE THAT**

SOMETHING HAS THEN BEEN ACCOMPLISHED OR PERFORMED BY EITHER BRANCH BEFORE A COURT MAY COME INTO THE PICTURE, AND THE PETITIONER MUST ALLEGE THE EXISTENCE OF AN IMMEDIATE OR THREATENED INJURY TO HIMSELF AS A RESULT OF THE CHALLENGED ACTION.— Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.

4. **ID.; ID.; ID.; ID.; ID.; THE MERE PASSAGE OF THE LAW DOES NOT *PER SE* ABSOLUTELY DETERMINE THE JUSTICIABILITY OF A PARTICULAR CASE ATTACKING THE LAW'S CONSTITUTIONALITY.—** Here, petitioners did not allege that they already sustained or are immediately in danger of sustaining some direct injury from R.A. No. 11199. The mere passage of the law does not *per se* absolutely determine the justiciability of a particular case attacking the law's constitutionality. Petitioners did not even allege that the law is already implemented against their interests. They simply gave a broad statement that "[t]he execution of Section 9-B of the 2018 SSS Law will definitely work injustice and irreparable damage to the petitioner manning agencies which are made to answer to so much liabilities as employer when it is not the seafarer's employer." Again, there must be an immediate or threatening injury to petitioners as a result of the challenged action; and not a mere speculation.

5. **ID.; ID.; ID.; ID.; SUPREME COURT; LITIGANTS ARE ALLOWED TO SEEK DIRECT RELIEF TO THE SUPREME COURT UPON ALLEGATION OF SERIOUS AND IMPORTANT REASONS, AND THE PRESENCE THEREOF IS NOT THE ONLY DECISIVE FACTOR IN DECIDING WHETHER TO PERMIT THE INVOCATION,**

AT THE FIRST INSTANCE, OF ITS ORIGINAL JURISDICTION OVER THE ISSUANCE OF EXTRAORDINARY WRITS, BUT RATHER IT IS THE NATURE OF THE QUESTIONS RAISED BY THE PARTIES IN THOSE EXCEPTIONS.— [T]he Court, through the years, has allowed litigants to seek from it direct relief upon allegation of "serious and important reasons." *Diocese of Bacolod v. Commission on Elections* summarized these circumstances in this wise: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression; (4) the constitutional issues raised are better decided by the Court; (5) exigency in certain situations; (6) the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and] (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." It must be clarified, however, that the presence of one or more of the so-called "serious and important reasons" is not the only decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enables us to allow the direct action before the Court. In this case, the Court finds that petitioners may seek direct relief because of the existence of two of the exceptions, particularly: (1) that this case is of first impression; and (2) that present issue involves public welfare and the advancement of public policy, or demanded by the broader interest of justice. The assailed law concerns the welfare of OFWs, the modern-day Filipino heroes, and the grant of social protection in their favor.

6. ID.; ID.; ID.; ID.; ID.; WHEN A LAW IS QUESTIONED BEFORE THE SUPREME COURT, THE PRESUMPTION IS IN FAVOR OF ITS CONSTITUTIONALITY AND THE BURDEN IS SQUARELY ON THE SHOULDERS OF THE

ONE ALLEGING UNCONSTITUTIONALITY TO PROVE INVALIDITY BEYOND REASONABLE DOUBT BY NEGATING ALL POSSIBLE BASES FOR THE CONSTITUTIONALITY OF A STATUTE.— When a law is questioned before the Court, the presumption is in favor of its constitutionality. To justify its nullification, there must be a clear and unmistakable breach of the Constitution, not a doubtful and argumentative one. Moreover, the reason courts will, as much as possible, avoid the decision of a constitutional question can be traced to the doctrine of separation of powers which enjoins on each department a proper respect for the acts of the other departments. In line with this policy, courts indulge the presumption of constitutionality and go by the maxim that "to doubt is to sustain." The theory is that, as the joint act of the legislative and executive authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted. It is a basic axiom of constitutional law that all presumptions are indulged in favor of constitutionality and a liberal interpretation of the Constitution in favor of the constitutionality of legislation should be adopted. Thus, if any reasonable basis may be conceived which supports the statute, the same should be upheld. Consequently, the burden is squarely on the shoulders of the one alleging unconstitutionality to prove invalidity beyond x x x reasonable doubt by negating all possible bases for the constitutionality of a statute. Verily, to doubt is to sustain.

7. ID.; ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAWS; DOES NOT REQUIRE THE UNIVERSAL APPLICATION OF THE LAWS TO ALL PERSONS OR THINGS WITHOUT DISTINCTION, FOR WHAT IT SIMPLY REQUIRES IS EQUALITY AMONG EQUALS AS DETERMINED ACCORDING TO A VALID CLASSIFICATION.— One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on

the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause. It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness.

8. ID.; ID.; ID.; ID.; ID.; CLASSIFICATION, WHEN VALID AND REASONABLE.— To be valid and reasonable, the classification must satisfy the following requirements: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. x x x The Court finds that Sec. 9-B of R.A. No. 11199 does not violate the equal protection of laws because there is a substantial distinction between sea-based OFWs and land-based OFWs. [S]eafarers constitute a unique classification of OFWs. Their essential difference against land-based OFWs is that all seafarers have only one (1) standard contract, which provides the rights and obligations of the foreign ship owner, the seafarer and the manning agencies. x x x The POEA-SEC outlines all the duties and responsibilities of the foreign ship owners, manning agencies, and seafarers within its coverage. As long as the seafarer is employed or engaged in overseas employment in any capacity on board a ship, the POEA-SEC shall apply to him or her. The latest POEA-SEC is covered by the POEA Memorandum Circular No. 010-10, or the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships. x x x [S]uch standardized contractual arrangement is possible because all seafarers have similarity of circumstances relating to work. As they are working in the seas, they face the same perils and predicaments in their employment and enjoy the same benefits for their welfare. Thus, whether a seafarer is a chef on a cruise ship, or an engineer in a cargo ship, they are covered by a unified POEA-SEC. The rights and responsibilities of the seafarer, manning agency, and foreign ship owner are consistent and uniform in every POEA-SEC. Contrary thereto, land-based OFWs do not have singular or uniform employment contract

because of the variety of work they perform. Their contracts depend on the nature of their employment and their place of work. x x x Sec. 9-B(b) of R.A. No. 11199 simply reiterates the provisions in other existing laws and regulations that manning agencies are jointly and solidarily liable with the principal foreign ship owners for monetary claims. Under Section 1(A)(1) of the 2010 POEA-SEC, the principal foreign ship owner has the primary duty to extend SSS coverage to seafarers. x x x The 2016 POEA Rules provides that manning agencies are jointly and severally liable with the principal employer for any and all claims arising out of the implementation of the SEC involving seafarers. Necessarily, this includes claims arising out of the SSS coverage and contributions in favor of seafarers. If the principal foreign ship owner fails to pay the SSS contributions, then the joint and several liability of the manning agencies can be invoked. Notably, the joint and several liability of manning agencies with the principal foreign ship owners is a mandatory pre-qualification requisite before they can secure a license to operate. Upon applying and receiving their license to operate, which is merely a privilege granted to them by the State, they accept all the conditions attached therein, including the joint and solidary liability with principal foreign ship owners that may arise under the POEA-SEC, such as the payment of SSS contributions. The joint and several liability of manning agencies indicated under the 2016 POEA Rules only echoes the statutory provision stated under Section 10 of R.A. No. 8042, or the Migrant Workers and Overseas Filipinos Act, as amended x x x. Thus, the solidary liability of manning agencies with respect to principal foreign ship owners has been established by law, particularly, R.A. No. 8042, as amended, and duly implemented by the 2016 POEA Rules. Sec. 9-B(b) of R.A. No. 11199, which treats manning agencies as employers for the sole purpose of recognizing their joint and solidary liability in favor of seafarers, simply acknowledged the existing law and regulations. This provision was not created by Congress out of thin air; instead, it was based on the cited law and regulations, which manning agencies already acceded to. Due to this existing and recognized solidary liability of manning agencies, it was reasonable for the law to no longer mandate the DFA and DOLE to secure bilateral labor agreements because the SSS coverage of the seafarers are already safeguarded. x x x Consequently, the different treatment of seafarers and manning agencies is justified and germane to the purpose of

the law. A declared policy of R.A. No. 11199 is to extend social security protection to Filipino workers, local or overseas, and their beneficiaries. The law applied the existing law and regulations regarding the joint and solidary liability of manning agencies with principal foreign ship owners to attain the statutory purpose of the mandatory coverage of seafarers under the SSS. As a result, the joint and solidary liability of the manning agency with principal foreign ship owners was reasonably extended to the obligations regarding SSS contributions. This satisfies the second requisite that the classification be germane to the purpose of the law. In the same manner, the assailed provision does not only apply to existing conditions. Seafarers are completely covered by the SSS, and all the manning agencies, without any prior conditions, shall have a solidary liability with the principal foreign ship owners for the SSS contributions. Likewise, the mandatory coverage of SSS applies to all kinds of seafarers, regardless of position or designation on their respective vessels. Hence, the third and fourth requisites — that the classification must not be limited to existing conditions only and that it must apply equally to all members of the same class — are complied with. As there is a valid and legal classification between sea-based OFWs and land-based OFWs, there is no violation of the equal protection clause.

9. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 11199 (THE SOCIAL SECURITY ACT OF 2018); COMPULSORY COVERAGE OF OVERSEAS FILIPINO WORKERS; THE MANNING AGENCIES ARE MERE AGENTS OF THEIR PRINCIPALS AND THEY ARE ONLY TREATED AS EMPLOYERS FOR THE EXCLUSIVE PURPOSE OF ENFORCING THEIR SOLIDARY LIABILITY WITH THE FOREIGN PRINCIPAL EMPLOYER IN FAVOR OF THE SEAFARERS, INCLUDING CLAIMS ARISING FROM THE SOCIAL SECURITY SYSTEM COVERAGE.— [T]he best solution to resolve the failure to report the seafarers for SSS coverage is to, once and for all, make the seafarer's SSS coverage mandatory under the law. In that manner, the foreign principal employers and manning agencies are jointly and solidarily liable under R.A. No. 11199 to ensure that they will report their seafarers to the SSS and pay their contributions. Failure to comply with the law shall lead to different sanctions. This is the decree

employed by Congress to give significant effect to the constitutional mandate of the State to afford protection to labor, whether local or overseas. x x x [T]he apprehension of petitioners that the law places the burden of the SSS coverage entirely upon the shoulders of manning agencies because they are treated as employers is more illusory than real. Evidently, Sec. 9-B(b) of R.A. No. 11199 treats manning agencies of seafarers as employers only for the purpose of enforcing their solidary liability with the principal foreign ship owners. The law is anchored on the existing law and regulations. This is to guarantee the SSS coverage of the seafarers. Again, Sec. 9-B(b) of R.A. No. 11199 clearly states that manning agencies are mere "agents of their principals." They are only treated as employers for the exclusive purpose of enforcing their solidarily liability with the foreign principal employer in favor of the seafarers, including claims arising from SSS coverage. This mechanism was deemed sufficient by Congress to ensure that seafarers would be fully protected under their social security coverage. Manning agencies are sensibly covered by R.A. No. 11199 when their joint and several liability with the principal foreign ship owner is invoked. Contrary to petitioners' argument that manning agencies are unnecessarily saddled with the SSS obligations, they still have available recourses under the Civil Code against their solidary obligors, particularly, the foreign principal shipowners. The law is reasonable because it is bereft of any provision that absolutely and unequivocally transfers the entire responsibility of the SSS coverage to the manning agencies alone. It simply found an innovative method to utilize the existing solidary liabilities of the parties involved in the hiring of sea-based OFWs to enforce the mandatory coverage of the SSS.

10. ID.; ID.; ID.; THE OFFICERS OF THE LOCAL MANNING AGENCIES DO NOT IMMEDIATELY INCUR CRIMINAL LIABILITY WHENEVER THE FOREIGN PRINCIPAL COMMITS A WRONGDOING, FOR THEIR RESPECTIVE MANNING AGENCIES MUST FIRST COMMIT A CRIMINAL ACT BEFORE THE SAID OFFICERS CAN BE CRIMINALLY CHARGED.— [B]efore a managing head, director or partner is penalized, their association, partnership, corporation or any other institution must first commit a criminal act under R.A. No. 11199. Consequently, the officers shall only have criminal liability for their organization's own acts. There

is no *ipso jure* criminal liability of the officers of manning agencies because some other separate entity, such as a foreign principal employer, committed a crime entirely unrelated to such manning agency. The Senate deliberations show the intent of lawmakers not to mindlessly charge officers of the manning agencies for criminal acts when the liability is only civil in nature, especially when there are no separate acts of collusion in the criminal acts of other entities x x x. Thus, contrary to the position of petitioners, the officers of the local manning agencies do not immediately incur criminal liability whenever the foreign principal commits a wrongdoing. Instead, their respective manning agencies must first commit a criminal act before the said officers can be criminally charged. x x x As R.A. No. 11199 is fair and reasonable with respect to its penal provisions, there is no violation of substantial due process.

11. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO INVIOLABILITY OF CONTRACTS; THE RIGHT IS NOT ABSOLUTE AS IT IS SUBJECT TO THE PROPER EXERCISE OF THE POLICE POWER OF THE STATE.— [T]he constitutional right to inviolability of contracts is not absolute. It is subject to the proper exercise of the police power by the State. Further, the contracts referred to by petitioners are labor contracts. Under the Civil Code, labor contracts are impressed with public interest and must yield to the common good. Here, the Court finds that the State reasonably exercised its police power in increasing the SSS contribution under R.A. No. 11199. The new rates are not a drastic increase based on the previous rates; these are imposed gradually; and these are justifiably and rationally shouldered between the employer and the seafarer. Glaringly, petitioners failed to present any credible evidence or argument that would show that the exercise of the State's police power in increasing the SSS contributions are unreasonable and will cause irreversible and significant economic damages and liabilities to the stakeholders and the entire maritime industry. x x x Further, it must be emphasized that the provision of the law in equitably increasing the SSS contribution rates is within the wisdom of Congress. As long as there is no grave abuse of discretion in enacting the increased rates, the Court must respect the intent of Congress to achieve a dynamic social security service for our seafarers.

12. ID.; ID.; PRINCIPLE OF SEPARATION OF POWERS; THERE WOULD BE AN INTRUSION NOT ALLOWABLE UNDER THE CONSTITUTION IF ON A MATTER LEFT TO THE DISCRETION OF A COORDINATE BRANCH, THE JUDICIARY WOULD SUBSTITUTE ITS OWN.— Indeed, only congressional power or competence, not the wisdom of the action taken, may be the basis for declaring a statute invalid. This is as it ought to be. The principle of separation of powers has in the main wisely allocated the respective authority of each department and confined its jurisdiction to such a sphere. There would then be intrusion not allowable under the Constitution if on a matter left to the discretion of a coordinate branch, the judiciary would substitute its own. If there be adherence to the rule of law, as there ought to be, the last offender should be the courts of justice, to which rightly litigants submit their controversy precisely to maintain unimpaired the supremacy of legal norms and prescriptions. The attack on the validity of the challenged provision likewise, insofar as there may be objections, even if valid and cogent, on its wisdom cannot be sustained.

APPEARANCES OF COUNSEL

Roberto A. Abad and *Blessilda B. Abad* for petitioner.
Office of the Government Corporate Counsel for respondents.

D E C I S I O N

GESMUNDO, *J.*:

It is a basic postulate that the one who challenges the constitutionality of a law carries the heavy burden of proof for laws enjoy a strong presumption of constitutionality as it is an act of a co-equal branch of government.[1] *Petitioners failed to carry this heavy burden.*

This is a petition for *certiorari* and prohibition, with an urgent prayer for the issuance of a temporary restraining order or a

[1] *British American Tobacco v. Camacho*, 603 Phil. 38, 54 (2009).

writ of preliminary injunction, seeking to annul and declare as unconstitutional Section 9-B of Republic Act (*R.A.*) No. 11199, or the Social Security Act of 2018, for violation of substantive due process and equal protection of laws.

The Antecedents

R.A. No. 1161, or the Social Security Act of 1954, established the Social Security System *(SSS)*. Its declared policy was to develop a social security service to protect Filipino workers. At that time, Overseas Filipino Workers *(OFWs)* were not covered by the said law. Subsequently, in 1987, the 74th Geneva Maritime Session of the International Labour Organization *(ILO)* ruled that seafarers have the right to social security protection, an internationally accepted principle. Eighteen (18) countries, including the Philippines, signed the Session's act.[2]

On July 14, 1988, the SSS and the Department of Labor and Employment *(DOLE)* entered into a Memorandum of Agreement *(1988 MOA)*, stating that one of the conditions of the Standard Employment Contract *(SEC)* of seafarers would be that sea-based OFWs shall be covered by the SSS.[3]

In 1995, the Court promulgated *Sta. Rita v. Court of Appeals (Sta. Rita)*,[4] which stated that R.A. No. 1161 does not exempt seafarers from coverage of the SSS law. It was underscored therein that the SEC entered into by the seafarer and the manning agencies, which imposes SSS coverage, is valid and binding.

In 1997, Congress enacted R.A. No. 8282 or the *1997 SSS Law*. However, the said law still did not consider the mandatory coverage of OFWs under the SSS. In 2006, the ILO adopted the Maritime Labour Convention *(2006 MLC)* to establish the minimum working living standards for all seafarers. It provides for the labor rights of a seafarer, including social protection, and the implementation and enforcement of these rights.[5]

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[2] *Rollo,* p. 6.

[3] *Id.*

[4] 317 Phil. 578 (1995).

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

In 2010, the Philippines Overseas Employment Administration *(POEA)* amended the SEC, declaring that the seafarer's SSS coverage is a duty of the principal, the employer, the master, or the company.[6]

On February 7, 2019, Congress enacted R.A. No. 11199, which mandated compulsory SSS coverage for OFWs. The purpose of the law is to provide OFWs with SSS benefits, especially upon retirement. It also increased the rates of SSS contributions to provide relief for the dwindling resources of the SSS. Sec. 9-B of R.A. No. 11199 covers the compulsory coverage of OFWs, to wit:

SEC. 9-B. *Compulsory Coverage of Overseas Filipino Workers (OFWs).* —

(a) Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022: *Provided*, That they are not over sixty (60) years of age.

All benefit provisions under this Act shall apply to all covered OFWs. The benefits include, among others, retirement, death, disability, funeral, sickness and maternity.

(b) Manning agencies are agents of their principals and are considered as employers of sea-based OFWs.

For purposes of the implementation of this Act, any law to the contrary notwithstanding manning agencies are jointly and severally or solidarily liable with their principals with respect to the civil liabilities incurred for any violation of this Act.

The persons having direct control, management or direction of the manning agencies shall be held criminally liable for any act or omission penalized under this Act notwithstanding Section 28(f) hereof.

(c) Land-based OFWs are compulsory members of the SSS and considered in the same manner as **self-employed** persons under such rules and regulations that the Commission shall prescribe.

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[6] *Id.* at 8.

(d) The Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE) and all its agencies involved in deploying OFWs for employment abroad are mandated to negotiate bilateral labor agreements with the OFWs' host countries to ensure that the employers of land-based OFWs, similar to the principals of sea-based OFWs, pay the required SSS contributions, in which case these land-based OFWs shall no longer be considered in the same manner as self-employed persons in this Act. Instead, they shall be considered as **compulsorily covered employees with employer and employee shares in contributions** that shall be provided for in the bilateral labor agreements and their implementing administrative agreements: *Provided*, That in countries which already extend social security coverage to OFWs, the DFA through the Philippine embassies and the DOLE shall negotiate further agreements to serve the best interests of the OFWs.

(e) The DFA, the DOLE and the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.

(f) Upon the termination of their employment overseas, OFWs may continue to pay contributions on a voluntary basis to maintain their rights to full benefits.

(g) Filipino permanent migrants, including Filipino immigrants, permanent residents and naturalized citizens of their host countries may be covered by the SSS on a voluntary basis. (emphases supplied)

Hence, this petition assailing the constitutionality of Sec. 9-B of R.A. No. 11199 was filed before the Court against the Social Security System *(SSS)* and the Social Security Commission *(SSC, collectively hereafter referred to as respondents)*.

Issue

WHETHER SEC. 9-B OF R.A. NO. 11199 IS UNCONSTITUTIONAL AS IT VIOLATES SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION OF RIGHTS.

Petitioners, consisting of Manning Associations, Manning Agencies, and their Manning Directors and Presidents, argue that Sec. 9-B of R.A. No. 11199 is unconstitutional for violation of the constitutionally guaranteed due process and equal protection of rights because it unreasonably discriminates against

manning agencies. They underscore that the assailed provision treats manning agencies of sea-based OFWs as employers and make them jointly and severally or solidarily liable insofar as the SSS coverages are concerned.

Petitioners point out that recruitment agencies of land-based OFWs are not treated in the same manner because they are not considered as employers and are not jointly and severally liable for the SSS coverage. Instead, land-based OFWs are only considered as self-employed members of the SSS. It is only when there is a bilateral labor agreement that the land-based OFW is treated as a compulsory covered member of the SSS.

Petitioners emphasize that the law does not provide for any valid justification of the difference in treatment between the manning agencies of sea-based OFWs and the recruitment agencies of land-based OFWs. While petitioners concede that there is a necessity to place OFWs under the compulsory coverage of the SSS, the manner of such coverage must be fair to all parties. They argue that the SSS coverage of sea-based OFWs is already provided by the 1988 MOA, 2006 MLC, and the POEA-SEC, thus, Sec. 9-B of R.A. No. 11199 is no longer required.

Petitioners also argue that the increased contribution of employers in R.A. No. 11199[7] is too high, which would prejudice the shipping industry in the country, as follows:

Year of Implementation	Contribution Rate	Share		Monthly Salary Credit	
		Employer	Employee	Minimum	Maximum
2019	12%	8%	4%	₱2,000.00	₱20,000.00
2020	12%	8%	4%	₱2,000.00	₱20,000.00
2021	13%	8.5%	4.5%	₱3,000.00	₱25,000.00
2022	13%	8.5%	4.5%	₱3,000.00	₱25,000.00
2023	14%	9.5%	4.5%	₱4,000.00	₱30,000.00
2024	14%	9.5%	4.5%	₱4,000.00	₱30,000.00
2025	15%	10%	5%	₱5,000.00	₱35,000.00[8]

[7] *Id.* at 40-62.

[8] *Id.* at 43.

In its Comment,[9] the Office of the Solicitor General *(OSG)*, representing the Government of the Philippines,[10] countered that the petition failed to comply with the requirement of justiciability to justify the exercise of the Court's power of judicial review. It underscored that the petition is bereft of any allegation that petitioners had suffered actual and direct injury under R.A. No. 11199 because it has not been fully implemented.

The OSG also argues that there is no violation of the equal protection clause because there is a substantial distinction between land-based and sea-based OFWs. It underscored that unlike land-based OFWs, all seafarers have one standard contract which provides for the rights and obligations of the foreign ship owner, seafarer, and the manning agency. Seafarers are also required to be competently trained and qualified before being able to work on a ship. Due to these distinctions, they are properly classified separately from land-based OFWs. Further, it avers that this classification is germane to the purpose of the law because even if seafarers and land-based OFWs are differently situated, they both must be granted utmost social security protection.

The OSG further emphasizes that the joint and several liability of manning agencies with foreign ship owners under Sec. 9-B of R.A. No. 11199 are mere reiterations of the imposition under existing laws and regulations, particularly, No. 20, Rule II, Part I, and Section 4 (F) (3), Rule II, Part II of the 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers *(2016 POEA Rules)*, and Section 10 of R.A. No. 8042, or the Migrant Workers and Overseas Filipinos Act, as amended. Thus, even before the passage of R.A. No. 11199, manning agencies were already held jointly and severally liable with the foreign ship owners, which liability includes SSS contributions under the 2010 POEA-SEC.

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[9] *Id.* at 236-267.

[10] *Id.* at 297-299.

Lastly, the OSG argues that increasing the rates of contributions is an act of the State in the exercise of its police power, and it is primarily for the general welfare of the OFWs, which cannot be considered an infringement of the existing contracts of manning agencies and foreign ship owners.

In its Comment/Opposition,[11] the SSS, as represented by the Office of the Government Corporate Counsel *(OGCC)*,[12] argues that: petitioners did not present an actual case or controversy in their petition; they did not have *locus standi*; they violated the hierarchy of courts; they failed to exhaust administrative remedies; the matters raised in the petition can be disposed of by applying the 2018 SSS Law and not nullifying the same; and petitioners are not entitled to an injunctive relief.

The Court's Ruling

The petition lacks merit.

Procedural Matters

The power of judicial review is the power of the Courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. For a court to exercise this power, certain requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

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[11] *Id.* at 280-293.

[12] *Id.* at 307.

(4) the issue of constitutionality must be the very *lis mota* of the case.[13]

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof, on the other; that is, it must concern a real, tangible and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[14]

Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[15]

Here, petitioners did not allege that they already sustained or are immediately in danger of sustaining some direct injury

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[13] *Garcia v. Executive Secretary*, 602 Phil. 64, 73 (2009).

[14] *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123 (2014), citing *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304-305 (2005); citations omitted.

[15] *Id.* at 123-124; citations omitted.

from R.A. No. 11199. The mere passage of the law does not *per se* absolutely determine the justiciability of a particular case attacking the law's constitutionality. Petitioners did not even allege that the law is already implemented against their interests. They simply gave a broad statement that "[t]he execution of Section 9-B of the 2018 SSS Law will definitely work injustice and irreparable damage to the petitioner manning agencies which are made to answer to so much liabilities as employer when it is not the seafarer's employer."[16] Again, there must be an immediate or threatening injury to petitioners as a result of the challenged action; and not a mere speculation.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[17] a petition was filed attacking the constitutionality of R.A. No. 9372. The Court ruled that there was no actual justiciable controversy because the possibility of abuse in the implementation of the law does not make a petition justiciable. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights, which are legally demandable and enforceable.

In *Republic v. Roque*,[18] a similar petition assailing the constitutionality of R.A. No. 9372 did not have an actual justiciable controversy because it failed to demonstrate how the petitioners therein are left to sustain or are in immediate danger of sustaining some direct injury as a result of the enforcement of the assailed provisions of R.A. No. 9372.

Nevertheless, the Court, through the years, has allowed litigants to seek from it direct relief upon allegation of "serious and important reasons." *Diocese of Bacolod v. Commission on Elections*[19] summarized these circumstances in this wise:

(1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;

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[16] *Rollo*, p. 30.

[17] 646 Phil. 452 (2010).

[18] 718 Phil. 294 (2013).

[19] 751 Phil. 301 (2015).

(2) when the issues involved are of transcendental importance;

(3) cases of first impression;

(4) the constitutional issues raised are better decided by the Court;

(5) exigency in certain situations;

(6) the filed petition reviews the act of a constitutional organ;

(7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]

(8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[20]

It must be clarified, however, that the presence of one or more of the so-called "serious and important reasons" is not the only decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. Rather, it is the nature of the question raised by the parties in those "exceptions" that enables us to allow the direct action before the Court.[21]

In this case, the Court finds that petitioners may seek direct relief because of the existence of two of the exceptions, particularly: (1) that this case is of first impression; and (2) that present issue involves public welfare and the advancement of public policy, or demanded by the broader interest of justice. The assailed law concerns the welfare of OFWs, the modern-day Filipino heroes, and the grant of social protection in their favor. For the first time, the social security membership and contributions of OFWs, specifically, the seafarers, are mandated

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[20] *Id.* at 331-335.

[21] *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

by law. Indeed, the Court must ensure that this social security must be for the welfare of the seafarers and, at the same time, not unduly oppressive to other stakeholders, such as the manning agencies and foreign ship owners. Accordingly, the petition should be discussed on its substantive aspect.

Substantive Matters

When a law is questioned before the Court, the presumption is in favor of its constitutionality. To justify its nullification, there must be a clear and unmistakable breach of the Constitution, not a doubtful and argumentative one.[22] Moreover, the reason courts will, as much as possible, avoid the decision of a constitutional question can be traced to the doctrine of separation of powers which enjoins on each department a proper respect for the acts of the other departments. In line with this policy, courts indulge the presumption of constitutionality and go by the maxim that "to doubt is to sustain." The theory is that, as the joint act of the legislative and executive authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted.[23]

It is a basic axiom of constitutional law that all presumptions are indulged in favor of constitutionality and a liberal interpretation of the Constitution in favor of the constitutionality of legislation should be adopted. Thus, if any reasonable basis may be conceived which supports the statute, the same should be upheld. Consequently, the burden is squarely on the shoulders of the one alleging unconstitutionality to prove invalidity beyond a reasonable doubt by negating all possible bases for the constitutionality of a statute. Verily, to doubt is to sustain.[24]

R.A. No. 11199 was enacted, among others, to extend social security protection to Filipino workers, local or overseas, and

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[22] *Lim v. People*, 438 Phil. 749, 755 (2002).

[23] *La Union Electric Cooperative, Inc. v. Judge Yaranon*, 259 Phil. 457, 466 (1989).

[24] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 674 (2004); citations omitted.

their beneficiaries.[25] Sec. 9-B (a) states that OFWs shall have compulsory coverage by the SSS. Sec. 9-B (b) states that manning agencies are agents of their principals and are considered as employers of sea-based OFWs which make them jointly and severally or solidarily liable with their principals with respect to the civil liabilities therein. On the other hand, the recruitment agencies of land-based OFWs are not considered as agents of their principals, and thus, are not jointly and solidarily liable for the SSS contributions.

Petitioners chiefly argue that this different treatment between sea-based OFWs and land-based OFWs violate the equal protection of laws under the Constitution. They assert that it is unfair for manning agencies, who are not the employers of the seafarer, to be solidarily liable for SSS contributions.

One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.[26]

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness.[27]

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[25] Section 2, R.A. No. 11199.

[26] *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374, 458 (2010).

[27] *Id.* at 459.

In *Gutierrez v. Department of Budget and Management*,[28] it was ruled that the fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class.[29]

To be valid and reasonable, the classification must satisfy the following requirements: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class.[30]

Substantial distinction

The Court finds that Sec. 9-B of R.A. No. 11199 does not violate the equal protection of laws because there is a substantial distinction between sea-based OFWs and land-based OFWs.

As properly argued by respondents, seafarers constitute a unique classification of OFWs. Their essential difference against land-based OFWs is that all seafarers have only one (1) standard contract, which provides the rights and obligations of the foreign ship owner, the seafarer and the manning agencies. The 2016 POEA Rules define the POEA-SEC as follows:

> Employment Contract/Standard Employment Contract — refers to the POEA-prescribed contract containing the minimum terms and conditions of employment, which shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire.

The POEA-SEC outlines all the duties and responsibilities of the foreign ship owners, manning agencies, and seafarers within its coverage. As long as the seafarer is employed or

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[28] 630 Phil. 1 (2010).

[29] *Id.* at 23.

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

engaged in overseas employment in any capacity on board a ship, the POEA-SEC shall apply to him or her.[31] The latest POEA-SEC is covered by the POEA Memorandum Circular No. 010-10, or the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.[32]

According to respondents, such standardized contractual arrangement is possible because all seafarers have similarity of circumstances relating to work.[33] As they are working in the seas, they face the same perils and predicaments in their employment and enjoy the same benefits for their welfare. Thus, whether a seafarer is a chef on a cruise ship, or an engineer in a cargo ship, they are covered by a unified POEA-SEC. The rights and responsibilities of the seafarer, manning agency, and foreign ship owner are consistent and uniform in every POEA-SEC.

Contrary thereto, land-based OFWs do not have singular or uniform employment contract because of the variety of work they perform. Their contracts depend on the nature of their employment and their place of work.

This is not the first time that the issue of the substantial distinction between the sea-based OFWs and land-based OFWs has been raised before the Court. In *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration (Conference of Maritime Manning Agencies, Inc.)*,[34] the petitioners therein assailed the constitutionality of the POEA's power to increase the minimum compensation and benefits in favor of seafarers under their SEC. One of their arguments was that there is violation of the equal protection clause because of an alleged discrimination against foreign shipowners and principals employing Filipino seamen and in

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[31] No. 14, POEA-SEC.

[32] Issued on October 26, 2010.

[33] *Rollo*, p. 245.

[34] 313 Phil. 592 (1995).

favor of foreign employers employing overseas Filipinos who are not seamen, or land-based OFWs.[35]

In that case, the Court declared that there was no violation of the equal protection clause because there is valid substantial distinction between sea-based OFWs and land-based OFWs, particularly, in work environment, safety, dangers and risks to life and limb, and accessibility to social, civic, and spiritual activities. It was stated that:

> There is, as well, no merit to the claim that the assailed resolution and memorandum circular violate the equal protection and contract clauses of the Constitution. To support its contention of inequality, the petitioners claim discrimination against foreign shipowners and principals employing Filipino seamen and in favor of foreign employers employing overseas Filipinos who are not seamen.
>
> It is an established principle of constitutional law that the guaranty of equal protection of the laws is not violated by legislation based on reasonable classification. And for the classification to be reasonable, it (1) must rest on substantial distinctions; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. **There can be no dispute about the dissimilarities between land-based and sea-based Filipino overseas workers in terms of, among other things, work environment, safety, dangers and risks to life and limb, and accessibility to social, civic, and spiritual activities.**[36] (emphasis supplied; citation omitted)

Accordingly, it is an indisputable fact that there is a substantial distinction between sea-based OFWs and land-based OFWs as enunciated in the cited case of *Conference of Maritime Manning Agencies, Inc*. Thus, these two (2) classifications of OFWs can be treated differently.

Reasonableness of classification; germane to the purpose of the law.

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[35] *Id.* at 607.

[36] *Id.* at 607-608.

Petitioners also argue that the different classification of manning agencies of seafarers, who are held solidarily liable with the principal foreign ship owners for SSS contributions, is unfair. The Department of Foreign Affairs *(DFA)* and the Department of Labor and Employment *(DOLE)* are only mandated to secure bilateral labor agreements with land-based OFWs, but not for sea-based OFWs, which violates the equal protection clause.

The argument is unmeritorious.

Sec. 9-B (b) of R.A. No. 11199 simply reiterates the provisions in other existing laws and regulations that manning agencies are jointly and solidarily liable with the principal foreign ship owners for monetary claims. Under Section 1 (A) (1) of the 2010 POEA-SEC, the principal foreign ship owner has the primary duty to extend SSS coverage to seafarers.[37] Nevertheless, several provisions of the 2016 POEA Rules, which governs the recruitment and employment of seafarers, state that:

PART I
General Provisions

x x x x x x x x x

Rule II
Definition of Terms

For purposes of these Rules, the following terms are defined as follows:

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[37] SECTION 1. Duties. —

A. Duties of the Principal/Employer/Master/Company:

x x x x x x x x x

2. To extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries.

20. **Joint and Several Liability — refers to the nature of liability of the principal/employer and the licensed manning agency, for any and all claims arising out of the implementation of the employment contract involving seafarers**. It shall likewise refer to the nature of liability of partners, or officers and directors with the partnership or corporation over claims arising from employer-employee relationship.

x x x x x x x x x

PART II
Licensing and Regulation

x x x x x x x x x

RULE II
Issuance of License

A. Application

SECTION 4. Pre-Qualification Requirements. — Any person applying for a license to operate a manning agency shall file a written application with the Administration, together with the following requirements:

x x x x x x x x x

F. A duly notarized undertaking by the sole proprietor, the managing partner, or the president of the corporation, stating that the applicant shall:

x x x x x x x x x

3. **Assume joint and several liability with the employer/shipowner/ principal for all claims and liabilities which may arise in connection with the implementation of the contract**, including but not limited to unpaid wages, death and disability compensation and repatriation;[38] (emphases supplied)

The 2016 POEA Rules provides that manning agencies are jointly and severally liable with the principal employer for any and all claims arising out of the implementation of the SEC involving seafarers. Necessarily, this includes claims arising out of the SSS coverage and contributions in favor of seafarers.

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[38] 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers.

If the principal foreign ship owner fails to pay the SSS contributions, then the joint and several liability of the manning agencies can be invoked.

Notably, the joint and several liability of manning agencies with the principal foreign ship owners is a mandatory pre-qualification requisite before they can secure a license to operate. Upon applying and receiving their license to operate, which is merely a privilege granted to them by the State,[39] they accept all the conditions attached therein, including the joint and solidary liability with principal foreign ship owners that may arise under the POEA-SEC, such as the payment of SSS contributions.

The joint and several liability of manning agencies indicated under the 2016 POEA Rules only echoes the statutory provision stated under Section 10 of R.A. No. 8042, or the Migrant Workers and Overseas Filipinos Act, as amended, to wit:

> SEC. 10. Money Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.
>
> **The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several**. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be

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[39] See *Republic of the Philippines v. Humanlink Manpower Consultants, Inc.*, 759 Phil. 235, 246 (2015).

jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages. (emphasis supplied)

x x x x x x x x x[40]

Thus, the solidary liability of manning agencies with respect to principal foreign ship owners has been established by law, particularly, R.A. No. 8049, as amended, and duly implemented by the 2016 POEA Rules. Sec. 9-B (b) of R.A. No. 11199, which treats manning agencies as employers for the sole purpose of recognizing their joint and solidary liability in favor of seafarers, simply acknowledged the existing law and regulations. This provision was not created by Congress out of thin air; instead, it was based on the cited law and regulations, which manning agencies already acceded to. Due to this existing and recognized solidary liability of manning agencies, it was reasonable for the law to no longer mandate the DFA and DOLE to secure bilateral labor agreements because the SSS coverage of the seafarers are already safeguarded.

Further, in the case of *Sta. Rita*,[41] the petitioner manning agency therein was criminally charged for non-payment of SSS contributions of its seafarers. It argued that the seafarers do not have mandatory SSS coverage. The Court upheld the validity of the 1988 MOA between SSS and DOLE, which requires a stipulation in the SEC providing for SSS coverage of the Filipino seafarer. Thus, the SEC is the legal contract that binds both principal foreign ship owner and manning agency regarding their solidary liability over the SSS coverage of the seafarers, to wit:

> Thus, the Standard Contract of Employment to be entered into between foreign shipowners and Filipino seafarers is the instrument by which the former express their assent to the inclusion of the latter in the coverage of the Social Security Act. **In other words, the extension of the coverage of the Social Security System to Filipino**

[40] Section 7, R.A. No. 10022, or an Act Amending Republic Act No. 8042, Otherwise known as the Migrant Workers and Overseas Filipino Act of 1995, Republic Act No. 10022, (March 8, 2010).

[41] *Supra* note 4.

seafarers arises by virtue of the assent given in the contract of employment signed by employer and seafarer; that same contract binds petitioner Sta. Rita or B. Sta. Rita Company, who is solidarily liable with the foreign shipowners/employers.[42] (emphasis and underscoring supplied)

While petitioners insist that the *Sta. Rita* ruling regarding the solidary liability of principal foreign ship owners and manning agencies regarding SSS coverage is a mere *obiter dictum*, such argument is inconsequential. As discussed above, there are several laws and regulations that already mandate the joint and several liability of principal foreign ship owners and manning agencies regarding claims arising from the employment of seafarers, including SSS coverage, particularly, R.A. No. 8049, as amended, and the 2016 POEA Rules.

Consequently, the different treatment of seafarers and manning agencies is justified and germane to the purpose of the law. A declared policy of R.A. No. 11199 is to extend social security protection to Filipino workers, local or overseas, and their beneficiaries. The law applied the existing law and regulations regarding the joint and solidary liability of manning agencies with principal foreign ship owners to attain the statutory purpose of the mandatory coverage of seafarers under the SSS. As a result, the joint and solidary liability of the manning agency with principal foreign ship owners was reasonably extended to the obligations regarding SSS contributions. This satisfies the second requisite that the classification be germane to the purpose of the law.

In the same manner, the assailed provision does not only apply to existing conditions. Seafarers are completely covered by the SSS, and all the manning agencies, without any prior conditions, shall have a solidary liability with the principal foreign ship owners for the SSS contributions. Likewise, the mandatory coverage of SSS applies to all kinds of seafarers, regardless of position or designation on their respective vessels. Hence, the third and fourth requisites — that the classification

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[42] *Id.* at 587.

must not be limited to existing conditions only and that it must apply equally to all members of the same class — are complied with. As there is a valid and legal classification between sea-based OFWs and land-based OFWs, there is no violation of the equal protection clause.

The law is not superfluous; manning agencies are not solely burdened.

Another argument raised by petitioners is that Sec. 9-B of R.A. No. 11199, which imposes mandatory SSS coverage for sea-based OFWs, is superfluous and unreasonable because such SSS coverage is already provided for by existing rules and contracts; and that it is improper to treat manning agencies as employers under R.A. No. 11199 because they will be unreasonably held liable for the SSS coverage of seafarers.

The Court finds the arguments specious.

There are several provisions in contracts and existing regulations that mandate the SSS coverage of seafarers. The 74th Maritime Session of the ILO, held on September 24 to October 9, 1987, which was participated in by the Philippines, stated that there shall be social security protection for seafarers, including those serving in ships flying flags other than those of their own country.[43] It was observed by the Court in *Sta. Rita* that after a series of consultations with seafaring unions and manning agencies, it was the consensus that Philippine social security coverage be extended to seafarers under the employ of vessels flying foreign flags.[44] In accordance thereto, the SSS and the DOLE executed the 1988 MOA, which states that there shall be a stipulation in the SEC providing for coverage of the Filipino seafarer by the SSS. In the latest POEA-SEC, the foreign ship owners are still primarily required to extend SSS coverage to the seafarers.

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[43] *Id.* at 588.

[44] *Id.*

Similarly, the 2006 MLC, to which the Philippines is a signatory, states that the members therein must provide social security protection to all seafarers:

> Regulation 4.5 — Social security
>
> *Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection*
>
> 1. Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependents have access to social security protection in accordance with the Code without prejudice however to any more favorable conditions referred to in paragraph 8 of article 19 of the Constitution.
>
> 2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.
>
> 3. Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependents, are entitled to benefit from social security protection no less favorable than that enjoyed by shoreworkers.[45]

In spite of the 74th Maritime Session of the ILO, 1988 MOA of the SSS-DOLE, 2010 POEA-SEC, and 2006 MLC, the mandatory coverage of social security to seafarers was not faithfully complied with. The discussion of the Technical Working Group of the Senate Committee on Government Corporations and Public Enterprises Joint with the Committee on Labor, Employment and Human Resources Development *(TWG)* is enlightening:

> **The Presiding Officer.** . . . Sa sea-based po, ano ang arrangement natin with regard to the SSS contributions?
>
> **Mr. Bautista.** Actually, for sea-based po, it is mandatory. We have this arrangement with the employer that the licensed manning agency is the one collecting the premium or the contribution of the employer and at the same time deducting from the remittance to the

[45] International Labour Organization, Maritime Labour Convention 2006.

family of the seafarers the specific share of the seafarer. So[,] that is the arrangement po.

The Presiding Officer. Yes po.

Ms. Banawis. Just to add to that, Madam Chair.

The reason why it is compulsory for the sea-based workers is because there was an agreement between DOLE and SSS in 1988 where they agreed that the social security for sea-based workers shall be compulsory. So that agreement was witnessed by the POEA and the associations of manning agencies, Madam Chair.

Ms. See. Madam Chair.

The Presiding Officer. Yes, from the SSS, please.

Ms. See. Yes. In addition to that, we have a standard employment contract which is signed by the principal, the manning agency and the seafarer. And in that standard employment contract, it already provides mandatory coverage of SSS and it is also espoused in the maritime labor convention which the Philippine government has ratified.

So[,] in terms of legal basis, we have mandatory provision for social security of seafarers.[46]

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The Presiding Officer. Thank you.

In practice po, paano siya?

May we ask from the SSS? For example, mayroon po tayong seafarer, one seaman, for example, paano po ba iyong [SSS coverage] mga agreements na ito? If you're going to look in the eyes of this particular seafarer, paano po nangyayari sa kanya iyong mga [SSS coverage] agreements na ito?

Ms. See. Thank you, Madam Chair.

Actually, the arrangement is that, typically, the manning agency in the Philippines access the employer of the sea-based workers. So as any other local employer in the Philippines, they report to SSS the

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[46] Senate Committee on Government Corporations and Public Enterprises Joint with the Committee on Labor, Employment and Human Resources Development (Technical Working Group), June 29, 2017, pp. 13-14.

sea-based workers that they deploy. Okay. And they deduct supposed to be from the employee's salary and remit to SSS.

So[,] in practice, there are problems in enforcement and implementation in that — there are actually sea-based workers who are not reported and registered to SSS. In fact, based on the latest statistics that we have, only about 60 percent are reported to SSS. And there are about 40 percent of sea-based workers who are deployed who are not reported by the manning agencies and the foreign principal. **That is the reason why we would like to make this mandatory and on our own enforce the coverability of the sea-based workers because — as of now, because it is voluntary under our law, we rely on the regulatory agency to enforce that provision under the contract.**

x x x x x x x x x

The Presiding Officer. So right now they are supposed to be giving mandatory contributions to the SSS. But, according to the SSS, we only have 60 percent coverage. There are 40 percent still that have yet to contribute. Am I clarified po? Sa lahat na po ng seafarers coming from the merchant ships and from the cruise ships regardless of whether or not they are actually, well, engaged in the actual work as a seafarer, iyong nagmamaneho talaga ng barko, are all considered seafarers after August 12, 2014 and, thus, they should have by now voluntary members of the SSS — sorry, mandatory members of the SSS. But right now ang coverage po natin sa kanila is 60 percent only; 40 percent pa ang iko-cover po natin.

Ms. See. Actually, let me correct that, Madam Chair. I have the exact figures here as of June 2017. Out of the 442,820 deployments, reported for SSS coverage only number 207,729, so[,] that's 47 percent po. That is only on the basis of the list of deployments of the POEA.

The Presiding Officer. Forty-seven percent lang po ang covered?

Ms. See. Yes po. That is based on the POEA deployment po.[47] (emphases supplied)

As shown above, despite the mandatory SSS coverage under the 1988 MOA of the SSS-DOLE, 2010 POEA-SEC, and 2006

[47] *Id.* at 15-24.

MLC, foreign principal employers and manning agencies do not comply with their obligation. There are still thousands of seafarers deployed who are not covered by the SSS, and foreign principal employers and manning agencies are not paying their SSS contributions.

Hence, Congress found that the best solution to resolve the failure to report the seafarers for SSS coverage is to, once and for all, make the seafarer's SSS coverage mandatory under the law. In that manner, the foreign principal employers and manning agencies are jointly and solidarily liable under R.A. No. 11199 to ensure that they will report their seafarers to the SSS and pay their contributions. Failure to comply with the law shall lead to different sanctions. This is the decree employed by Congress to give significant effect to the constitutional mandate of the State to afford protection to labor, whether local or overseas.[48]

Likewise, the apprehension of petitioners that the law places the burden of the SSS coverage entirely upon the shoulders of manning agencies because they are treated as employers is more illusory than real. Evidently, Sec. 9-B (b) of R.A. No. 11199 treats manning agencies of seafarers as employers only for the purpose of enforcing their solidary liability with the principal foreign ship owners. The law is anchored on the existing law and regulations. This is to guarantee the SSS coverage of the seafarers.

Again, Sec. 9-B (b) of R.A. No. 11199 clearly states that manning agencies are mere "agents of their principals." They are only treated as employers for the exclusive purpose of enforcing their solidarity liability with the foreign principal employer in favor of the seafarers, including claims arising from SSS coverage. This mechanism was deemed sufficient by Congress to ensure that seafarers would be fully protected under their social security coverage.

Manning agencies are sensibly covered by R.A. No. 11199 when their joint and several liability with the principal foreign

[48] See Section 3, Article XIII, of the 1987 Constitution.

ship owner is invoked. Contrary to petitioners' argument that manning agencies are unnecessarily saddled with the SSS obligations, they still have available recourses under the Civil Code against their solidary obligors, particularly, the foreign principal shipowners. The law is reasonable because it is bereft of any provision that absolutely and unequivocally transfers the entire responsibility of the SSS coverage to the manning agencies alone. It simply found an innovative method to utilize the existing solidary liabilities of the parties involved in the hiring of sea-based OFWs to enforce the mandatory coverage of the SSS.

There is no automatic criminal liability against officers of manning agencies.

Petitioners likewise argue that Sec. 9-B of R.A. No. 11199 violates the managers, officers, owners, or directors of manning agencies' right to substantive due process when it imposes criminal liability on them for the crimes that others, such as the principal foreign employer, might commit against such OFWs under the law.

The argument is unmeritorious.

Sec. 9-B (b), last paragraph, of R.A. No. 11199 states:

> The persons having direct control, management or direction of the manning agencies shall be held criminally liable for any act or omission penalized under this Act notwithstanding Section 28(f) hereof.

On the other hand, this provision should be read in conjunction with Sec. 28 (f) of R.A. No. 11199, which states:

> SEC. 28. *Penal Clause*.
>
> x x x x x x x x x
>
> (f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties provided in this Act for the offense.

Verily, before a managing head, director or partner is penalized, their association, partnership, corporation or any other institution must first commit a criminal act under R.A. No. 11199. Consequently, the officers shall only have criminal liability for their organization's own acts. There is no *ipso jure* criminal liability of the officers of manning agencies because some other separate entity, such as a foreign principal employer, committed a crime entirely unrelated to such manning agency.

The Senate deliberations show the intent of lawmakers not to mindlessly charge officers of the manning agencies for criminal acts when the liability is only civil in nature, especially when there are no separate acts of collusion in the criminal acts of other entities, to wit:

INTERPELLATION OF SENATOR DRILON

He stated that at present, there are two systems of salary remittances in the shipping industry — one is when the manning agency does payroll services wherein sums of money are remitted by the shipping company to the manning agent and the latter would be the one to pay the salary of the sea-based OFW, remit usually 70% of his/her salary to his family, and, at the same time, remit the SSS contributions of both the OFW and the shipping company; and second is when the manning agency only performs manning of the vessel for a fee and it is the shipping company that would remit the salary of the Filipino seafarer including the company's and seafarer's SSS contributions, if so decreed. He said that he saw no problem as far as being jointly and solidarily liable for the civil aspect is concerned, but what he found difficult to accept, he said, is the proposition that the manning agency would be criminally liable for failure to remit the SSS premium because, to him, there must be a finding that it conspired with shipping agency or violated the provisions of the Act either intentionally or through negligence; meaning, there must be an act attributable to the manning agency before becoming criminally liable. **He said that equity and fairness dictate that while civilly liable, the manning agency should not be criminally liable unless it commits separate acts of collusion and other acts which would show that it had participation.**

Senator Gordon agreed that joint and solidary liability should only be limited to the civil aspect, notwithstanding a Supreme Court decision that there is no impediment for filing a criminal complaint

against the petitioner for his failure as a manning agent, as held in the case of *Ben Sta. Rita vs. Court of Appeals*.[49] (emphasis supplied)

Thus, contrary to the position of petitioners, the officers of the local manning agencies do not immediately incur criminal liability whenever the foreign principal commits a wrongdoing. Instead, their respective manning agencies must first commit a criminal act before the said officers can be criminally charged.

For example, when a foreign principal remitted to the manning agency the required SSS contributions but the latter failed to remit such to the SSS. In that case, the manning agency commits a criminal act, which is a criminal violation of Sec. 28 (b) of R.A. No. 11199,[50] because it participated in the illegal act of not remitting the SSS contributions duly given by the foreign principal. In another instance, a manning agency deducted the remittance of the seafarers for the payment of the contributions but it neither reported the seafarers nor remitted their contributions to the SSS. This constitutes as a criminal violation of Sec. 28 (e) of R.A. No. 11199[51] because the manning agency

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[49] *Rollo*, pp. 259-260.

[50] Section 28. *Penal Clause*. —

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(b) Whoever shall obtain or receive any money or check under this Act or any agreement thereunder, without being entitled thereto with intent to defraud any member, employer or the SSS, shall be fined not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisoned for not less than six (6) years and one (1) day nor more than twelve (12) years.

[51] Section 28. *Penal Clause*. —

x x x x x x x x x

e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: *Provided*, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed or to deduct contributions from the employees' compensation

did not report the seafarers and remit their contributions to the SSS. Only in those instances, when the manning agency participates in a criminal act, shall the officers of such agency be held criminal liable.

In *Ching v. Secretary of Justice*,[52] the Court explained that when a corporation commits a criminal violation, the law may specifically hold its officers responsible for such offense. The rationale for this rule is that the corporate officers are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable, to wit:

> Though the entrustee is a corporation, nevertheless, the law [Presidential Decree No. 115, or the Trust Receipts Law] specifically makes the *officers; employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense.* The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.
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> If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.
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> A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the

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and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (₱5,000.00) nor more than Twenty thousand pesos (₱20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

[52] 517 Phil. 151 (2006).

definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.[53] (citations omitted)

As R.A. No. 11199 is fair and reasonable with respect to its penal provisions, there is no violation of substantial due process.

The law does not violate the constitutional right against infringement of contracts; the wisdom of the law cannot be questioned by the Court.

Finally, petitioners argue that the imposition of the new rates under R.A. No. 11199 violates their constitutional right against infringement of their existing contracts with sea-based OFWs.

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[53] *Id.* at 177-178.

This argument is not novel and has been squarely addressed by the Court in *Conference of Maritime Manning Agencies, Inc.* In that case, it was explained that:

> The constitutional prohibition against impairing contractual obligations is not absolute and is not to be read with literal exactness. It is restricted to contracts with respect to property or some object of value and which confer rights that may be asserted in a court of justice; it has no application to statutes relating to public subjects within the domain of the general legislative powers of the State and involving the public rights and public welfare of the entire community affected by it. It does not prevent a proper exercise by the State of its police power by enacting regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community, even though contracts may thereby be affected, for such matters cannot be placed by contract beyond the power of the State to regulate and control them.
>
> **Verily, the freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity.** And under the Civil Code, contracts of labor are explicitly subject to the police power of the State because they are not ordinary contracts but are impressed with public interest. Article 1700 thereof expressly provides:
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> > ART. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.
>
> The challenged resolution and memorandum circular being valid implementations of E.O. No. 797, which was enacted under the police power of the State, they cannot be struck down on the ground that they violate the contract clause. To hold otherwise is to alter long-established constitutional doctrine and to subordinate the police power to the contract clause.[54] (emphasis supplied; citations omitted)

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[54] *Supra* note 34, at 609-611.

Indeed, the constitutional right to inviolability of contracts is not absolute. It is subject to the proper exercise of the police power by the State. Further, the contracts referred to by petitioners are labor contracts. Under the Civil Code, labor contracts are impressed with public interest and must yield to the common good.[55]

Here, the Court finds that the State reasonably exercised its police power in increasing the SSS contribution under R.A. No. 11199. The new rates are not a drastic increase based on the previous rates; these are imposed gradually; and these are justifiably and rationally shouldered between the employer and the seafarer. Glaringly, petitioners failed to present any credible evidence or argument that would show that the exercise of the State's police power in increasing the SSS contributions are unreasonable and will cause irreversible and significant economic damages and, liabilities to the stakeholders and the entire maritime industry.

Rather, the increased rate of the SSS coverage is in line with the State's objective to establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice through savings, and ensure meaningful social security protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death, and other contingencies resulting in loss of income or financial burden.[56]

Further, it must be emphasized that the provision of the law in equitably increasing the SSS contribution rates is within the wisdom of Congress. As long as there is no grave abuse of discretion in enacting the increased rates, the Court must respect the intent of Congress to achieve a dynamic social security service for our seafarers. In *St. Joseph's College v. St. Joseph's College Workers' Association*,[57] the Court held that:

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[55] Article 1700, Civil Code.

[56] Section 2, R.A. No. 11199.

[57] 489 Phil. 559 (2005).

Amidst these opposing forces the task at hand becomes saddled with the resultant implications that the interpretation of the law would bear upon such varied interests. But this Court cannot go beyond what the legislature has laid down. Its duty is to say what the law is as enacted by the lawmaking body. That is not the same as saying what the law should be or what is the correct rule in a given set of circumstances. **It is not the province of the judiciary to look into the wisdom of the law nor to question the policies adopted by the legislative branch.** Nor is it the business of this Tribunal to remedy every unjust situation that may arise from the application of a particular law. It is for the legislature to enact remedial legislation if that would be necessary in the premises. But as always, with apt judicial caution and cold neutrality, the Court must carry out the delicate function of interpreting the law, guided by the Constitution and existing legislation and mindful of settled jurisprudence. The Court's function is therefore limited, and accordingly, must confine itself to the judicial task of saying what the law is, as enacted by the lawmaking body.[58] (emphasis supplied)

Indeed, only congressional power or competence, not the wisdom of the action taken, may be the basis for declaring a statute invalid. This is as it ought to be. The principle of separation of powers has in the main wisely allocated the respective authority of each department and confined its jurisdiction to such a sphere. There would then be intrusion not allowable under the Constitution if on a matter left to the discretion of a coordinate branch, the judiciary would substitute its own. If there be adherence to the rule of law, as there ought to be, the last offender should be the courts of justice, to which rightly litigants submit their controversy precisely to maintain unimpaired the supremacy of legal norms and prescriptions. The attack on the validity of the challenged provision likewise, insofar as there may be objections, even if valid and cogent, on its wisdom cannot be sustained.[59]

As petitioners failed to prove that Sec. 9-B of R.A. No. 11199, to the extent that sea-based OFWs are concerned, violates the

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[58] *Id.* at 572-573.

[59] *Garcia v. Corona*, 378 Phil. 848, 866 (1999).

Constitution, then this statutory provision must be upheld in favor of the obligatory SSS coverage of the seafarers.

WHEREFORE, the petition is **DENIED**. Section 9-B of Republic Act No. 11199, or the Social Security Act of 2018, insofar as sea-based Overseas Filipino Workers are concerned, is **CONSTITUTIONAL**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248777. July 7, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AAA,**[1] *accused-appellant.*

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[1] 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.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; ALLEGED IRREGULARITY IN ARREST NOT RAISED BEFORE ARRAIGNMENT IS DEEMED WAIVED.— [A]n accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment; thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. What is more is that even if AAA's warrantless arrest were proven to be indeed invalid, such a scenario would still not save his plight because case law also instructs that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.

2. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN DETERMINING THE INNOCENCE OR GUILT OF ACCUSED.— To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.

4. ID.; ID.; ID.; NOT AFFECTED BY RAPE VICTIM'S TESTIMONIES LACKING CERTAIN DETAILS.— AAA may argue that BBB's testimony lacks certain details, but such argument can barely persuade. As We have consistently ruled, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Inaccuracies and inconsistencies in her testimony are generally expected. Thus, such fact, alone cannot automatically result in an accused's acquittal.

5. ID.; ID.; ID.; NOT AFFECTED BY RAPE VICTIM'S DELAY IN REPORTING THE CRIME.— Neither can BBB's alleged delay in reporting the incident save AAA's plight. Settled is the rule that delay in reporting the incident does not weaken AAA's testimony. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

6. CRIMINAL LAW; RAPE AND QUALIFIED RAPE; ELEMENTS.— Pursuant to Article 266-A, paragraph 1(a), the crime of rape may be committed: (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b)

When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Pursuant to Article 266-B, paragraph 1, moreover, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

7. ID.; QUALIFIED RAPE; PENALTY AND DAMAGES.— We sustain AAA's conviction of qualified rape defined under Article 266-A, paragraph 1(a), in relation to Article 266-B, of the RPC. We, likewise, sustain the penalty imposed and amount of damages awarded by the courts below. Thus, AAA is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC, and in lieu of death, because of its suspension under Republic Act No. 9346. As to the award of damages, AAA is ordered to pay civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*, as well as a six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.

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[2] dated May 9, 2019 of the Court of Appeals *(CA)* in CA-G.R.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Walter S. Ong and Florencio M. Mamauag, Jr., concurring; *rollo*, pp. 5-13.

CR-HC No. 01774-MIN which affirmed the Decision[3] dated August 4, 2017 of the Regional Trial Court *(RTC)*, Branch 26, Medina, Misamis Oriental, finding appellant guilty beyond reasonable doubt of rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code *(RPC)*.

The antecedent facts are as follows.

AAA was charged with rape in an Information, the accusatory portions of which read:

> That on or about December 2015, in [redacted], Municipality of [redacted], [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have carnal knowledge with BBB, 15 years old, minor, against her consent, to her damage and prejudice.
>
> The commission of the crime is qualified by the circumstance that the victim is under 18 years of age and the offender is the parent of the victim.
>
> Contrary to and in violation of Article[s] 266-A and 266-B of the Revised Penal Code.[4]

During arraignment, AAA, assisted by counsel, pleaded not guilty to the charge. Subsequently, trial on the merits ensued. The prosecution presented the minor victim, BBB, and SPO2 Felix A. Espejon, while the defense presented the accused AAA, and his son.

The prosecution evidence shows that sometime in December 2015, after attending one of the early morning masses or *misa de gallo*, BBB saw her father AAA as she passed by a wake. AAA asked her to stay and offered her coffee. After drinking it, she went home. While she was changing her clothes, AAA arrived home. He went to her room and told her to lie down. He undressed her pants and took off his pants too. He lay on top of her, kissed her lips, took off her panties, and took off

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[3] Penned by Judge Judy A. Sia-Galvez; CA *rollo*, pp. 35-43.

[4] *Rollo*, pp. 5-6.

his briefs. Then, he inserted his penis into her vagina, BBB felt pain as he was doing it to her. Afterwards, he casually walked away.[5]

BBB admitted that it was not the first time that her father did that to her. But it was only after the December 2015 incident that she reported it to the Department of Social Welfare and Development *(DSWD)* with her aunt. The social worker thereat accompanied them to the nearest police station to report the rape incident. After taking BBB's statement, a team of police officers went to the residence of AAA to arrest him. But he had already left to work as a driver of a passenger multicab. The police officers eventually arrested AAA at Gingoog City and brought him to the police station.[6]

For his part, AAA denied the accusation against him. He testified that he has not seen his wife and mother of his children for 11 years, and that his 3 children lived with him. He believed that BBB merely made up the story against him at the instance of her aunt who was the sister of his wife. He countered that on the day of the alleged rape, he was busy driving his multicab during the day and sleeping at the waiting shed near their house at night. In support thereof, AAA's son testified that he lived with his father and siblings when his father was arrested. He said that during the time of the alleged rape incident, he also attended the *misa de gallo*. According to him, he went home immediately after the mass, but his sister BBB stayed behind with her friends.[7]

On September 18, 2017, the RTC rendered its Decision finding AAA guilty of the crime charged and disposing of the case as follows:

WHEREFORE, since there is proof beyond reasonable doubt, accused [AAA] is found GUILTY of the crime of QUALIFIED RAPE,

[5] *Id.* at 6.

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

[7] *Id.* at 7.

as provided under Article 266-a, paragraph 1, of the Revised Penal Code, in relation to Article 266-B, as amended, for having carnal knowledge with his biological daughter — 15-year-old [BBB], in December 2015 in their house at [redacted], and sentenced to serve the penalty of DEATH, which is reduced to *Reclusion Perpetua*, in view of R.A. 9346, without eligibility for parole under Act 4103, as amended.

Further, accused [AAA], is ordered to pay minor victim [BBB] the following:

> Civil Indemnity *Ex Delicto* — One Hundred Thousand Pesos (Php100,000.00)
> Moral Damages — One Hundred Thousand Pesos (Php100,000.00) [and]
> Exemplary Damages — One Hundred Thousand Pesos (Php100,000.00)

all with interest at the rate of 6% *per annum* from the date of finality of this judgment until the amount is paid in full.

Costs against accused [AAA].

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 AAA has committed the offense charged against him. In a Decision dated May 9, 2019, the CA affirmed the RTC Decision. According to the appellate court, there is no reason to disturb the findings of the RTC holding that BBB's credibility, by well-established precedents, is given great weight and accorded high respect.[9]

Now before Us, AAA 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 Solicitor General similarly

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[8] CA *rollo*, pp. 42-43.

[9] *Rollo*, pp. 5-12.

[10] *Id.* at 29.

manifested that it had already discussed its arguments in its Appellee's Brief.[11]

In his Brief, AAA assailed the constitutionality of his warrantless arrest. According to him, the police officers violated his constitutional right for immediately arresting him without a warrant and in the absence of the circumstances provided under Section 5, Rule 113 of the Revised Rules of Court. As to the rape charge, AAA maintains his innocence in light of the prosecution's failure to prove his guilt beyond reasonable doubt. In support of this claim, he assails BBB's testimony for being too simplistic, lacking the details as to what happened after she was raped or how she reacted during the same. She even testified that her friend saw them naked that day but she neither identified nor presented said friend before the court. Finally, AAA concludes that BBB's testimony deserves scant consideration as he delay in reporting the incident runs contrary to human experience.[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 CA finding him guilty of the acts charged against him.

Prefatorily, We sustain the CA's conclusion insofar as AAA's arrest is concerned. Time and again, the Court has ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment; thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[13] What is more is that even if AAA's warrantless arrest were proven to be indeed invalid, such a scenario would still not save his plight because case law also instructs that the illegal arrest of an accused is not

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[11] *Id.* at 23.

[12] CA *rollo*, pp. 23-31.

[13] *People v. Velasco*, 722 Phil. 243, 252 (2013).

sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[14]

Unfortunately for AAA, the Court's judicious review of the records of the case yields no reason to suspect that the trial court committed any mistake in convicting him for the crime charged. To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her.[15]

In the present case, We concur with both the trial court and appellate court in finding that BBB was convincingly straightforward when she narrated in open court the details of her harrowing experience, to wit:

Q: Now, when you arrived at the house, no one was there?
A: Yes, ma'am.

Q: So when you arrived in the house, what did you do, if any?
A: I went upstairs, ma'am.

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[14] *Id.* at 253.

[15] *People v. BBB*, G.R. No. 232071, July 10, 2019.

Q: And when you got inside upstairs, what did you do?
A: I changed my clothes, ma'am.

Q: And while you were changing your clothes, was there anything that happened, if any?
A: My father arrived, ma'am.

Q: And when your father arrived, what happened, if any?
A: He let me lay *(sic)* down, ma'am.

Q: Where did he let you lay *(sic)* down?
A: On the floor, ma'am.

Q: And did you ask him why did he want you to lay *(sic)* down?
A: Yes, ma'am.

Q: And what did he tell you?
A: He just let me lay *(sic)* down and he let me undress my pants, ma'am.

Q: Who took off your pants, is it you or your father?
A: My father, ma'am.

Q: After taking off your pants, what happened next?
A: Then he took off his short pants, ma'am.

Q: And after he took off his short pants, what happened next?
A: He laid on top of me, ma'am.

Q: Were you still wearing your panties at that time, [BBB]?
A: Yes, ma'am.

Q: How about your father, did he still have his briefs?
A: Yes, ma'am.

Q: So when he laid on top of you, what happened next?
A: He held my hands and feet, ma'am.

Q: And after that, what happened next?
A: He then kissed my lips, ma'am.

Q: And after he kissed you on the lips, what happened next?
A: He let me take off my panties, ma'am.

Q: Who took off your panties, was it you or your father?
A: My father, ma'am.

Q: And then after he took off your panties, what happened next?
A: He took off his briefs, ma'am.

Q: And after taking off his briefs, what happened next?
A: He inserted his penis, ma'am.

Q: Where did he insert his penis?
A: In my vagina, ma'am.

Q: And when he inserted his penis into your vagina, what did you feel, if any? Did you feel pain?
A: Yes, ma'am.

Q: After he inserted his penis, what happened next?
A: And then he walked away, ma'am.

Q: Was he holding any sharp object at that time, [BBB]?
A: No, ma'am.

Q: Did he threaten you in any way?
A: Yes, ma'am.

Q: What kind of threat?

COURT
Actually, there is really no need for a threat because there is abuse of authority.

ASST. PROVINCIAL PROS. CHARISSA KAY B. ALVAREZ
Okay, your Honor.

Q: Now, after your father left, [BBB], what did you do, if any?
A: I changed my dress, ma'am.

Q: Now, in Question No. 6 in your Affidavit, [BBB], you were asked if there was anyone who knew about this incident and you said that no one, but there was a friend who saw you naked with your father, is that correct?
A: Yes, ma'am.

x x x x x x x x x

Q: Now, aside from the incident on December 2015, were there any other incidents of sexual abuse or rape that your father did to you?
A: Yes, ma'am.

Q: Do you remember the months?
A: No, ma'am.

Q: Was the incident on December 2015 the last time that your father sexually abused you?
A: Yes, ma'am.[16]

As shown by the records, the trial court found the foregoing account especially credible. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.[17]

Accordingly, AAA may argue that BBB's testimony lacks certain details, but such argument can barely persuade. As We have consistently ruled, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Inaccuracies and inconsistencies in her testimony are generally expected. Thus, such fact, alone, cannot automatically result in an accused's acquittal.[18] Neither can BBB's alleged delay in reporting the incident save AAA's plight. Settled is the rule that delay in reporting the incident does not weaken AAA's testimony. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet

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[16] TSN, March 31, 2016, pp. 9-12.

[17] *People v. BBB*, *supra* note 15.

[18] *Id.*

rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[19]

As such, AAA cannot escape the consequences of his bestial acts punishable and defined under Article 266-A, paragraph 1 (a), in relation to Article 266-B of the RPC. Pursuant to said Article 266-A, paragraph 1 (a), the crime of rape may be committed: (1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. Pursuant to Article 266-B, paragraph 1, moreover, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. Thus, the elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[20]

As duly proven by the prosecution, BBB was merely fifteen (15) years old when she was raped by her father, AAA, in their very home. Thus, the moral ascendancy AAA has over BBB takes the place of violence and intimidation due to the fact that force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties

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[19] *People v. Jordan Batalla y Aquino*, G.R. No. 234323, January 7, 2019.

[20] *People v. BBB*, *supra* note 15.

but also on their relationship with each other. Indeed, a rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.[21]

In view of the foregoing, We sustain AAA's conviction of qualified rape defined under Article 266-A, paragraph 1 (a), in relation to Article 266-B, of the RPC. We, likewise, sustain the penalty imposed and amount of damages awarded by the courts below. Thus, AAA is hereby sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC,[22] and in lieu of death, because

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[21] *Id.*

[22] Section II of A.M. No. 15-08-02-SC Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015 provides:

> In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":
>
> (1) x x x; and
>
> (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.
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> 35. RPC, Article 266-B:
>
> Art. 266-B. *Penalty*. — x x x
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

of its suspension under Republic Act No. 9346.[23] As to the award of damages, AAA is ordered to pay civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*,[24] as well as a six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.[25]

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit. The assailed Decision dated May 9, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 01774-MIN, which affirmed the Decision dated August 4, 2017 of the Regional Trial Court, Branch 26, Medina, Misamis Oriental, is **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[23] Article 266-B of the Revised Penal Code provides:

Art. 266-B. *Penalty*. — x x x

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

[24] 783 Phil. 806 (2016).

[25] *People v. BBB*, *supra* note 15.

THIRD DIVISION

[A.C. No. 8395. July 8, 2020]

LORNA C. BASAGAN, *complainant, vs.* **ATTY. DOMINGO P. ESPINA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; FACTUAL FINDINGS AND RECOMMENDATIONS OF THE COMMISSION ON BAR DISCIPLINE AND THE BOARD OF GOVERNORS OF THE IBP ARE RECOMMENDATORY.—** The factual findings and recommendations of the CBD and the Board of Governors of the IBP are recommendatory. The Court is neither bound by its findings, much less, obliged to accept the same as a matter of course because as the tribunal which has the final say on the proper sanctions to be imposed on errant members of the both bench and bar, the Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred for investigation and report.

2. **ID.; ID.; ID.; IF THE ENTIRE BODY OF PROOF CONSISTS MAINLY OF DOCUMENTARY EVIDENCE THE DOCUMENTS THEMSELVES MUST COMPLY WITH THE BEST EVIDENCE RULE UNDER RULE 130 OF THE RULES OF COURT.—** Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule under Rule 130 of the Rules of Court, save for an established ground that would merit exception.

3. **REMEDIAL LAW; EVIDENCE; BEST EVIDENCE, DISCUSSED.—** The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content

of the documents. This is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy, completeness, and authenticity of the documents submitted into evidence. It is therefore *non sequitur* to surmise that this crucial preference for the original may be done away with or applied liberally in this case.

D E C I S I O N

GAERLAN, *J.*:

The original document is the best evidence of the contents thereof. A photocopy must be disregarded, for it is unworthy of any probative value and inadmissible in evidence.[1]

The Case

This is an administrative case stemming from a Complaint[2] filed by Lorna C. Basagan (Basagan) against Atty. Domingo Espina (Atty. Espina) for violation of Rule IV, Section 3 (c)[3] of A.M. No. 02-8-13-SC,[4] praying that respondent be placed under immediate preventive suspension and be meted a disciplinary action if found guilty of the violation.[5]

The Antecedents

Basagan, in her Complaint, stated that she is a taxpayer and a resident of Barangay Tigbao, Libagon, Southern Leyte. Atty. Espina, on the other hand, is a resident of Barangay Jubas, Libagon, Southern Leyte, a former mayor of the Municipality

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[1] See *Sps. Dioso v. Sps. Cardeño*, 481 Phil. 53, 63 (2004).

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

[3] **Sec. 3.** *Disqualifications.* - A notary public is disqualified from performing a notarial act if he:

x x x x x x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree. (Emphasis ours)

[4] 2004 Rules on Notarial Practice.

[5] *Rollo*, p. 5.

of Libangon, husband of then incumbent Mayor Rizalina B. Espina (Mayor Espina), and a notary public.[6]

Basagan narrated that the Land Bank of the Philippines (Landbank) was granted a loan by the Overseas Economic Cooperation Fund (OECF Loan), now Japan Bank for International Cooperation (JBIC) in the amount of ¥6,072,000.00 for the implementation of the Local Government Units Support Credit Program.[7] The said loan was for onlending to qualified local government units to finance housing and health, water supply, flood control and sanitation, forestry, sewage and solid waste treatment, and sub-project preparation.[8] She alleged that on October 10, 2005, then Mayor Espina entered into a subsidiary loan agreement with the Landbank — Sogod Southern Leyte Branch in the amount of ₱19,045,600.00, under the OECF Loan for the development of Libagon Water System — Level III (Project).[9] In furtherance of the Project, Mayor Espina likewise entered into a Contract for Consultancy Services[10] with the POIEL Engineering and Management Services for the detailed engineering design and construction supervision of the Project.[11] The total lump sum fee for the consultancy services was ₱1,042,099.30.[12] Further, an Agreement[13] with Legacy Construction (Contractor) was also entered into by the Municipal Government of Libagon. In the said Agreement, it was agreed that the Contractor shall furnish the equipment, materials, labor, tools, transportation, including fuel, power, air, water, and any other means necessary to complete all works required to finish the Project for the amount of ₱18,598,000.00.[14]

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[6] *Id.* at 2.

[7] *Id.* at 18.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 32-46.

[11] *Id.* at 33.

[12] *Id.* at 36.

[13] *Id.* at 47-53.

[14] *Id.* at 47.

Basagan claimed that the Project was reportedly anomalous and that a case was filed by the members of the Association of Barangay Councils of Libagon, Southern Leyte (Association) before the Ombudsman Visayas against Mayor Espina.[15] The Association approved a resolution dated September 25, 2008 urging the Ombudsman and the Procurement Watch, Inc. to conduct fact finding investigation on the Project.[16] According to Basagan, what made the Project more anomalous was that the three contracts entered into by the Municipal Government of Libagon, signed by Mayor Espina, were all notarized by the respondent.[17]

In a Resolution issued by this Court dated October 7, 2009,[18]Atty. Espina was required to comment on the complaint within 10 days from receipt thereof. His failure to file a comment caused the issuance of another Resolution[19] dated July 11, 2011 which required him to show cause why he should not be disciplinarily dealt with or held in contempt of court for such failure and to comply to the earlier resolution. In his October 10, 2011 Manifestation and Compliance,[20] he stated that he has physically and actually been a resident of Cebu City for many years now but he has maintained Libagon, Southern Leyte as his domicile. As he is in his twilight years, he is conscious of necessities, such as easy access to medical facilities, which are readily available in urban centers like Cebu City.[21] He also stated that it was only on October 7, 2011, when he received the July 11, 2011 Resolution of this Court, that he came to learn that an action against him was filed by Basagan[22] and

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[15] *Id.* at 3.

[16] *Id.*

[17] *Id.* at 4.

[18] *Id.* at 54.

[19] *Id.* at 55.

[20] *Id.* at 56-63.

[21] *Id.* at 56.

[22] *Id.* at 57-58.

that there was an earlier Resolution issued by this Court requiring him to comment on the complaint. He prayed that he be furnished with a copy of the complaint to enable him to prepare and file his answer thereto.[23]

In a Resolution[24] dated December 7, 2011, this Court noted the said Manifestation and Compliance and considered the same as a satisfactory compliance with the July 11, 2011 Resolution.

Later, a Supplemental Manifestation[25] was submitted by Atty. Espina. He emphasized therein that he never received a copy of the complaint and that upon his investigation with the Philpost office in Libagon Southern Leyte, he found no record of any communication from this Court to him. However, he investigated further and a second book of the Philpost showed that in November 2009, a letter for him was received by someone who did not write his name legibly before affixing his signature.[26] There being no copy of the complaint in his possession, he still cannot make an intelligent comment thereto.

Further, Atty. Espina narrated the supposed background for the action against him. He attached a copy of the Evaluation Report[27] of the Office of the Ombudsman-Visayas dismissing the complaint for oppression filed by Basagan against Mayor Espina which stemmed from the latter's suspension of the former from public office. To further prove his asseveration, he cited Executive Order No. 8 s. 2003[28] issued by Mayor Espina which dismissed Basagan from being a Barangay Captain. To counter Atty. Espina's claims, Basagan filed her Comments to Manifestation and Compliance and to Supplemental Manifestation[29] and averred that the first notice from this Court

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[23] *Id.* at 62.

[24] *Id.* at 72.

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

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

[27] *Id.* at 77-78.

[28] *Id.* at 80.

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

was actually received by Atty. Espina's secretary Pamela Bautista-Salada.[30]

On February 10, 2012, another Manifestation[31] was filed by Atty. Espina which highlighted the address of his residence in Cebu City. He also stated therein that he visited the Philpost in Libagon in February 2012 and learned that there was a letter from Basagan but was not delivered to him by the post office personnel for more than a month or so, and pursuant to their policy, the letter was returned to Basagan.[32]

On April 3, 2012, another Manifestation and Motion[33] was received by this Court from Atty. Espina. He stated that he still has not received a copy of the complaint. Consequently, he has no knowledge of the act he was charged of and corollarily, he cannot comment thereon.

On August 1, 2012, this Court issued a Resolution[34] noting the manifestations; directing Basagan to furnish Atty. Espina with a copy of the complaint and its annexes and to report her compliance therewith; and requiring Atty. Espina to comment on the complaint within 15 days from receipt of a copy thereof.[35]

On April 20, 2015, a Resolution was issued by this Court requiring Basagan to show cause why she failed to submit a proof of service on Atty. Espina of a copy of her Complaint and to comply to the August 1, 2012 Resolution. On September 21, 2015, a Manifestation[36] from Basagan was received by this Court stating that she could no longer furnish this Court with any proof of service since all the records of the case were among those soaked during the typhoon Yolanda and that as gesture

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[30] *Id.* at 82.

[31] *Id.* at 87.

[32] *Id.*

[33] *Id.* at 91-93.

[34] *Id.* at 107-108.

[35] *Id.* at 107.

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

of good human relations, she and the respondent have already patched up their differences, however, she leaves the matter to this Court.[37]

In the August 24, 2016 Resolution[38] of this Court, the complaint was referred to the Office of the Bar Confidant for appropriate action.[39] Upon the Bar Confidant's recommendation and considering that the case has been pending before this Court for more than seven years, the filing of a comment by the respondent was dispensed with and the case was referred to the Integrated Bar of the Philippines (IBP) for thorough investigation, report, and recommendation.[40]

The Report and Recommendation of the IBP

On December 10, 2018, Investigating Commissioner Gina H. Mirano-Jesena of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) issued her Report and Recommendation.[41] She found that Atty. Espina committed serious error in notarizing the Subsidiary Loan Agreement, the Contract for Consultancy Services, and the Project Agreement signed by his wife as the Mayor of Libagon, Southern Leyte against Rule IV, Section 3(c) of A.M. No. 02-8-13-SC which stated that "a notary public is disqualified from performing a notarial act if he: x x x (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree." Thus, she recommended:

> In view of the foregoing premises, the undersigned Investigating Commissioner respectfully recommends that Atty. Domingo P. Espina be suspended from the practice of law for a period of one (1) year and suspended from being commissioned as notary public for a period of two (2) years.

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[37] *Id.*

[38] *Id.* at 123.

[39] *Id.*

[40] *Id.* at 124.

[41] *Id.* at 142-146.

RESPECTFULLY SUBMITTED.[42]

The IBP-Board of Governors Resolution

On February 15, 2019, the Board of Governors of the IBP passed a Resolution[43] adopting the findings of the Investigating Commissioner, thus:

CBD Case No. 18-5511
(Adm. Case No. 8395)
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Atty. Domingo P. Espina

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, ***with modification****, to impose upon the Respondent the penalty of* ***SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW and TWO (2) YEARS DISQUALIFICATION to hold commission as Notary Public****, and if currently so engaged, be immediately decommissioned as such.*[44]

The Court's Ruling

The practice of law is a privilege burdened with conditions[45] and is reserved only for those who adhere to rigid standards of mental fitness, maintain the highest degree of morality, faithfully comply with the rules of the legal profession, and regularly pay membership fees to the IBP to remain as a member of good standing of the bar.[46]

Certainly, the practice of law is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare.[47] Beyond question, any breach by a lawyer of

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[42] *Id.* at 146.

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

[44] *Id.* at 140.

[45] *Goopio v. Maglalang,* A.C. No. 10555, July 31, 2018, 875 SCRA 85, 96.

[46] *Id.*

[47] See *Judge Pantanosas, Jr. v. Atty. Pamatong*, 787 Phil. 86 (2016).

any of these standards makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege.[48]

Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.[49]

However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, the Court has consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence.[50] A complainant's failure to dispense the same standard of proof does not oblige respondents to prove their exception or defense,[51] and requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.[52]

With all evidence presented and claims considered, the Court now deviates from the findings and recommendations of the IBP Board of Governors.

The factual findings and recommendations of the CBD and the Board of Governors of the IBP are recommendatory.[53] The Court is neither bound by its findings, much less, obliged to accept the same as a matter of course because as the tribunal

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[48] *Goopio v. Maglalang*, *supra* at 96-97.

[49] *Id.* at 97.

[50] *Id.*

[51] *Re: Letter of Lucena Ofendo Reyes Alleging Illicit activities of a certain Atty. Cajayon involving cases in the Court of Appeals, Cagayan de Oro City*, 810 Phil. 369, 374 (2017).

[52] *Goopio v. Maglalang*, *supra* note 33 at 97.

[53] *Torres v. Dalangin*, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 492.

which has the final say on the proper sanctions to be imposed on errant members of both bench and bar, the Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred for investigation and report.[54]

Based on the evidence presented by the complainant, this Court is certain that she failed to discharge her duty to present evidence on the facts in issue necessary to establish her claim by the amount of evidence required by law.[55]

To begin with, Basagan, to prove her asseveration that Atty. Espina violated the 2004 Rules on Notarial Practice, appended to her complaint photocopies, not the original, of the Subsidiary Loan Agreement,[56] Contract for Consultancy Services,[57] Project Agreement,[58] and letters[59] between Tito E. Calooy, Jr. (Calooy) and Romulo Endico.

Apart from the photocopies of documents she presented, Basagan also submitted the Affidavit[60] of Calooy. Upon perusal of the said document, this Court learned that the second page of the three-page Affidavit was likewise a photocopy. What makes it more dubious is the fact that the signature of the affiant was not original. The erasures on the details of the proof of identity of Calooy are not just noticeable but exceptionally remarkable.[61]

Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly

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[54] *Dumadag v. Atty. Lumaya*, 390 Phil. 1, 7-8 (2000).

[55] *Republic v. Sandiganbayan (1st Div.), et al.*, 663 Phil. 212, 319 (2011).

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

[57] *Id.* at 32-46.

[58] *Id.* at 47-53.

[59] *Id.* at 10-16.

[60] *Id.* at 7-9.

[61] *Id.* at 8.

of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule under Rule 130 of the Rules of Court, save for an established ground that would merit exception.[62] Sections 3 and 4 of Rule 130 specifically provide:

Sec. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Sec. 4. *Original of document*. —

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

In this case, a perusal of the documents on which the complaint is anchored divulges that the photocopies are not at the least

[62] *Goopio v. Maglalang*, *supra* note 33 at 98-99.

certified true copies, neither were they testified on by any witness who is in a position to establish the authenticity of the document.[63] Neither was the source of the document shown for the participation of the complainant in its execution.[64] This fact gives rise to the query, where did these documents come from?[65]

To foster her claims, Basagan attached the Affidavit of Dolores Cahucom (Cahucom) who claimed that she has direct knowledge that Atty. Espina notarized the subject documents.[66] Unfortunately, Cahucom merely expressed a general statement. She failed to give specific details as to how she acquired such "direct knowledge" that Atty. Espina notarized the documents. The absence of specific details on how she acquired her "direct knowledge" makes her statements inadequate to equate it as personal knowledge of the facts to be accorded probative value.

Here, Basagan clearly failed to adduce substantial and admissible evidence to prove her case. The original documents should have been presented to comply with the Best Evidence Rule. Basagan likewise failed to show proof as to the reasons for the unavailability of the original copy. She could have proven the contents of the documents following the provisions of Section 5, Rule 130 of the Rules of Court.[67]

The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content of the documents. This is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy,

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[63] *Concepcion v. Atty. Fandiño, Jr.*, 389 Phil. 474, 481 (2000).

[64] *Id.*

[65] *Id.*

[66] *Rollo*, p. 17.

[67] Sec. 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

completeness, and authenticity of the documents submitted into evidence.[68] It is therefore *non sequitur* to surmise that this crucial preference for the original may be done away with or applied liberally in this case.[69]

Elementary is the rule that photocopies of documents have no probative value and are inadmissible in evidence.[70] Likewise, unsubstantiated general statements are unavailing and simply cannot suffice. Hence, there is no substantial evidence to prove the alleged violation complained of.

The Court has consistently held that an attorney enjoys the legal presumption that he/she is innocent of charges against him/her until the contrary is proved, and that as an officer of the court, he/she is presumed to have performed his duties in accordance with his/her oath.[71]

WHEREFORE, the disbarment complaint against Atty. Domingo P. Espina is **DISMISSED** for lack of merit. Let a copy of this Decision be attached to his records.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,* and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

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[68] *Goopio v. Maglalang, supra* note 33 at 99.

[69] *Id.*

[70] *Id.* at 103, citing *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. CA*, 333 Phil. 597, 625 (1996).

[71] *Gradiola v. Atty. Deles*, A.C. No. 10267, June 18, 2018 citing *Aba v. Atty. De Guzman, Jr.*, 678 Phil. 588, 601 (2011).

SECOND DIVISION

[A.C. No. 12551. July 8, 2020]

VALENTINO C. LEANO, *complainant, vs.* **ATTY. HIPOLITO C. SALATAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; VIOLATED WHEN A NOTARY PUBLIC NOTARIZES A DOCUMENT WITHOUT REQUIRING ANY COMPETENT PROOF OF AFFIANT'S IDENTITY AND WHEN HE AFFIXES HIS OFFICIAL SIGNATURE AND SEAL ON AN INCOMPLETE NOTARIAL CERTIFICATE.— After a careful examination of the records, the Court finds Atty. Salatan administratively liable for violation of the Notarial Rules and the Code of Professional Responsibility (CPR). x x x Aside from the physical presence of the affiant during the notarization of a document, the Notarial Rules also requires the presentation of a competent evidence of the affiant's identity *if* he or she is not personally known to the notary public. "Competent evidence of identity" is defined under Section 12, Rule II of the Notarial Rules x x x. Moreover, Section 5(b), Rule IV of the same Rules provides that a notary public shall not affix his official signature or seal on a notarial certificate that is *incomplete*. By definition, a notarial certificate pertains to "the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seat, and states the facts attested to by the notary public in a particular notarization as provided for by these Rules." In this case, the records show that Atty. Salatan had affixed his official signature and seal on the notarial certificate of Teresita's affidavit without properly identifying the person who signed the document. x x x [T]here is no question that Atty. Salatan had violated: *(a)* Section 2(b), Rule IV of the Notarial Rules by notarizing Teresita's affidavit without requiring any competent proof of her identity; and *(b)* Section 5(b), Rule IV of the same Rules when he affixed his official signature and seal on an *incomplete* notarial certificate.

2. ID.; ID.; ID.; ENTRIES IN THE NOTARIAL REGISTER; A NOTARY PUBLIC IS PERSONALLY ACCOUNTABLE FOR ALL ENTRIES IN HIS NOTARIAL REGISTER.— To make matters worse, it appears that the notarization of the subject affidavit was *not* recorded in Atty. Salatan's notarial register, which is a clear violation of Section 2(a), Rule VI of the Notarial Rules x x x. Here, Atty. Salatan did not deny that the subject document was not recorded in his notarial register. x x x [I]t is settled that "a notary public is personally accountable for all entries in his notarial register." Thus, Atty. Salatan's delegation of his notarial function of recording entries in his notarial register to his office clerk is in itself a clear violation of the Notarial Rules, as well as Rule 9.01, Canon 9 of the CPR.

D E C I S I O N

INTING, *J.*:

This administrative case is rooted on the Affidavit-Complaint[1] filed by Valentino C. Leano (Leano) before the Office of the Bar Confidant seeking to disbar Atty. Hipolito C. Salatan (Atty. Salatan) and to revoke his notarial commission for violation of the 2004 Rules on Notarial Practice[2] (Notarial Rules).

Complainant's Position

Leano alleged that he was the defendant in the case of "*Spouses Juanito Tabudlo and Myrna Tabudlo, as represented by Miguel Cauilan and Jorge Cauilan v. Valentino Leano*," filed by Atty. Salatan, plaintiff's counsel before Branch 36, Regional Trial Court, Santiago City for specific performance with damages. He claimed that in said case, Atty. Salatan introduced the affidavit of a certain Teresita Cauilan (Teresita) into evidence before the trial court which, upon closer scrutiny, bore several defects on the face of the document itself: (a) the document had no date of execution; (b) Teresita's competent proof of identity

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

[2] Administrative Matter (A.M.) No. 02-8-13-SC, July 6, 2004.

was left blank in the document; and (c) Atty. Salatan's Mandatory Continuing Legal Education (MCLE) compliance number was not indicated therein.[3]

In addition, Leano stated that the subject affidavit does not appear in Atty. Salatan's notarial register, as evidenced by the Certificate (Lack of Record)[4] issued by Atty. Jeanna B. Ongan, Clerk of Court VI, Office of the Clerk of Court, Santiago City.[5]

Respondent's Position

In his Comment,[6] Atty. Salatan explained that the failure to record Teresita's affidavit in his notarial register was not deliberate but a mere clerical error by his staff, *viz.*:

> 19. As a matter of office procedure, it was respondent's office clerk who had been tasked to do the mechanical act of doing the entry and assigning docket numbers of documents in the Notarial Register as testified to by respondent's two former office personnel, x x x;[7]
>
> x x x x x x x x x
>
> 23. Respondent was not personally involved neither had participation in the mechanical act of listing documents and assigning docket numbers even as he kept on reminding his office staff to record completely all the notarial acts in the Notarial Register in accordance with Section 2 of Rule VI of the 2004 Rules on Notarial Practice[.][8]

Notably, Atty. Salatan did not squarely address the alleged defects in Teresita's affidavit that Leano had enumerated in his Affidavit-Complaint. Instead, Atty. Salatan simply argued that he had "dutifully ascertained that the affiant was sincerely

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

[4] *Id.* at 19-A.

[5] *Id.* at 2.

[6] *Id.* at 53-59.

[7] *Id.* at 56.

[8] *Id.* at 57.

telling the truth in support to the cause of action of the spouses Juanito and Myrna Tabudlo against Valentino Leano," which he deemed "the more important and overarching consideration" in notarizing the document.[9]

The Issue

The sole issue for the Court's resolution is whether Atty. Salatan violated the Notarial Rules when he notarized Teresita's Affidavit.[10]

The Court's Ruling

After a careful examination of the records, the Court finds Atty. Salatan administratively liable for violation of the Notarial Rules and the Code of Professional Responsibility (CPR).

Section 2 (b), Rule IV of the Notarial Rules states:

> SEC. 2. *Prohibitions.* — (a) x x x
>
> x x x x x x x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Aside from the physical presence of the affiant during the notarization of a document, the Notarial Rules also requires the presentation of a competent evidence of the affiant's identity *if* he or she is not personally known to the notary public. "Competent evidence of identity" is defined under Section 12, Rule II of the Notarial Rules as follows:

> SEC. 12. *Competent Evidence of Identity.* — The phrase "competent evidence of identity" refers to the identification of an individual based on:

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[9] *Id.* at 57-58.

[10] *Id.* at 19.

a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual x x x; or

b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who personally knows the individual and shows to the notary public documentary identification.

Moreover, Section 5 (b), Rule IV of the same Rules provides that a notary public shall not affix his official signature or seal on a notarial certificate that is *incomplete*. By definition, a notarial certificate pertains to "the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and states the facts attested to by the notary public in a particular notarization as provided for by these Rules."[11]

In this case, the records show that Atty. Salatan had affixed his official signature and seal on the notarial certificate of Teresita's affidavit without properly identifying the person who signed the document. This conclusion can easily be inferred from the fact that the competent proof of Teresita's identity had been left *blank* on the face of the document itself.[12] Unfortunately, in his Comment, Atty. Salatan simply claimed that he had "ascertained" that the affiant was the same person executing the document, but he completely failed to explain why Teresita's competent evidence of identity was not indicated in the notarial certificate.[13] Similarly, there was also no allegation that Teresita is personally known to Atty. Salatan to dispense with the presentation of her competent evidence of identity.

Based on these considerations, there is no question that Atty. Salatan had violated: *(a)* Section 2 (b), Rule IV of the Notarial

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[11] A.M. No. 02-8-13-SC, Rule II, Section 8.

[12] See Affidavit of Teresita Cauilan dated November 13, 2009, *rollo*, p. 19.

[13] *Id.* at 96.

Rules by notarizing Teresita's affidavit without requiring any competent proof of her identity; and *(b)* Section 5 (b), Rule IV of the same Rules when he affixed his official signature and seal on an *incomplete* notarial certificate.

To make matters worse, it appears that the notarization of the subject affidavit was *not* recorded in Atty. Salatan's notarial register,[14] which is a clear violation of Section 2 (a), Rule VI of the Notarial Rules, *viz.*:

> SEC. 2. *Entries in the Notarial Register*. — (a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:
>
> (1) the entry number and page number;
> (2) the date and time of day of the notarial act;
> (3) the type of notarial act;
> (4) the title or description of the instrument, document or proceeding;
> (5) the name and address of each principal;
> (6) the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
> (7) the name and address of each credible witness swearing to or affirming the person's identity;
> (8) the fee charged for the notarial act;
> (9) the address where the notarization was performed if not in the notary's regular place of work or business; and
> (10) any other circumstance the notary public may deem of significance or relevance.

Here, Atty. Salatan did not deny that the subject document was not recorded in his notarial register. Instead, he explained as follows:

> 17) Although the "Affidavit" due to oversight, may not have been listed in the respondent's Notarial Register, please take note that **Docket No. 805** is **vacant** and is really **intended for such document**, x x x;

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[14] See Certificate (Lack of Record), *id.* at 19-A.

18) Be that as it may, there was no deliberate intention not to record and enter in the Notarial Register the Affidavit of Teresita Cauilan. Respondent hereby invokes good faith on his part as he did not take advantage of his official position as Notary Public when such circumstances occurred;

19) As a matter of office procedure, it was respondent's office clerk who had been tasked to do the mechanical act of doing the entry and assigning docket numbers of documents in the Notarial Register x x x.

x x x x x x x x x

23) Respondent was not personally involved neither had participation in the mechanical act of listing documents and assigning docket numbers even as he kept on reminding his office staff to record completely all notarial acts in the Notarial Register in accordance with Section 2 of Rule VI of the 2004 Rules on Notarial Practice.[15]

However, it is settled that "a notary public is personally accountable for all entries in his notarial register."[16] Thus, Atty. Salatan's delegation of his notarial function of recording entries in his notarial register to his office clerk is in itself a clear violation of the Notarial Rules, as well as Rule 9.01, Canon 9 of the CPR which provides that:[17]

Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

In the 2017 case of *Sps. Chambon v. Atty. Ruiz*,[18] in which the factual milieu is markedly similar to this case, the Court found Atty. Christopher S. Ruiz doubly negligent in the performance of his duties as notary public for: *(a)* notarizing an incomplete notarial document; and *(b)* delegating his duty

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

[16] *Sps. Chambon v. Atty. Ruiz*, 817 Phil. 712, 721 (2017).

[17] *Dr. Malvar v. Atty. Baleros*, 807 Phil. 16, 28 (2017).

[18] *Sps. Chambon v. Atty. Ruiz, supra* note 16.

of recording entries in his notarial register to his secretary. Hence, the Court deemed it proper to impose the penalties of revocation of notarial commission, suspension from the practice of law for a period of one (1) year, and perpetual disqualification from being a notary public. Guided by the foregoing precedent, the Court now imposes the same penalties upon Atty. Salatan for the above-discussed violations of the Notarial Rules and the CPR.

WHEREFORE, the Court finds respondent Atty. Hipolito C. Salatan **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, his notarial commission, if still existing, is **REVOKED**, and he is hereby **PERPETUALLY DISQUALIFIED** from being reappointed as Notary Public. Respondent Atty. Hipolito C. Salatan is likewise **SUSPENDED** from the practice of law for a period of one (1) year, effective immediately.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to Respondent Atty. Hipolito C. Salatan's personal record, and the Office of the Court Administrator 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.

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[*] Designated as additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[A.C. No. 12631. July 8, 2020]

ATTY. FERNANDO P. PERITO, *complainant, vs.* **ATTY. BERTRAND A. BATERINA, ATTY. RYAN R. BESID, ATTY. RICHIE L. TIBLANI, and ATTY. MARI KHRIS R. PAMMIT,** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 8, RULE 8.01 THEREOF; LAWYERS SHALL NOT USE LANGUAGE WHICH IS ABUSIVE, OFFENSIVE OR OTHERWISE IMPROPER IN THEIR PROFESSIONAL DEALINGS.—** After assessment of the attendant circumstances, the Court is convinced that the present disbarment case stemmed from the kidnapping case, which unfortunately affected the professional relationship of the lawyers of the therein parties. Upon perusal of the records, We note that Atty. Perito somehow initiated the conflict with the respondents by using intemperate language and strong allegations in a number of pleadings which he filed. Hence, it would be apt to remind the lawyer-parties of the import of the following provisions of the CPR: CANON 8 — A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL. Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

2. **ID.; ID.; ID.; A LAWYER OWES ENTIRE DEVOTION TO THE INTEREST OF HIS CLIENT, WARMTH AND ZEAL IN THE MAINTENANCE AND DEFENSE OF HIS RIGHTS AND THE EXERTION OF HIS UTMOST LEARNING AND ABILITY, TO THE END THAT NOTHING CAN BE TAKEN OR WITHHELD FROM HIS CLIENT EXCEPT IN ACCORDANCE WITH THE LAW.—** We agree with the Investigating Commissioner's finding that the remedies which Attys. Baterina and Besid pursued and exhausted were sanctioned

by the applicable rules and were intended solely to advance their clients' interest in the kidnapping case. Furthermore, they did not violate Canon 11, Rule 11.03 when they filed a *certiorari* petition before the CA in order to assail the issuances of the RTC. In fact, their actions are supported by Canons 17 and 19 of the CPR, as follows: CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM. CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW. Similarly, Attys. Tiblani and Pammit who were representing Atty. Baterina in the latter's disbarment cases were merely protecting Atty. Baterina's interests. Indeed, "[a] lawyer owes entire devotion to the interest of his client, warmth and zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing can be taken or withheld from his client except in accordance with the law. He should present every remedy or defense authorized by the law in support of his client's cause, regardless of his own personal views. In the full discharge of his duties to his client, the lawyer should not be afraid of the possibility that he may displease the judge or the general public."

3. ID.; ID.; DISBARMENT; BEING THE MOST SEVERE FORM OF DISCIPLINARY SANCTION, DISBARMENT IS IMPOSED ONLY FOR THE MOST IMPERATIVE REASONS AND 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; LAWYERS MUST FAITHFULLY CONDUCT THEMSELVES IN A MANNER EXPECTED FROM MEMBERS OF THE BAR; PETITION FOR DISBARMENT, DISMISSED.— [T]he respondents' acts did not constitute as gross misconduct or a violation of the Lawyer's Oath or the CPR. Additionally, the respondents committed none of the grounds for disbarment enumerated in Section 27, Rule 138 of the Rules of Court. Besides, "[a]s a rule, this Court exercises the power to disbar with great caution. Being the most severe form of disciplinary sanction, it is imposed only for the most imperative reasons and 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. x x x" In view of the foregoing, the Court finds that Atty. Perito did not present substantial evidence to show that herein respondents violated the CPR. In fact, the instant petition is simply evidence of the parties' frustration against each other and of their refusal to resolve their issues as lawyers in a more dignified and less adversarial manner. Withal, the parties are reminded to act and be guided by the Lawyer's Oath and the CPR, and to faithfully conduct themselves in a manner expected from members of the Bar.

APPEARANCES OF COUNSEL

Baterina Baterina Casals Lozada & Tiblani for respondents.

D E C I S I O N

HERNANDO, *J.*:

This is a Petition for Disbarment[1] filed by Atty. Fernando P. Perito (Atty. Perito) before the Integrated Bar of the Philippines (IBP) against respondents Atty. Bertrand A. Baterina (Atty. Baterina), Atty. Ryan R. Besid (Atty. Besid), Atty. Richie L. Tiblani (Atty. Tiblani), and Atty. Mari Khris R. Pammit (Atty. Pammit).

The Facts

Atty. Perito was the lawyer for the accused in a kidnapping case entitled *People v. Josephine and Jason Bracamonte* which was filed before Branch 169 of the Regional Trial Court (RTC) of Malabon. The case was initially filed by Antonio Galian (Galian) but he was later substituted by Geri Villa. Respondents Attys. Baterina and Besid[2] were the private prosecutors.[3]

During the reinvestigation of the kidnapping case, the Investigating Panel of the Department of Justice (DOJ) issued

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[1] *Rollo*, pp. 1-21.

[2] *Id.* at 67; after they replaced the previous private prosecutor, Atty. Roberto Ferrer, who withdrew from the case.

[3] *Id.* at 605.

a Resolution dated August 1, 2007 dismissing the charge against the Bracamontes. Attys. Baterina and Besid, as Galian's counsels, filed a Motion for Reconsideration which the DOJ dismissed in a Resolution dated September 27, 2007. Atty. Besid then filed a Petition for Review[4] before the Secretary of Justice.[5]

Meanwhile, in view of the DOJ's August 1, 2007 Resolution and the repeated failure of the private complainant to appear despite due notice, the RTC issued an Order on September 17, 2007, provisionally dismissing[6] the case against the Bracamontes, but without prejudice to any motion for reconsideration which may have been filed by the private prosecutors. Consequently, Attys. Baterina and Besid filed a motion for reconsideration[7] which the RTC denied in an Order dated December 17, 2007[8] for lack of conformity of the public prosecutor. Afterwards, Attys. Baterina and Besid filed a Petition for *Certiorari*[9] with the Court of Appeals (CA) with Dulce Hernandez (Dulce) (mother of the alleged kidnap victim) as petitioner.[10]

On August 29, 2008, Attys. Baterina and Besid learned that the Bracamontes had filed a disbarment case against them before the Court which was docketed as A.C. No. 7929. Suspecting that Atty. Perito was behind the filing of said complaint, Atty. Baterina filed a countersuit for disbarment[11] against Atty. Perito which was docketed as CBD Case No. 09-2468.[12]

Relevantly, though, A.C. No. 7929 *(Josephine Bracamonte, et al. v. Attys. Bertrand A. Baterina and Ryan R. Besid)* was

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[4] *Id.* at 349-359.

[5] *Id.* at 605-606.

[6] *Id.* at 361.

[7] *Id.* at 362-369.

[8] *Id.* at 386.

[9] *Id.* at 391-415.

[10] *Id.* at 606.

[11] *Id.* at 59-89.

[12] *Id.* at 47.

dismissed, and thereafter declared as closed and terminated.[13] Also, CBD Case No. 09-2468 *(Atty. Bertrand A. Baterina v. Atty. Ferdinand P. Perito)* was dismissed by the IBP-Board of Governors (BOG) for lack of merit.[14]

Nonetheless, in the case at bench, Atty. Perito charged herein respondents with pursuing a losing and dismissed case or endlessly persecuting the Bracamontes in the kidnapping case, and for filing a baseless disbarment complaint against him (Atty. Perito) grounded on suspicion. Atty. Perito likewise charged respondents Attys. Baterina and Besid with misrepresentation because Dulce was never an original complainant in the proceedings before the Office of the Prosecutor of Malabon, the DOJ and the RTC of Malabon, nor can she represent the then alleged minor victim who already reached the age of majority at that time.[15]

Moreover, Atty. Perito charged Attys. Baterina and Besid of demeanor unbecoming of members of the Bar for purportedly accusing him of "'being the cause of the prolonged detention of accused Josephine Bracamonte,' 'delaying the proceedings of the case and obtaining undue advantage by not attending the hearing scheduled by the Court,' 'adopting a scheme where counsel will go to court and making a manifestation in open court even if the case is not scheduled on that day,' [and] 'depriving private complainant of his day in court, fair play and right to be heard.'"[16]

In addition, Atty. Perito asserted that respondents failed to uphold the dignity and authority of the court for imputing upon the Presiding Judge of the RTC with grave abuse of discretion "amounting to excess of jurisdiction by succumbing to the pressure employed by counsel (complainant Perito) who uses dirty and coercive tactics to obtain a favorable judgment by

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[13] *Id.* at 477, 519-520.

[14] *Id.* at 521.

[15] *Id.* at 606.

[16] *Id.*

any and all means possible and completely [disregarding and compromising] its supposed integrity."[17]

Atty. Perito impleaded Attys. Tiblani and Pammit as respondents in the instant complaint since they allegedly conspired with Attys. Baterina and Besid in filing a disbarment case against him.[18]

Conversely, herein respondents argued that the petition for review and petition for *certiorari* which they filed in the kidnapping case were remedies which can be availed of as a matter of law in behalf of their client and that resorting to such remedies cannot be a ground for disbarment.[19] They added that contrary to Atty. Perito's allegation, Dulce can properly file the petition since the complainant was a minor when the alleged felony was committed. They further stated that a petition for *certiorari* is an entirely different remedy with a new cause of action and that the criminal case should not be affected even if Dulce was a stranger to the proceedings before the DOJ and the RTC.[20] Similarly, they averred that the imputation of grave abuse of discretion upon the RTC was necessary for a *certiorari* petition under Rule 65 and cannot be a ground for disbarment if the said imputation was supported by facts and logic.[21]

Moreover, the respondents explained that the act of Attys. Tiblani and Pammit in filing a disbarment case in behalf of Atty. Baterina against Atty. Perito is not a ground for disbarment.[22]

The Report and Recommendation of the IBP

In a Report and Recommendation[23] dated March 9, 2018, the Investigating Commissioner[24] of the IBP-Commission on

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[17] *Id.* at 606-607.

[18] *Id.* at 607.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 607-608.

[23] *Id.* at 603-613.

[24] Nelly Annegret R. Puno-Yambot.

Bar Discipline (IBP-CBD) found that the respondents did not violate the Code of Professional Responsibility (CPR) and recommended the dismissal of the complaint.

The Investigating Commissioner stated that the burden of proof rests upon Atty. Perito to prove his allegations with [substantial] evidence.[25] In light of this, the Investigating Commissioner found that Attys. Baterina and Besid did not violate Rule 1.03, Canon 1 and Rule 10.03, Canon 10 of the CPR since the pleadings which they filed in the criminal proceedings were proper remedies under DOJ Circular No. 70 (2000 NPS Rule on Appeal) and the Rules of Court. Also, if Attys. Baterina and Besid did not pursue the said remedies, they would have been remiss in their duties to their client.[26]

Moreover, the Investigating Commissioner found that Attys. Baterina and Besid did not violate Rule 11.04, Canon 11 of the CPR. Their imputation of grave abuse of discretion on the Presiding Judge of the RTC was necessary to substantiate their *certiorari* petition before the CA, especially when they questioned the orders of the RTC which provisionally dismissed the case and denied the motion for reconsideration thereof.[27]

As for Attys. Tiblani and Pammit, the Investigating Commissioner found that they did not violate Rule 1.03 and Canon 8 of the CPR since there was no proof that they were motivated by ill will in representing Atty. Baterina in the disbarment case that he (Atty. Baterina) filed against Atty. Perito and in the other disbarment case filed by the Bracamontes against Attys. Baterina and Besid.[28]

Noting that this is the third disbarment case involving Attys. Perito, Baterina and Besid whether as parties or counsels, which all stemmed from the kidnapping case involving the Bracamontes,

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[25] *Rollo*, p. 608.

[26] *Id.* at 609-610.

[27] *Id.* at 610-611.

[28] *Id.* at 611-612.

the Investigating Commissioner reminded the lawyers to focus on the merits of their claims, exercise mutual respect and courtesy with each other, and not to indiscriminately file disbarment suits against each other.[29]

In a Resolution[30] dated November 8, 2018, the IBP-BOG resolved to adopt the findings of fact and recommendation of the Investigating Commissioner and to dismiss the petition.

The Ruling of the Court

The Court adopts the findings and approves the recommendation of the IBP to dismiss the instant petition for disbarment against the respondents.

After assessment of the attendant circumstances, the Court is convinced that the present disbarment case stemmed from the kidnapping case, which unfortunately affected the professional relationship of the lawyers of the therein parties. Upon perusal of the records, We note that Atty. Perito somehow initiated the conflict with the respondents by using intemperate language and strong allegations in a number of pleadings which he filed. Hence, it would be apt to remind the lawyer-parties of the import of the following provisions of the CPR:

CANON 8 — A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

We agree with the Investigating Commissioner's finding that the remedies which Attys. Baterina and Besid pursued and exhausted were sanctioned by the applicable rules and were intended solely to advance their clients' interest in the kidnapping

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[29] *Id.* at 612.

[30] *Id.* at 601-602.

case. Furthermore, they did not violate Canon 11, Rule 11.03[31] when they filed a *certiorari* petition before the CA in order to assail the issuances of the RTC. In fact, their actions are supported by Canons 17 and 19 of the CPR, as follows:

CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Similarly, Attys. Tiblani and Pammit who were representing Atty. Baterina in the latter's disbarment cases were merely protecting Atty. Baterina's interests. Indeed, "[a] lawyer owes entire devotion to the interest of his client, warmth and zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing can be taken or withheld from his client except in accordance with the law. He should present every remedy or defense authorized by the law in support of his client's cause, regardless of his own personal views. In the full discharge of his duties to his client, the lawyer should not be afraid of the possibility that he may displease the judge or the general public."[32]

To Our mind, the respondents' acts did not constitute as gross misconduct or a violation of the Lawyer's Oath or the CPR. Additionally, the respondents committed none of the grounds for disbarment enumerated in Section 27, Rule 138[33] of the Rules of Court.[34]

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[31] 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.

Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

[32] *Legarda v. Court of Appeals*, 272-A Phil. 394, 403-404 (1991) citing Canon of Professional Ethics 15.

[33] **SEC. 27.** *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by

Besides, "[a]s a rule, this Court exercises the power to disbar with great caution. Being the most severe form of disciplinary sanction, it is imposed only for the most imperative reasons and 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. x x x"[35]

In view of the foregoing, the Court finds that Atty. Perito did not present substantial evidence to show that herein respondents violated the CPR. In fact, the instant petition is simply evidence of the parties' frustration against each other and of their refusal to resolve their issues as lawyers in a more dignified and less adversarial manner. Withal, the parties are reminded to act and be guided by the Lawyer's Oath and the CPR, and to faithfully conduct themselves in a manner expected from members of the Bar.

WHEREFORE, the Petition for Disbarment against Atty. Bertrand A. Baterina, Atty. Ryan R. Besid, Atty. Riche L. Tiblani, and Atty. Mari Khris R. Pammit is hereby **DISMISSED**.

SO ORDERED.

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

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reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[34] *Re: SC Decision dated May 20, 2008 in G.R. No. 161455 under Rule 139-B of the Rules of Court v. Atty. Pactolin*, 686 Phil. 351, 355 (2012).

[35] *Id.*

[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 211078. July 8, 2020]

LETICIA ELIZONDO EUPENA, *petitioner, vs.* **LUIS G. BOBIER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; AN ACTION FOR UNLAWFUL DETAINER IS FILED ONLY FOR THE PURPOSE OF RECOVERING PHYSICAL POSSESSION OR POSSESSION *DE FACTO*; WHEN THE DEFENDANT RAISES THE DEFENSE OF OWNERSHIP AND THE QUESTION OF POSSESSION CANNOT BE RESOLVED WITHOUT PASSING UPON THE ISSUE OF OWNERSHIP, A DETERMINATION OF OWNERSHIP SHOULD BE MADE BUT ONLY TO DETERMINE THE ISSUE OF POSSESSION; ANY PRONOUNCEMENT MADE BY THE COURT OVER THE ISSUE OF OWNERSHIP IN SUCH CASES IS MERELY PROVISIONAL.—An action for unlawful detainer is filed only for the purpose of recovering physical possession or possession *de facto*. Such action is summary in nature to provide for a peaceful, speedy, and expeditious means of preventing an alleged illegal possessor from unjustly continuing possession during the long period it would take to properly resolve the issue of ownership or one's right to possession (*a.k.a.* possession *de jure*). When the defendant raises the defense of ownership and the question of possession cannot be resolved without passing upon the issue of ownership, a determination of ownership should be made but only to determine the issue of possession. Any pronouncement made by the court over the issue of ownership in such cases is merely provisional and is made only to determine the principal issue of possession *de facto*. Thus, a defendant's defense of ownership will not constitute a collateral attack on the plaintiff's title. Bobier alleged that he purchased the land from EDC and that Eupena's right over the property only stems from the SPA indicating that the property shall be used as a collateral to Bobier's loan with Eupena. The loan agreement was never presented during trial, which Bobier claimed Eupena

suppressed from him. Bobier denied executing a Deed of Sale in Eupena's favor. He insisted that Eupena secured a TCT under her name because she automatically appropriated the lot. Bobier's allegations do not only show his ownership over the lot but also accuse Eupena of fraudulently acquiring title over the same. The nature of Bobier's averments show the inseparable link between ownership and possession that the trial courts should have determined.

2. ID.; EVIDENCE; CONCLUSIVE PRESUMPTIONS; THE LESSEE IS BARRED FROM QUESTIONING THE LESSOR'S OWNERSHIP OF THE LEASED PREMISES WHERE THERE IS PROOF THAT A LESSOR-LESSEE RELATIONSHIP EXISTS; THE MERE EXISTENCE OF A LEASE AGREEMENT IS NOT ENOUGH TO PROVE THE PRESENCE OF A LESSOR-LESSEE RELATIONSHIP. — The MTC and RTC hastily concluded that Bobier's signature in the lease agreement estopped him from questioning Eupena's ownership over the property. Citing *Samelo v. Manotok Services, Inc.* and *Tamio v. Ticson*, the RTC held that a lessee is barred from questioning the lessor's ownership following Section 2(b), Rule 131 of the Rules. In order for Section 2(b), Rule 131 of the Rules to become operative, there must be proof that a lessor-lessee relationship exists. "A presumption is conclusive x x x upon the presentation of the evidence." In *Datalift Movers, Inc. v. Belgravia Realty & Dev't. Corp*, We ruled that "[a]s long as the lessor-lessee relationship between the petitioners [the lessees] exists x x x, the former, as lessees, cannot by any proof, however strong, overturn the conclusive presumption that Belgravia [as lessor] has valid title to or better right of possession to the subject leased premises than they have." This leads Us to Ask: Was Eupena able to prove the existence of a lessor-lessee relationship? We rule in the negative. The peculiar circumstances of the instant petition bring Us to conclude that the mere existence of a lease agreement is not enough to prove the presence of a lessor-lessee relationship.

3. CIVIL LAW; LEASE; A LEASE AGREEMENT IS VOID WHERE THE SAME IS THE RESULT OF A *PACTUM COMMISSORIUM*; CONTRACTS WHOSE PURPOSE IS CONTRARY TO LAW ARE VOID AND INEXISTENT FROM THE BEGINNING.—The following facts are undisputed: (1) Bobier initially contracted with EDC to purchase

the subject lot; (2) due to financial difficulties since 2001, Bobier defaulted on his amortization payments with EDC; (3) Bobier, secured a loan with Eupena, the proceeds of which will be used to pay for Bobier's unpaid amortizations; (4) Bobier executed an SPA authorizing Eupena to receive the TCT under Bobier's name upon Eupena's full payment of Bobier's outstanding obligation with EDC; (5) the SPA categorically stated that the TCT [again, under Bobier' s name] shall stand as collateral for Bobier's loan with Eupena; (6) one year after the execution of the SPA and one month after Eupena secured TCT No. 698957, the parties executed a lease contract. The abovementioned facts, along with Bobier's unrefuted allegations that Eupena concealed: (1) the loan agreement; and (2) the deed of sale he allegedly executed in Eupena's favor, show that Eupena possibly obtained TCT No. 698957 *via* a *pactum commissorium*. x x x. Given the factual backdrop, the validity of the lease agreement becomes suspect. Even without presenting the loan agreement containing the void stipulation, the parties' actions before the institution of the ejectment case reveals Eupena's intention to automatically acquire the property. Following Our ruling in *Bustamante v. Sps. Rosel*, this is also embraced under the concept of a *pactum commissorium*. Because Eupena illegally obtained TCT No. 698957, the lease agreement becomes void following Article 1409(1) of the Civil Code. Under Article 1409(1), contracts whose purpose is contrary to law are void and inexistent from the beginning. Here, the lease agreement is the result of a *pactum commissorium*, resulting in its invalidity for violating Article 2088 of the Civil Code.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ELEMENT THEREOF, NOT PROVED; WHERE THE LESSOR'S OWNERSHIP OVER THE LEASED PROPERTY IS INVALID, THE LEASE AGREEMENT UPON WHICH THE UNLAWFUL DETAINER COMPLAINT IS BASED, IS VOID.— We are more inclined to believe that because of Bobier's need to pay EDC and his fear of losing the house and lot (which he has been paying for the past 6 years out of the 10-year lease-to-own contract with EDC), Bobier was compelled to accede to Eupena's demand of signing the lease contract. According to Bobier, he signed the lease contract with the understanding that the "rent payments" are, in reality, his loan payments to Eupena.

The fact that the lease agreement (executed one month after the issuance of TCT No. 698957) indicated Bobier's residence as Phase 6, B3, Lot 3 of Golden City Subdivision, Taytay Rizal – the very lot subject of the lease agreement – lends credence to his version of the events as against Eupena's complete lack of evidence to prove otherwise. This Court has recognized the reality that "[a]ll persons in need of money are liable to enter into contractual relationships whatever the condition if only to alleviate their financial burden albeit temporarily. Hence, courts are duty bound to exercise caution in the interpretation and resolution of contracts lest the lenders devour the borrowers like vultures do with their prey." While the lease agreement is clear in its terms, the factual milieu of this case militates against upholding its validity. With the possibility of a *pactum commissorium*, Eupena's ownership over the subject land becomes invalid. The lease agreement, upon which the unlawful detainer complaint is based, is void. Eupena, thus, failed to prove the first element of an unlawful detainer – *i.e.*, that possession by Bobier was by a valid lease contract.

APPEARANCES OF COUNSEL

Sinforoso N. Ortiz, Jr. for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated October 11, 2013 and the Resolution[3] January 24, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 129493. The Decision and Resolution of the CA reversed the Regional Trial Court's

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[1] *Rollo*, pp. 7-17.

[2] Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Amelita G. Tolentino and Danton Q. Bueser; *id.* at 21-31.

[3] *Id.* at 32-33.

(RTC) Decision[4] dated March 4, 2013 and dismissed the complaint for unlawful detainer filed by petitioner Leticia Elizondo Eupena (Eupena) against respondent Luis G. Bobier (Bobier).[5]

Facts of the Case

On February 11, 2011, Eupena filed a Complaint[6] for unlawful detainer against Bobier. Eupena claimed to be the owner of a parcel of land designated as Block 3, Lot 3, Phase 6 of Golden City Subdivision in Taytay, Rizal and evidenced by Transfer Certificate of Title (TCT) No. 698957.[7] She alleged to have leased the subject property to Bobier and presented a Contract of Lease[8] dated November 22, 2005 (lease contract). The monthly rent was fixed at ₱3,000.00 from October 1, 2005 to September 30, 2006. Although the written contract was not renewed, the lease was extended on a monthly basis.

Bobier started to default on his rent payments in May 2010. Eupena sent a demand letter[9] dated January 28, 2011 seeking payment of ₱27,000.00 as rent in arrears. Because of Bobier's refusal to heed Eupena's demand, Eupena asked that the court order Bobier to vacate the subject land and pay: (1) ₱27,000.00 as rent in arrears; (2) ₱50,000.00 as attorney's fees; and (3) the cost of suit.[10]

Bobier denied Eupena's ownership over the subject land. In his Verified Answer,[11] Bobier averred that he was the owner of the land and merely sought Eupena's financial assistance

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[4] Penned by Presiding Judge Marie Claire Victoria Mabutas-Sordan; CA *rollo*, pp. 115-122.

[5] *Rollo*, p. 31.

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

[7] *Id.* at 83 and 105.

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

[9] *Id.* at 87.

[10] *Id.* at 81.

[11] *Id.* at 88-95.

when he could not complete his amortization payments over the land's purchase.

According to Bobier, he purchased the land from Extraordinary Development Corporation (EDC) in 1995 under a lease-to-own arrangement for ₱438,200.00. At that time, he was an overseas contract worker deployed in Saudi Arabia. Under the arrangement, Bobier was to make monthly payments of ₱6,543.99.[12] He had been diligent in paying until 2001, when he started experiencing some financial difficulty. In a Notice of Cancellation[13] dated July 1, 2002 (Notice) and following Republic Act No. 6552,[14] EDC gave Bobier 15 days from receipt of the Notice to settle his unpaid amortizations covering January 7, 2002 to June 7, 2002. Fearing the loss of his house and lot, Bobier and his wife approached Eupena. At that time, Eupena was the co-worker and *kumadre* of Bobier's wife.

On September 6, 2004, Bobier executed a Special Power of Attorney (SPA),[15] which states:

> I, LUIS G. BOBIER, x x x do hereby name, constitute, and appoint LETICIA E. EUPENA, x x x to be my true and lawful attorney, and in my name, place, and stead, to do and perform the following acts:
>
> TO CLAIM, COLLECT AND RECEIVE FROM EXTRAORDINARY DEVELOPMENT CORPORATION X X X THE TITLE ISSUED IN MY NAME AS REGISTERED OWNER OF REAL PROPERTY KNOWN AS PHASE 6 BLOCK 3 LOT 3 OF THE GOLDEN CITY SUBDIVISION, TAYTAY, RIZAL, UPON FULL PAYMENT OF MY OUTSTANDING OBLIGATION WITH THE SAID DEVELOPER, TO SERVE AS COLLATERAL FOR THE LOAN THAT I CONTRACTED WITH SAID LETICIA EUPENA FOR THE PAYMENT OF MY SAID OUTSTANDING OBLIGATION.
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> x x x x x x x x x[16]

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[12] Including interest. See CA *rollo*, pp. 50, 53.

[13] CA *rollo*, p. 55.

[14] Otherwise known as the "Realty Installment Buyer Act."

[15] *Rollo*, pp. 103-104.

[16] *Id.* at 103.

Bobier only discovered that Eupena was able to transfer the title of the property to the latter's name when he received a copy of the complaint. Bobier thus alleged that Eupena automatically appropriated the subject lot and should not be entitled to the prayer in Eupena's Complaint.

Ruling of the Municipal Trial Court

In a Decision[17] dated May 4, 2012, the Municipal Trial Court (MTC) granted Eupena's Complaint and ordered Bobier to vacate the premises, peacefully surrender possession to Eupena peacefully, and pay Eupena: (1) ₱27,000.00 as rental arrears and (2) ₱20,000.00 as attorney's fees, and the cost of suit.[18]

The MTC explained that since the lease contract clearly shows the agreement for Bobier to lease Eupena's property, then Bobier was estopped from assailing the Eupena's ownership over the land.[19]

Bobier appealed with the RTC, claiming that the SPA only gave Eupena the authority "to retrieve the title issued in [respondent's] name and no other."[20] He accused Eupena of keeping the loan agreement from him because it contained "a provision regarding the automatic execution of a deed of absolute sale if and when [Bobier] fails to pay the loan[.]"[21]

Ruling of the Regional Trial Court

In its March 4, 2013 Decision,[22] the RTC affirmed the MTC's decision *in toto*. The RTC ruled that there was no *pactum commissorium*[23] because the automatic appropriation clause

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[17] Penned by Judge Wilfredo V. Timola; CA *rollo*, pp. 68-71.

[18] *Id.* at 71.

[19] *Id.* at 70.

[20] *Id.* at 118.

[21] *Id.* at 118-119.

[22] *Supra* note 4.

[23] Defined as an agreement of forfeiture. *Black's Law Dictionary* 1108, 6th ed., 1891-1991.

prohibited by Article 2088[24] of the Civil Code was not present in the SPA.

The RTC did not give credit to Bobier's allegation that he signed the lease contract "with the understanding that the rentals will serve as his payments to [Eupena]."[25] The lease contract was clear. It did not allow rental payments to be applied to Bobier's loan with petitioner.[26]

Unfazed, Bobier elevated the matter to the CA *via* a Petition for Review under Rule 42 of the Rules. Similar to the issues raised before the RTC, Bobier claimed that the RTC erroneously disregarded the SPA and improperly ruled that there was no *pactum commissorium* in the instant case.[27]

Ruling of the Court of Appeals

The CA granted the petition and dismissed the Complaint against Bobier. The appellate court found the elements of *pactum commissorium* present because the title of the subject lot was transferred under Eupena's name just over a year after the SPA was executed. "The existence of the loan and the transfer of the property from x x x Bobier to x x x Eupena lead to no other conclusion but that the latter appropriated the property when the former failed to pay his indebtedness."[28] The CA noted that Eupena failed to address the claim of a *pactum commissorium* and did not state how the property was transferred to her name.[29]

Thus, the CA provisionally declared petitioner's title void.[30] Without a valid title, the CA then dismissed petitioner's Complaint for unlawful detainer against respondent.

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[24] Under Article 2088 of the Civil Code, "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

[25] CA *rollo*, p. 121.

[26] *Id.*

[27] *Id.* at 197.

[28] *Id.* at 200.

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

[30] *Id.* at 201.

Eupena filed the instant petition for review on *certiorari*. She maintained that the CA should have declared her as the owner of the property for purposes of determining possession *de facto* because of the TCT in her name. Bobier's defense of a *pactum commissorium* is a collateral attack on Eupena's title that should not be entertained.[31] Moreover, Bobier is estopped from assailing the Eupena's ownership by virtue of their lease contract. Under Section 2 (b),[32] Rule 131 of the Rules, a tenant cannot deny his/her land owner's title.

Ruling of the Court

An action for unlawful detainer is filed only for the purpose of recovering physical possession or possession *de facto*. Such action is summary in nature to provide for a peaceful, speedy, and expeditious means of preventing an alleged illegal possessor from unjustly continuing possession during the long period it would take to properly resolve the issue of ownership or one's right to possession (*a.k.a.* possession *de jure*).[33]

When the defendant raises the defense of ownership and the question of possession cannot be resolved without passing upon the issue of ownership, a determination of ownership should be made but only to determine the issue of possession.[34] Any pronouncement made by the court over the issue of ownership in such cases is merely provisional and is made only to determine the principal issue of possession *de facto*. Thus, a defendant's defense of ownership will not constitute a collateral attack on the plaintiff's title.

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

[32] Sec. 2. *Conclusive Presumptions*. — The following are instances of conclusive presumptions:

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(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

[33] *Jose v. Alfuerto*, 699 Phil. 307, 326 (2012), citing *Spouses Refugia v. CA*, 327 Phil. 982, 1004 (1996).

[34] *Go v. Looyuko*, 713 Phil. 125, 131 (2013), citing Section 16, Rule 70 of the Rules of Court.

Bobier alleged that he purchased the land from EDC and that Eupena's right over the property only stems from the SPA indicating that the property shall be used as a collateral to Bobier's loan with Eupena. The loan agreement was never presented during trial, which Bobier claimed Eupena suppressed from him. Bobier denied executing a Deed of Sale in Eupena's favor. He insisted that Eupena secured a TCT under her name because she automatically appropriated the lot.

Bobier's allegations do not only show his ownership over the lot but also accused Eupena of fraudulently acquiring title over the same. The nature of Bobier's averments show the inseparable link between ownership and possession that the trial courts should have determined.

Instead of categorically denying Bobier's allegations, Eupena simply based her claim of ownership (and right to possession) on TCT No. 698957 and the lease contract. Eupena had every opportunity, from the MTC to the CA to rebut Bobier's assertions but failed to do so.

The MTC and RTC hastily concluded that Bobier's signature in the lease agreement estopped him from questioning Eupena's ownership over the property. Citing *Samelo v. Manotok Services, Inc.*[35] and *Tamio v. Ticson*,[36] the RTC held that a lessee is barred from questioning the lessor's ownership following Section 2 (b), Rule 131 of the Rules.[37]

In order for Section 2 (b), Rule 131 of the Rules to become operative, there must be proof that a lessor-lessee relationship exists. "A presumption is conclusive x x x upon the presentation of the evidence."[38] In *Datalift Movers, Inc. v. Belgravia Realty & Dev't. Corp.*,[39] We ruled that "[a]s long as the lessor-lessee

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[35] 689 Phil. 411 (2012).

[36] 485 Phil. 434 (2004).

[37] *Id.*

[38] Riano, W., *Evidence (The Bar Lecture Series)* (2009), p. 429, citing 29 Am. Jur. 2d, Evidence, Section 183.

[39] 531 Phil. 554 (2006).

relationship between the petitioners [the lessees] exists x x x, the former, as lessees, cannot by any proof, however strong, overturn the conclusive presumption that Belgravia [as lessor] has valid title to or better right of possession to the subject leased premises than they have."[40]

This leads Us to ask: Was Eupena able to prove the existence of a lessor-lessee relationship?

We rule in the negative.

The peculiar circumstances of the instant petition bring Us to conclude that the mere existence of a lease agreement is not enough to prove the presence of a lessor-lessee relationship.

The following facts are undisputed: (1) Bobier initially contracted with EDC to purchase the subject lot; (2) due to financial difficulties since 2001, Bobier defaulted on his amortization payments with EDC; (3) Bobier secured a loan with Eupena, the proceeds of which will be used to pay for Bobier's unpaid amortizations; (4) Bobier executed an SPA authorizing Eupena to receive the TCT under Bobier's name upon Eupena's full payment of Bobier's outstanding obligation with EDC; (5) the SPA categorically stated that the TCT [again, under Bobier's name] shall stand as collateral for Bobier's loan with Eupena; (6) one year after the execution of the SPA and one month after Eupena secured TCT No. 698957, the parties executed a lease contract.

The abovementioned facts, along with Bobier's unrefuted allegations that Eupena concealed: (1) the loan agreement; and (2) the deed of sale he allegedly executed in Eupena's favor,[41] show that Eupena possibly obtained TCT No. 698957 *via* a *pactum commissorium*. In fact, Eupena manifested the presence of a loan agreement, which the RTC (in a separate action for reconveyance) declared void for being a *pactum commissorium*.[42]

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[40] *Id.* at 561-562.

[41] See *rollo*, pp. 165-166. See also *CA rollo*, p. 100.

[42] Docketed as Civil Case No. 11-9463 entitled *Luis G. Bobier v. Leticia Elizondo Eupena*. See *rollo*, pp. 187-193.

While the action for reconveyance is still the subject of a Notice of Appeal, such pronouncement corroborates Bobier's claims.

Given the factual backdrop, the validity of the lease agreement becomes suspect. Even without presenting the loan agreement containing the void stipulation, the parties' actions before the institution of the ejectment case reveals Eupena's intention to automatically acquire the property. Following Our ruling in *Bustamante v. Sps. Rosel*,[43] this is also embraced under the concept of a *pactum commissorium*. Because Eupena illegally obtained TCT No. 698957, the lease agreement becomes void following Article 1409 (1)[44] of the Civil Code. Under Article 1409 (1), contracts whose purpose is contrary to law are void and inexistent from the beginning. Here, the lease agreement is the result of a *pactum commissorium*, resulting in its invalidity for violating Article 2088[45] of the Civil Code.

We are more inclined to believe that because of Bobier's need to pay EDC and his fear of losing the house and lot (which he has been paying for the past 6 years out of the 10-year lease-to-own contract with EDC),[46] Bobier was compelled to accede to Eupena's demand of signing the lease contract.[47] According to Bobier, he signed the lease contract with the understanding that the "rent payments" are, in reality, his loan payments to Eupena. The fact that the lease agreement (executed one month

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[43] 377 Phil. 436, 443 (1999). In the case of *Bustamante*, this Court held that Bustamante's (the creditor's) insistence that Sps. Rosel (the debtors) execute a Deed of Sale over the collateral and Bustamante's refusal to accept payment of the loan constituted a *pactum commissorium* even in the absence of a clause explicitly providing for an automatic appropriation of the mortgaged property.

[44] Art. 1409. The following contracts are inexistent and void from the beginning:

(a) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy; x x x

[45] Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void. (1859a)

[46] *Rollo*, p. 61.

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

after the issuance of TCT No. 698957) indicated Bobier's residence as Phase 6, B3, Lot 3 of Golden City Subdivision, Taytay, Rizal — the very lot subject of the lease agreement — lends credence to his version of the events as against Eupena's complete lack of evidence to prove otherwise.

This Court has recognized the reality that "[a]ll persons in need of money are liable to enter into contractual relationships whatever the condition if only to alleviate their financial burden albeit temporarily. Hence, courts are duty bound to exercise caution in the interpretation and resolution of contracts lest the lenders devour the borrowers like vultures do with their prey."[48] While the lease agreement is clear in its terms, the factual milieu of this case militates against upholding its validity.

With the possibility of a *pactum commissorium*, Eupena's ownership over the subject land becomes invalid. The lease agreement, upon which the unlawful detainer complaint is based, is void. Eupena, thus, failed to prove the first element of an unlawful detainer — *i.e.*, that possession by Bobier was by a valid lease contract.[49]

WHEREFORE, the petition is **DENIED**. The Decision dated October 11, 2013 and the Resolution dated January 24, 2014 of the Court of Appeals in CA-G.R. SP No. 129493 are hereby **AFFIRMED**.

SO ORDERED.

Leonen, Zalameda, and *Gaerlan, JJ.*, concur.

Gesmundo, J., on official leave.

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[48] *Bustamante v. Sps. Rosel, supra* note 43 at 445.

[49] *Fairland Knitcraft Corporation v. Po*, 779 Phil. 612 (2016), where this Court held:

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property, and deprived the plaintiff of the enjoyment thereof; and (4) within one (1) year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (*Id.* at 624, citing *Zacarias v. Anacay*, 744 Phil. 201, 208-209 (2014).

THIRD DIVISION

[G.R. No. 220535. July 8, 2020]

DENNIS M. VILLA-IGNACIO, *petitioner, vs.* **ELVIRA C. CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; TIMELY FILED.— Now that it has been settled that Villa-Ignacio received the Amended Decision on December 15, 2014, a simple mathematical computation would show that the deadline for Villa-Ignacio to file his Motion for. Reconsideration fell on December 30, 2014. However, there were various work interruptions from period of December 2014 to January 2015, which include: December 30, 2014 Regular Holiday (pursuant to Proclamation No. 655, series of 2013) December 31, 2014 Special Non-Working Day (pursuant to Proclamation No. 655, series of 2013) January 1, 2015 Regular Holiday (pursuant to Proclamation No. 831 series of 2014) January 2, 2015 Special Non-Working Holiday (pursuant to Proclamation No. 831, series of 2014) January 3, 2015 Saturday January 4, 2015 Sunday. Considering that December 30, 2014 is a holiday, the same was timely filed on the next working day, on January 5, 2015.

2. ID.; ID.; JUDGMENTS; DECISION OF THE COURT OF APPEALS ABSOLVING THE PETITIONER HAD NOT YET ATTAINED FINALITY WHEN THE RESPONDENT FILED A MOTION FOR RECONSIDERATION THEREOF.— Under Section 7, Rule III of Administrative Order No. 07, series of 1990 (A.O. 7), as amended, otherwise known as the Rules of Procedure of the Office of the Ombudsman, a decision of the Ombudsman absolving the respondent from an administrative charge, is final and not appealable. The provision cited by Villa-Ignacio clearly pertains to a decision of the Ombudsman absolving a respondent and not a decision of the CA. Thus, Villa-Ignacio's insistence that the 2012 Decision of the CA is final is erroneous.

3. POLITICAL LAW; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE; SECTION III(N) OF ADMINISTRATIVE ORDER (A.O.) 16, SERIES OF 2003; A PERSON WHO BELONGS TO THE SAME COMPONENT UNIT AS ANY OF THE PARTIES TO THE CASE, REGARDLESS OF THE TIMEFRAME THAT THE ACTS COMPLAINED OF TRANSPIRED, IS DISQUALIFIED FROM ACTING ON THE COMPLAINT OR PARTICIPATING IN THE PROCEEDINGS.— The pertinent portion of Section III(N) of A.O. 16 states: N. Disqualifications The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances x x x. **2. He belongs to the same component unit as any of the parties to the case; 3. He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired;** x x x. The Court has already settled this issue in the related case of *Villa-Ignacio v. Ombudsman Gutierrez*, where it was held that the above-cited provision "patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired." Even if item numbers 2 and 3 of Section III(N) of A.O. 16, series of 2003 had been deleted in Administrative Order No. 21 (A.O. 21), series of 2009, Casimiro should have been disqualified to act on the complaint Chua filed on March 27, 2008. The Court explained in *Villa-Ignacio v. Ombudsman Gutierrez*, that: **This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules**. x x x. x x x **Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law**.

4. ID.; ID.; ID.; ID.; MISCONDUCT, DEFINED; THE MISCONDUCT IS GRAVE IF IT INVOLVES ANY OF THE ADDITIONAL ELEMENTS OF CORRUPTION, WILLFUL INTENT TO VIOLATE THE LAW OR TO DISREGARD ESTABLISHED RULES, WHICH MUST BE ESTABLISHED BY SUBSTANTIAL EVIDENCE; PETITIONER FOUND NOT GUILTY OF MISCONDUCT,

DISHONESTY, ABUSE OF AUTHORITY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— Misconduct refers to: x x x [A] transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the *additional* elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple. Applying the foregoing definition of misconduct, We find sufficient justification to reverse the ruling of the CA in its Amended Decision. Contrary to the ruling of the CA, Villa-Ignacio did not have ill motive or corrupt desire for personal gain in appropriating the donation for a different beneficiary. It is not sensible and reasonable to expect that Villa-Ignacio will ask each and every employee of the OSP whether they consent to the proposed turnover of the proceeds of the charity drive to Gawad Kalinga instead of devoting his time to fulfill his responsibilities as head of the OSP. As Special Prosecutor, it is recognized that he has to attend to various pressing matters that require his immediate attention. x x x. Villa-Ignacio had been transparent about the handling of the proceeds of the donation drive. Thus, there is no hint of corruption nor willful intent to violate the law or to disregard established rules in the conduct of Villa-Ignacio to hold him accountable for Misconduct, Dishonesty, Abuse of Authority, and Conduct Prejudicial to the Best Interest of Service.

5. ID.; ID.; ID.; ID.; ADMINISTRATIVE ORDER (A.O.) 7; PROCEDURE IN ADMINISTRATIVE CASES; WITHOUT AN AFFIDAVIT DULY SWORN TO BY THE DECLARANTS BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS TO SUPPORT THE COMPLAINT IN THE ADMINISTRATIVE CASE, THE "MANIFESTATION" CANNOT BE CONSIDERED TO HAVE MET THE REQUIREMENTS TO INITIATE AN ADMINISTRATIVE CASE BEFORE THE INTERNAL AFFAIRS BOARD OF THE OFFICE OF THE OMBUDSMAN.— We recognize the Court's earlier ruling in the related case of *Villa-Ignacio v. Ombudsman Gutierrez* founded on the same set of facts where the Information for *estafa* under Article 315 (1)(b) of the Revised Penal Code filed against

Villa-Ignacio before the Sandiganbayan was dismissed. In dismissing the Information for *estafa* filed in the Sandiganbayan over the same act subject of this administrative case, We explained: According to Section 4, Rule II of A.O. 7 entitled "Rules of Procedure of the Office of the Ombudsman," supporting witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation. Affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths. x x x. **That Manifestation, which purports to be the voice of the majority belying the donation to Gawad Kalinga, does not qualify as an affidavit as it was not sworn to by the declarants before an officer authorized to administer oaths.** x x x. Due to this supervening ruling, We cannot give credence to the Manifestation dated September 4, 2008 that the CA relied upon in re-visiting its original Decision and in finding Villa-Ignacio guilty of simple misconduct. In addition, the procedure in administrative cases stated in Section 3 of Rule III of A.O. 7 similarly requires that: Section 3. How initiated. - An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. **Such complaint shall be accompanied by a Certificate of Non Forum Shopping duly subscribed and sworn to by the complainant or his counsel**. x x x. Without an affidavit duly sworn to by the declarants before an officer authorized to administer oaths to support the complaint in the administrative case, the Manifestation cannot be considered to have met the parameters set in A.O. 7 to initiate an administrative case before the IAB. Thus, there is sufficient justification in not giving credence to the same document in the present administrative complaint against Villa-Ignacio.

APPEARANCES OF COUNSEL

Anthony B. Peralta & Arno V. Sanidad for petitioner.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Amended Decision[2] dated November 28, 2014 and the Resolution[3] dated September 15, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 114702 filed by petitioner Former Special Prosecutor Dennis M. Villa-Ignacio (Villa-Ignacio).

The Antecedents

On March 27, 2008, respondent Assistant Special Prosecutor Elvira Chua (Chua) filed a Complaint[4] before the Internal Affairs Board of the Office of the Ombudsman (IAB) against Villa-Ignacio and Erlina C. Bernabe (Bernabe) for Dishonesty, Abuse of Authority, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service docketed as IAB-08- 0004.

In January 2005, during a flag ceremony, Villa-Ignacio asked the employees of the Office of the Special Prosecutor (OSP) what to do with the monetary contributions solicited in their Christmas party charity drive in December 2004. The employees agreed that the monetary proceeds of their charity drive will be used for the construction of manual deep wells for the typhoon victims in Quezon province.[5] Chua donated ₱26,660.00 to the charity drive. Bernabe, who was assigned to gather the donations, issued a receipt[6] in the name of Chua, stating that the donation was for the purchase of water pumps.[7]

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[1] *Rollo*, pp. 11-79.

[2] Penned by Associate Justice Noel G. Tijam, (Former Member of this Court) with the concurrence of Associate Justices Romeo F. Barza and Ramon A. Cruz; *id.* at 85-91.

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

[4] *Id.* at 177-187.

[5] *Id.* at 231-232.

[6] *Id.* at 189.

[7] *Id.* at 178.

On September 1, 2006, Villa-Ignacio instructed Bernabe to apply for a manager's check[8] in the amount of ₱52,000.00 payable to Gawad Kalinga Community Development Foundation, Inc. (Gawad Kalinga).[9] The beneficiary issued an Official Receipt,[10] which was posted on the bulletin board of the OSP for the information of all its employees.[11]

Villa-Ignacio vehemently denied personally receiving nor ever having physical or juridical possession of Chua's donation. He also denied misappropriating or converting the same for any purpose.[12] He averred that he told the OSP employees in the succeeding flag assemblies that the contractor of the deep wells had declined the project as the cost of the project is not sufficient to compensate the distance to be traveled. After soliciting suggestions on the use of the funds they had raised, he allegedly proposed that these be donated to the Gawad Kalinga. He claimed that the employees participated in the discussion and eventually agreed to donate the funds to Gawad Kalinga. Villa-Ignacio distinctly recalls that Chua was present during the discussions.[13]

Bernabe admitted issuing the receipt and applying for the Manager's Check for the donation collected in compliance with the lawful order of her superior.[14] She argued that she never exercised any kind of authority, discretion in disposing Chua's donation as her acts were merely ministerial.[15] She insisted that it was Villa-Ignacio who facilitated the transmittal of the Manager's Check to Gawad Kalinga.[16] Thus, she maintained

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[8] *Id.* at 194.

[9] *Id.* at 192, 234.

[10] *Id.* at 195.

[11] *Id.* at 235.

[12] *Id.* at 237.

[13] *Id.* at 233-234.

[14] *Id.* at 367-368.

[15] *Id.*

[16] *Id.* at 342.

that she cannot be held liable for both criminal and administrative charges against her.[17]

On March 18, 2008, or approximately three years after the charity drive, Chua contested the donation made in favor of Gawad Kalinga through a letter addressed to Bernabe.[18] Bernabe replied that, as instructed by Villa-Ignacio, the funds Chua donated had already been included in the OSP employees' donation to Gawad Kalinga.[19]

Ruling of the Internal Affairs Board

On September 3, 2009, the IAB rendered its Decision,[20] the dispositive portion of which reads:

> **WHEREFORE, premises considered**, judgment is hereby rendered finding respondent Special Prosecutor DENNIS M. VILLA-IGNACIO guilty of **Simple Misconduct** and is hereby meted the penalty of ***three (3) months suspension from Office without pay*** pursuant to Section 10, Rule III of Administrative Order No. 17 in relation to Section 25 of Republic Act 6770.
>
> The administrative complaint against respondent ERLINA C. BERNABE be [*sic*] ***dismissed*** for lack of merit.
>
> **SO DECIDED**.[21] (Emphasis and italics in the original)

In finding Villa-Ignacio administratively liable, the IAB emphasized that the donation was received and held in trust by Villa-Ignacio and Bernabe with an obligation to apply the same for the construction of deep wells.[22] The IAB found that

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[17] *Id.* at 368.

[18] *Id.* at 179.

[19] *Id.* at 190.

[20] Signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Merceditas Navarro-Gutierrez; *id.* at 421-444.

[21] *Id.* at 442-443.

[22] *Id.* at 438.

Villa-Ignacio failed to satisfactorily refute the claim of Chua and other officers of OSP who denied being informed of the change in the beneficiary of their donation. The IAB added that mere juridical possession is enough for Villa-Ignacio to acquire control in the disposition of the money or personal property received.[23]

With regard to Bernabe's culpability, the IAB ruled that even if she was the custodian of the donations, she could not have disposed them without an order or instruction from her superior. As such, the IAB concluded that there was no conspiracy between her and Villa-Ignacio and that her conduct enjoys the presumption of regularity in the performance of official functions.[24]

Villa-Ignacio filed a Consolidated Motion for Reconsideration *Ex Abundanti Ad Cautelam* before the IAB.[25] In its Joint Order[26] dated June 4, 2010, the IAB denied Villa-Ignacio's Motion for Reconsideration for lack of merit.

Ruling of the Court of Appeals

On October 8, 2012, the CA rendered its Decision,[27] the dispositive portion of which states:

WHEREFORE, the petition is **GRANTED**. The Decision dated September 3, 2009, and the Joint Order, dated June 4, 2010, of the Internal Affairs Board of the Office of the Ombudsman are hereby annulled and set aside. In their stead, a new judgment is hereby entered dismissing the charges for Misconduct, Dishonesty, Abuse of Authority

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[23] *Id.* at 439.

[24] *Id.* at 440.

[25] *Id.* at 447-478.

[26] Signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Merceditas Navarro Gutierrez; *id.* at 489-497.

[27] Penned by Associate Justice Noel G. Tijam (Former Members of this Court), with the concurrence of Associate Justices Romeo F. Barza and Ramon A. Cruz; *id.* at 100-120.

& Conduct Prejudicial to the Best Interest of Service against Petitioner for utter lack of merit.

SO ORDERED.[28] (Emphasis in the original)

After a perusal of the records, the CA found that Villa-Ignacio presented substantial evidence to show that he acted with regularity and transparency in making the donation to the Gawad Kalinga.[29] The affidavits of the OSP employees corroborated Villa-Ignacio's claim that he made all his announcements during the flag ceremony and that he sought the consensus of the employees as to what to do with the proceeds of the charity drive. The CA held that Chua was never deprived of any information regarding her donation since the information was made public and available to all the employees. The CA noted that it took Chua more than three years to inquire about her donation. Her silence for more than three years was deemed an implied consent for which she cannot now deny knowing what happened to the donation.[30]

Aggrieved, Chua filed a Motion for Reconsideration.[31]

On November 28, 2014, the CA rendered its Amended Decision,[32] the dispositive portion of which reads:

WHEREFORE, the *Motion for Reconsideration* is **GRANTED**. The Petition for Certiorari is hereby **DISMISSED**.

SO ORDERED.[33] (Emphasis in the original)

The CA held that Chua did not only give the donation specifically for the purpose of purchasing water pumps, she neither consented to, nor was she informed of the diversion of

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

[29] *Id.* at 119.

[30] *Id.* at 117.

[31] *Id.* at 843-859.

[32] *Supra* note 2.

[33] *Rollo*, p. 91.

the donation to Gawad Kalinga Foundation.[34] The *Manifestation*[35] dated September 4, 2008 executed by 28 officials and employees of OSP stated that "it was only recently or about the time when Special Prosecutor Dennis M. Villa-Ignacio revealed to the press that Director Elvira Chua filed a complaint of [*sic*] estafa against him that we came to know that part of the amount we (Prosecutors) gave to the 2004 Christmas Party for the purchase of water pumps was diverted to Gawad Kalinga project of building shelter (houses)."[36] Contrary to Villa-Ignacio's assertion that Prosecutors John I.C. Turalba and Rabendrath Y. Uy volunteered to help in looking for contractors to build the deep wells, the CA noted that both Turalba and Uy categorically denied under oath having been asked by Villa-Ignacio to look for a contractor or having volunteered to look for one.[37]

In a Resolution[38] dated September 15, 2015, the CA denied Villa- Ignacio's Motion for Reconsideration. In denying outright Villa-Ignacio's Motion for Reconsideration, the CA noted that:

> x x x [P]etitioner's counsel's receipt of the Amended Decision was on December 5, 2014. He filed the instant motion only on January 5, 2015 or beyond the reglementary period set forth under the Rules of Court.
>
> x x x x x x x x x
>
> In this case, the 15-day period of Petitioner run upon his counsel's receipt of the Amended Decision on December 5, 2014, as evidenced by the Registry Return Card, and not from December 15, 2014 as barely claimed by counsel to be the date of receipt of the said Amended Decision. From December 5, 2014, Petitioner's counsel supposedly had until December 22, 2014 within which to file a motion for reconsideration but they delayed the filing until it was already January

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[34] *Id.* at 89.

[35] *Id.* at 323-325.

[36] *Id.* at 89, 323.

[37] *Id.* at 89.

[38] *Supra* note 3.

5, 2015 or beyond permissible time frame.[39] (Emphasis and citations omitted)

As the Amended Decision became final and executory, the CA directed the Division Clerk of Court to issue an Entry of Judgment.[40]

In the present petition, Villa-Ignacio raised the following procedural arguments: (1) the evidence on record clearly shows that he timely filed his Motion for Reconsideration on January 5, 2015, contrary to the ruling of the CA in its Resolution dated September 15, 2015;[41] and (2) the Decision dated October 8, 2012 of the CA absolving him of all the charges was already final, executory, and not appealable.[42]

Villa-Ignacio also maintained that: (1) the amount of ₱26,660.00 was not solely intended for the purchase of water pumps;[43] (2) the change in the purpose of the use of the monetary donations was made with the knowledge and consent of the employees, including Chua, and that the latter was never deprived of any information regarding her donation since the information was made public and available to all employees;[44] (3) Chua's silence for more than three years which amounted to implied consent to the use of the funds, is indicative of the contrived and fabricated nature of the complaint;[45] and (4) his actions cannot be considered as grounds for any disciplinary administrative action as these have been characterized with good faith, regularity and transparency.[46] Villa-Ignacio also questioned the IAB's alleged irregular and anomalous handling

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[39] *Rollo*, p. 96.

[40] *Id.* at 98.

[41] *Id.* at 29-36.

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

[43] *Id.* at 38-41.

[44] *Id.* at 41-50.

[45] *Id.* at 50-53.

[46] *Id.* at 53-60.

of the case which he claims violates his right to due process.[47] He argued that Orlando C. Casimiro should be disqualified from the proceedings in the IAB because he and Chua belong to the same unit — Office of the Ombudsman's Central Office. He insisted that the complaint of Chua was motivated by a vendetta against him.[48]

In Chua's Comment,[49] she alleged that: (1) the composition of the internal affairs board is legal;[50] (2) Villa-Ignacio was afforded his right to due process during the proceedings before the IAB;[51] (3) Villa-Ignacio personally received the amount of ₱26,660.00 from her;[52] (4) Villa-Ignacio is guilty of misconduct; and (5) there was injury caused to Chua when Villa-Ignacio, without the knowledge and consent of Chua, unilaterally gave the money intended for the purchase of water pumps for the typhoon victims to Gawad Kalinga Foundation.[53]

Issues

The issues to be resolved in this case are:

1. Whether the Amended Decision of the CA attained finality due to the alleged failure of Villa-Ignacio to timely file his Motion for Reconsideration;
2. Whether the 2012 Decision absolving Villa-Ignacio of the administrative charges against him was already final, executory and not appealable;
3. Whether Orlando Casimiro should have been disqualified from acting on the complaint of Chua pursuant to Section III(N) of Administrative Order No. 16 (A.O. 16); and
4. Whether Villa-Ignacio is guilty of simple misconduct.

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[47] *Id.* at 60-78.

[48] *Id.* at 70-75.

[49] *Id.* at 929-951.

[50] *Id.* at 937-938.

[51] *Id.* at 939-943.

[52] *Id.* at 943-946.

[53] *Id.* at 948-949.

Ruling of the Court

The Court grants the petition.

Villa-Ignacio timely filed his Motion for Reconsideration.

A careful scrutiny of the documents submitted by Villa-Ignacio and the averments in his petition reveal that he timely filed his Motion for Reconsideration. As correctly pointed out by Villa-Ignacio, he received the copy of the Amended Decision on December 15, 2014. This fact is substantiated by the Affidavit[54] of Avigale T. Aragon (Aragon), the receptionist of Villa Ignacio's counsel, Atty. Arno Sanidad (Atty. Sanidad). This is also supported by the envelope[55] Villa-Ignacio received showing that the Manila Central Post Office received the mail containing the copy of the Amended Decision on December 2, 2014 and the Quezon City Central Post Office received the same only on December 10, 2014 for delivery to Atty. Sanidad. Thus, on December 18, 2014, he filed his Compliance[56] manifesting his receipt of the Amended Decision on December 15, 2014.[57] Villa-Ignacio exerted effort in obtaining a Certification from the Quezon City Central Post Office as to the date when the Amended Decision was actually delivered to Atty. Sanidad.[58] However, the records of mail matters delivered from January 31, 2015 and earlier were reportedly consumed by fire.[59]

Contrary to the erroneous conclusion of the CA, it was physically impossible for the office of Atty. Sanidad to receive the Amended Decision on December 5, 2014. The envelope accompanying the Amended Decision contains the stamp marks of the Manila and Quezon City Post Offices showing that the

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[54] *Id.* at 121.

[55] *Id.* at 125.

[56] *Id.* at 126-127.

[57] *Id.* at 25.

[58] *Id.* at 128.

[59] *Id.* at 29.

Manila Central Post Office received the mail on December 2, 2014, transmitted it to, and received by the Quezon City Central Post Office only on December 10, 2014 for delivery to Atty. Sanidad's office.[60] Villa-Ignacio could not have received the Amended Decision and the postman could not have delivered the same earlier than the date when the Quezon City Central Post Office received it from the Manila Central Post Office.

It is highly probable that the date appearing on the Registry Return Card showing Villa-Ignacio's receipt of the Amended Decision on December 5, 2014 is merely a clerical error. Aragon explained in her Affidavit[61] that:

x x x x x x x x x

5. By inadvertence and to my best recollection, the date I stamped to all Registry Return Receipts on that particular day was "DEC 05 2014" instead of "DEC 15, 2014". It was merely because the number 1 of the dater was unnoticeably changed with 0 and without double checking I was able to give it back to the mailman on the following day when he delivered our mails.

6. Consequently, the Registry Return Receipt attached to the said Notice of Amended Decision from the Court of Appeals was also stamped with "DEC 05 2014" instead of "DEC 15, 2014."[62]

The explanation above sufficiently clarified the inadvertence committed by the office secretary. We find her explanation to be more consistent with the other stamps appearing on the envelope[63] of the Amended Decision that the office of Atty. Sanidad received and submitted for Our evaluation.

Now that it has been settled that Villa-Ignacio received the Amended Decision on December 15, 2014, a simple mathematical computation would show that the deadline for Villa-Ignacio to file his Motion for Reconsideration fell on December 30,

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[60] *Id.* at 30, 125.

[61] *Id.* at 121.

[62] *Id.*

[63] *Id.* at 125.

2014. However, there were various work interruptions from period of December 2014 to January 2015, which include:

December 30, 2014	Regular Holiday (pursuant to Proclamation No. 655, series of 2013)
December 31, 2014	Special Non-Working Day (pursuant to Proclamation No. 655, series of 2013)
January 1, 2015	Regular Holiday (pursuant to Proclamation No. 831 series of 2014)
January 2, 2015	Special Non-Working Holiday (pursuant to Proclamation No. 831, series of 2014)
January 3, 2015	Saturday
January 4, 2015	Sunday

Considering that December 30, 2014 is a holiday, the same was timely filed on the next working day, on January 5, 2015.

The Decision dated October 8, 2012 of the CA had not yet attained finality when Chua filed a Motion for Reconsideration.

Under Section 7, Rule III of Administrative Order No. 07, series of 1990 (A.O. 7), as amended, otherwise known as the Rules of Procedure of the Office of the Ombudsman, a decision of the Ombudsman absolving the respondent from an administrative charge, is final and not appealable.[64] The provision

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[64] Section 7, Rule III of Administrative Order No. 7, series of 1990 states:

Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

cited by Villa-Ignacio clearly pertains to a decision of the Ombudsman absolving a respondent and not a decision of the CA. Thus, Villa-Ignacio's insistence that the 2012 Decision of the CA is final is erroneous.

Casimiro should have been disqualified from acting on the complaint of Chua pursuant to Section III(N) of A.O. 16, series of 2003.

The pertinent portion of Section III(N) of A.O. 16 states:

N. Disqualifications

The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances:

1. He is a party to the complaint, either as a respondent or complainant;

2. **He belongs to the same component unit as any of the parties to the case;**

3. **He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired;**

4. He is pecuniarily interested in the case or is related to any of the parties within the sixth degree of affinity or consanguinity, or to counsel within the fourth degree, computed according to the provisions of civil law; or

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An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

5. He has, at one time or another, acted upon the matter subject of the complaint or proceeding. x x x[65] (Emphasis supplied)

The Court has already settled this issue in the related case of *Villa-Ignacio v. Ombudsman Gutierrez*,[66] where it was held that the above-cited provision "patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired."[67] Even if item numbers 2 and 3 of Section III(N) of A.O. 16, series of 2003 had been deleted in Administrative Order No. 21 (A.O. 21), series of 2009, Casimiro should have been disqualified to act on the complaint Chua filed on March 27, 2008. The Court explained in *Villa-Ignacio v. Ombudsman Gutierrez*,[68] that:

This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules. In our view, the supervening revision of A.O. 16 contravenes the avowed policy of the Office of the Ombudsman "to adopt and promulgate stringent rules that shall ensure fairness, impartiality, propriety and integrity in all its actions." x x x **Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law**.[69] (Emphasis supplied; italics in the original; citations omitted)

Villa-Ignacio is not guilty of any misconduct.

Misconduct refers to:

xxx [A] transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the *additional*

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[65] *Villa-Ignacio v. Ombudsman Gutierrez*, 806 Phil. 175 182 (2017).

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple.[70] (Citations omitted; italics in the original)

Applying the foregoing definition of misconduct, We find sufficient justification to reverse the ruling of the CA in its Amended Decision. Contrary to the ruling of the CA, Villa-Ignacio did not have ill motive or corrupt desire for personal gain in appropriating the donation for a different beneficiary. It is not sensible and reasonable to expect that Villa-Ignacio will ask each and every employee of the OSP whether they consent to the proposed turnover of the proceeds of the charity drive to Gawad Kalinga instead of devoting his time to fulfill his responsibilities as head of the OSP. As Special Prosecutor, it is recognized that he has to attend to various pressing matters that require his immediate attention.

Although there appears to be an acknowledgment receipt[71] specifying the intended recipient of Chua's donation, there is also a collective understanding during the flag ceremony that the entire proceeds of the donation drive will instead be donated to the Gawad Kalinga.[72] It must be pointed out that this consensus was obtained in the same manner which Villa-Ignacio initiated the collective discussion regarding the charity drive with the OSP employees. All discussions were made during the weekly flag ceremonies of the OSP.

We find the timing of the filing of the administrative case suspicious. If Chua really did not consent to the proposal to replace the beneficiary of her donation, she could have easily expressed her dissent and requested for the return of her share in the donation instead of filing an administrative case. It took her approximately three years to inquire about her donation.[73]

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[70] *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005).

[71] *Rollo*, p. 189.

[72] *Id.* at 231-232.

[73] *Id.* at 90.

Villa-Ignacio had been transparent about the handling of the proceeds of the donation drive. Thus, there is no hint of corruption nor willful intent to violate the law or to disregard established rules in the conduct of Villa-Ignacio to hold him accountable for Misconduct, Dishonesty, Abuse of Authority, and Conduct Prejudicial to the Best Interest of Service.

Moreover, We recognize the Court's earlier ruling in the related case of *Villa-Ignacio v. Ombudsman Gutierrez*[74] founded on the same set of facts where the Information for *estafa* under Article 315(1)(b) of the Revised Penal Code filed against Villa-Ignacio before the Sandiganbayan was dismissed.[75] In dismissing the Information for *estafa* filed in the Sandiganbayan over the same act subject of this administrative case, We explained:

> According to Section 4, Rule II of A.O. 7 entitled "Rules of Procedure of the Office of the Ombudsman," supporting witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation. Affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths.
>
> Here, the IAB concluded that a "majority of the OSP officers and employees disclaimed that they had knowledge of and consented to the turning-over of their donations to Gawad Kalinga Foundation." As its basis, public respondent relied upon the Manifestation dated 4 September 2008 signed by 28 officials and employees of the OSP.
>
> **That Manifestation, which purports to be the voice of the majority belying the donation to Gawad Kalinga, does not qualify as an affidavit as it was not sworn to by the declarants before an officer authorized to administer oaths**. Therefore, based on A.O. 7, public respondents should not have considered an unverified and unidentified private document as evidence in its proceeding against petitioner. (Citations omitted; emphasis supplied)

Due to this supervening ruling, We cannot give credence to the Manifestation[76] dated September 4, 2008 that the CA relied

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[74] *Supra* note 65 at 182.

[75] *Id.* at 187.

[76] *Rollo*, pp. 323-325.

upon in revisiting its original Decision[77] and in finding Villa-Ignacio guilty of simple misconduct.[78]

In addition, the procedure in administrative cases stated in Section 3 of Rule III of A.O. 7[79] similarly requires that:

> Section 3. How initiated. — An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. **Such complaint shall be accompanied by a Certificate of Non Forum Shopping duly subscribed and sworn to by the complainant or his counsel.** An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance. (Emphasis in the original)

Without an affidavit duly sworn to by the declarants before an officer authorized to administer oaths to support the complaint in the administrative case, the Manifestation[80] cannot be considered to have met the parameters set in A.O. 7 to initiate an administrative case before the IAB. Thus, there is sufficient justification in not giving credence to the same document in the present administrative complaint against Villa-Ignacio.

WHEREFORE, premises considered, the petition is **GRANTED**. The Amended Decision dated November 28, 2014 and the Resolution dated September 15, 2015 of the Court of Appeals in CA-G.R. SP No. 114702 are hereby **REVERSED** and **SET ASIDE**. The administrative complaint against petitioner Dennis M. Villa-Ignacio is **DISMISSED**.

SO ORDERED.

Leonen (*Chairperson*), *Inting,*[*] *Zalameda,* and *Gaerlan, JJ.*, concur.

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[77] *Supra* note 27.

[78] *Supra* note 32.

[79] Otherwise known as the Rules of Procedure of the Office of the Ombudsman.

[80] *Rollo*, pp. 323-325.

[*] Designated as additional Member per Raffle dated July 8, 2020.

SECOND DIVISION

[G.R. No. 226650. July 8, 2020]

LAND BANK OF THE PHILIPPINES, *petitioner*, *vs.* **HEIRS OF RENE DIVINAGRACIA, substituted by his heirs, namely: TRANQUILINO RENE, EMORY JUDSON IGNACIO, FELECIANO and GINA, all surnamed DIVINAGRACIA, all represented by TRANQUILINO RENE DIVINAGRACIA and SOFIA DIVINAGRACIA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; LAW OF THE CASE IS THE OPINION DELIVERED ON A FORMER APPEAL; ELUCIDATED.— Law of the case is defined as the *opinion delivered on a former appeal*. It means that whatever is once irrevocably established, the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Nevertheless, the law of the case does not have the finality of *res judicata* as it applies only to the same case; whereas *res judicata* forecloses parties or privies in one case by what has been done in another case. In the principle of the law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case.

2. ID.; ID.; PRINCIPLE OF THE LAW OF THE CASE; RATIONALITY.— In *Sps. Sy v. Young*, the principle of the law of the case was rationalized, thus: The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case.

APPEARANCES OF COUNSEL

LBP Legal Services Group for respondent LBP.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] filed by Land Bank of the Philippines (Land Bank) pursuant to Rule 45 of the Rules of Court assailing the Decision[2] dated July 14, 2015 and the Resolution[3] dated August 1, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 02495 that denied Land Bank's Motion for Reconsideration.[4]

The Antecedents

Spouses Rene Divinagracia and Sofia Castro (Spouses Divinagracia) are registered owners of an 8.8 hectares of agricultural land covered by the Operation Land Transfer under Presidential Decree No. (PD) 27. Land Bank approved the land transfer claim for compensation of Spouses Divinagracia in the amount of ₱133,200.00, with the land valued at ₱15,000.00 per hectare.[5]

The land transfer claim of Spouses Divinagracia was for the purpose of settling their loan obligation with the Philippine National Bank (PNB), Iloilo Branch in the total amount of ₱134,666.69 whereby a mortgage was constituted upon the herein

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[1] *Rollo*, pp. 14-48.

[2] *Id.* at 55-83; penned by Associate Justice Jhosep Y. Lopez with Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi, concurring.

[3] *Id.* at 115-118.

[4] *Id.* at 87-112.

[5] *Id.* at 56.

subject property.[6] However, because there was a disagreement as to the payment order issued by Land Bank in favor of PNB and the delay in its issuance, Spouses Divinagracia wrote a letter-request to Land Bank for a stop payment order and the withdrawal of their land from the coverage of Operation Land Transfer.[7]

The District Officer of the Ministry of Agrarian Reform, Othelo C. Clement, denied the request which prompted Spouses Divinagracia to file a Complaint[8] dated July 19, 1985 before the Regional Trial Court (RTC) for the nullification of the agreement of purchase against Land Bank, and the withdrawal of their property from the coverage of Operation Land Transfer.

Land Bank initially filed a Motion to Dismiss[9] on the ground of lack of jurisdiction asserting that the allegations and reliefs prayed for in the complaint are under the coverage of Operation Land Transfer of the subject land, its compensation, and proceeds. It therefore argued that jurisdiction belongs to the Department of Agrarian Reform pursuant to PD 946 and Executive Order No. 229.[10] However, the RTC denied the motion.[11]

Thus, in response to the complaint, Land Bank countered that the delay was attributable to herein Spouses Divinagracia for their submission of insufficient/wrong documents; they were duly informed that the actual payment shall be made in three releases, each subject to the submission and accomplishment of the requirements. It further contended that Spouses Divinagracia voluntarily opted to be compensated for their land transfer claim through Land Bank's financing which required compliance with their financing requirements.

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[6] *Id.* at 58.

[7] *Id.* at 59.

[8] *Id.* at 209-213.

[9] *Id.* at 152-160.

[10] *Id.* at 157-158.

[11] See Decision dated August 1, 2000 of Branch 29, Regional Trial Court, Iloilo City and penned by Judge Rene B. Honrado, *id.* at 129-151.

Ruling of the RTC

On August 1, 2000, Branch 29, RTC, Iloilo City rendered a Decision[12] in Civil Case No. 16620. The dispositive portion of which is cited herein, to wit:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering the nullification of the two (2) Deeds of Assignment, Warranties and Undertaking and the Landowners-Tenant Production Agreement and Farmers Undertaking (LTPA-FU) covering the 8.8 hectares of land owned by the plaintiffs covered by TCT No. T-22759 and TCT No. T-22761 and withdrawing the same from the coverage of Operation Land Transfer;
>
> 2. Ordering the defendant Land Bank of the Philippines to return to plaintiffs all amortization payments paid by the farmer/beneficiaries with interest of 6% per annum from the amount of ₱699,326.36 as actual damages plus interest of 6% per annum from the date of finality of this decision until fully paid.
>
> 3. Ordering the defendant Land Bank of Philippines to pay plaintiffs, as actual damages, the amount of the total obligation of plaintiffs with PNB less Php134,666.69; ₱100,000.00 as moral damages; ₱50,000.00 as exemplary damages and ₱50,000.00 as Attorneys fees and litigation expenses.
>
> SO ORDERED.[13]

The RTC ruled that the arrangement between Land Bank and Spouses Divinagracia partook of the nature of an agreement of purchase and sale. Further, it held that the delay in the payment of the compensation claim was caused by Land Bank's unreasonable imposition of additional requirements when it was clear that time was of the essence considering that the Spouses Divinagracia needed the amount to settle their loan with PNB. Thus, it awarded actual damages in favor of Spouses Divinagracia representing the interest and penalties which increased the amount of the latter's loan with PNB.

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[12] *Id.* at 129-151; penned by Judge Rene B. Honrado.

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

In an Order dated March 30, 2005, the RTC denied Land Bank's Motion for Reconsideration. Upon the death of Rene Divinagracia, his heirs namely: Tranquilino Rene, Emory Judson Ignacio, Feleciano and Gina, all surnamed Divinagracia (respondents), filed a Motion for Substitution.[14]

Ruling of the CA

On appeal, the CA ruled as follows:

> WHEREFORE, the appeal is hereby GRANTED. The assailed Decision of the Regional Trial Court, Branch 29, Iloilo City August 1, 2000 in Civil Case No. 16620 is hereby REVERSED and SET ASIDE. This Court DECLARES:
>
> 1. That the Complaint for the Annulment of the Agreement of Purchase and Sale and the Withdrawal of the land from the Operation Land Transfer with Damages is hereby DISMISSED;
> 2. The defendant-appellant is, however, ORDERED to pay the amount of indebtedness of plaintiffs-appellees in the amount of ₱133,200.00 that was not paid to PNB and interests that may be imposed thereon;
> 3. That, on the other hand, the balance of ₱1,466.69 and interests thereon remains the sole responsibility of the plaintiffs-appellees.
>
> SO ORDERED.[15]

Contrary to the findings of the RTC the CA ratiocinated that the agreement was not simply for purchase and sale, but an exercise of the state's power of eminent domain thereby making the release of the land from the coverage of the agrarian reform program improper. Nevertheless, it was one with the RTC in declaring that Land Bank's requirement for additional documents from Spouses Divinagracia was unreasonable and violative of the latter's right to just compensation which necessitated payment within a reasonable time from taking. Thus, it ordered Land Bank to pay PNB the amount of

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[14] *Id.* at 66.

[15] *Id.* at 82.

₱133,200.00 with interests as may be imposed thereon which corresponded to the Spouses Divinagracia's loan obligation to PNB; while the remaining balance of ₱1,466.69 shall be for the sole account of herein respondents.

Aggrieved by the CA's Decision, Land Bank elevated this case to the Court *via* a Petition for Review on *Certiorari* citing as errors the following acts allegedly committed by the CA:

A. WHETHER THE COURT OF APPEALS HAS ACQUIRED APPELLATE JURISDICTION TO MAKE ITS OWN DETERMINATION OF THE CASE[.]

B. WHETHER THE COURT OF APPEALS HAS CORRECTLY APPLIED THE LAW AND JURISPRUDENCE IN ITS DECISION[.][16]

The lone and primordial issue raised by Land Bank for the Court's adjudication is the jurisdiction of the RTC over the complaint for withdrawal of respondents' land from the coverage of the Operation Land Transfer. Land Bank argues that it is not the trial court, but the Department of Agrarian Reform that has jurisdiction in the implementation of PD 27, and all agrarian reform matters, more particularly as in this case — the recall or cancellation of land ownership award and exclusion from the coverage of PD 27.

Our Ruling

The petition must fail.

The Court reiterates the findings of the CA that jurisdiction over the complaint for exclusion from the coverage of Operation Land Transfer of the subject property of Spouses Divinagracia belongs to the RTC. The sole question of whether the RTC has jurisdiction in the present action has already been passed upon and resolved by the CA; thus, barred by the principle of the law of the case.

Law of the case is defined as *the opinion delivered on a former appeal*.[17] It means that whatever is once irrevocably

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[16] *Id.* at 36.

[17] *Radio Communications of the Phils., Inc. v. CA*, 522 Phil. 267, 273 (2006), citing *Padillo v. Court of Appeals*, 422 Phil. 334, 351 (2001).

established, the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[18] Nevertheless, the law of the case does not have the finality of *res judicata* as it applies only to the same case; whereas *res judicata* forecloses parties of privies in one case by what has been done in another case.[19] In the principle of the law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case.[20]

In *Sps. Sy v. Young*,[21] the principle of the law of the case was rationalized, thus:

> The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case.[22]

Veritably, the Court should not depart from the earlier ruling of the CA which upheld the RTC's jurisdiction over the case. As meticulously discussed in the RTC's Decision, the issue on jurisdiction had already been settled to wit:

> The issue of whether the instant case falls within the jurisdiction of the court or of the Ministry (now Department) of Agrarian Reform was the subject of a Petition for *Certiorari* and Prohibition with Preliminary Injunction or Restraining Order filed by Defendant with

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[18] *Id.*

[19] *Sps. Sy v. Young*, 711 Phil. 444, 450 (2013).

[20] *Id.*

[21] 711 Phil. 444 (2013).

[22] *Id.* at 450, citing *Zarate v. Director of Lands*, 39 Phil. 747, 749-750 (1919).

the Court of Appeals which denied it in a decision promulgated on November 29, 1991. This decision became final on December 25, 1992 per Entry of Judgment dated May 13, 1992. This decision, therefore, is the Law of the case which renders this issue moot and academic.[23]

Indeed, as correctly observed by the RTC, the CA's disposition that jurisdiction over the subject matter herein belonged to the RTC is now the law of the case which should not be disturbed and litigated once more through the instant petition.

With respect to Land Bank's claim that it should not be held liable to pay the indebtedness of Spouses Divinagracia to PNB because of the dismissal by the CA of the complaint, it should be noted that what was dismissed was the complaint for annulment of the compulsory purchase agreement for the transfer of the subject property to the tenant-farmers and the withdrawal of the land from the coverage of the Operation Land Transfer. Accordingly, the CA upheld the purchase agreements between Spouses Divinagracia and Land Bank which included the concomitant obligation of the latter to directly pay the proceeds of the land transfer claim of Spouses Divinagracia to PNB as earlier agreed upon. Land Bank should be reminded that it rejected the request of Spouses Divinagracia to stop the release of the payment order which the bank itself issued in favor of PNB; while it simultaneously continued to receive amortization payments from the farmer-beneficiaries of the land owned by Spouses Divinagracia. Thus, Land Bank must comply with its obligation to Spouses Divinagracia whose property was subjected under the coverage of the Operation Land Transfer.

WHEREFORE, the petition is **DENIED**. The Decision dated July 14, 2015 and the Resolution dated August 1, 2016 of the Court of Appeals in CA-G.R. CV No. 02495 are **AFFIRMED**.

SO ORDERED.

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

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[23] *Rollo,* p. 146.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

THIRD DIVISION

[G.R. No. 227866. July 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **TAHIR TAMANO *y* TOGUSO,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; RAPE THROUGH SEXUAL INTERCOURSE; ELEMENTS.— Article 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, defines the crime of rape x x x. Essentially, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt: **(i) that the accused had carnal knowledge of the victim;** and (ii) that said act was accomplished (a) **through the use of force or intimidation,** or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.

2. ID.; RAPE; FORCE; DEPENDS ON THE AGE, SIZE AND STRENGTH OF THE PARTIES, AND IT IS ESSENTIAL THAT THE FORCE EMPLOYED IS SUFFICIENT TO ENABLE THE OFFENDER TO CONSUMMATE HIS LEWD PURPOSE.— It is a well-entrenched principle that "the force used in the commission of rape need not be overpowering or absolutely irresistible." Certainly, "tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary." After all, resistance is not an element of rape. Accordingly, a rape victim is not obliged to prove that she did all within her power to resist the force employed against her. As contemplated by the law, force in the commission of rape depends on the age, size and strength of the parties. It is likewise assessed from the perception and judgment of the vulnerable victim. What remains essential is that the force employed was sufficient to enable the offender to consummate his lewd purpose. x x x There is no question that Tamano easily consummated his bestial desire by subduing AAA. AAA testified that she struggled to repel Tamano's

advances but was too weak to ward him off. She fought and pushed him, but felt defenseless and weak against his strong body. Worse, from the very moment Tamano met AAA, he employed a dastardly scheme to lure her and weaken her.

3. **ID.; ID.; A CONVICTION IN RAPE CASES MOST OFTEN RESTS SOLELY ON THE BASIS OF THE OFFENDED PARTY'S TESTIMONY, IF CREDIBLE, NATURAL, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.—** [D]ue to the peculiar nature of rape cases, a conviction thereon most often rests solely on the basis of the offended party's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things. Similarly, the Court explained in *People v. Pareja* that the assessment of the witness' credibility is best left to the trial court judge in view [of] his/her unique opportunity to observe the witness' deportment and demeanor on the stand. This vantage point is not available to the appellate courts. Thus, the findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon this Court. In the case at bar, the trial court observed that AAA's testimony was credible and convincing. Her demeanor throughout her court examination showed that she was telling the truth. She remained steadfast in her accusation and did not waver as she recounted the harrowing ordeal she suffered. Moreover, [t]he RTC noted that she was crying during her direct examination.

4. **ID.; ID.; THE FAILURE OF THE VICTIM TO RUN, SHOUT OR SEEK HELP DOES NOT NEGATE RAPE.—** Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge, it is not correct to expect a typical reaction or norm of behavior from rape victims. The workings of the human mind when placed under emotional stress are unpredictable. Victims may not be expected to act with reason or conformably with the usual expectation of mankind. Thus, the failure of the victim to run, shout or seek help does not negate rape. Certainly, it is unfair to demand a rational reaction from AAA, or fault her for failing to ask for help or expect her to escape. Tamano's accusation that AAA acted as if nothing happened is absolutely baseless. The records show that Tamano

devised ways to keep AAA by his side. x x x In the same vein, AAA may not be blamed for going with Tamano to Festival Mall after the rape incident. It must be remembered that prior to the incident, she was groggy and unaware of her surroundings. All that she vaguely remembered was being dragged to a dark and nasty alley, followed by finding herself inside a room with Tamano. Weak, unaware and trapped in an unfamiliar situation, she cannot be expected to devise a rational plan to flee.

5. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; TESTIMONIAL EVIDENCE; HEARSAY RULE; *RES GESTAE*; REQUISITES; THERE MUST BE NO INTERVENING CIRCUMSTANCE BETWEEN THE *RES GESTAE* OCCURRENCE AND THE TIME THE STATEMENT WAS UTTERED THAT COULD HAVE ALLOWED THE DECLARANT AN OPPORTUNITY TO DELIBERATE AND REFLECT.— Significantly, one of the most basic rules on the admissibility of evidence states that "[a] witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own perception." Accordingly, anything that is not based on a witness' own personal knowledge shall be barred as hearsay. However, an exception to the hearsay rule is a declaration that forms part of the *res gestae* x x x. Albeit reworded under the New Rules on Evidence, the essence of the *res gestae* rule remains unchanged. Notably, in *People v. Estibal*, the concept of *res gestae* was explained x x x. In *Manulat v. People*, the Court, citing the case of *People v. Salafranca*, mentioned two requisites for applying the *res gestae* rule: "(i) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (ii) the said evidence clearly negatives any premeditation or purpose to manufacture testimony." Similarly, in *People v. Jorolan*, the Court stressed that there must be no intervening circumstance between the *res gestae* occurrence and the time the statement was uttered that could have allowed the declarant an opportunity to deliberate and reflect x x x. Likewise, the Court enumerated the factors that may aid in determining whether the utterances were in fact "spontaneous": There is no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, (1) **the time**

> **that has lapsed between the occurrence of the act or transaction and the making of the statement,** (2) the place where the statement is made, (3) the condition of the declarant when the utterance is given, (4) **the presence or absence of intervening events between the occurrence and the statement relative thereto,** and (5) the nature and the circumstances of the statement itself. In addition, in the cases where the Court applied the *res gestae* rule, such as in *People v. Lupac*, *People v. Fallones*, and *People v. Maniquez*, the Court consistently noted the absence of any appreciable length of time between the startling occurrence and the utterance. Unfortunately, this essential requisite does not obtain in the case at bar. x x x [W]hat militates against admitting AAA's statements as *res gestae* utterances is the fact that an appreciable length of time intervened between the startling occurrence, which was the rape incident, and the utterance that Tamano raped AAA. Moreover, in addition to the statement having been made after an appreciable lapse of time, it was also uttered in a place far from the *locus criminis*. x x x It is all too apparent that a sufficient lapse of time and numerous intervening events transpired between the startling event (rape) and the utterance. These interferences eliminated the spontaneity that is characteristic of a *res gestae* statement.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for defendant-appellant.

D E C I S I O N

GAERLAN, *J.*:

This resolves the appeal filed by accused-appellant Tahir Toguso Tamano (Tamano) seeking the reversal of the February 5, 2016 Decision[1] promulgated by the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06792, convicting him of two counts of rape.

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Noel G. Tijam (now a retired Member of this Court), with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

The Antecedents

On July 15, 2009, Tamano was charged with two counts of rape committed as follows:[2]

CRIMINAL CASE No. 09-431

That on or about the 13th day of July 2009 in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, thru force did then and there willfully, unlawfully and feloniously have carnal knowledge with "AAA" after giving her a potion as a result of which she felt dizzy and weak thereby depriving her of reason and will to resist the sexual assault of the accused.

Contrary to law.

CRIMINAL CASE No. 09-432

That on or about the 13th day of July 2009 in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, thru force did then and there willfully, unlawfully and feloniously have carnal knowledge with "AAA" after giving her a potion as a result of which she felt dizzy and weak thereby depriving her of reason and will to resist the sexual assault of the accused.

Contrary to law.[3]

On September 3, 2009, Tamano pleaded not guilty to the charge. After the completion of the pre-trial conference on October 8, 2009, trial on the merits ensued.

Version of the Prosecution

In the evening of July 12, 2009, AAA went to Metropolis Mall in Muntinlupa City to purchase a liquid crystal display (LCD) for her PlayStation Portable (PlayStation). While roaming the stalls at Metropolis, a man approached her and asked if she wanted to sell her PlayStation. AAA declined the offer, but the man took her PlayStation and placed it inside the glass cabinet in his stall. Vexed, AAA told the man that she had no intention of selling her PlayStation, and tried to get it back.

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[2] CA *rollo*, pp. 45-46.

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

She noticed that the man was signaling a male person from another stall, who turned out to be accused-appellant Tamano.[4]

Tamano stood up, and took AAA's PlayStation from the glass cabinet and asked if he could purchase it. AAA refused. Despite AAA's protestations, Tamano put the PlayStation back inside the glass cabinet.[5]

Then, Tamano took AAA's Motorola cellphone and asked her if she wanted to sell it. He asked for her name and invited her to go out with him. He said that he would return her PlayStation only if she agreed to go out with him.[6]

AAA angrily ran away and boarded a jeepney home. However, she realized that she left her cellphone with Tamano.[7]

Seeking to recover her Motorola cellphone, AAA returned to Metropolis Mall at 5 o'clock in the afternoon of July 13, 2009. She looked for Tamano, but was informed that he was not there.[8] After waiting for quite sometime, AAA asked for Tamano's number from the men at the stalls. She called the number, but there was no answer. She sent a text message to ask where he was. However, she did not receive a reply. She decided to leave.[9]

When she was about to go home, her phone suddenly rang. When she answered the call, she realized it was Tamano.[10] He told her to be quiet, and not to let the others know that he called her. He instructed her to meet him at Jollibee in Metropolis Mall, and promised to return her Motorola cellphone.[11]

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[4] *Id.* at 3-4.

[5] *Id.* at 4.

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

AAA obliged. While at the second floor of the mall, Tamano suddenly grabbed her hand. He told her that he had been waiting for her and had been following her. He pulled her inside Jollibee. She followed him to avoid creating a scene. They sat on the farthest table with only a few people. All the while, she kept asking for her cellphone back.[12]

Then, a waiter appeared and served two sets of meals with a serving of Coke. Since AAA was parched, she drank the Coke. Immediately thereafter, she felt groggy and weak. Her head ached and she felt dizzy. Her vision likewise turned blurry, and she could not think straight. Tamano grabbed her arm and ordered her to come with him. She struggled but could not resist him.[13]

All of a sudden, AAA found herself in a very dark and nasty-looking narrow alley.[14] Soon thereafter, she noticed that they were in a place marked with numbers. Then, she was taken to a room where she saw towels, a mirror, a bed and an air conditioning unit.[15]

Tamano pulled AAA and threw her on the bed. He removed her clothes and groped her whole body. She fought back by trying to punch him but failed because he was too strong. Tamano pinned down her lower extremity, inserted his penis inside her vagina, and made a pumping motion. She felt extreme pain and pleaded for him to stop. Then, she felt a rush of something hot inside her while Tamano continued moaning. She was crying the entire time.[16]

Afterwards, Tamano carried AAA to the floor and continued to touch and kiss her. He bit her breasts and vagina and inserted his fingers inside her organ. He made her kneel in front of him

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[12] *Id.* at 5.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 5-6.

in a crouching position then inserted his penis from behind and made a pumping motion. Again, AAA felt something hot inside of her.[17]

Subsequently, Tamano dragged AAA inside the comfort room and made her sit on the toilet. He then washed his penis and her vagina and ordered her to perform oral sex on him. AAA looked away and shut her mouth tight. He rubbed his penis all over her face, while she kept pulling away. Then, Tamano cleaned himself up.[18]

Still in a state of shock, AAA crawled outside of the comfort room, grabbed her clothes and dressed up. Tamano forced her outside of the room while carrying her things. Then, they boarded a jeepney and went to Festival Mall. Tamano brought AAA to the fourth floor of the mall, purchased a beverage and ordered her to drink it. She refused and told Tamano that she wanted to go home. Tamano promised to bring her home to a certain "Wawa," and told her that he would give her everything she desires.[19]

Fearful that he would not let her out of his grasp, AAA created an excuse to leave by asking to go to the comfort room. Tamano initially refused but eventually acceded under the condition that AAA would leave her things with him.[20]

While at the ladies' comfort room, AAA asked for help from the janitress saying that someone was after her. Then, she suddenly fainted. When she regained consciousness, several persons, including Tamano, were surrounding her. She struggled to escape from Tamano's grasp and ran outside of the comfort room. However, she fainted again. When she awoke, she reported to the security guard that Tamano raped her.[21]

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[17] *Id.* at 6.

[18] *Id.*

[19] *Id.*

[20] *Id.*

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

AAA was taken to the Ospital ng Muntinlupa, where she was treated. She was crying hysterically. She reported the incident as soon as her parents arrived.[22]

Version of the Defense

Tamano vehemently denied the charges leveled against him. He related that he met AAA at Metropolis Mall on July 11, 2009. She offered to sell her friend's PlayStation for ₱5,000.00. However, Tamano made a counter-offer of ₱1,500.00. She told him that she would have to confer with her friend.[23]

The next day, while Tamano was passing by Jollibee at Metropolis Mall, someone tapped him from behind. Turning, he saw AAA. She introduced herself as the one who offered to sell the PlayStation, and invited him for a meal. He acquiesced.[24]

Thereafter, AAA told Tamano to accompany her at her friend's house to get the PlayStation. He agreed since he pitied AAA who needed money. However, instead of going to her friend's house, they went to a motel in front of Metropolis. AAA signed a document at the cashier and borrowed five hundred pesos from Tamano. She then pulled his arm and invited him inside a room. She went to the toilet and came out clad in a towel. She unbuttoned his pants, and when he refused her advances, she cried and threatened to shout. He had no choice but to have sexual intercourse with her.[25]

After their copulation, they went to Festival Mall to meet AAA's friend. He told AAA that he wanted to go home as he was already tired. AAA asked him to wait for her as she needed to go to the comfort room. After a few minutes, Tamano noticed a commotion at the ladies' comfort room. He peeped and saw AAA unconscious near the faucet and held by a janitress. He rushed to AAA and wiped her face with a wet handkerchief.

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[22] *Id.* at 7.

[23] *Id.* at 8.

[24] *Id.* at 53.

[25] *Id.*

She temporarily regained consciousness, but did not recognize him.[26]

Then, she passed out again. Tamano asked for assistance from the security guards. They rushed AAA to the Ospital ng Muntinlupa. To his surprise, once AAA regained consciousness, she started screaming, asking that Tamano be driven away because he was running after her. He was asked to step out. Then, AAA's mother arrived and slapped him and shouted at him. Thereafter, he was invited to the police station.[27]

Ruling of the Regional Trial Court

On December 1, 2013, the Regional Trial Court (RTC) rendered a Decision[28] convicting Tamano of two counts of rape.

The RTC opined that AAA credibly and tearfully narrated the ordeal she suffered in the hands of Tamano. Her demeanor in court showed that she was telling the truth.[29] According to the RTC, Tamano was "a predator, [who] tricked and trapped her in his web to satisfy his sexual desires."[30] He laced AAA's drink with "some chemical" that rendered her weak and dizzy. Tamano took advantage of AAA's weakened state, and brought her to a motel. He succeeded in having carnal knowledge of her, amidst AAA's struggles.[31]

The RTC further noted that the circumstances following the rape incident support AAA's claim that she was defiled by Tamano. She tried to get away from him by escaping to the comfort room. Although she momentarily lost consciousness, she immediately sought help as soon as she was lucid. Also, she told the security guard that she was raped by Tamano. The

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[26] *Id.*

[27] CA *rollo*, pp. 53-54.

[28] *Id.* at 47-57, signed by Judge Patria A. Manalastas-De Leon.

[29] *Id.* at 55.

[30] *Id.*

[31] *Id.*

same thing happened at the hospital where upon regaining consciousness, she cried hysterically, asking that Tamano be removed from the premises because he raped her. The RTC held that AAA's statements upon regaining consciousness form part of the *res gestae*.[32]

The dispositive portion of the RTC ruling reads:

WHEREFORE:

1. In Criminal Case No. 09-431, the Court finds the accused, Tahir Tamano y Toguso, GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A, paragraph 1 (a) of the Revised Penal Code and hereby imposes upon him the penalty of *reclusion perpetua*. He is also ordered to pay the victim, [AAA] ₱30,000.00 as moral damages.

2. In Criminal Case No. 09-432, the Court finds the accused, Tahir Tamano y Toguso, GUILTY beyond reasonable doubt of the crime of Rape under Art. 266-A, paragraph 1 (a) of the Revised Penal Code and hereby imposes upon him the penalty of *reclusion perpetua*. He is also ordered to pay the victim, [AAA] ₱30,000.00 as moral damages.

In the service of his sentence, the accused shall be credited with the period of his preventive imprisonment.

SO ORDERED.[33]

Aggrieved, Tamano filed an appeal with the CA.

Ruling of the Court of Appeals

On February 5, 2016, the CA rendered the assailed Decision,[34] affirming the conviction meted by the RTC with modification on the amount of damages awarded.

The CA agreed with the RTC's assessment of AAA's credibility. The CA declared that AAA's acts after the rape do not render her claim dubious. It applied the jurisprudential tenet that there is no standard behavior and response expected from

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

[33] *Id.* at 57.

[34] *Rollo*, pp. 2-14.

rape victims. According to the CA, what matters is that AAA consistently pointed to Tamano as the person who defiled her.[35]

Similarly, the CA found that AAA's statements to the janitress, the security guard and to her mother at the hospital, after she regained consciousness may be admitted in evidence as part of the *res gestae*. She was in shock when she pointed to Tamano as her defiler.[36]

The dispositive portion of the assailed CA ruling states:

> WHEREFORE, premises considered, the instant Appeal is hereby DENIED. The assailed Decision of the Regional Trial Court (RTC), Branch 206, Muntinlupa City, dated December 1, 2013 in Criminal Case Nos. 09-431 and 09-432 holding Accused-Appellant guilty of two (2) counts of Rape under Art. 266-A, are hereby AFFIRMED with MODIFICATIONS in that: 1) the moral damages is increased to ₱50,000.00; and 2) civil indemnity of ₱50,000.00, are awarded to the victim. These awards shall be for each count of rape committed against the victim.
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> The award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.
>
> SO ORDERED.[37]

Undeterred, Tamano filed a Notice of Appeal.[38]

The Issue

The essential issue for the Court's resolution is whether or not Tamano is guilty beyond reasonable doubt for two counts of simple rape.

Tamano manifested that he will replead his former arguments in his Appellant's Brief[39] and dispense with the filing of a

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[35] *Id.* at 12.

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

[37] *Id.* at 14.

[38] *Id.* at 15.

[39] CA *rollo*, pp. 27-42.

Supplemental Brief. Tamano raised the lone error that the trial court erred in regarding AAA's declarations as part of the *res gestae*, and accordingly, his guilt was not proven beyond reasonable doubt.[40] He urges that to be admitted as part of the *res gestae*, the statement must be made under the influence of a startling event witnessed by the person, immediately before he/she had time to think and make up a story or concoct a falsehood.[41] AAA's statement that he raped her was not delivered spontaneously.[42] He claimed that she merely feigned fainting so she could act hysterical upon waking up and point to him as someone she escaped from.[43]

Likewise, Tamano criticizes AAA's conduct before and after the purported rape incident. Before the rape, AAA returned alone to Metropolis Mall despite her claim that she felt fearful while being pestered by Tamano and his acquaintance. She never reported the men's conduct to the mall authorities. She even allegedly agreed to meet Tamano at Jollibee.[44] Moreover, after she was purportedly raped, she still agreed to go with him to Festival Mall and even drank iced tea with him. He also attacks AAA's failure to escape despite the numerous opportunities to do so.[45]

Finally, Tamano urges that his acts prove his innocence. He asserts that had he truly raped AAA, he would have abandoned her at the motel after having sexual intercourse with her, or leave her at Festival Mall. Instead, he stayed with her until she was brought to the hospital and even went back after he was taken to the precinct where he was interviewed by the police authorities.[46]

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[40] *Id.* at 27.

[41] *Id.* at 39.

[42] *Id.* at 41.

[43] *Id.* at 39.

[44] *Id.* at 38.

[45] *Id.*

[46] *Id.* at 41.

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that AAA's testimony was credible. Her testimony was straightforward and consistent.[47] There was no indication that the trial court fell short in scrutinizing the testimonies of all witnesses.[48]

The OSG further urges that AAA's testimony should be taken together with the corroborating statements of all the prosecution witnesses.[49] The security guard Angelo Pingoy responded to the emergency and related that he saw AAA sitting on a wheelchair feeling dizzy. He noticed that every time Tamano came near AAA, she suddenly became hysterical.[50] Also, the Medico-Legal Officer affirmed the presence of spermatozoa on AAA's vagina, which further bolsters the charge of rape.[51]

Ruling of the Court

The appeal is dismissed for lack of merit.

The Prosecution Established Beyond Reasonable Doubt that Tamano is Guilty of Two Counts of Simple Rape

Article 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,[52] defines the crime of rape as follows:

Art. 266-A. Rape, When and How Committed. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

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[47] *Id.* at 75.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] THE ANTI-RAPE LAW OF 1997.

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

Essentially, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt: **(i) that the accused had carnal knowledge of the victim;** and (ii) that said act was accomplished (a) **through the use of force or intimidation**, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.[53]

It bears stressing that Tamano admitted to having sexual intercourse with AAA. Hence, the only question to be resolved is whether the sexual intercourse was consensual or was consummated through force or intimidation.

On this score, the prosecution sufficiently established beyond reasonable doubt that Tamano had carnal knowledge of AAA through force and intimidation twice on July 13, 2009. He succeeded in his brutish objective, in the first instance through force by pushing and pinning down AAA's lower extremity and then inserting his penis inside her vagina despite her persistent struggles; and in the second instance, by forcibly carrying her to the floor and forcing her to assume a crouching position, then inserting his penis inside her vagina, still against AAA's vehement protests. Coupled with this, AAA's continuous act of crying while Tamano satisfied his lust is a clear sign of her objection.

The Amount of Force Necessary to Overpower the Victim is Relative

It is a well-entrenched principle that "the force used in the commission of rape need not be overpowering or absolutely

[53] *People v. Esteban*, 735 Phil. 663, 669-670 (2014).

irresistible."[54] Certainly, "tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary."[55] After all, resistance is not an element of rape.[56] Accordingly, a rape victim is not obliged to prove that she did all within her power to resist the force employed against her.[57] As contemplated by the law, force in the commission of rape depends on the age, size and strength of the parties.[58] It is likewise assessed from the perception and judgment of the vulnerable victim.[59] What remains essential is that the force employed was sufficient to enable the offender to consummate his lewd purpose.[60]

Notably, in *People v. Ramos*,[61] the Court considered the relative size of the victim as against that of her predator. Particularly, it gave credence to the trial court's observation that the victim was frail and petite, while the offender had a heavy built, thereby bolstering to the former's testimony that the latter easily succeeded in pinning her down, amidst her persistent struggling.[62]

There is no question that Tamano easily consummated his bestial desire by subduing AAA. AAA testified that she struggled to repel Tamano's advances but was too weak to ward him off. She fought and pushed him, but felt defenseless and weak against his strong body.[63]

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[54] *People v. Barangan*, 560 Phil. 811, 836 (2007), citing *People v. Villaflores*, 255 Phil. 776, 784-785 (1989).

[55] *People v. Ramos*, 743 Phil. 344, 364 (2014), citing *People v. Gayeta*, 594 Phil. 636, 647 (2008).

[56] *People v. Japson*, 743 Phil. 495, 503-504 (2014), citing *People v. Durano*, 548 Phil. 383, 397 (2007).

[57] *Id.*, citing *People v. Rivera*, 717 Phil. 380, 395 (2013).

[58] *People v. Ramos, supra*, citing *People v. Gayeta, supra*.

[59] *People v. Lucena*, 728 Phil. 147, 161 (2014).

[60] *People v. Barangan, supra*.

[61] G.R. No. 210435, August 15, 2018, 877 SCRA 424.

[62] *Id.* at 440.

[63] CA *rollo*, pp. 73-74.

Worse, from the very moment Tamano met AAA, he employed a dastardly scheme to lure her and weaken her. He called her cellphone, but specifically warned her not to tell the others that she was talking to him. Then he ordered her to go to Jollibee, all the while dangling the prospect that he will return her cellphone. Once at Jollibee, he cajoled her into having a meal with him. As soon as AAA drank the Coke Tamano offered, she instantly felt weak and dizzy. Everything was suddenly hazy. Next thing she knew, she was dragged along a dark, nasty-looking alley. Thereafter, she found herself in a place with numbers, a bed, mirror and towels. He abused her vulnerability then used his brute strength to overpower her.

AAA's Testimony Regarding the Rape Was Credible and Trustworthy

Remarkably, due to the peculiar nature of rape cases, a conviction thereon most often rests solely on the basis of the offended party's testimony, if credible, natural, convincing, and consistent with human nature and the normal course of things.[64] Similarly, the Court explained in *People v. Pareja*[65] that the assessment of the witness' credibility is best left to the trial court judge in view his/her unique opportunity to observe the witness' deportment and demeanor on the stand. This vantage point is not available to the appellate courts. Thus, the findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon this Court.[66]

In the case at bar, the trial court observed that AAA's testimony was credible and convincing. Her demeanor throughout her court examination showed that she was telling the truth.[67] She remained steadfast in her accusation and did not waver as she recounted the harrowing ordeal she suffered. Moreover, The RTC noted that she was crying during her direct examination.[68]

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[64] *People v. Corpuz*, 517 Phil. 622, 632-633 (2006); *People v. Baraoil*, 690 Phil. 368, 376 (2012); *People v. Magayon*, 640 Phil. 121, 136 (2010).

[65] 726 Phil. 759, 773 (2014).

[66] *Id.*, *People v. Manalili*, 716 Phil. 762, 772-773 (2013).

[67] CA *rollo*, p. 74.

[68] *Id.*

AAA's Conduct Prior to and After the Rape Incident, Her Failure to Seek Help, or Flee, Do Not Establish Consent to the Sexual Act

Tamano attacks AAA's credibility by criticizing her behavior prior to and subsequent to the rape incident. He claims that her willingness to return to Metropolis Mall despite the alleged harassment she experienced, as well as her failure to escape or ask for help during the purported incident, dispel her tale of rape.

The Court does not agree.

Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge, it is not correct to expect a typical reaction or norm of behavior from rape victims.[69] The workings of the human mind when placed under emotional stress are unpredictable.[70] Victims may not be expected to act with reason or conformably with the usual expectation of mankind.[71] Thus, the failure of the victim to run, shout or seek help does not negate rape.[72]

Certainly, it is unfair to demand a rational reaction from AAA, or fault her for failing to ask for help or expect her to escape. Tamano's accusation that AAA acted as if nothing happened[73] is absolutely baseless. The records show that Tamano devised ways to keep AAA by his side. In fact, she had to ask permission to go to the bathroom. Although he allowed her to go, he ordered her to leave her things to prevent her from escaping. In the end, what matters is that she sought help, and reported the rape, as soon as she had escaped from Tamano's watchful glare.

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[69] *People v. Zafra*, 712 Phil. 559, 572 (2013), citing *People v. Saludo*, 662 Phil. 738, 758-759 (2011).

[70] *Id.*, citing *Sison v. People*, 682 Phil. 608, 625 (2012).

[71] *Id.*, citing *People v. Saludo, supra.*

[72] *People v. Saludo, id.*, citing *Sison v. People, supra* note 66.

[73] CA *rollo*, p. 39.

In the same vein, AAA may not be blamed for going with Tamano to Festival Mall after the rape incident. It must be remembered that prior to the incident, she was groggy and unaware of her surroundings. All that she vaguely remembered was being dragged to a dark and nasty alley, followed by finding herself inside a room with Tamano. Weak, unaware and trapped in an unfamiliar situation, she cannot be expected to devise a rational plan to flee.

AAA's Declarations Upon Regaining Consciousness Do Not Form Part of the Res Gestae

Tamano argues that the trial court and the CA erred in regarding AAA's utterances upon regaining consciousness as part of the *res gestae*.

Although a correct argument, this does not in any way exonerate him from the crime.

Significantly, one of the most basic rules on the admissibility of evidence states that "[a] witness can testify only to those facts which he or she knows of his or her personal knowledge; that is, which are derived from his or her own perception."[74] Accordingly, anything that is not based on a witness' own personal knowledge shall be barred as hearsay. However, an exception to the hearsay rule is a declaration that forms part of the *res gestae*:

> **Section 44.** *Part of res gestae*. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto, under the stress of excitement caused by the occurrence with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.[75]

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[74] NEW RULES ON EVIDENCE, Rule 130. Rules of Admissibility, C.1. Section 22.

[75] NEW RULES ON EVIDENCE, Rule 130. Rules of Admissibility, C.6. Section 44.

Albeit reworded under the New Rules on Evidence,[76] the essence of the *res gestae* rule remains unchanged. Notably, in *People v. Estibal*,[77] the concept of *res gestae* was explained in the following wise:

> *Res gestae* speaks of a **quick continuum of related happenings, starting with the occurrence of a startling event which triggered it and including any spontaneous declaration made by a witness, participant or spectator relative to the said occurrence**. The cases this Court has cited invariably reiterate that the statement must be an unreflected reaction of the declarant, undesigned and free of deliberation. x x x
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> *Res gestae* means the "things done." It "refers to those exclamations and statements made by either the participants, victims, or spectators to a crime **immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.**" A spontaneous exclamation is defined as "**a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him**. The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear,' the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him." In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself. Or, stated differently, "x x x the events speak for themselves, giving out their fullest meaning through the unprompted language of the participants.

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[76] NEW RULES ON EVIDENCE.

[77] *People v. Estibal*, 748 Phil. 850 (2014).

The spontaneous character of the language is assumed to preclude the probability of its premeditation or fabrication. Its utterance on the spur of the moment is regarded, with a good deal of reason, as a guarantee of its truth.[78] (Citations omitted; Emphasis and underscoring supplied)

In *Manulat v. People*, the Court, citing the case of *People v. Salafranca*, mentioned two requisites for applying the *res gestae* rule: "(i) the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself; and (ii) the said evidence clearly negatives any premeditation or purpose to manufacture testimony."[79]

Similarly, in *People v. Jorolan*,[80] the Court stressed that there must be no intervening circumstance between the *res gestae* occurrence and the time the statement was uttered that could have allowed the declarant an opportunity to deliberate and reflect:

An important consideration is whether there intervened between the occurrence and the statement any circumstance calculated to divert the mind of the declarant, and thus restore his mental balance and afford opportunity for deliberation. His statement then cannot be regarded as unreflected and instinctive, and is not admissible as part of the *res gestae*. **An example is where he had been talking about matters other than the occurrence in question or directed his attention to other matters**.[81] (Citations omitted and emphasis supplied)

Likewise, the Court enumerated the factors that may aid in determining whether the utterances were in fact "spontaneous":

There is no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, (1) **the time that has lapsed between the occurrence of the act or transaction and the making**

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[78] *Id.* at 875.

[79] 766 Phil. 724, 744-745 (2015).

[80] 452 Phil. 698 (2003).

[81] *Id.* at 713.

of the statement, (2) the place where the statement is made, (3) the condition of the declarant when the utterance is given, (4) **the presence or absence of intervening events between the occurrence and the statement relative thereto**, and (5) the nature and the circumstances of the statement itself.[82] (Emphasis supplied)

In addition, in the cases where the Court applied the *res gestae* rule, such as in *People v. Lupac*,[83] *People v. Fallones*,[84] and *People v Maniquez*,[85] the Court consistently noted the absence of any appreciable length of time between the startling occurrence and the utterance. Unfortunately, this essential requisite does not obtain in the case at bar.

Guided by the foregoing tenets, what militates against admitting AAA's statements as *res gestae* utterances is the fact that an appreciable length of time intervened between the startling occurrence, which was the rape incident, and the utterance that Tamano raped AAA. Moreover, in addition to the statement having been made after an appreciable lapse of time, it was also uttered in a place far from the *locus criminis*.

It is well to note that after the rape incident, Tamano and AAA boarded a jeepney and went to Festival Mall. After arriving at the said mall, they proceeded to the fourth floor and drank iced tea. It was only after AAA went to the comfort room and thereafter fainted, that she uttered the statement that a man was after her. At this point, she did not yet mention that she was raped. Afterward, she ran and fainted again. Upon recovering consciousness, she told the security guard that Tamano raped her.

It is all too apparent that a sufficient lapse of time and numerous intervening events transpired between the startling

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[82] *Manulat v. People*, *supra* at 745, citing *People v. Dianos*, 357 Phil. 871, 885-886 (1998).

[83] 695 Phil. 505 (2012).

[84] 661 Phil. 281 (2011).

[85] 292 Phil. 406, 418-419 (1993).

event (rape) and the utterance. These interferences eliminated the spontaneity that is characteristic of a *res gestae* statement.

Relatedly, in *People v. Estibal*, the Court held that the statements made by the victim were not part of the *res gestae*, "in view of the missing element of spontaneity and the lapse of an appreciable time between the rape and the declarations which afforded [the victim] sufficient opportunity for reflection."[86]

Also, in *People v. Dagsa*,[87] the Court refused to consider as part of the *res gestae*, a statement that was uttered one day after the rape incident. The Court clarified that "[t]o be admissible as part of the *res gestae*, a statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto x x x."[88]

Thus, the trial court and the CA erred in regarding the statements made by AAA as part of the *res gestae*. This notwithstanding, there were numerous pieces of evidence, other than her utterances after regaining consciousness, that indubitably point to Tamano's guilt beyond reasonable doubt.

Tamano's Defenses Do Not Inspire Belief

Tamano strives to paint a demented picture of AAA, claiming that she was a temptress who lured him into having sexual intercourse, despite his alleged protestations. **His defenses that the sexual intercourse was consensual and spurred by AAA's enticement do not inspire belief**.

Furthermore, neither may he claim that his act of accompanying AAA in the hospital disproves his guilt. Notably, the accused's decision not to flee the scene of the crime when he had the means and the opportunity to do so, does not indicate

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[86] *Supra* note 73 at 873.

[87] G.R. No. 219889, January 29, 2018, 853 SCRA 276.

[88] *Id.* at 285.

innocence.[89] In *People v. Jorolan*,[90] the Court recognized that culprits have become bolder by returning to the scene of the crime to feign innocence.[91] Thus, Tamano's brazen attempt to stay by AAA's side does not prove his innocence.

The Proper Penalty

Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, the crime of simple rape is punishable with *reclusion perpetua*.

In addition, the victim of simple rape shall be entitled to an award of civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each for every count of rape.[92] All amounts due shall earn legal interest of six (6%) per *annum* from the finality of this Decision until full payment.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED for lack of merit**. Accordingly, the February 5, 2016 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06792 is **AFFIRMED with modification**. Accused-appellant Tahir Toguso Tamano is held **GUILTY** of two counts of simple rape, and is hereby sentenced to *reclusion perpetua*. He is ordered to pay the victim AAA (i) ₱75,000.00 as civil indemnity; (ii) ₱75,000.00 as moral damages; and (iii) ₱75,000.00 as exemplary damages, for every count of simple rape. All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of this Decision until full satisfaction.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,* and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

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[89] *People v. Jorolan, supra* note 76 at 714-715.

[90] *Id.*

[91] *Id.*

[92] *People v. Jugueta*, 783 Phil. 806 (2016).

THIRD DIVISION

[G.R. No. 228212. July 8, 2020]

MARCIANO D. MAGTIBAY, *petitioner*, *vs.* **AIRTRAC AGRICULTURAL CORPORATION and/or IAN PHILIPPE W. CUYEGKENG, President, VICTOR S. MERCADO, JR., Chief Financial Officer,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN, FOR THE COURT IS NOT A TRIER OF FACTS AND DOES NOT ROUTINELY EXAMINE THE EVIDENCE PRESENTED BY THE CONTENDING PARTIES; EXCEPTION.— It is well settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts and does not routinely examine the evidence presented by the contending parties. Nevertheless, the divergence of findings of fact by the LA on the one hand, and the NLRC and the CA on the other, is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in affirming the NLRC ruling that petitioner was not a regular employee but a contracted officer of the company, and that he was not illegally dismissed.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; KINDS OF EMPLOYEES.— [T]here are four kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal

employees. Jurisprudence later added a fifth kind, the fixed term employee. The fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee; employment exists only for the duration of the term and ends on its own when the term expires.

3. ID.; ID.; REGULAR EMPLOYEES; KINDS; IN DETERMINING REGULAR EMPLOYMENT, THE PRIMARY STANDARD IS THE REASONABLE CONNECTION BETWEEN THE PARTICULAR ACTIVITY PERFORMED BY THE EMPLOYEE IN RELATION TO THE USUAL TRADE OR BUSINESS OF THE EMPLOYER.— [T]he law provides for two types of regular employees, namely: (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. In determining regular employment, the Court held that the primary standard is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety.

4. ID.; ID.; NATURE OF EMPLOYMENT; DEPENDS ON THE NATURE OF THE ACTIVITIES TO BE PERFORMED BY THE EMPLOYEE, CONSIDERING THE NATURE OF THE EMPLOYER'S BUSINESS, THE DURATION AND SCOPE TO BE DONE, AND IN SOME CASES, EVEN THE LENGTH OF TIME OF THE PERFORMANCE AND ITS CONTINUED EXISTENCE.— While it is true that the hiring of consultants who have a vast experience and necessary technical skills whose engagement may be fixed by a term or duration is often resorted to by companies instead of employing full-time employees, the agreements should be scrutinized as these might be used to prevent employees from acquiring regular employment and to avoid the constitutionally guaranteed security of tenure. Here, it is undisputed that the parties initially executed a Consultancy Agreement wherein petitioner was engaged as

Consultant for a period of five months x x x. However, the nature of petitioner's employment was changed when he replaced the previous General Manager and was made to perform the duties and responsibilities of a General Manager. x x x Moreover, petitioner not only performed activities which are necessary or desirable in the usual business or trade of the employed, but in fact administered and directed the day-to-day affairs of the company. Also, petitioner was clearly acknowledged to be the General Manager of the company and not merely a Consultant as claimed by respondents. x x x [T]he x x x documents signed by petitioner as General Manager are not the work of a simple consultant, but one who is engaged to perform activities which are necessary or desirable in the usual business or trade of the employer. In this case, the parties may initially intend for a fixed-term agreement in obtaining the services of petitioner as Consultant but when he was continually made to perform the duties and functions of a General Manager, he was no longer a mere consultant, but has become a regular employee of the company whose services cannot be terminated without just or authorized cause. We also do not agree with the NLRC's ruling that petitioner willingly and voluntarily signed the consultancy agreements, hence, he knew that he was hired as consultant. While it is true that in the case of *Brent School, Inc. v. Zamora*, the Court held that in instances: (1) where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or (2) where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever exercised by the former over the latter. Nevertheless, the Court likewise ruled that "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and the Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc." In such a case, the Court ruled that the employee shall be deemed regular. Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be

performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and in some cases, even the length of time of the performance and its continued existence.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED FROM WORK SHALL BE ENTITLED TO FULL BACKWAGES AND REINSTATEMENT AND WHERE REINSTATEMENT IS NO LONGER VIABLE AS AN OPTION, SEPARATION PAY SHOULD BE AWARDED AS AN ALTERNATIVE.— Settled is the rule that an employee who is unjustly dismissed from work shall be entitled to full backwages and reinstatement without loss of seniority rights and other privileges, computed from the time his compensation was withheld up to the time of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month for every year of service should be awarded as an alternative. Here, we find that the Labor Arbiter correctly granted separation pay because reinstatement is no longer advisable considering the strained relations of the parties.

6. ID.; ID.; ID.; MORAL DAMAGES ARE RECOVERABLE WHEN THE DISMISSAL OF AN EMPLOYEE IS ATTENDED BY BAD FAITH OR FRAUD OR CONSTITUTES AN ACT OPPRESSIVE TO LABOR, OR IS DONE IN A MANNER CONTRARY TO GOOD MORALS, GOOD CUSTOMS OR PUBLIC POLICY, AND EXEMPLARY DAMAGES ARE RECOVERABLE WHEN THE DISMISSAL WAS DONE IN WANTON, OPPRESSIVE, OR MALEVOLENT MANNER.— We find that the reduced amount of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages is more appropriate. Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner. Considering the manner in which petitioner was dismissed and terminated from his service when he was asserting the adjustment and payment of his unpaid salary, justifies the grant of these amount of damages.

APPEARANCES OF COUNSEL

Batacan Montejo & Vicencio Law Office for petitioner.
Uy Cruz Lo & Associates for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Marciano D. Magtibay (petitioner) seeking the annulment and reversal of the Decision[2] dated May 30, 2016 and Resolution[3] dated October 5, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 07045 which affirmed the Resolutions dated May 7, 2015[4] and July 27, 2015[5] of the National Labor Relations Commission (NLRC). The NLRC reversed and set aside the Decision[6] dated August 29, 2014 of the Labor Arbiter (LA) and dismissed the complaint for illegal dismissal with money claims filed by petitioner against respondents Airtrac Agricultural Corporation (Airtrac) and/or Ian Philippe W. Cuyegkeng (Cuyegkeng) and Victor S. Mercado, Jr. (Mercado) in their respective capacities as President and Chief Financial Officer.

Facts of the Case

Petitioner is a certified accountant who was hired as Consultant by respondent Airtrac, a corporation engaged in the business of crop dusting, weed control and eradication by the use of airplane or related equipment. He joined Airtrac on July 19,

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[1] *Rollo*, pp. 9-44.

[2] Penned by Associate Justice Edgardo T. Lloren, with the concurrence of Associate Justices Oscar V. Badelles and Rafael M. Santos; *id.* at 49-59.

[3] *Id.* at 75-76.

[4] *Id.* at 425-439.

[5] *Id.* at 454-455.

[6] *Id.* at 338-356.

2010 upon the invitation of Roinda Soriano (Soriano), the administrative head officer of Sumifru. Petitioner was paid ₱55,705.00 per month for a minimum of 24 hours of service per week. Petitioner signed a Consultancy Agreement[7] for five months from July 19, 2010 to December 18, 2010. In August 2010, petitioner worked as Controller of Airtrac. Later in November 2010, when the previous operations manager of Airtrac, Mr. J.J. Gonzalo Barcia resigned, petitioner assumed as "General Manager." He initially protested the low pay considering the increased responsibility but refrained from being adamant as his contract was to expire on December 18, 2010. He claimed that his working hours as General Manager were from 8:00 a.m. to 5:00 p.m., from Monday to Saturday.[8]

On April 20, 2011, an Aviation Service Agreement[9] was entered into by and between Airtrac and Sumifru. Petitioner was under special instruction as General Manager of Airtrac to work on the services provided in the Service Agreement.[10]

Thereafter, sometime on January 2012, he was made to sign another Consultancy Agreement[11] with Airtrac for a two-year period from December 19, 2011 to December 18, 2013 with Service Fee of ₱70,000.00 per month, 13th month pay, and other additional benefits, and for which he was required to render service four hours per day at such times as may be reasonably required by the Company. This was despite the fact that he was already rendering duties of a General Manager working eight hours a day.[12] He claimed that within the week of signing the abovementioned contract, he expressed his dissent to Marilyn Lee, the Chief Financial Officer of Airtrac who advised him to clarify it with Soriano but petitioner did not follow through

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[7] *Id.* at 112-115.

[8] *Id.* at 426-427.

[9] *Id.* at 116-121.

[10] *Id.* at 80.

[11] *Id.* at 122-126.

[12] *Id.* at 80.

with his complaint.[13] After his contract expired on December 18, 2013, he was again made to sign another two-year period Consultancy Agreement[14] from December 19, 2013 until December 18, 2015, at the rate of ₱70,000.00 per month. He signed it but changed the offered rate of ₱70,000.00 per month to a higher rate of ₱90,000.00 per month. This contract was signed by Ricky Tagabucba, the Human Resources Management Department Head.[15]

On January 20, 2014, as the new contract was not yet approved, petitioner billed Airtrac for unpaid hours of service from June 2011 until January 18, 2014 amounting to ₱1,904,000.00 after deduction of the 15% tax as consultant.[16] The new contract with his counteroffer of ₱90,000.00 per month was later disapproved. In a letter[17] dated February 10, 2014, Airtrac notified him of the non-renewal of his consultancy agreement and that petitioner's appointment as General Manager would likewise be terminated effective March 12, 2014.[18]

Petitioner received the notice but made a marginal note on the received copy[19] thereof as "received with reservations and issues to resolve."[20] He then handed to Rose Mary Angelia (Angelia) his resignation letter[21] stating that he would resigning as General Manager of Airtrac. On February 12, 2014, a written announcement[22] signed by respondent Cuyegkeng as president of Airtrac appointing Captain Samson S. Villaber as Officer-

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[13] *Id.* at 427.

[14] *Id.* at 130-134.

[15] *Id.* at 81-82.

[16] *Id.* at 427.

[17] *Id.* at 136-137.

[18] *Id.* at 427-428.

[19] *Id.* at 300-301.

[20] *Id.* at 301.

[21] *Id.* at 302.

[22] *Id.* at 138.

in-Charge and Than Htun as consultant. Petitioner turned over the records and functions previously assigned to him. He also returned the company car and paid the cash advances made to him. Petitioner reiterated his billing for receivables on the balance of his pay pertaining to the extra hours he served Airtrac. Airtrac *denied his claim*.[23]

On April 22, 2014, petitioner instituted a complaint for illegal dismissal with money claims against respondents Airtrac and/or Cuyegkeng and Mercado in their respective capacities as President and Chief Financial Officer of the respondent corporation.[24] In his position paper,[25] petitioner claimed that he was a regular employee of Airtrac who was illegally dismissed by respondents. He averred that he was made to sign consultancy agreements in order to deprive him of his benefits and security of tenure.[26] He further asserted that he would be entitled to the money claims he demanded from respondents.[27]

For their part, respondents countered that petitioner was not dismissed but rather his consultancy agreement expired and was not renewed which resulted in the termination of his services. Respondents contended that petitioner was an independent contractor and not an employee of Airtrac.[28]

Ruling of the Labor Arbiter

In a Decision[29] dated August 29, 2014, the LA ruled in favor of petitioner and declared that he was illegally constructively dismissed from employment. The LA held that the existence of employment relationship is determined by law and not by contract and to rule otherwise would set a dangerous precedent,

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[23] *Id.* at 48.

[24] *Id.* at 338.

[25] *Rollo*, pp. 77-109.

[26] *Id.* at 84-94, 97-101.

[27] *Id.* at 94-97, 101-108.

[28] *Id.* at 259-274.

[29] *Supra* note 6.

which would in effect permit employers to evade their responsibilities under our labor laws through the scheme of having the employees sign agreements negating the existence of employer-employee relationship.[30] The LA noted that when petitioner was appointed as General Manager and performed the duties and functions as such, the Consultancy Agreement of petitioner with respondent Airtrac was effectively terminated and that he is considered hired as regular employee to occupy the position of General Manager. Thus, petitioner was illegally constructively dismissed from his employment with the appointment of his replacement as there was no justifiable reason to terminate petitioner's employment and the alleged non-renewal of consultancy agreement is not among the just causes allowable by law.[31]

Respondents were held solidarily liable to pay petitioner the total amount of ₱2,065,580.28, representing unpaid salaries of ₱198,000.25; backwages of ₱919,800; separation pay of ₱560,000.00; moral damages and exemplary damages of ₱100,000.00 each and attorney's fees of 10% of the total amount. The dispositive portion of the Decision of the LA reads:

> WHEREFORE, FOREGOING PREMISES CONSIDERED, judgment is hereby rendered declaring that complainant MARCIANO D. MAGTIBAY was ILLEGALLY CONSTRUCTIVELY DISMISSED from his employment.
>
> Consequently, respondents AIRTRAC AGRICULTURAL CORPORATION and/or IAN PHILIPPE W. CUYEGKENG and VICTOR S. MERCADO in their respective capacity *(sic)* as President and Chief Finance Officer of the respondent corporation are hereby severally and solidarily held liable to pay complainant Magtibay the following monetary judgment award in the total amount of Two Million Sixty Five Thousand Five Hundred Eighty Pesos & 28/100 (₱2,065,580.28), as herein computed below:
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> A. UNPAID SALARIES
> (December 19, 2013 to February 12, 2014) ₱198,000.25

[30] *Rollo*, p. 352.

[31] *Id.* at 354.

B. BACKWAGES (February 13, 2014 to Aug. 30, 2014 = 6.57 mos. x ₱140,000.00)	₱919,800.00
C. SEPARATION PAY (Aug 2010 to Aug 2014 = 4 years x ₱140,000.00)	560,000.00
D. MORAL DAMAGES	100,000.00
E. EXEMPLARY DAMAGES	100,000.00
TOTAL	₱1,877,800.25
F. ATTORNEY'S FEE (10%)	187,780.03
TOTAL AWARD	₱2,065,580.28

All other claims not hereto awarded are considered denied for lack of merit.

SO ORDERED.[32] (Emphasis omitted)

Ruling of the National Labor Relations Commission

On appeal, the Decision[33] of the LA was reversed by the NLRC in its Resolution[34] dated May 7, 2015, stating that:

WHEREFORE, the appeal is GRANTED and the assailed Decision of the Labor Arbiter *a quo* is hereby REVERSED and SET ASIDE.

The complaint for illegal dismissal is DISMISSED for lack of merit. Respondent Airtrac is ordered to pay Complainant Magtibay the amount of ₱178,500.00 as unpaid salaries for three (3) months.

SO ORDERED.[35] (Emphasis omitted)

The NLRC held that petitioner was not illegally dismissed, hence he is not entitled to separation pay and backwages. The NLRC noted that petitioner and respondent Airtrac had term consultancy agreements. The initial contract was for five months

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[32] *Id.* at 356.

[33] *Supra* note 6.

[34] *Supra* note 4.

[35] *Rollo*, p. 439.

and was renewed for a second term for one year, and a third term for two years. Thus, according to the NLRC, petitioner is a contracted employee or more aptly, a contracted officer of the company. The NLRC further observed that there was no evidence presented by petitioner that his consent to the three consultancy agreements was vitiated or forced. He voluntarily agreed to the fixed-term contract.[36] As to the issue of work and time, the NLRC ruled that managerial employees are generally paid without overtime and that the need to put on more hours of work than that indicated in the contract was his look-out. As to the pay of petitioner, it was clear from the start that his work was subject to a fixed period and with fixed pay per month. Nevertheless, the NLRC held that petitioner is entitled to his unpaid salaries of three months less the tax withheld which amounted to ₱178,500.00.[37]

Petitioner filed a Motion for Reconsideration[38] but the NLRC denied his motion in its Resolution[39] dated July 27, 2015.

Petitioner elevated his case to the CA assailing the Resolutions of the NLRC. He reiterated that he is a regular employee of Airtrac, and not a consultant with a fixed-term contract; that he was illegally dismissed by respondents and that the monetary award due to him, as computed by the Labor Arbiter, was proper.[40]

Ruling of the Court of Appeals

In a Decision[41] dated May 30, 2016, the Court of Appeals denied the appeal and affirmed the ruling of the NLRC. The CA upheld the consultancy agreement or contracts between

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[36] *Id.* at 432-434.

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

[38] *Id.* at 440-451.

[39] *Supra* note 5.

[40] *Rollo*, pp. 460-502; see petition for Review on *Certiorari* filed before the Court of Appeals Cagayan De Oro City Mindanao Station dated September 28, 2015.

[41] *Supra* note 2.

petitioner and respondent Airtrac. The CA agreed with the findings of the NLRC that it was clear to both parties at the start of work that their agreement was subject to a fixed period and with fixed pay per month. The CA held that the consultancy agreements or contracts between petitioner and respondents should be upheld since petitioner agreed to the terms of the contract and had voluntarily signed the same. The dispositive portion of the CA Decision states, to wit:

> WHEREFORE, the petition is hereby DENIED. The National Labor Relations Commission, Eighth (8th) Division's (NLRC) Resolutions dated May 7, 2015 and July 27, 2015 Resolution are hereby AFFIRMED.
>
> SO ORDERED.[42]

The CA, likewise, denied the motion for reconsideration[43] filed by petitioner in a Resolution[44] dated October 5, 2016.

Petitioner is now before Us through a Petition for Review on *Certiorari* raising the following issues:

> a. Can numerous documents supporting petitioner's claim of regular employment be simply over-ridden by a consultancy agreement?
>
> b. Can a consultancy agreement be upheld as the controlling arrangement of employment and at the time disregarded as to the other provision on the term/duration of the contract?[45]

Petitioner filed this petition reiterating his stand that he is a regular employee who was illegally dismissed and is entitled to the money claims. Petitioner asserts that the CA and the NLRC erred in ruling that petitioner's employment with Airtrac was for a fixed term, as evidenced by the consultancy agreements. Petitioner does not deny that his entry to respondent Airtrac was through a consultancy agreement where he was engaged

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[42] *Rollo*, p. 58.

[43] *Id.* at 60-72.

[44] *Supra* note 3.

[45] *Rollo*, p. 21.

as a consultant from July 19, 2010 until December 18, 2010. However, petitioner claims that things changed upon the resignation of the prior manager and his eventual assumption of the duties of General Manager. This change, according to petitioner, necessitated a change in his working hours and most importantly, a change in his functions. Petitioner contends that he was made to work as General Manager although he was made to sign an agreement stating that he is merely a consultant to prevent him from acquiring regular employment and security of tenure.[46]

Moreover, petitioner argues that the consultancy agreements do not reflect the true working relationship of the parties, considering that the consultancy agreement provides no specific project; no schedule of services was appended therein, and stipulated open-ended undetermined tasks requirement which do not pertain to the tasks actually performed by the petitioner as General Manager. Petitioner stresses that he did not function as consultant but as a General Manager and he did not work for four hours only as stated in the consultancy agreement. Thus, being then the General Manager of Airtrac, petitioner asserts that he is considered a regular employee having performed activities usually necessary or desirable in the usual business and trade of the employer.[47]

Respondents, in their Comment,[48] maintain that the CA correctly upheld the consultancy agreements as proof of respondents' employment of petitioner for a fixed term or period. Respondents asserted that whatever acts or duties petitioner as General Manager had on top of and in addition to his being a consultant did not change the nature of the relationship between petitioner and respondents. Respondents countered that when petitioner signed his signature but changed the printed amount

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[46] *Id.* at 21-25.

[47] *Id.* at 25-28.

[48] *Id.* at 511-531.

of ₱70,000.00 to ₱90,000.00, he was aware of his status as a consultant.[49]

Issues

The issues to be resolved in this case are: (1) whether petitioner is a regular employee of respondents or an officer with a fixed term contract; (2) whether petitioner was illegally terminated by respondents; and (3) whether petitioner is entitled to his money claims. These issues boil down to whether the CA erred in upholding the ruling of the NLRC that petitioner's agreement with respondent Airtrac was a fixed term contract based on consultancy agreements and that he was not a regular employee of respondents, but a contracted employee or officer of the company.

Ruling of the Court

The petition is meritorious.

It is well settled that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts and does not routinely examine the evidence presented by the contending parties.[50] Nevertheless, the divergence of findings of fact by the LA on the one hand, and the NLRC and the CA on the other, is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in affirming the NLRC ruling that petitioner was not a regular employee but a contracted officer of the company, and that he was not illegally dismissed.

On the first issue, it is imperative that we determine the true nature of petitioner's employment with respondent since the validity of petitioner's dismissal depends on whether he was hired for a fixed period, as claimed by respondents, or as a regular employee who may not be dismissed except for just or authorized causes.

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[49] *Id.* at 512-514.

[50] *OKS Designtech, Inc. v. Caccam*, 765 Phil. 946, 954-955 (2015).

Article 295[51] of the Labor Code provides that:

> Art. 295. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Based on the foregoing, there are four kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees.

Jurisprudence later added a fifth kind, the fixed term employee.[52] The fixed-term character of employment essentially refers to the period agreed upon between the employer and the employee;

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[51] Formerly Article 280, as renumbered pursuant to Section 5 of Republic Act No. 10151.

[52] *Innodata Knowledge Services, Inc. v. Inting*, G.R. No. 211892, December 6, 2017.

employment exists only for the duration of the term and ends on its own when the term expires.[53]

Furthermore, under the aforequoted provision, the law provides for two types of regular employees, namely: (1) those who are engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. In determining regular employment, the Court held that the primary standard is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer.[54] The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of work performed and its relation to the scheme of the particular business or trade in its entirety.[55]

After a careful review of the records and the evidence presented by the parties, We find that the CA erred when it upheld the finding of the NLRC that petitioner's employment was for a fixed term. On the contrary, We agree with the ruling of the LA that petitioner was a regular employee of respondent Airtrac, and not merely an officer whose duration of employment is fixed under a contract. While it is true that the hiring of consultants who have a vast experience and necessary technical skills whose engagement may be fixed by a term or duration is often resorted to by companies instead of employing full-time employees, the agreements should be scrutinized as these might be used to prevent employees from acquiring regular employment and to avoid the constitutionally guaranteed security of tenure.

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[53] *Colegio del Santisimo Rosario v. Rojo*, 717 Phil. 265, 279 (2013), citing *Mercado v. AMA Computer College-Parañaque*, 632 Phil. 228, 256 (2010).

[54] *UST v. Samahang Manggagawa ng UST*, 809 Phil. 212, 222 (2017), citing *Universal Robina Corp. v. Catapang*, 509 Phil. 765, 779 (2005).

[55] *Id.*

Here, it is undisputed that the parties initially executed a Consultancy Agreement[56] wherein petitioner was engaged as Consultant for a period of five months beginning from July 19, 2010 until December 18, 2010 with a monthly salary of ₱55,705.00. However, the nature of petitioner's employment was changed when he replaced the previous General Manager and was made to perform the duties and responsibilities of a General Manager. His working hours doubled from four hours as stated in their agreement, as he was later required to render eight hours from 8:00 a.m. to 5:00 p.m., from Monday to Saturday. Moreover, petitioner not only performed activities which are necessary or desirable in the usual business or trade of the employed, but in fact administered and directed the day-to-day affairs of the company. Also, petitioner was clearly acknowledged to be the General Manager of the company and not merely a Consultant as claimed by respondents. In fact, among the documents presented by petitioner to prove his position are the following:

a. Aviation Service Agreement between Airtrac and Sumifro (Philippines) Corporation where Airtrac was represented by petitioner was named as General Manager;[57]

b. Airtrac Operations Manual's Organizational Structure[58] where petitioner was named as the General Manager;

c. Secretary's Certificates[59] where petitioner was authorized as General Manager to deal/transact with the Civil Aviation Authority of the Philippines;

d. Airtrac Lease Agreement[60] between Airtrac and Sumifro (Philippines) Corporation where Airtrac was represented as its General Manager; and

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[56] *Rollo*, pp. 112-115.

[57] *Id.* at 116-121.

[58] *Id.* at 140.

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

[60] *Id.* at 150.

e. Agricultural Aircraft Operator Certificate[61] issued by the Civil Aviation Authority of the Philippines to Airtrac where petitioner was named as the General Manager/Accountable Manager of Airtrac.

Clearly, the aforementioned documents signed by petitioner as General Manager are not the work of a simple consultant, but one who is engaged to perform activities which are necessary or desirable in the usual business or trade of the employer. In this case, the parties may initially intend for a fixed-term agreement in obtaining the services of petitioner as Consultant but when he was continually made to perform the duties and functions of a General Manager, he was no longer a mere consultant, but has become a regular employee of the company whose services cannot be terminated without just or authorized cause.

We also do not agree with the NLRC's ruling that petitioner willingly and voluntarily signed the consultancy agreements, hence, he knew that he was hired as consultant. While it is true that in the case of *Brent School, Inc. v. Zamora*,[62] the Court held that in instances: (1) where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or (2) where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever exercised by the former over the latter.[63] Nevertheless, the Court likewise ruled that "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and the Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, etc."[64] In such a case, the Court ruled

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[61] *Id.* at 153.

[62] 206 Phil. 747 (1990).

[63] *Rollo*, p. 763.

[64] *Universal Robina Sugar Milling Corp. v. Acibo*, 724 Phil. 489, 503 (2014), citing *Cielo v. NLRC*, 271 Phil. 433, 442 (1991), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747, 761 (1990).

that the employee shall be deemed regular.[65] Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and in some cases, even the length of time of the performance and its continued existence.[66]

Thus, having ruled that petitioner has become a regular employee of respondent Airtrac, we likewise agree with the LA that petitioner was terminated without just or authorized cause. We are likewise not convinced that petitioner resigned from his job. On February 11, 2014, Angelia furnished petitioner with a letter[67] informing him of the company's decision to no longer renew the Consultancy Agreement that expired on December 18, 2013. We concur with the LA's finding and thus quote with approval the LA's discussion on this matter:

> Consequently, it being on record that respondent has no justifiable cause to terminate complainant Magtibay's employment as the alleged non-renewal of consultancy agreement is not among the just causes allowable by law as grounds for termination xxx complainant Magtibay therefore is herein considered illegally constructively dismissed when he was effectively replaced by the appointments of his replacements on February 12, 2014.
>
> x x x x x x x x x
>
> x x x The attendant circumstances therefore in the submission of the disputed resignation letter disprove the voluntariness of resignation considering that complainant was demanding for his salaries that were withheld from him and even trying to express his dismay and disappointment over his indistinct status as General Manager as well as his salary rate, which are manifestations that complainant Magtibay has no intention to resign.[68] (Emphasis omitted)

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[65] *Id.*

[66] *Id.* at 503-504.

[67] *Rollo*, pp. 136-137.

[68] *Rollo*, p. 354.

Lastly, We address the issue of the propriety of the monetary claims asserted by petitioner. The unpaid salaries claimed by petitioner from December 19, 2013 to February 12, 2014 and admitted by respondent Airtrac is proper. Likewise, We are in agreement with the Labor Arbiter in computing petitioner's monthly salary at ₱140,000.00 considering that petitioner was made to render service double the stipulated hours in the consultancy agreements. Settled is the rule that an employee who is unjustly dismissed from work shall be entitled to full backwages and reinstatement without loss of seniority rights and other privileges, computed from the time his compensation was withheld up to the time of actual reinstatement.[69] Where reinstatement is no longer viable as an option, separation pay equivalent to one month for every year of service should be awarded as an alternative.[70] Here, we find that the Labor Arbiter correctly granted separation pay because reinstatement is no longer advisable considering the strained relations of the parties.

As to the award of damages, We find that the reduced amount of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages is more appropriate. Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner. Considering the manner in which petitioner was dismissed and terminated from his service when he was asserting the adjustment and payment of his unpaid salary, justifies the grant of these amount of damages.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **GRANTED**. Accordingly, the Decision dated May 30, 2016 and the Resolution dated October 5, 2016 of the Court of

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[69] *ICT Marketing Services, Inc. v. Mariphil L. Sales*, 769 Phil. 498, 524 (2015).

[70] *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 605 (2013), citing *Aliling v. Feliciano*, 686 Phil. 889, 917 (2012).

Appeals in CA-G.R. SP No. 07045, which affirmed the Resolutions dated May 7, 2015 and July 27, 2015 of the National Labor Relations Commission, are **REVERSED** and **SET ASIDE**. The Decision dated August 29, 2014 of the Labor Arbiter finding petitioner Marciano D. Magtibay to be a regular employee of respondents who was illegally dismissed from his employment is hereby **AFFIRMED with MODIFICATION** in that respondents Airtrac Agricultural Corporation and/or Ian Philippe W. Cuyegkeng and Victor S. Mercado Jr., in their respective capacity as President and Chief Finance Officer of the respondent corporation, are hereby jointly and severally liable to pay petitioner the following:

1. Unpaid Salaries from December 19, 2013 to February 12, 2014 in the amount of ₱198,000.25;
2. Full backwages from the date of his dismissal on February 12, 2014 up to the finality of this decision at the rate of ₱90,000.00 per month;
3. Separation Pay equivalent to one (1) month pay for every year of service, from the time he assumed the duties of a General Manager in November 2010 up to the finality of this decision at the rate of ₱90,000.00 per month;
4. Moral and exemplary damages, each in the amount of ₱50,000.00;
5. Attorney's fees equivalent to ten percent (10%) of the total awards; and
6. Legal interest of six (6%) *per annum* of the total monetary awards computed from February 12, 2014 up to the finality of this Decision and thereafter six (6%) per annum from the finality of this Decision up to the full satisfaction.

The case is hereby ordered **REMANDED** to the Labor Arbiter for the computation of the total amount due.

SO ORDERED.

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

Gesmundo, J., on official leave.

THIRD DIVISION

[G.R. No. 229984. July 8, 2020]

DONNA B. JACOB, *petitioner*, *vs.* **FIRST STEP MANPOWER INT'L. SERVICES, INC., MUHAMMAD/ELNOR E. TAPNIO,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION OF A RULE 65 RULING IN A LABOR CASE, ELUCIDATED.—** In a Rule 45 Petition of a Rule 65 ruling, this Court does not resolve factual issues except in ascertaining whether the Court of Appeals erred in finding that the Commission did or did not gravely abuse its discretion in deciding the labor case. This Court generally resolves questions of law because it is not a trier of facts. Moreover, the Commission's decision is final and executory and can only be re-evaluated by the Court of Appeals when it gravely abused its discretion amounting to lack or excess of jurisdiction. Applying the foregoing principle in the present case, the central issue is not whether petitioner was dismissed. Instead, it is whether or not the Court of Appeals aptly decided that the Commission did not commit grave abuse of discretion in reversing the Labor Arbiter's finding of constructive dismissal.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CONSTRUCTIVE DISMISSAL IS A FORM OF ILLEGAL DISMISSAL; DISCUSSED.—** Constructive dismissal, otherwise known as constructive discharge, is a form of illegal dismissal. x x x Constructive dismissal does not always entail a "forthright dismissal or diminution in rank, compensation, benefit and privileges." Pertinent in the case at hand, there can also be constructive dismissal in cases where "an act of clear discrimination, insensibility, or disdain by an employer becomes so *unbearable* on the part of the employee that it could foreclose any choice by him [or her] except to forego his [or her] continued employment." To gauge if constructive dismissal exists, the test is whether a reasonable person in the employee's standing was impelled to surrender his or her post under the given situation.

It is a dismissal in disguise because the doing equates to a "dismissal[,] but made to appear as if it were not." Hence, "the law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer."

3. **ID.; ID.; ID.; SUBSTANTIAL EVIDENCE REQUIRED; CASE AT BAR.—** "Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise." Thus, over and again, this Court "upheld that the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects," as in the case at hand where the sworn declaration of the complainant depicting the situation which caused her to leave her foreign employer's residence and thus, forego continued employment was supported by other documentary evidence such as relevant medical records. x x x The cessation of petitioner's employment was not of her own doing but was brought about by unfavorable circumstances created by her foreign employers. To put in simply, if petitioner failed to continue her job, it was because she refused to be further subjected to the ordeal caused by her employers' conduct. All of these evidently constitute a case of constructive dismissal. x x x To seek refuge, she went to respondent First Step's counterpart agency in Riyadh. Upon discovering the unfortunate situation of female overseas workers there, she tried to escape through the agency's window where she fell and injured her spine. The material points of her story were duly supported by the Discharge Summary from King Saudi Medical City x x x In resolving issues of constructive dismissal, courts do not only weigh the evidence presented by the parties, but also delve into the "totality of circumstances."

4. **ID.; ID.; ID.; DEEDS OF RELEASES, WAIVERS AND QUITCLAIMS CANNOT BAR EMPLOYEES FROM DEMANDING BENEFITS TO WHICH THEY ARE LEGALLY ENTITLED.—** [A]s a general rule, "deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy." The burden of proving that petitioner voluntarily

entered into the agreement lies with the employer, which in this case, respondents miserably failed to do. Apart from merely claiming that petitioner's homesickness led her to voluntary resign from her job (as evinced by the execution of the Final Settlement), respondents failed to present other concrete evidence to support the assertion. Also, the lack of any physical coercion on the part of petitioner does not automatically suggest that she voluntarily adhered to the stipulations in the Final Settlement. This is especially so in light of her helpless situation, away from the comforts of her family and support group. Out of dire necessity and desperation, it is evident that signing the Final Settlement and Certification was her only choice as it was, in fact, explicitly noted therein that it was a "condition for the worker's [r]epatriation[.]" Besides, it would be irrational for petitioner to resign and thereafter file a case for illegal dismissal since "[r]esignation is inconsistent with the filing of the said complaint." Given that resignation "is a formal pronouncement of relinquishment of an office[,]" it must be concurrent with the intent and the act.

5. ID.; ID.; ILLEGAL DISMISSAL; DAMAGES; ILLEGALLY DISMISSED EMPLOYEE ENTITLED TO MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.— As a result of petitioner's illegal dismissal, she is entitled to moral damages, exemplary damages, and attorney's fees. x x x The physical stress expected from the nature of petitioner's job as a household helper abroad, coupled with the everyday longing of wanting to be with her family, are already hard to imagine. With the added burden of enduring the trauma caused by her employers' conduct, it can be reasonably deduced that the kind of treatment afforded her was nothing but oppressive. Worse, in petitioner's situation, she had to escape twice in order to save her life. Regrettably, instead of giving petitioner protection, respondents seemingly took advantage of her helpless condition by making her sign a Final Settlement with terms obviously disadvantagous to her. Hence, with the foregoing in mind, an award of ₱50,000 moral damages is therefore justified. Additionally, to deter the commission of similar actuations, an award of ₱25,000 exemplary damages is also warranted. Furthermore, petitioner is entitled to "attorney's fees equivalent to ten percent (10%) of [her] monetary awards" on the basis of Article 2208 of the Civil Code which provides

that it may be recovered if exemplary damages are awarded and if the case includes recovery of wages.

6. ID.; ID.; ID.; SALARIES CORRESPONDING TO THE UNEXPIRED PORTION OF EMPLOYMENT CONTRACT, PROPER UNDER R.A. NO. 10022 (ACT AMENDING R.A. 8042, THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995).— Petitioner, for having been illegally dismissed from employment, is also entitled to her salaries corresponding to the unexpired portion of her employment contract in accordance with Section 7 of Republic Act No. 10022 x x x [and] in light of prevailing jurisprudence, an interest of six percent (6%) per annum shall be imposed on the total monetary awards from the time of the filing of the complaint until their full satisfaction.

APPEARANCES OF COUNSEL

Cristeta D. Tamayo for petitioner.
Emmanuel B. Bigornia for respondents.

D E C I S I O N

LEONEN, *J.*:

The courage of a Filipina to work as a household helper in a foreign land deserves much more than a cursory evaluation of the evidence on record. Failure of the Court of Appeals to appreciate the totality of the evidence which supports the claim of sexual harassment, maltreatment, and involuntary escape is definitely grave abuse of discretion correctible by this Court.

Constructive dismissal does not necessarily entail a "forthright dismissal or diminution in rank, compensation, benefit and privileges."[1] Constructive dismissal also exists in cases where "an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee

[1] *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295 (2001) [Per J. Gonzaga-Reyes, Third Division].

that it could foreclose any choice by him [or her] except to forego his [or her] continued employment."[2]

We find for the Filipina Overseas Filipino Worker in this case.

This Petition for Review on *Certiorari*[3] prays that the Court of Appeals Decision[4] and Resolution[5] in CA-G.R. SP No. 146028 be reversed and set-aside.[6] The Court of Appeals dismissed Donna Jacob's (Jacob) Petition for *Certiorari* which assailed the National Labor Relations Commission's Decision[7] nullifying the Labor Arbiter's pronouncement[8] that she was constructively dismissed.

In early August of 2014, Jacob sought employment with First Step Manpower International Services, Inc. (First Step) as a household service worker. When First Step accepted her application,[9] she signed a two-year contract[10] where she would be deployed to Riyadh, Kingdom of Saudi Arabia and would earn a monthly income of US$400.00.[11]

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[2] *Id.*

[3] *Rollo*, pp. 10-33.

[4] *Id.* at 34-43. The Decision dated October 24, 2016 was penned by Associate Justice Ramon R. Garcia (Chair) and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, of the Fifteenth Division, Court of Appeals, Manila.

[5] *Id.* at 44-45. The Resolution dated February 6, 2017 was penned by Associate Justice Ramon R. Garcia (Chair) and concurred in by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, of the Fifteenth Division, Court of Appeals, Manila.

[6] *Id.* at 28.

[7] *Id.* at 66-74.

[8] *Id.* at 125-132.

[9] *Id.* at 126.

[10] *Id.* at 91-94, Employment Contract.

[11] *Id.* at 92.

Following her deployment overseas on January 11, 2015, Jacob was escorted to the residence of her foreign employer Abdulaziz Masser[12] Abdulaziz Al Masoud. She only stayed abroad for less than three (3) months[13] before an early repatriation on account of the following declarations she made under oath.

Jacob narrated that at around noontime on January 31, 2015, she was washing the dishes when "[s]he felt a hard object rubbing against her bottom and was surprised to see her male employer attempting to rape her."[14] She went upstairs to report the matter to her female employer. The latter, however, did not believe her and since then, ill-treated her.[15]

Jacob recalled that on February 16, 2015,[16] her female employer hit her with a shoe, which was then "violently thrown at her."[17] She escaped and went to her agency's counterpart in Riyadh where she met another Overseas Filipino Worker named Rosalie Bermido (Bermido). Bermido told her that apart from being maltreated, female Filipino workers were also being sold to their Arab employers.[18]

According to Jacob, Bermido suggested that they escape the agency through the window of the second-floor comfort room, since the agency keeps their doors locked at night.[19] Bermido succeeded in escaping the agency. Jacob, however, fell and injured her spinal column. Upon injuring herself, a passerby approached them and started groping their breasts. They begged him to stop and bring them to the hospital instead.[20] An ambulance

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[12] However, in Jacob's Employment Contract, the name of his employer was spelled as "Abdulaziz Nasser Abdulaziz Al Masoud."

[13] *Rollo*, p. 35.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 127.

[17] *Id.* at 35.

[18] *Id.* at 35 and 127.

[19] *Id.* at 127. See also *rollo*, pp. 95-96, Discharge Summary.

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

later took Jacob to King Saudi Medical City[21] where she underwent surgery on February 28, 2015. After a few days, representatives from the Overseas Workers Welfare Administration brought them to *bahay kalinga* where they waited for their ticket exit visas.[22]

On March 25, 2015, Jacob appeared before the Office of the Labor Attaché and executed[23] a Final Settlement and Certification,[24] the contents of which read:

FINAL SETTLEMENT

I, Donna B. Jacob, a Filipino national, hereby acknowledge full conformity to the final settlement with my employer/sponsor . . . and further state: That as result of this settlement, I have voluntarily agreed to be sent home to the Philippines; That I acknowledge to have received all my salaries and benefits entitled to me, and [t]hat I hereby voluntarily waive my right to file any complaint or action for whatever reason against my employer/Agency at any court in the Kingdom of Saudi Arabia as well as in the Philippines.

Signature: [Signed]
Worker's name: Donna B. Jacob
Passport No. _____
Thumb Mark: _____
Witness: _____

Noted (as a condition for worker's Repatriation)

[stamped]
Seen and Noted

25 March 2015
[Signed] Rustico SM. Dela Fuente
Labor Attaché, POLO
Philippine Embassy, KSA [25]

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[21] In the pertinent Discharge Summary, however, it is referred to as King Saud Medical City.

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

[23] *Id.* at 67.

[24] *Final Settlement and Certification,* pp. 163-164.

[25] *Id.* at 163.

CERTIFICATION

This is to certify that Donna B. Jacob personally appeared before me this 3-24-2015 [March 24, 2015] at the Philippine Embassy POLO Office in Riyadh, KSA and freely signed this document consisting of two (2) pages including this certification after having been duly apprised of his/her contractual and legal rights.

[stamped]
Seen and Noted

25 March 2015
[signed] Rustico SM. Dela Fuente
Labor Attaché, POLO
Philippine Embassy, KSA
Name & Signature of Authorized Officer

x----------x

Ako Donna B. Jacob ay nagsasaad at nagpapatunay na:

1. Natanggap ko sa aking employer ang lahat kong sahod, mga benepisyo at plane ticket pabalik sa Pilipinas;
2. Wala na akong reklamo sa aking employer;
3. Ako ay sapat na pinayuhan at binalaan ng POLO officer tungkol sa aking mga karapatan at pananagutan sa kasulatang ito.

Maraming salamat po.

[signed]
Donna Jacob
Pangalan at Lagda ng OFW[26]

On March 31, 2015, Jacob was repatriated to the Philippines.[27]

On July 2, 2015,[28] Jacob and Bermido filed a case[29] before the Labor Arbiter for constructive illegal dismissal,[30] maltreatment, and nonpayment of wages for the unexpired portion

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[26] *Id.* at 164.

[27] *Id.* at 67.

[28] *Id.* at 35.

[29] *Id.* at 78-79.

[30] *Id.* at 78.

of their contract with claims of moral and exemplary damages, medical expenses, and attorney's fees.[31] The Complaint filed was directed against First Step and its President,[32] Elnor Tapnio, as well as against Jacob's foreign[33] employer Muhammad (First Step, *et al.*).

Only Jacob filed an Amended Complaint. She solely pursued the case by filing her Position Paper and attending all the mandatory conferences.[34] Since no amicable settlement was reached,[35] an exchange of pleadings[36] then ensued between the parties.

Jacob insisted on having been constructively dismissed because her working environment allegedly became so intolerable that she was impelled to leave her job. She assailed the validity of the Final Settlement and Certification, asserting that her alleged signature therein was not hers.[37]

On the other hand, First Step, *et al.*, countered that Jacob was the one who commenced the pre-termination of her contract since she was feeling "homesick."[38] Jacob allegedly requested to be repatriated as soon as possible. When her foreign employer tried convincing her to stay, she repeatedly threatened to run away if she will not be permitted to leave.[39]

First Step, *et al.*, emphasized that Jacob's intention to resign was formalized when she executed the Final Settlement, which

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[31] *Id.* at 67.

[32] *Id.* at 108.

[33] *Id.* at 81.

[34] *Id.* at 125.

[35] *Id.* at 67.

[36] See *rollo*, pp. 80-90, Complainants' Position Paper; *rollo*, pp. 97-109, First Step, *et al.*'s Position Paper; *rollo*, pp. 114-119, Jacob's Reply with Motion to Present the Original Annexes; *rollo*, pp. 120-124, First Step, *et al.*'s Reply.

[37] *Rollo*, pp. 67-68.

[38] *Id.* at 128.

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

was later certified by the Philippine Overseas Labor Office Labor Attaché in Riyadh.[40] Her assertion of maltreatment allegedly had no basis, since she did not submit any police or medical report to support her claim. Further, First Step, *et al.*, asserted that there was no proof that Jacob did not receive her remuneration. They pointed out that in her Complaint and in the Certification she signed before the Labor Attaché, she even admitted receiving SR1,500.00 or US$400.00.[41]

On September 4, 2015, the Labor Arbiter[42] found that Jacob was constructively dismissed and declared that the latter was able to categorically relate how her foreign employers' hostile and unbearable conduct forced her to leave. The Labor Arbiter did not give credence to the Final Settlement and Certification because apart from being mere photocopies, its authenticity and due execution was contested.[43] Additionally, the Labor Arbiter dismissed Bermido's complaint for failure to prosecute.[44]

In computing Jacob's salaries for the unexpired portion of the contract, the Labor Arbiter explained:

> Clearly there exists constructive dismissal. Thus, for having worked for more than a month (from 12 January 2015 to 16 February 2015); complainant is entitled to wages representing the unexpired portion of the contract or in the amount of US$ (US$400.00 x 23 mos. = US$9,200.00) or in its Philippine Peso equivalent at the time of payment pursuant to Section 7 of RA 10022, amending Section 10 of Republic Act No. 8042.[45]

The dispositive portion of the Labor Arbiter's Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:

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[40] *Id.* at 129.

[41] *Id.* at 36.

[42] *Id.* at 125-132.

[43] *Id.* at 130-131.

[44] *Id.* at 125.

[45] *Id.* at 131.

1) Dismissing without prejudice the complaint of Rosalie C. Bermido for failure to prosecute;

2) Declaring complainant Donna B. Jacob to have been constructively dismissed from employment.

3) Ordering respondents First Step Manpower Int'l. Services, Inc., Muhammad[,] and Elnor E. Tapnio to solidarily pay complainant Donna B. Jacob of her wages representing the unexpired portion of her contract in the amount of US$9,200.00 or in its Philippine Peso equivalent at the time of payment.

All other claims[46] are dismissed for lack of merit.

So Ordered.[47] (Emphasis in the original)

First Step, *et al*., then appealed[48] before the National Labor Relations Commission (Commission). They attached an original copy of the Final Settlement and another Certification issued by Labor Attaché Rustico S.M. dela Fuente (Labor Attaché dela Fuente) which reads:

This is to certify that the signature affixed on the Final Settlement done by **OFW DONNA B. JACOB** was that of **Assistant Labor Attaché, Ms. FIRMA P. BANTILAN**. The signature of Ms. Bantilan affixed on the said document is true and authentic.

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[46] *Id.*

Anent complainant's claim for reimbursement of medical expenses in the amount of ₱100,000.00 [sic], the same is denied for lack of merit. Other than complainant's bare assertion that she is entitled to such claim[,] [s]he did not present receipts of such amount on which she claims reimbursement thereof. Anent complainant's claim for unpaid overtime pay, the same is also denied for being devoid of merit.

She failed to state with certainty the days she rendered overtime work but not paid the consequent overtime pay.

Anent complainant's claim for moral and exemplary damages and attorney's fees, the same is denied for lack of factual and legal basis.

[47] *Id.* at 132.

[48] *Id.* at 133-146. See also *rollo*, pp. 166-171, Jacob's Comment/Opposition to Memorandum of Appeal.

This certification is issued today, **16 September 2015**, as requested by **Alesnad Almehani Recruitment Office** for whatever legal purpose it may serve.[49] (Emphasis in the original)

On February 29, 2016, the Commission[50] reversed the decision of the Labor Arbiter and dismissed Jacob's complaint for lack of merit.[51] In a divided ruling, it held that the Final Settlement and Certification are both valid since the Labor Attaché enjoys the presumption of regularity in the performance of official functions. Having entered into a valid compromise agreement, Jacob's claim of constructive dismissal is untenable.[52]

Moreover, it emphasized that aside from Jacob's failure to substantiate her claim of forgery, the same was also belied by the Certification issued by Labor Attaché dela Fuente.[53] The dispositive portion of the Decision provides:

WHEREFORE, Labor Arbiter Remedios L.P. Marcos' Decision dated 04 September 2015 is hereby **SET ASIDE** and a new one entered **DISMISSING** the complaint of complainant Donna B. Jacob for lack of merit.

The dismissal of the complaint of complainant Bermido for failure to prosecute is sustained.

SO ORDERED.[54] (Emphasis in the original)

In his Dissenting Opinion,[55] Presiding Commissioner Gerardo C. Nograles (Commissioner Nograles) concurred with the Labor Arbiter's finding that Jacob was constructively dismissed.[56] He presented his dissent in this wise:

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[49] *Id.* at 165.

[50] *Id.* at 66-74.

[51] *Id.* at 73.

[52] *Id.* at 69-73.

[53] *Id.* at 72.

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

[55] *Id.* at 226-230.

[56] *Id.* at 228-230.

Complainant Jacob narrates the event that transpired when she was maltreated by her foreign employer which made her decide to ran *[sic]* away. Respondents, on the other hand, contend that she pre-terminated her employment contract due to homesickness. As between these two contentions, undersigned finds that respondents' assertion cannot prevail over complainant's categorical, straightforward, and detailed statement. There is more serious reason that made her decide to give up her employment than mere homesickness. It is unbelievable that for being homesick, she would ran *[sic]* away from her foreign employer and risk her life in so doing. In fact, complainant presented the Discharge summary to prove her allegation that she suffered an injury due to an accident. This fact was recognized by respondents with their statement in the reply — "*Moreover, her failure to return to her foreign employer and the accident that subsequently landed her in the hospital was caused by her doing and fault, and which resulted to her inability to continue working for her foreign employer*." Such statement clearly contradicts their earlier stand in their Position Paper that complainant Jacob decided to pre-terminate her employment due to homesickness.

x x x x x x x x x

x x x In the case at bar, based on the narration of events which complainant suffered in the hands of her foreign employer, undersigned opines that she had experienced unbearable treatment from her foreign employer which compelled her to give up her employment. Indubitably, there exists illegal constructive dismissal.

x x x x x x x x x

As regards the Final Settlement document signed by complainant Jacob, the same is not a proof that she voluntarily gave up her employment and received all the benefits due her. Taking into consideration her situation at the time of the signing, she had no choice but to go back to the Philippines. In other words, signing the Final Settlement document was a condition for her repatriation.

x x x x x x x x x

It is worthy to note that the Philippine Embassy and POLO's stamps in the document did not mean that complainant subscribed and swore to it before the Labor Attaché. Complainant did not attest the veracity and truthfulness of the contents of the document before Labor Attaché Rustico SM. Dela Fuente, and there is no showing that those documents

were subscribed and sworn to by complainant before him as the latter simply had "seen and noted" it.[57] (Emphasis in the original)

On March 31, 2016, the Commission denied[58] Jacob and Bermido's Motion for Reconsideration,[59] to which Commissioner Nograles likewise dissented from.[60]

On June 10, 2016, Jacob filed a Petition for *Certiorari*[61] before the Court of Appeals.

On October 24, 2016, the Court of Appeals[62] dismissed Jacob's petition and declared that the allegations of maltreatment and attempted rape were unsubstantiated. Jacob's narration of incidents was found to be inconsistent and discrepant. There was also no record that she reported any incident of maltreatment or molestation before the Labor Attaché or the Overseas Workers Welfare Administration representatives who assisted her.[63]

Also, the Court of Appeals ruled that there was no evidence showing that Jacob was forced to sign the settlement agreement.[64] It gave evidentiary weight to the Labor Attaché's Certification that "Jacob personally appeared before him and signed the Final Settlement and the Certification on March 25, 2015" and upheld that the official act enjoys the presumption of regularity.[65] The dispositive portion of its Decision reads:

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby **DISMISSED**.

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[57] *Id.* at 228-230.

[58] *Id.* at 76-77.

[59] *Id.* at 172-181.

[60] *Id.* at 77.

[61] *Id.* at 46-61.

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

[63] *Id.* at 41.

[64] *Id.* at 42.

[65] *Id.*

SO ORDERED.[66] (Emphasis in the original)

On February 6, 2017, the Court of Appeals denied[67] Jacob's Motion for Reconsideration.[68]

Hence, this Petition for Review[69] where Jacob prays, among others,[70] for the reversal of the Court of Appeals ruling and the reinstatement of the Labor Arbiter's decision.

Petitioner claims that the Labor Arbiter's Decision and Commissioner Nograles' Dissenting Opinion clearly shows that she was constructively dismissed. She asserts that she was able to substantiate her claim of maltreatment through the Medical Summary she submitted as evidence.[71]

In ruling that the settlement agreement was valid, petitioner maintains that the Court of Appeals erred in strictly applying the rules on technicality against a poor employee and liberally construing it in favor of the employer.[72] Since the settlement allegedly has no legal basis and consideration, she posits that it should be considered as a "mere scrap of paper."[73] She also emphasizes that her filing of an illegal dismissal case debunks respondents' assertion that she voluntary resigned.[74]

On June 28, 2017, this Court issued a Resolution[75] requiring respondents to comment on the Petition.

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[66] *Id.*

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

[68] *Id.* at 214-224.

[69] *Id.* at 10-30.

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

Jacob also prays that "respondents [be] liable for Twelve (12%) percent per annum of the total judgment award as interest provided in R.A. 10022 as amending R.A. No. 8042, plus 10% attorney's fees." Jacob also prays for "[o]ther reliefs and just under the circumstances[.]"

[71] *Id.* at 21-24.

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

[73] *Id.* at 25.

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

[75] *Id.* at 231.

In their Comment,[76] respondents counter that petitioner failed to support her claims with substantial evidence.[77] Allegedly, her points of argument reveal that she merely wanted the Court of Appeals ruling to be reversed "because she is poor[.]"[78] Other than her bare allegations and a misplaced reliance to social justice, her petition had no leg to stand on.[79]

Respondents also insist that petitioner's illegal dismissal charge was baseless for failing to prove that she was really maltreated and molested by her foreign employers.[80] For one, the medical summary presented merely showed "the injuries and bruises she sustained when she fell from a window while attempting to flee from the office of her foreign placement agency."[81] Equally telling was petitioner's failure to mention to First Step or the Philippine Embassy that she was harassed by her male boss despite having the opportunity to do so.[82]

Respondents assert that there was no dismissal to speak of since petitioner merely resigned.[83] Albeit impliedly, petitioner allegedly admitted in her *Sinumpaang Salaysay* that "she decided to be repatriated to the Philippines due to her medical operation."[84] Moreover, her voluntary resignation was bolstered by her execution of a settlement agreement which, as a public document, enjoys the presumption of validity.[85] Thus, the agreement being "executed before the Philippine Embassy in

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[76] *Id.* at 237-248.

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

[78] *Id.* at 238.

[79] *Id.* at 238-241.

[80] *Id.* at 243.

[81] *Id.* at 241.

[82] *Id.* at 243.

[83] *Id.* at 245-247.

[84] *Id.* at 244.

[85] *Id.* at 241-242.

the Kingdom of Saudi Arabia, it is presumed that the official duty has [also] been regularly performed."[86]

Finally, respondents underscore that there was no indication that petitioner was coerced to sign the document. She neither contradicted its due execution nor denied her signature.[87] Besides, the genuineness of the settlement agreement was affirmed by the Certification issued by the Philippine Embassy.[88]

In her Reply,[89] petitioner argues that her "[a]llegations, affidavit and medical summary" sufficiently established that she was illegally dismissed.[90] She argues that it is not the worker but the employer who bears the burden of proving that the termination of services is grounded on valid or authorized causes.[91]

Moreover, petitioner asserts that the settlement agreement is void because the "Philippine Embassy has no jurisdiction to hear and decide the issue of illegal dismissal."[92] She adds that it was the officer at the embassy who directed her to sign the document so she could come home. Allegedly, the latter even told her to just file a complaint once she arrives in the Philippines.[93]

For resolution before this Court is whether or not petitioner Donna Jacob was constructively dismissed.

The Petition is meritorious.

I

In a Rule 45 Petition of a Rule 65 ruling, this Court does not resolve factual issues except in ascertaining whether the Court

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[86] *Id.*

[87] *Id.* at 241.

[88] *Id.* at 242.

[89] *Id.* at 250-256.

[90] *Id.* at 250.

[91] *Id.*

[92] *Id.* at 252.

[93] *Id.*

of Appeals erred in finding that the Commission did or did not gravely abuse its discretion in deciding the labor case. This Court generally resolves questions of law because it is not a trier of facts. Moreover, the Commission's decision is final and executory and can only be re-evaluated by the Court of Appeals when it gravely abused its discretion amounting to lack or excess of jurisdiction.[94]

Applying the foregoing principle in the present case, the central issue is not whether petitioner was dismissed. Instead, it is whether or not the Court of Appeals aptly decided that the Commission did not commit grave abuse of discretion in reversing the Labor Arbiter's finding of constructive dismissal.

The Court of Appeals erred in so doing.

Constructive dismissal, otherwise known as constructive discharge,[95] is a form of illegal dismissal. In *Siemens Philippines v. Domingo*,[96] the Court defined it as follows:

> Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay. **It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. It is brought about by the clear discrimination, insensibility or disdain shown by an employer which becomes unbearable to the employee. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary.**[97] (Citations omitted; emphasis supplied)

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[94] *Rodriguez v. Sintron Systems, Inc.*, G.R. No. 240254, July 24, 2019 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65491> [Per *J.* Caguioa, Second Division].

[95] *Philippine Japan Active Carbon Corp. v. NLRC*, 253 Phil. 149, 152-153 (989) [Per *J.* Griño-Aquino, First Division].

[96] 582 Phil. 86 (2008) [Per *J.* Nachura, Third Division].

[97] *Id.* at 99-100.

Constructive dismissal does not always entail a "forthright dismissal or diminution in rank, compensation, benefit and privileges."[98] Pertinent in the case at hand, there can also be constructive dismissal in cases where "an act of clear discrimination, insensibility, or disdain by an employer becomes so *unbearable* on the part of the employee that it could foreclose any choice by him [or her] except to forego his [or her] continued employment."[99]

To gauge if constructive dismissal exists, the test is whether a reasonable person in the employee's standing was impelled to surrender his or her post under the given situation. It is a dismissal in disguise because the doing equates to a "dismissal[,] but made to appear as if it were not."[100] Hence, "the law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer."[101]

On the basis of the Labor Arbiter's Decision and Commissioner Nograles' Dissenting Opinion, petitioner maintains that she was constructively dismissed.[102] She insists on the probative value of her affidavit and medical summary to establish her allegations.[103] On the other hand, respondents counter that her illegal dismissal charge was baseless for failing to prove that she was maltreated and sexually harassed by her foreign employers. Respondents assert that apart from her self-serving affidavit and medical summary, no other relevant evidence was presented to corroborate the charges.[104]

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[98] *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001) [Per *J*. Gonzaga-Reyes, Third Division].

[99] *Id.*

[100] *McMer Corp., Inc. v. National Labor Relations Commission*, 735 Phil. 204, 214 (2014) [Per *J*. Peralta, Third Division].

[101] *Id.*

[102] *Rollo*, pp. 21-23.

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

[104] *Id.* at 241.

In ruling for the respondents, the Court of Appeals found that there was no substantial evidence to confirm a case of constructive dismissal on account of maltreatment and molestation. Prescinding from petitioner's declaration, it held that nothing therein reveals that her male employer attempted to rape her. The Court of Appeals pointed out that if the said charges were true, she could have reported the matter "to the Labor Attaché or the OWWA who assisted her in processing her exit visa."[105]

This Court rules otherwise.

"Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine otherwise."[106] Thus, over and again, this Court "upheld that the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects,"[107] as in the case at hand where the sworn declaration of the complainant depicting the situation which caused her to leave her foreign employer's residence and thus, forego continued employment was supported by other documentary evidence such as relevant medical records.

A review of the records shows that petitioner, as aptly found by the Labor Arbiter,[108] was able to categorically relate the following circumstances:

> Dumating po ako sa bansang Riyadh noon[g] January 12, 2015 at hinatid po ako ng amo ko sa agency ng Riyadh. Ako po ay dinala sa amo ko na si Abdulaziz Masser Adulaziz Al Masoud. Noong January 31, [2015] ng tanghali habang ako ay naghuhugas ng mga plato nagulat ako ng may lumapat na matigas na ari ng [amo] kong lalaki sa likod ko. **Nagulat ako kasi gusto niya [akong] gahasain**. Tumakbo ako sa third floor para magsumbong sa [amo] [kong] babae. Pero ayaw

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[105] *Id.* at 41.

[106] *McMer Corp., Inc. v. National Labor Relations Commission*, 735 Phil. 204, 219 (2014) [Per *J.* Peralta, Third Division].

[107] *Id.* at 217.

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

maniwala ang [amo] [kong] babae at ang sabi sinungaling daw ako. Kaya wala akong magawa kundi umiyak na lang. Ang sabi pa sakin ng [amo] [kong] babae wag daw ako madalas maligo at huwag daw ako [tumingin] sa mga mata ng [amo] [kong] lalaki. At kailangan nakatakip lahat maliban sa mata ko ang lumabas. At kailangan nakatingin ako lagi sa lupa o sahig. **Mula noon lagi nalang akong sinasaktan ng amo [kong] babae**. Pag basa ang buhok ko lagi siya galit sa akin. Noong February 16, 2015 ako ay pinukpok ng sapatos at hinagisan ng sapatos ng amo kong babae. Kaya ako ay ***tumakas*** papunta sa agency sa Saudi. Subalit pagdating ko po doon sa agency nadatnan ko po si Rosalie Bermido na taga Bicol. Ganon din nangyari sa kanya minaltrato din siya ng employer niya at muntik din gahasain ng among lalaki. Halos hindi po makatayo si Rosalie Bermido dahil sa gutom dahil hindi po sya pinapakain [nang] maayos noong dumating po ako doon parang tatakas siya noong gabi din na yon mga 11:30 ng gabi ay binigyan kami ng pagkain. Ang sabi po sa akin ni Rosalie kumain kami para lumakas at tatakas daw kami sa dahilang ang mga babae doon sa agency ay inaabuso at sinasampal kung sino ang magugustuhan ng Arabo. Kaya po natakot kami at isa pa po [ibebenta] kami sa Arabo na magiging employer namin ulit. [Nang] dumating ang 3:00 A.M. doon kami dumaan sa may C.R. ng agency sa bintana nagdugtong dugtong kami ng mga damit pa doon sa bintana ng mga may naunang tumakas. Sarado po kasi ang pinto at kinandado ng agency. Natakot na po kami kaya tumakas na po kami yong kasama ko na si Rosalie Bermido. Nakababa [nang] maayos si Rosalie Bermido subalit ako po ay bumagsak kaya [nabali] ang spinal column ko sa likod di na [ako] makalakad ng oras na yon may nakakita sa amin [na] isang Arabo at tumawag ng [pulis]. Nagmakaawa po kami dahil nilamas na ang aming mga suso kahit ako ang hindi makatayo. Kinalkal lahat ng mga damit namin at kinuha nila lahat ang tanging natira sa amin ay mga suot namin. Nag makaawa kami na dalhin kami sa ospital dahil hindi na po ako makatayo. Tumawag po sila ng ambulance at dinala kami sa King Saudi Medical City. Nakalakip dito ay may marking bilang Annex "2" ang aking medical records. Ako po ay inoperahan noong February 28, 2015 at mga ilang araw po sinundo na ako ng OWWA at dinala sa bahay kalinga at doon na ako nag hintay na mabigyan ako ng ticket exit visa. Ganon din si Rosalie Bermido.[109] (Emphasis supplied)

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[109] *Id.* at 126-127.

It is discernable from petitioner's declaration that the controversy emanated from the lewd actuations of her male foreign employer on January 31, 2015. To avert a commotion, she reported the matter to her female employer but unfortunately, she was merely discredited and even blamed for the incident. From then on, petitioner's female foreign employer treated her differently. Jacob was subjected to physical and verbal harm that she was left with no other choice but to relinquish her employment.

Certainly, the treatment petitioner experienced in the hands of her foreign employers fostered a hostile and unbearable work setting which impelled her not only to leave her employers but also, as in petitioner's words, to escape *(tumakas)*. The conclusion is all too clear that there exists a well-grounded fear on her part prompting her to run away despite having been employed overseas for barely two (2) months.

The cessation of petitioner's employment was not of her own doing but was brought about by unfavorable circumstances created by her foreign employers. To put in simply, if petitioner failed to continue her job, it was because she refused to be further subjected to the ordeal caused by the her employers' conduct. All of these evidently constitute a case of constructive dismissal.

Unfortunately, petitioner's anguish did not end when she was able to escape on February 16, 2015. To seek refuge, she went to respondent First Step's counterpart agency in Riyadh. Upon discovering the unfortunate situation of female overseas workers there, she tried to escape through the agency's window where she fell and injured her spine. Petitioner's narration is not at all self-serving and baseless, as claimed by respondents.[110] The material points of her story were duly supported by the Discharge Summary[111] from King Saudi Medical City which, in part, provides:

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[110] *Id.* at 241.

[111] *Id.* at 95-96.

Date of Admission: 17/02/2015

Reason [o]f Admission:

PT. ADMITTED THROUGH ER WITH H/O FALL FROM HEIGHT OF 2ND FLOOR ON 16/2/15 AND C/O LOW BACKACHE. NO H/O LOC WEAKNESS OR NUMBNESS IN LIMBS.

Significant History and Physical Examination:

O/E. PT. CONSCIOUS ORIENTED, STABLE HEMODYNAMICALLY. TENDER LUMBAR SPINE. NO NEUROLOGICAL DEFICIT.

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MANAGEMENT PROCEDURE & TREATMENT INCLUDING OPERATIONS:

ON 28/2/15 PT. WAS OPERATED WITH POSTERIOR SPINAL FIXATION FROM T11 TO L2 AND FUSION WITH BONE GRAFT.

PROGRESS OF PATIENTS HEALTH:

MOBILISED WITH BRACE. WOUND HEALED WELL.[112] (Emphasis supplied)

Therefore, respondents' argument that petitioner was not dismissed because she impliedly admitted "in her Petition [that] she decided to be repatriated to the Philippines due to her medical operation"[113] is absurd. In resolving issues of constructive dismissal, courts do not only weigh the evidence presented by the parties, but also delve into the "totality of circumstances."[114] In petitioner's case, it is apparent that she could not have gone to the counterpart agency and eventually injure herself in the course of escape were it not for the hostile treatment afforded by her foreign employers which made her run away.

Furthermore, petitioner's failure to promptly report the matter of maltreatment and harassment to the authorities overseas[115]

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[112] *Id.* at 95.

[113] *Id.* at 244.

[114] *Philippine Span Asia Carriers Corp. v. Pelayo*, 826 Phil. 776, 794 (2018) [Per *J.* Leonen, Third Division].

[115] *Rollo*, p. 243. See also *rollo*, p. 41.

cannot be taken against her. In her Petition, petitioner expressed being "maltreated, injured and nearly raped[.]"[116] Hence, "[t]he behavior and reaction of every person cannot be predicted with accuracy."[117] Given the traumatic incidents petitioner went through, the alleged delay in reporting could be reasonably expected. People respond differently in varied situations, and there exists "no standard form of behavioral response when one is confronted with a strange or startling experience."[118]

Guided by the foregoing precepts, this Court finds that petitioner was constructively discharged from employment and hence, illegally dismissed.

II

Respondents' theory that petitioner voluntarily resigned due to homesickness also fails to convince.

The correlation of resignation *vis-à-vis* constructive dismissal was explained in *Central Azucarera de Bais v. Siason*:[119]

> *Resignation is the formal pronouncement or relinquishment of a position or office. It is the voluntary act of an employee who is in a situation where he [or she] believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he [or she] has then no other choice but to disassociate himself [or herself] from employment.* The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he [or she] in fact intended to terminate his [or her] employment. *In illegal dismissal cases, it is a fundamental rule that when an employer interposes the defense of resignation, on him [or her] necessarily rests the burden to prove that the employee indeed voluntarily resigned.*

In contrast, constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or

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[116] *Id.* at 10.

[117] *People v. Buenviaje*, 408 Phil. 342, 352 (2001) [Per *J.* Pardo, First Division].

[118] *Id.*

[119] 765 Phil. 399 (2015) [Per *J.* Perlas-Bernabe, First Division].

a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him [or her] except to forego his [or her] continued employment. It must be noted, however, that bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.[120] (Emphasis supplied, citations omitted)

As stated above, respondents hold the burden of proving that petitioner voluntarily resigned. Respondents make much of the Final Settlement and Certification executed before the Philippine Embassy to support their claim. They insist that, bereft of any other clear and convincing evidence to the contrary, petitioner's mere denial cannot overturn the presumption that the Labor Attaché regularly performed its official duties.[121]

Respondents' argument is misplaced.

A perusal of the Final Settlement and Certification shows that they were merely stamped with a "*seen and noted*"[122] mark that was signed by Assistant Labor Attaché Firma P. Bantilan.[123] As amply deduced by Commissioner Nograles in his Dissenting Opinion, the stamps do not imply that petitioner attested to the veracity of the documents' contents before the Labor Attaché[124] because they were plainly seen and noted. Besides, nothing in the Final Settlement expressly provides that petitioner voluntarily resigned from employment due to the personal reason stated. Among other things, it was merely written therein that "as a result of [said] settlement, [she] voluntarily agreed to be sent home to the Philippines[.]"[125]

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

[121] *Rollo*, pp. 241-242.

[122] *Id.* at 163.

[123] *Id.* at 165. According to the certification, the signature affixed above Rustico SM. Dela Fuente's name on the Final Settlement was that of Assistant Labor Attaché Firma P. Bantilan's.

[124] *Id.* at 230.

[125] *Id.* at 163.

Equally telling is the fact that the space allotted for a supposed witness was left blank, which means that no one was called to confirm the circumstances surrounding the execution of the document. Having a witness could have been helpful to the cause of respondents, especially since petitioner is assailing[126] the authenticity of her signature in the pertinent documents. As such, we are left with nothing but self-serving assertions from respondents.

Notably, as a general[127] rule, "deeds of release, waivers, or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy."[128] The burden of proving that petitioner voluntarily entered into the agreement lies with the employer,[129] which in this case, respondents miserably failed to do. Apart from merely claiming that petitioner's homesickness led her to voluntary resign from her job (as evinced by the execution of the Final Settlement), respondents failed to present other concrete evidence to support the assertion.

Also, the lack of any physical coercion on the part of petitioner does not automatically suggest that she voluntarily adhered to the stipulations in the Final Settlement.[130] This is especially so in light of her helpless situation, away from the comforts of her family and support group. Out of dire necessity and desperation, it is evident that signing the Final Settlement and

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[126] *Id.* at 114-115.

[127] *Universal Staffing Services, Inc. v. NLRC*, 581 Phil. 199, 210 (2008) [Per *J.* Nachura, Third Division]. Save in cases where "the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking."

[128] *Id.* at 209-210.

[129] *Id.*

[130] See *Universal Staffing Services, Inc. v. NLRC*, 581 Phil. 199, 210 (2008) [Per *J.* Nachura, Third Division].

Certification was her only choice as it was, in fact, explicitly noted therein that it was a "condition for the worker's [r]epatriation[.]"[131] Besides, it would be irrational for petitioner to resign and thereafter file a case for illegal dismissal since "[r]esignation is inconsistent with the filing of the said complaint."[132] Given that resignation "is a formal pronouncement of relinquishment of an office[,]"[133] it must be concurrent with the intent and the act.[134]

III

As a result of petitioner's illegal dismissal, she is entitled to moral damages, exemplary damages, and attorney's fees.[135]

Moral and exemplary damages are awarded in the following circumstances:

> Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or *constitutes an act oppressive to labor*, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a *wanton, oppressive, or malevolent manner*.[136] (Emphasis supplied, citation omitted)

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[131] See *rollo*, p. 163. Also, in the pertinent employment contract (*rollo*, p. 94), stipulation number 17 expressly states that: "After the expiration of the contract and the [Household Service Worker or HSW] desires to return the Philippines, the employer shall present the bank statement of the HSW to the Saudi recruitment agency, and the employer and the worker shall then sign a **final settlement**. Such bank statement and proof of statement may be submitted as evidence in the Philippines and in the KSA."

[132] *Valdez v. NLRC*, 349 Phil. 760, 767 (1998) [Per J. Regalado, Second Division].

[133] *Id.* at 768.

[134] *Id.*

[135] *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, G.R. No. 200811, June 19, 2019, <http://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/65230> [Per J. Leonen, Third Division].

[136] *Torreda v. Investment and Capital Corporation of the Philippines*, G.R. No. 229881, September 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64603> [Per J. Gesmundo, Third Division].

In *Prieto v. NLRC*,[137] the Court recognized the struggles of Filipino workers abroad:

> The Court is not unaware of the many abuses suffered by our overseas workers in the foreign land where they have ventured, usually with heavy hearts, in pursuit of a more fulfilling future. Breach of contract, maltreatment, rape, insufficient nourishment, sub-human lodgings, insults and other forms of debasement, are only a few of the inhumane acts to which they are subjected by their foreign employers, who probably feel they can do as they please in their own country.[138]

In acknowledging the plight of Overseas Filipino Workers, this Court underscored the importance of stern enforcement of pertinent laws and rules. In *JSS Indochina Corp. v. Ferrer*:[139]

> We take this opportunity to stress the need for strict enforcement of the law and the rules and regulations governing Filipino contract workers abroad. Many hapless citizens of this country who have sought foreign employment to earn a few dollars to ensure for their families a life worthy of human dignity and provide proper education and a decent future for their children have found themselves enslaved by foreign masters, harassed or abused and deprived of their employment for the slightest cause. No one should be made to unjustly profit from their suffering. Hence, recruiting agencies must not only faithfully comply with Government-prescribed responsibilities; they must impose upon themselves the duty, borne out of a social conscience, to help citizens of this country sent abroad to work for foreign principals. They must keep in mind that this country is not exporting slaves but human beings, and above all, fellow Filipinos seeking merely to improve their lives.[140]

The physical stress expected from the nature of petitioner's job as a household helper abroad, coupled with the everyday longing of wanting to be with her family, are already hard to imagine. With the added burden of enduring the trauma caused by her employers' conduct, it can be reasonably deduced that

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[137] 297 Phil. 256 (1993) [Per *J.* Cruz, First Division].

[138] *Id.* at 265.

[139] 509 Phil. 699 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[140] *Id.* at 700-701.

the kind of treatment afforded her was nothing but oppressive. Worse, in petitioner's situation, she had to escape twice in order to save her life. Regrettably, instead of giving petitioner protection, respondents seemingly took advantage of her helpless condition by making her sign a Final Settlement with terms obviously disadvantageous to her. Hence, with the foregoing in mind, an award of ₱50,000 moral damages[141] is therefore justified. Additionally, to deter the commission of similar actuations, an award of ₱25,000 exemplary damages is also warranted.[142]

Furthermore, petitioner is entitled to "attorney's fees equivalent to ten percent (10%) of [her] monetary awards"[143] on the basis of Article 2208[144] of the Civil Code which provides

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[141] *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, G.R. No. 200811, June 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65230> [Per *J.* Leonen, Third Division].

[142] *Id.*

[143] *Id.*

[144] CIVIL CODE, Art. 2208 provides:

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

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

that it may be recovered if exemplary damages are awarded and if the case includes recovery of wages.[145]

IV

Petitioner, for having been illegally dismissed from employment, is also entitled to her salaries corresponding to the unexpired portion of her employment contract[146] in accordance with Section 7 of Republic Act No. 10022[147] which, in part, reads:

SECTION 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

"SEC. 10. *Money Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

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

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[145] See *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, G.R. No. 200811, June 19, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65230> [Per J. Leonen, Third Division].

[146] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

[147] An Act Amending Republic Act No. 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 (2010).

and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

"Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

"Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority.

"In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) *per annum*, **plus his salaries for the unexpired portion of his employment contract** or for three (3) months for every year of the unexpired term, whichever is less. (Emphasis supplied)

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*,[148] the phrase "or for three (3) months for every year of the unexpired term, whichever is less" in the above provision of Republic Act No. 10022 was struck down for violating "constitutional rights to equal protection and due process."[149] Accordingly, as aptly ruled by the Labor Arbiter, petitioner is entitled to her salaries for the unexpired portion of her employment contract.

Nevertheless, this Court cannot grant petitioner's prayer that respondents be liable for an interest of "twelve (12%) percent per annum of the total judgment award"[150] as allegedly stated under Republic Act No. 10022. The said 12% interest particularly pertains to the reimbursement of placement fees. Thus, in light of prevailing jurisprudence, an interest of six percent (6%) per annum shall be imposed on the total monetary awards from

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[148] 740 Phil. 403 (2014) [Per *J.* Leonen, *En Banc*].

[149] *Id.* at 434.

[150] *Rollo*, p. 29.

the time of the filing of the complaint until their full satisfaction.[151]

Finally, this Court notes with disappointment the unreasonably high bar that the majority in the Commission and the Court of Appeals set for a Filipina to prove sexual harassment and maltreatment from their foreign employers in a household setting. It betrays a lack of appreciation of context or an insensitivity to the plight of our Overseas Filipino Workers. The consistent statement affirmed under oath, the medical certificate submitted from the injuries she sustained, her attempt to find succor with the representatives of the respondent, and the sad reality that many women steel themselves in order to work abroad by cleaning the houses of others just so that their families can have a better life here should have been enough.

We are not unaware of the suffering that petitioner may have endured not only from her maltreatment but from how her case was misappreciated by the Commission and the Court of Appeals. We can only hope that our judgment today can contribute to her healing and her family's redress. The dignity of all workers is a value that we all should protect. It is definitely protected under our laws.

WHEREFORE, the Petition is **PARTLY GRANTED**. The October 24, 2016 Decision and February 6, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 146028 are **REVERSED** and **SET ASIDE**.

The September 4, 2015 Decision of the Labor Arbiter is **REINSTATED** in so far as it ruled that petitioner Donna B. Jacob was constructively dismissed and that respondents First Step Manpower Int'l. Services, Inc., Muhammad, and Elnor Tapnio are ordered to pay her salary for the unexpired portion of her contract, with **MODIFICATIONS** that she is adjudged entitled to moral damages, exemplary damages, and attorney's

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[151] *Gutierrez v. NAWRAS Manpower Services, Inc.*, G.R. No. 234296, November 27, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65786> [Per *J.* Carandang, Third Division].

fees. Accordingly, respondents are **ORDERED** to pay petitioner Donna B. Jacob the following:

1. The amount equivalent to her salary for the unexpired portion of her contract;
2. Moral and exemplary damages in the amount of ₱50,000.00 and ₱25,000.00, respectively;
3. Attorney's fees equivalent to 10% of the monetary awards.

An interest of six percent (6%) per annum of the total monetary awards shall be imposed, computed from the time the complaint was filed until its full satisfaction.

SO ORDERED.

Carandang, Zalameda, and *Delos Santos,*[*] *JJ.*, concur.

Gesmundo, J., on wellness leave.

THIRD DIVISION

[G.R. No. 231748. July 8, 2020]

RICHARD LAWRENCE DAZ TOLIONGCO, *petitioner, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, ANGLO-EASTERN CREW MANAGEMENT PHILIPPINES, INC., ANGLO-EASTERN (ANTWERP) NV, GREGORIO B. SIALSA, ALL CORPORATE OFFICERS AND DIRECTORS and M/V MINERAL WATER,** *respondents*.

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[*] Additional Member per S.O. No. 2753.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION - STANDARD EMPLOYMENT CONTRACT (POEA-SEC); 3-DAY MANDATORY REPORTORIAL REQUIREMENT; A SEAFARER CLAIMING DISABILITY BENEFITS IS REQUIRED TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY-DESIGNATED PHYSICIAN WITHIN THREE (3) WORKING DAYS FROM REPATRIATION, AND NON-COMPLIANCE THEREOF RESULTS IN THE FORFEITURE OF THE SEAFARER'S CLAIM FOR DISABILITY BENEFITS; RATIONALE; EXCEPTIONS.— While the Constitution provides for "full protection to labor," employers have the right to determine whether a seafarer's illness or injury is work-related or work-aggravated. This is one of the reasons behind the 3-day reportorial requirement. x x x. The discharge and return home of a seafarer—for reasons such as end of contract, early termination of contract, or illness—is called repatriation. Upon repatriation, "the seafarer shall report to the manning agency within 72 hours upon arrival at point of hire." The 3-day reportorial requirement is reiterated under Section 20 (A) (3) of the 2010 POEA Standard Employment Contract. x x x. *De Andres v. Diamond H Marine Services & Shipping Agency, Inc., et al.* summarized the 3-day reportorial requirement and its exceptions under the POEA Standard Employment Contract: To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. *Ebuenga v. Southfield Agencies* explained the rationale for the 3-day reportorial requirement: The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly

manageable for the physician to identify whether the disease . . . was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment. x x x x x x x x 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.

2. ID.; ID.; ID.; ID.; THE SEAFARER'S REPATRIATION CANNOT BE CONSIDERED AS VOLUNTARY, WHERE HE WAS SEXUALLY HARASSED DURING THE COURSE OF HIS EMPLOYMENT ON BOARD THE SEA VESSEL; HENCE, HE IS ENTITLED TO HIS SALARY FOR THE UNEXPIRED PORTION OF HIS CONTRACT.— There is no doubt that sexual harassment occurred on board the M/V Mineral Water, and that petitioner was a victim of it. x x x. A unique circumstance in this case is that the alleged illness is not caused by the duties and responsibilities of a Messman, but is due to the seafarer's work environment. Petitioner was harassed twice in one night. Though he managed to escape in both instances, there was no way for him to avoid CO Oleksiy. The only way he could protect himself from further sexual advances or unwanted sexual contact was to request for repatriation. In cases like these, it is possible that the seafarer's fear is heightened because there is no way to escape from the environment where sexual harassment occurred. Being out at sea, the seafarer has to wait for the ship to dock at the nearest port before the seafarer can disembark and be repatriated. Thus, from the time the incident of sexual harassment occurred until the time the seafarer is able to disembark, it is probable that the seafarer is cowered by fear. In addition, the sexual predator, knowing there is no room for the victim to escape, is capable of continuously committing such acts of sexual harassment. The unique condition of working on board a ship empowers the harassment. The unique condition of working on board a ship empowers the sexual predator and leaves the victim feeling helpless because they are in the same enclosed space. By no means can petitioner's repatriation be

considered as voluntary, for he had been pushed against the wall with no other recourse. Hence, he is entitled to his salary for the unexpired portion of his contract.

3. ID.; ID.; ID.; ID.; PETITIONER'S NON-COMPLIANCE WITH THE THREE-DAY REPORTORIAL REQUIREMENT IS JUSTIFIED, AS HIS MENTAL FACULTIES HAVE HINDERED HIM FROM DOING SO BECAUSE OF TRAUMA INFLICTED ON HIM CAUSED BY THE INCIDENTS OF SEXUAL HARASSMENT AT THE HANDS OF CHIEF OFFICER WHILE ON BOARD THE SEA VESSEL.— The present case is unique because the illness involved is a mental health disorder. We should consider the reality that even if petitioner was physically capable of complying with the three-day reportorial requirement, his mental faculties might have hindered him from doing so, because of the possible trauma inflicted on him caused by the two incidents of sexual harassment at the hands of the chief officer. A review of the records of this case shows that petitioner was unable to comply with the 3-day reportorial requirement but filed a complaint one week after repatriation. x x x. Perhaps petitioner's mind might have been so confused that he could not fully grasp whatever was happening around him. He might have lost his sense of time because of the trauma, thus rendering him unable to comply with the three-day reportorial requirement. It is also possible that he found it too traumatic to report to his agency upon repatriation.

4. ID.; ID.; ID.; DISABILITY BENEFITS; THE COURT IS PRECLUDED FROM AWARDING DISABILITY BENEFITS, NOT BECAUSE OF THE SEAFARER'S NON-COMPLIANCE WITH THE 3-DAY REPORTORIAL REQUIREMENT, BUT BECAUSE HE FAILED TO PROVE THAT HIS POST-TRAUMATIC STRESS DISORDER (PTSD) IS WORK-RELATED OR WORK-AGGRAVATED, AND THAT THE SAME HAD RENDERED HIM PERMANENTLY AND TOTALLY DISABLED TO WORK AS A SEAFARER.— To support his claim for disability benefits, petitioner presented a psychiatric report and a medical certificate. These documents only prove that he was diagnosed with PTSD, prescribed to take medication, and recommended for psychotherapy sessions. However, there was no disability grading. The medical certificate states that "[a]t this point in

time he cannot return to his work as a seafarer." This statement is not sufficient for this court to conclude that petitioner is permanently and totally disabled to work as a seafarer. It does not instruct us how petitioner's PTSD is work-related or work-aggravated. x x x. Several months had passed before petitioner sought medical opinion, but we should not blame him for belatedly seeking medical help. Perhaps his dire financial condition is one factor. We note that he filed this Petition as a pauper-litigant and he has not found any suitable employment after repatriation. It might also have taken him some time to accept that he needed medical help. He knew well enough that he was wronged and immediately filed a complaint before the Overseas Worker's Welfare Administration, but perhaps, at that point, he had no manifest symptoms of any mental health issues yet. Lest this Court be misunderstood, We recognize that it takes time for victims of sexual harassment to come forward. Perhaps more so if the victim is a male, due to factors such as "fear that he will be considered to have provoked the assault in some way, stigma, a sense of loss of masculinity, either through being penetrated or not having fought hard enough to prevent the attack (or both), . . . and fear of being perceived as homosexual." It is established that petitioner suffered some form of injury, but the pieces of evidence he submitted are not sufficient to convince this Court that he has been rendered permanently and totally disabled. Thus, this Court is precluded from awarding disability benefits, not because of his non-compliance with the 3-day reportorial requirement, but because there is barely any evidence to support the claim for disability benefits.

5. ID.; ID.; ID.; ID.; THE EXISTENCE AND DUE EXECUTION OF THE POEA-SEC DOES NOT MEAN THAT THE SEAFARERS WAIVE THEIR RIGHTS TO FILE CLAIMS ON THE BASIS OF SUBSTANTIVE LAW; SEAFARERS WHO SUFFER FROM OCCUPATIONAL HAZARDS ARE NOT CONSTRAINED TO CONTRACTUAL BREACH AS CAUSE OF ACTION IN CLAIMING COMPENSATION, BUT MAY SEEK DAMAGES BASED ON TORTIOUS VIOLATIONS BY THEIR EMPLOYERS.— Both the Labor Arbiter and the National Labor Relations Commission found that petitioner was sexually harassed. Respondents also did not refute this. In view of the sexual harassment suffered by petitioner at the hands of CO Oleksiy, he is entitled to moral damages, exemplary damages, and attorney's fees. The provisions of the

POEA Standard Employment Contract strikes a balance between the interests of the employer and the seafarer. It provides for "the process for recovery of compensation as a result of occupational hazards suffered by the seafarer." The structure of the POEA Standard Employment Contract theorizes that a seafarer will file for claims based on contractual obligations. However, this should not be the case. To afford full protection to labor, our seafarers should not be limited to what is provided by contract. x x x. This Court made a x x x pronouncement in *Monana v. MEC Global Shipmanagement and Manning Corp*. that "seafarers who suffer from occupational hazards are not necessarily constrained to contractual breach as cause of action in claiming compensation. Our laws allow seafarers, in a proper case, to seek damages based on tortious violations by their employers by invoking Civil Code provisions, and even special laws such as environmental regulations requiring employers to ensure the reduction of risks to occupational hazards." The existence and due execution of the POEA Standard Employment Contract does not mean that seafarers waive their rights to file claims on the basis of substantive law.

6. ID.; ID.; ID.; MONETARY AWARD; AWARD OF MORAL DAMAGES TO A SEAFARER WHO WAS SEXUALLY HARASSED WHILE ON BOARD THE VESSEL, WARRANTED; EXEMPLARY DAMAGES, IMPOSED AGAINST THE RESPONDENT AS A WARNING TO SHIPPING COMPANIES AND MANNING AGENCIES THAT IT IS THEIR OBLIGATION TO ENSURE SAFE WORKING CONDITIONS FOR OUR SEAFARERS; ATTORNEY'S FEES, AWARDED TO SEAFARER WHERE HE WAS FORCED TO LITIGATE IN ORDER TO RECEIVE COMPENSATION FOR THE UNEXPIRED PORTION OF HIS CONTRACT AND FOR WHAT HE SUFFERED WHILE ON BOARD THE VESSEL.— [T]his Court reinstates the Labor Arbiter's award of moral damages but increases the amount to ₱100,000.00. The award of moral damages is based not on the grounds stated by petitioner but because this court cannot turn a blind eye to the sexual harassment that he had to endure while onboard the M/V Mineral Water. Certainly, a wrongful act was committed against him. We also reinstate and increase the award of exemplary damages to ₱50,000.00 in view of the award of moral damages. In addition, the award of exemplary damages should serve as a warning to

shipping companies and manning agencies that it is their obligation to ensure safe working conditions for our seafarers. As petitioner was forced to litigate in order to receive compensation for the unexpired portion of his contract and compensation for what he suffered at the hands of CO Oleksiy, attorney's fees are also awarded.

7. ID.; ID.; INJURIES DO NOT REFER ONLY TO PHYSICAL KIND, BUT MAY BE PHYSICAL, EMOTIONAL, OR PSYCHOLOGICAL; BOTH WOMEN AND MEN SEAFARERS CAN BE VICTIMS OF SEXUAL HARASSMENT ON BOARD THE VESSELS, AS SEXUAL HARASSMENT IS NOT AN ISSUE OF GENDER BUT AN ISSUE OF POWER.— [S]exual harassment can happen to anyone and everyone. Our society has often depicted women as being the weaker sex, and the only victims of sexual harassment. It is high-time that this notion is corrected. To consider women as the weaker sex is discriminatory. To think that only women can be victims of sexual harassment is discriminatory against men who have suffered the same plight; men who have been victimized by sexual predators. x x x. We must change the notion that injuries refer to only the physical kind. Injuries can come in many forms—physical, emotional, or psychological. It is high-time that we recognize sexual harassment on board vessels as a risk faced by our seafarers. We also cannot disregard the possibility that Toliongco felt shame over what had happened. Victims of sexual abuse usually take time before reporting to the proper authorities. Perhaps, more so if they are male as society has made it hard for male victims of sexual harassment to come out and report. At its core, sexual harassment is not an issue of gender but an issue of power and it may take time to find solutions.

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.
Del Rosario & Del Rosario for private respondents.

D E C I S I O N

LEONEN, *J.*:

This case involves a seafarer who was sexually harassed during the course of his employment on board the M/V Mineral Water. After the incident, petitioner Richard Lawrence Daz Toliongco (Toliongco) opted for voluntary repatriation. He failed to comply with the three-day reportorial requirement. However, a week after his repatriation, he filed a complaint before the Overseas Workers Welfare Administration.[1] Several months later, he filed a complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees"[2] claiming that he is rendered permanently and totally disabled due to his post-traumatic stress disorder caused by his unfortunate experience onboard the vessel.

For this Court's resolution is a Petition for Review on *Certiorari* with Motion to Allow Petitioner to Litigate as an Indigent or a Pauper Litigant assailing the Decision[3] and Resolution[4] of the Court of Appeals, Manila in CA-G.R. SP No. 143146.

On October 30, 2013, respondent Anglo-Eastern Crew Management Philippines (Anglo-Eastern Crew), Inc. employed Toliongco as a Messman on behalf of its foreign principal,

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[1] *Rollo*, pp. 100-101.

[2] *Id.* at 41, CA *Decision*.

[3] *Id.* at 38-49. The January 13, 2017 Decision in CA-G.R. SP No. 143146 was penned by Associate Justice Jhosep Y. Lopez, and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Fifteenth Division, Court of Appeals, Manila.

[4] *Id.* at 51-52. The March 17, 2017 *Resolution* in CA-G.R. SP No. 143146 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba of the Former Fifteenth Division, Court of Appeals, Manila.

Anglo Eastern (ANTWERP), NV.[5] Toliongco's employment contract provided:

That the seafarer shall be employed on board under the following terms and conditions:

1.1 Duration of Contract:	7 MONTHS
1.2 Position:	Messman
1.3 Basic Monthly Salary:	US$604.00
1.4 Hours of Work:	44 hrs/wk
1.5 Overtime:	US$450.00 OT after 103 hrs/mo. US$4.36/hr
1.6 Vacation Leave with Pay:	US$91.00
Comp leave holidays-	US$34.91
1.7 Point of Hire:	MANILA,PHILIPPINES

1.8 Collective Bargaining Agreement, if any: Belgium

The herein terms and conditions in accordance with Governing Board Resolution No. 09 and Memorandum Circular No. 10, series of 2010, shall be strictly and faithfully observed.[6]

On February 23, 2014, Toliongco was deployed aboard the vessel M/V Mineral Water.[7]

On the night of June 27, 2014, Toliongco claimed he was cleaning the galley of the ship when he felt the urge to relieve himself. He was on his way to the water closet when he met Chief Officer Korolenko Oleksiy (CO Oleksiy). Toliongco asked CO Oleksiy "if he wanted his dinner served right away,"[8] to which CO Oleksiy replied "Ok, Ok, Thank you."[9]

Toliongco served dinner to CO Oleksiy and continued to clean the galley. When he returned, Toliongco noticed that CO Oleskiy had not eaten his fruits. Toliongco handed CO Oleksiy the uneaten fruits but he was instructed to follow CO Oleksiy

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[5] *Id.* at 39.

[6] *Id.* at 136.

[7] *Id.* at 40.

[8] *Id.* at 75.

[9] *Id.*

to his room. When both of them had entered the room, CO Oleksiy "removed all of his clothes and lay on his bed."[10] Toliongco was about to leave but CO Oleksiy called out to him, and as Toliongco approached, "the CO suddenly grabbed his left arm."[11]

According to Toliongco, CO Oleksiy "demanded that [Toliongco] masturbate and suck his manhood."[12] He claimed CO Oleksiy "repeatedly forced [Toliongco's] hand unto [CO Oleksiy's] penis."[13] However, Toliongco resisted and left CO Oleksiy's room.[14]

Toliongco then went to the smoking room where he saw Able Seaman Desiderio Paner (Paner). He told Paner what happened and requested that Paner accompany him while cleaning the galley.[15]

Toliongco was about to finish cleaning the galley when Paner told him that CO Oleksiy was waiting for him in the ship's office.[16] Toliongco "asked Paner to accompany him"[17] but the latter suggested that he should "just run or shout if the situation became precarious."[18] Paner also promised "to follow [Toliongco] if he did not come back soon."[19]

Toliongco "was made to enter the cabin first."[20] Upon entering, he averred that CO Oleksiy locked the door, grabbed and

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 76.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

embraced him, then dragged him to the bed.[21] Toliongco resisted and managed to escape. After this, he told Paner[22] as well as Chief Cook Edenjarlou Eseo (Eseo) what happened "and requested permission to call his parents."[23]

The following day, Toliongco filed a Complaint for "Physical Abuse and Sexual Abuse under Alcohol Intake"[24] against Oleksiy before the Captain. Paner and Eseo corroborated the complaint through their written testimonies.[25] All these incidents were entered in the Deck Log Book.[26]

Toliongco claimed that when CO Oleksiy learned about the complaint, he threatened to kill him. Out of fear, Toliongco requested for a reliever. On July 12, 2014, he was repatriated to the Philippines.[27]

Toliongco averred that "[u]pon arrival, he was examined by the company physicians who found that he was sexually harassed and physically abused by CO Korolenko Oleksiy."[28]

Months later or on November 24, 2014 Toliongco consulted Dr. Randy Dellosa (Dr. Dellosa), a clinical psychologist, who diagnosed him with Post Traumatic Stress Disorder (PTSD).[29] The finding was based on the following:

- The patient directly experienced the threat of sexual violence and death;
- recurrent, intrusive, and distressing memories of the traumatic incident;

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 139.

[25] *Id.* at 137-138.

[26] *Id.* at 140.

[27] *Id.* at 40.

[28] *Id.* at 77.

[29] *Id.* at 141-142.

- persistent avoidance of the distressing memories;
- persistent anger;
- problem with concentration; and
- sleep disturbance ever since the said incident happened.[30]

Dr. Dellosa's diagnosis was verified by Dr. Li-Ann Lara-Orencia who also concluded that Toliongco cannot return to his job as a seafarer.[31]

Due to his illness, Toliongco requested for compensation from Anglo-Eastern Crew. However, his request remained unheeded.[32]

On March 2, 2015, Toliongco filed a labor complaint "for constructive dismissal, sexual harassment and maltreatment with prayer for the payment of disability benefits, damages and attorney's fees" against Anglo-Eastern Crew, ANTWERP and Gregorio Sialsa.[33] He also prayed for "payment of the unexpired portion of his contract . . . and legal interest."[34] Toliongco claimed that he suffered from PTSD because he was sexually harassed.[35] Allegedly, "his illness [was] analogous to the traumatic head injuries under Section 32 of the POEA Standard Employment Contract (POEA-SEC)" which reads:

> 6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work.[36]

He asserted that he suffered an occupational disease while employed aboard the vessel and is now "totally and permanently

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[30] *Id.* at 142.

[31] *Id.* at 143.

[32] *Id.* at 41.

[33] *Id.*

[34] *Id.* at 109.

[35] *Id.* at 41.

[36] *Id.*

disabled" due to his "mental instability.[37] Thus, he was hindered from returning to his previous job as a seafarer.[38]

Meanwhile, respondent Anglo-Eastern claimed that Toliongco was not illegally dismissed as he was actually the one who asked for the early termination of his employment contract.[39] They also insisted that Toliongco cannot claim disability benefits because:

> (1) he was not repatriated on a medical ground; (2) he did not comply with the mandatory requirement for post-employment medical examination within three days from his arrival; and (3) there is no declaration from the company-designated physician as to his fitness for sea duty.[40]

While the Labor Arbiter found that Toliongco was constructively dismissed and forced to repatriate himself due to "the hostile environment brought about by . . . [the] filing of the complaint,"[41] it concluded that Toliongco cannot claim disability benefits because he failed to report within three (3) days from his arrival and the medical evidence he submitted was not enough to guarantee his claim.[42]

> There are no compelling reasons to accord the exceptional clause 'physically incapacitated to do so' a liberal reading. Hence, since complainant's failure to observe his reportorial duty is by reason of alleged mental or psychological condition, it cannot be equated with physical incapacity. Moreover, complainant offered no explanation as to why he did not notify his manning agent by some other means. For these two reasons, his disability compensation — assuming he was entitled thereto — is deemed forfeited.[43]

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[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

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

[42] *Id.* at 42.

[43] *Id.* at 87.

Nevertheless, the Labor Arbiter directed respondents to pay Toliongco "moral damages for the mental torture that he endured and exemplary damages to dissuade such incident from further occurring."[44] Attorney's fees were also awarded as Toliongco was constrained to avail the services of a lawyer:[45]

> Regardless, complainant was certainly wronged. His resistance to the repeated demands of his CO to masturbate him and suck his penis led to his complaint. In turn, his complaint was met with violent reaction by his superior. It will not escape the attention of this Office that his allegation that he was threatened with death was never really contested by the respondents. In short, his work environment became a hostile, offensive and intimidating environment because he resisted his superior's demand for sexual favor. What was done to him was clear sexual harassment.[46]

The dispositive portion of the Labor Arbiter's decision reads:

> **WHEREFORE**, evidence and law considered, judgment is hereby rendered holding the respondents liable for the constructive dismissal of the complainant. Accordingly, they are hereby **ORDERED** to solidarily pay the latter as follows:
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> | | |
> |---|---|
> | Salaries for the unexpired portion of the contract | Php54,384.16 |
> | Moral Damages | Php20,000.00 |
> | Exemplary Damages | Php10,000.00 |
> | Attorney's Fees | Php5,438.41 |
>
> **SO ORDERED**.[47]

On appeal, the National Labor Relations Commission affirmed the Labor Arbiter's ruling with modification.[48]

It agreed that Toliongco cannot be given any disability benefit even if he was constructively dismissed.[49] It found that:

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[44] *Id.* at 42.

[45] CA *Decision*, p. 41, *Id.* at 42.

[46] *Id.* at 88.

[47] *Id.* at 42.

[48] *Id.* at 93-104.

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

While complainant submitted the medical reports of his self-appointed doctors, the same failed to show the causal connection between the nature of his employment as the vessel's messman and his PTSD, or that the risk of contracting his illness was increased by his working conditions. Not even his own doctors made a finding or declaration that his illness is work-related/aggravated or that he is permanently incapacitated to perform his job as messman as a result of his having been molested and threatened by his own superior officer. There is likewise no disability grading issued by his own physicians.[50]

However, it deleted the awards for moral and exemplary damages and instead granted financial assistance "as a measure of social and compassionate justice."[51] The dispositive portion of its decision provided:

WHEREFORE, premises considered, the assailed Decision is **AFFIRMED** with modification. Respondents are hereby ordered to solidarily pay complainant his salary for the unexpired portion of his contract computed as follows:

1) Unexpired portion (in USD)
7/13/14-9/22/14
$604.00 x 2.30 = $1,389.20

They are likewise ordered to give financial assistance in the amount Php30,000.00 plus 10% attorney's fees of the total amount awarded.

The award[s] for moral and exemplary damages are hereby deleted for lack of merit.

SO ORDERED.[52]

On September 30, 2015, the National Labor Relations Commission denied Toliongco's Motion for Reconsideration for lack of merit.[53]

This prompted Toliongco to file a Petition for *Certiorari* under Rule 65 before the Court of Appeals claiming that the

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[50] *Id.* at 99.

[51] *Id.*

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

[53] *Id.* at 106-107.

National Labor Relations Commission committed grave abuse of discretion in issuing the assailed decision. He insisted that his PTSD was a work-related illness incurred while aboard the vessel. Citing the Revised Pre-Employment Medical Exam Standards for Seafarers, he claimed that his mental state "permanently and totally incapacitated him" from doing his job. For this reason, he should be entitled to disability benefits, moral and exemplary damages.[54]

The Court of Appeals dismissed Toliongco's petition for lack of merit and ruled that the "NLRC did not exercise its power in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility."[55]

According to the Court of Appeals, Toliongco's disability benefits cannot be granted because he failed to conform with the "mandatory 3-day medical examination deadline" under Section 20 (B) (3) of the POEA-SEC.[56] Similarly, he also failed to give a written notice within three (3) days from his arrival to inform the respondents of his inability to report to their office.[57]

It also held that Toliongco failed to prove, through substantial evidence, the correlation between his illness and his work.[58] It ruled that a seafarer suffering from a mental disease will only be remunerated when "it was due to a traumatic injury to the head, which is clearly absent in this case."[59]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the petition filed by petitioner/complainant is **DENIED**. The Decision dated 28 August 2015 and 30 September 2015 that were issued by the National Labor Relations Commission (NLRC) are **AFFIRMED**.

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[54] *Id.* at 43.

[55] *Id.* at 48.

[56] *Id.* at 44.

[57] *Id.*

[58] *Id.* at 46.

[59] *Id.* at 47.

SO ORDERED.[60]

On March 17, 2017, the Court of Appeals denied Toliongco's Motion for Reconsideration.[61]

Hence, this Petition for Review.[62]

On June 7, 2017, this Court allowed petitioner to litigate as an indigent litigant and required respondents to file their comment.[63] Respondents filed their Comment on July 14, 2017.[64]

On August 3, 2017, Petitioner filed a Reply with Motion to Admit[65] which this Court granted in its October 2, 2017 Resolution.[66]

Petitioner argues that he suffers from Post-Traumatic Stress Disorder or PTSD as a consequence of the incident that happened onboard the M/V Mineral Water.[67] He claims that this condition made it physically impossible for him to comply with the 3-day reportorial requirement.[68]

Petitioner also insists that the PTSD was work related as it resulted from the sexual harassment he experienced while working as a Messman. He claims "the sexual harassments that occurred that night of 27 June 2014, not once, but twice, and the threats to his life took a severe toll on [his] mental health and sanity."[69] Hence, it cannot be denied that "he was disabled in the course of employment."[70]

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[60] *Id.* at 48.

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

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

[63] *Id.* at 149-150.

[64] *Id.* at 151-158.

[65] *Id.* at 159-172.

[66] *Id.* at 174.

[67] *Id.* at 10.

[68] *Id.* at 16.

[69] *Id.* at 19.

[70] *Id.*

To support his arguments, petitioner cites the online medical journal of the National Institute of Mental Health:

> When in danger, it's natural to feel afraid. This fear triggers many split-second changes in the body to prepare to defend against the danger or to avoid it. This 'fight-or-flight' response is a healthy reaction meant to protect a person from harm. But in post-traumatic stress disorder (PTSD), this reaction is changed or damaged. People who have PTSD may feel stressed or frightened even when they're no longer in danger. PTSD develops after a terrifying ordeal that involved physical harm or the threat of physical harm. The person who develops PTSD may have been the one who was harmed, the harm may have happened to a loved one, or the person may have witnessed a harmful event that happened to loved ones or strangers.[71]

He also cites Mayo Clinic:

> Post-traumatic stress disorder symptoms may start within three months of a traumatic event, but sometimes symptoms may not appear until years after the event. These symptoms cause significant problems in social or work situations and in relationships.[72]

Petitioner reiterates that because of the state of his mental health, he "can no longer return to his former work as seafarer."[73] Therefore, he is entitled to permanent and total disability benefits.[74]

On the other hand, respondents counter that petitioner actually opted for voluntary repatriation because he wanted to take care of his mother, who was scheduled for surgery.[75]

According to respondents, petitioner was neither repatriated for medical reasons nor did he develop any illness while onboard M/V Mineral Water. They claim that petitioner did not even

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[71] *Id.* at 19-20.

[72] *Id.* at 20.

[73] *Id.* at 23.

[74] *Id.* at 25.

[75] *Id.* at 154.

request for any post-employment medical examination upon repatriation or comply with the 3-day reportorial requirement.[76]

Respondents highlight that petitioner's medical certificates were issued five (5) months after he was repatriated. They claim that petitioner also did not present "any receipts of hospitalization, medicines, laboratories or doctor's professional fees or consultation fees" from the time he was repatriated until the date of his consultation with Dr. Dellosa.[77]

Finally, respondents argue that petitioner is not entitled to salary for the unexpired portion of his contract because his repatriation was voluntary.[78]

In his Reply,[79] petitioner rebuts that his voluntary repatriation was due to the events that happened onboard the vessel.[80] While he admits that he was not able to comply with the 3-day mandatory reportorial requirement, he points out that "mental incapacity itself makes it impossible for the seafarer to report to the respondent manning agency."[81]

Petitioner states that his illness is of a peculiar nature which warrants the application of the exception to the 3-day mandatory reportorial requirement. Further, he claims that his illness "completely and thoroughly incapacitated him soon after thus preventing him from ever taking up work again as a mariner[.]"[82] He posits that his post-traumatic stress disorder is work-related as it was caused by the sexual harassment he experienced at the hands of his Chief Officer.[83]

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[76] *Id.*

[77] *Id.* at 155.

[78] *Id.*

[79] *Id.* at 159-172.

[80] *Id.* at 160.

[81] *Id.*

[82] *Id.* at 161.

[83] *Id.* at 163.

Petitioner cites Department of Health (DOH) Administrative Order 2007-0025 or the Revised Pre-Employment Medical Examination (PEME) Standards for Seafarers which includes a list of mental disorders that may render a seafarer "permanently unsuitable for seafaring duties."[84]

Based on the parties' arguments, the main issue in this case is whether or not the Court of Appeals erred in ruling that the National Labor Relations Commission did not commit grave abuse of discretion in denying Toliongco's claim to disability benefits and damages. Subsumed under this are the issues of (1) whether or not the 3-day rule on post-employment medical examination is mandatory; (2) whether or not Toliongco's post-traumatic stress disorder is work-related or work-aggravated; and (3) whether or not Toliongco is entitled to damages.

The petition is partly granted. The Court of Appeals erred in ruling that Toliongco is not entitled to damages.

I

While the Constitution provides for "full protection to labor,"[85] employers have the right to determine whether a seafarer's illness or injury is work-related or work-aggravated. This is one of the reasons behind the 3-day reportorial requirement.

The 2010 POEA Standard Employment Contract[86] defines "work-related illness" and "work-related injury" as:

Definition of Terms:

. . . . . .

16. Work-Related Illness — any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied.

17. Work-Related Injury — injury arising out of and in the course of employment.

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[84] *Id.* at 169.

[85] CONST., Art. XIII, Sec. 3.

[86] POEA Memorandum Circular No. 010-10.

The discharge and return home of a seafarer — for reasons such as end of contract, early termination of contract, or illness — is called repatriation. Upon repatriation, "the seafarer shall report to the manning agency within 72 hours upon arrival at point of hire."[87] The 3-day reportorial requirement is reiterated under Section 20 (A) (3) of the 2010 POEA Standard Employment Contract:

> 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:
>
> . . . . . .
>
> 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

[87] POEA Memorandum Circular No. 010-10, Sec. 19 (H).

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

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

De Andres v. Diamond H Marine Services & Shipping Agency, Inc., et al.[88] summarized the 3-day reportorial requirement and its exceptions under the POEA Standard Employment Contract:

To recapitulate, a seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[89]

Ebuenga v. Southfield Agencies[90] explained the rationale for the 3-day reportorial requirement:

The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease . . . was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

. . . . . .

Moreover, the post-employment medical examination within 3 days from . . . arrival is required in order to ascertain [the seafarer's] physical

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[88] 813 Phil. 746 (2017) [Per *J.* Mendoza, Second Division].

[89] *Id.* at 763.

[90] 828 Phil. 122 (2018) [Per *J.* Leonen, Third Division].

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.[91]

This Court also stated in *Ebuenga* that post-employment medical examination "is a reciprocal obligation where 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."[92]

However, some illnesses may take more than three (3) days before its symptoms manifest. There are also illnesses that are asymptomatic. Thus, the application of the 3-day reportorial requirement must also be viewed on a case-to-case basis, depending on the type of illness or disease.

For instance, petitioner's alleged illness involves mental health. Mental health disorders are not normally detected in laboratory tests that we are accustomed to such as blood extraction. The diagnosis of mental health disorders usually involve an interview with a psychiatrist and the conduct of tests like the Rorschach, Thematic Apperception Test, and Minnesota Multiphasic Personality Inventory.[93]

Petitioner cited the DOH Order No. 2007-0025 (DOH AO No. 2007-0025).[94] One of the related documents to DOH AO

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[91] *Id.* at 136 citing *Manota v. Avantgarde Shipping Corporation*, 715 Phil. 54, 64-65 (2013) [Per *J.* Peralta, Third Division].

[92] *Id.* citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1 (2012) [Per *J.* Brion, Second Division].

[93] H. KENNETH WALKER, W. DALLAS HALL, AND J. WILLIS HURST, *CLINICAL METHODS: THE HISTORY, PHYSICAL, AND LABORATORY EXAMINATIONS* (3rd ed., 1990), available at <https://www.ncbi.nlm.nih.gov/books/NBK321/> (last accessed on July 1, 2020).

[94] *Rollo*, p. 169.

No. 2007-0025 is entitled Medical Standards in the Conduct of PEME for Seafarers.[95] A portion of the Medical Standards provides:

E. MENTAL DISORDERS

There shall be no manifestation of any anxiety, depressive, psychotic, personality and psychological disorders identified and observed during the conduct of PEME and psychological testing. Appropriate psychologist's or psychiatrist's evaluation shall be sought to determine if condition renders a seafarer permanently unsuitable for seafaring duties.

- Active alcohol or drug dependence as evidenced by diagnostic test result/s and confirmatory drug test result including physical finding or identified related behavioral disorder.
- Acute Psychoses, whether organic, schizophrenic or any other listed in the International Classification of Diseases
- Dementia/Senility
- Depression, active requiring medication
- History of documented mental disorder (psychosis)
- Identified "phobias" which will not fit into the job requirement
- Observation of Acute Manifestation of a Psychiatric Disorder that indicates a need for psychiatric evaluation
- Personality Disorder
- Psychoneurosis, Major Depression or Mania.[96]

However, since DOH AO No. 2007-0025 refers to the pre-employment medical examination, it presupposes that the examination is done prior to embarkation.

For post-employment medical examination, we look at the POEA Standard Employment Contract. Mental disorders are listed under Section 32 of the POEA Standard Employment Contract, with the specification that the mental disorder resulted from traumatic head injuries:

Section 32. Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illness Contracted.

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[95] Available at <https://hfsrb.doh.gov.ph/wp-content/uploads/2019/07/related_doc_require.pdf> (last accessed on July 2, 2020).

[96] *Id.* at 11.

HEAD

Traumatic head injuries that result to:

1. Apperture unfilled with bone not over three (3) inches without brain injury ..... Gr. 9

2. Unfilled with bone over three (3) inches without brain injury.. Gr. 3

3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity ..... Gr. 1

4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities ..... Gr. 10

5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities ..... Gr. 10

6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work ..... Gr. 1

7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance ..... Gr. 6

8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant ..... Gr. 10

9. Incurable imbecility ..... Gr. 1

The use of the phrase "traumatic head injury" and a reading of the entire portion of Sec. 32 referring to head injuries imply that the seafarer suffered from an adverse event that caused physical harm to the skull or other parts of the head. It also implies that only medical findings, not including psychological trauma, are cognizable as work-related.

Petitioner did not suffer any traumatic head injury, but his alleged illness, post-traumatic stress disorder, is a kind of mental disorder. For other illnesses not listed under Section 32, Section 32-A applies.

Section 32-A provides:

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.

There is no doubt that sexual harassment occurred on board the M/V Mineral Water, and that petitioner was a victim of it. The question now is whether petitioner was able to prove that his PTSD, as diagnosed by his physicians of choice, is work-related or work-aggravated.

II

Mental disorders are generally defined as:

> [A] syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (*e.g.*, political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.[97]

Statistical Manual of Mental Disorders and "[occurs] when the person has experienced an event that is outside the range of usual human experience, that would be markedly distressing to almost anyone; *e.g.*, serious threat to one's life or physical integrity, *etc.*"[98] The current diagnostic features of post-traumatic

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[97] DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 20 (5th ed.).

[98] R. MOSCARELLO, *Posttraumatic Stress Disorder After Sexual Assault: Its Psychodynamics and Treatment Journal of the American Academy of Psychoanalysis*, 19(2) THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 235 (1991).

stress disorder are stated in the Diagnostic and Statistical Manual of Disorders:

> Diagnostic Features
>
> The essential feature of posttraumatic stress disorder (PTSD) is the development of characteristic symptoms ***following exposure to one or more traumatic events***. Emotional reactions to the traumatic event (*e.g.*, fear, helplessness, horror) are no longer a part of Criterion A. The clinical presentation of PTSD varies. In some individuals, fear-based re-experiencing, emotional, and behavioral symptoms may predominate. In others, anhedonic or dysphoric mood states and negative cognitions may be most distressing. In some other individuals, arousal and reactive-externalizing symptoms are prominent, while in others, dissociative symptoms predominate. Finally, some individuals exhibit combinations of these symptom patterns.
>
> The directly experienced traumatic events in Criterion A include, but are not limited to, exposure to war as a combatant or civilian, threatened or actual physical assault (*e.g.*, physical attack, robbery, mugging, childhood physical abuse), ***threatened or actual sexual violence (e.g., forced sexual penetration, alcohol/drug-facilitated sexual penetration, abusive sexual contact, noncontact sexual abuse, sexual trafficking)***, being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war, natural or human-made disasters, and severe motor vehicle accidents.[99] (Emphasis supplied).

A unique circumstance in this case is that the alleged illness is not caused by the duties and responsibilities of a Messman, but is due to the seafarer's work environment. Petitioner was harassed twice in one night. Though he managed to escape in both instances, there was no way for him to avoid CO Oleksiy. The only way he could protect himself from further sexual advances or unwanted sexual contact was to request for repatriation.

In cases like these, it is possible that the seafarer's fear is heightened because there is no way to escape from the environment where sexual harassment occurred. Being out at

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[99] DIAGNOSTIC AND STATISTICAL MANUAL OF DISORDERS 274 (5th ed.).

sea, the seafarer has to wait for the ship to dock at the nearest port before the seafarer can disembark and be repatriated. Thus, from the time the incident of sexual harassment occurred until the time the seafarer is able to disembark, it is probable that the seafarer is cowered by fear. In addition, the sexual predator, knowing there is no room for the victim to escape, is capable of continuously committing such acts of sexual harassment. The unique condition of working on board a ship empowers the harassment. The unique condition of working on board a ship empowers the sexual predator and leaves the victim feeling helpless because they are in the same enclosed space.

By no means can petitioner's repatriation be considered as voluntary, for he had been pushed against the wall with no other recourse. Hence, he is entitled to his salary for the unexpired portion of his contract.

There are several cases decided by this Court involving seafarers who experienced unfortunate and harsh treatment while onboard a vessel.

In *Toquero v. Crossworld Marine Services*,[100] this Court stated:

> Respondents' argument that the claim is precluded because the injury is due to the willful acts of another seafarer is also untenable. The POEA Standard Employment Contract disqualifies claims caused by the willful or criminal act or intentional breach of duties done by the claimant, not by the assailant. It is highly unjust to preclude a seafarer's disability claim because of the assailant's willful or criminal act or intentional breach of duty.
>
> ***Between the ship owner/manager and the worker, the former is in a better position to ensure the discipline of its workers. Consequently, the law imposes liabilities on employers so that they are burdened with the costs of harm should they fail to take precautions***. In economics, this is called internalization, which attributes the consequences and costs of an activity to the party who causes them.[101] (Emphasis supplied)

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

[101] *Id.*

Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.[102] involved Cabuyoc, a Messman who "was found to be suffering from nervous breakdown and was declared unfit for work at sea."[103] He was repatriated after two months and 11 days at sea and "filed a complaint before the Philippine Overseas Employment Administration for non-payment of overtime pay, hospitalization benefit and sickness allowance."[104] Cabuyoc alleged that he received hostile treatment from the officers on board the ship. In ruling for Cabuyoc, this Court reasoned:

> Here, petitioner's illness and disability were the direct results of the demands of his shipboard employment contract and the harsh and inhumane treatment of the officers on board the vessel "Olandia." For no justifiable reason, respondents refused to pay their contractual obligations in bad faith. Further, it cannot be gainsaid that petitioner's disability is not only physical but mental as well because of the severe depression, mental torture, anguish, embarrassment, anger, sleepless nights and anxiety that befell him. To protect his rights and interest, petitioner was constrained to institute his complaint below and hire the services of an attorney.[105]

The present case is unique because the illness involved is a mental health disorder. We should consider the reality that even if petitioner was physically capable of complying with the three-day reportorial requirement, his mental faculties might have hindered him from doing so, because of the possible trauma inflicted on him caused by the two incidents of sexual harassment at the hands of the chief officer.

A review of the records of this case shows that petitioner was unable to comply with the 3-day reportorial requirement but filed a complaint one week after repatriation. We note the findings of the National Labor Relations Commission on this matter:

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[102] 537 Phil. 897 (2006) [Per *J.* Garcia, Second Division].

[103] *Id.* at 901.

[104] *Id.*

[105] *Id.* at 916.

Complainant's belated explanation in his Memorandum in Appeal that his mental state could not even cognize the imperative nature of the requirement fails to persuade [u]s. ***If he is indeed suffering from a debilitating mental incapacity as to deprive him of reason and logic to consult the company designated physician or at least notify his manning agent by some other means, then how come he had the wisdom of filing a complaint with the OWWA a week after he signed off from the vessel?*** How come that in his own Position Paper, he stated in no. 51 thereof that "in 12 July 2014, the complainant was repatriated to the Philippines and the company physicians examined him after his arrival." This statement strongly indicates that he knew he had to be examined after his arrival yet he was not able to produce any medical report of the company physician and instead submitted, very belatedly at that, the medical reports of his self-appointed doctors which, with due respect to the doctors, were wanting in many aspects.[106] (Emphasis supplied).

Perhaps petitioner's mind might have been so confused that he could not fully grasp whatever was happening around him. He might have lost his sense of time because of the trauma, thus rendering him unable to comply with the three-day reportorial requirement. It is also possible that he found it too traumatic to report to his agency upon repatriation.

To support his claim for disability benefits, petitioner presented a psychiatric report[107] and a medical certificate.[108] These documents only prove that he was diagnosed with PTSD, prescribed to take medication, and recommended for psychotherapy sessions.[109] However, there was no disability grading.

The medical certificate states that "[a]t this point in time he cannot return to his work as a seafarer." This statement is not

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[106] *Rollo*, pp. 100-101.

[107] *Id.* at 141-142. The Psychiatric Report was issued by the Life Change Recovery Center, The Randy Dellosa Wellness Center and signed by Dr. Randy Dellosa, a psychiatrist and clinical psychologist.

[108] *Id.* at 143. The Medical Certificate was issued by Dr. Li-Ann Lara-Orencia, MD.

[109] *Id.* at 141-143.

sufficient for this court to conclude that petitioner is permanently and totally disabled to work as a seafarer. It does not instruct us how petitioner's PTSD is work-related or work-aggravated. It also does not tell us whether petitioner underwent psychotherapy sessions, as recommended by his physicians. Assuming that petitioner underwent psychotherapy sessions and took his prescribed medication, no evidence was presented showing how he responded to treatment.

Phil. Transmarine Carriers, Inc., et al. v. Nazam[110] involved a Nazam, a Bosun who requested for voluntary repatriation based on personal reasons. Shortly after he was repatriated, he filed a complaint for "payment of disability benefits, sickness allowance, damages, and attorney's fees" because the humiliation, verbal, and mental abuse he experienced onboard caused "to suffer hypertension and depression."[111] The Labor Arbiter ruled in favor of Nazam.[112] However, the National Labor Relations Commission reversed the Labor Arbiter's decision.[113] The Court of Appeals reinstated the Labor Arbiter's decision.[114] In reinstating the National Labor Relations Commission's decision which dismissed the complaint, this Court reasoned:

> Respondent's claim of having reported to petitioner Transmarine's office within three days from his arrival in the Philippines remains just that. As duly observed by the NLRC, respondent merely consulted a private practitioner more than one month after his arrival — three weeks after he had already filed his complaint for disability benefits; and he already filed his complaint for disability benefits; and he secured a medical certification that he was unfit for sea duty from another private physician only on March, 2005 or six months after his arrival.
>
> . . . . . .
>
> . . . Aside from a "To whom it may concern" handwritten letter of respondent attached to his Position Paper filed before the arbiter

[110] 647 Phil. 91 (2010) [Per *J.* Carpio Morales, Third Division].

[111] *Id.* at 93.

[112] *Id.* at 94.

[113] *Id.* at 95 (2010) [Per *J.* Carpio Morales, Third Division].

[114] *Id.*

detailing the alleged instances of verbal abuse, which letter bears the alleged signatures of some of respondent's colleagues, respondent failed to proffer concrete proof that, if indeed he was subjected to abuse, it directly resulted in his depression.[115]

Several months had passed before petitioner sought medical opinion, but we should not blame him for belatedly seeking medical help. Perhaps his dire financial condition is one factor. We note that he filed this Petition as a pauper-litigant[116] and he has not found any suitable employment after repatriation.[117] It might also have taken him some time to accept that he needed medical help. He knew well enough that he was wronged and immediately filed a complaint before the Overseas Worker's Welfare Administration, but perhaps, at that point, he had no manifest symptoms of any mental health issues yet.

As found by the Labor Arbiter:

> A week after sign-off, complainant filed a complaint with the Overseas Worker's Welfare Administration (OWWA) claiming that he was sexually abused on board. Respondents denied his accusation and the case was dismissed.
>
> Sometime around mid-December 2014, complainant filed another complaint against respondents with the National Conciliation & Mediation Board (NCMB) claiming disability as he said he consulted a doctor and he was suffering from post-traumatic stress disorder. No formal case was filed before the NCMB.[118]

Lest this Court be misunderstood, We recognize that it takes time for victims of sexual harassment to come forward. Perhaps more so if the victim is a male, due to factors such as "fear that he will be considered to have provoked the assault in some way, stigma, a sense of loss of masculinity, either through being penetrated or not having fought hard enough to prevent the

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[115] *Id.* at 96-98.

[116] *Rollo,* pp. 31-32.

[117] *Id.* at 147.

[118] *Id.* at 79.

attack (or both), . . . and fear of being perceived as homosexual."[119]

It is established that petitioner suffered some form of injury, but the pieces of evidence he submitted are not sufficient to convince this Court that he has been rendered permanently and totally disabled. Thus, this Court is precluded from awarding disability benefits, not because of his non-compliance with the 3-day reportorial requirement, but because there is barely any evidence to support the claim for disability benefits.

In a separate opinion in *Garcia v. Drilon*,[120] the existence of violence against men and the underreporting of such incidents was recognized. It was discussed that:

> Social and cultural expectations on masculinity and male dominance urge men to keep quiet about being a victim, adding to the unique experience of male victims of domestic abuse. This leads to latent depression among boys and men. In a sense, patriarchy while privileging men, also victimizes them.
>
> . . . . . .
>
> There is now more space to believe that portraying only women as victims will not always promote gender equality before the law. It sometimes aggravates the gap by conceding that women have always been dominated by men. In doing so, it renders empowered women invisible; or, in some cases, that men as human beings can also become victims.
>
> In this light, it may be said that violence in the context of intimate relationships should not be seen and encrusted as a gender issue, rather it is a power issue. Thus, when laws are not gender-neutral, male victims of domestic violence may also suffer from double victimization first by their abusers and second by the judicial system. Incidentally, focusing on women was the victims entrenches some level of heteronormativity. It is blind to the possibility that, whatever moral positions are taken by those who are dominant, in reality intimate relationships can also happen between men.[121]

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[119] Simon Vearnals and Tomas Campbell, *Male victims of male sexual assault: A review of psychological consequences and treatment*, 16(3) SEXUAL AND RELATIONSHIP THERAPY 279, 285 (2001).

[120] 712 Phil. 44 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[121] *Id.* at 171-172.

To restate, sexual harassment can happen to anyone and everyone. Our society has often depicted women as being the weaker sex, and the only victims of sexual harassment. It is high-time that this notion is corrected. To consider women as the weaker sex is discriminatory. To think that only women can be victims of sexual harassment is discriminatory against men who have suffered the same plight; men who have been victimized by sexual predators.

III

Both the Labor Arbiter[122] and the National Labor Relations Commission[123] found that petitioner was sexually harassed. Respondents also did not refute this. In view of the sexual harassment suffered by petitioner at the hands of CO Oleksiy, he is entitled to moral damages, exemplary damages, and attorney's fees.

The provisions of the POEA Standard Employment Contract strikes a balance between the interests of the employer and the seafarer. It provides for "the process for recovery of compensation as a result of occupational hazards suffered by the seafarer."[124]

The structure of the POEA Standard Employment Contract theorizes that a seafarer will file for claims based on contractual obligations.[125] However, this should not be the case. To afford full protection to labor, our seafarers should not be limited to what is provided by contract.

The separate opinion in *InterOrient Maritime Enterprises, Inc. v. Creer III*[126] recognized that:

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[122] *Rollo*, pp. 74-91.

[123] *Id.* at 93-104.

[124] *InterOrient Maritime Enterprises, Inc. v. Creer III*, 743 Phil. 164, 188 (2014) [Per *J.* Del Castillo, Second Division], *J.* Leonen, concurring.

[125] *Id.*

[126] 743 Phil. 164 (2014) [Per *J.* Del Castillo, Second Division].

[S]ubstantive law still allows recovery of damages for injuries suffered by the seafarer as a result of a tortious violation on the part of the employer. This may be on the basis of the provisions of the Civil Code as well as special laws. These special laws may relate, among others, to environmental regulations and requirements to ensure the reduction of risks to occupational hazards both for the seafarer and the public in general. In such cases, the process for recovery should not be constrained by contract.[127]

This Court made a similar pronouncement in *Monana v. MEC Global Shipmanagement and Manning Corp.*[128] that "seafarers who suffer from occupational hazards are not necessarily constrained to contractual breach as cause of action in claiming compensation. Our laws allow seafarers, in a proper case, to seek damages based on tortious violations by their employers by invoking Civil Code provisions, and even special laws such as environmental regulations requiring employers to ensure the reduction of risks to occupational hazards."[129]

The existence and due execution of the POEA Standard Employment Contract does not mean that seafarers waive their rights to file claims on the basis of substantive law.

In this case, Toliongco argues that he is entitled to moral damages because of "respondents' withholding of full disability benefits with no justifiable reason and their whimsical and blatant refusal to honor their contractual obligation of disability compensation to the petitioner."[130]

On this matter, this Court reinstates the Labor Arbiter's award of moral damages but increases the amount to ₱100,000.00. The award of moral damages is based not on the grounds stated by petitioner but because this court cannot turn a blind eye to the sexual harassment that he had to endure while onboard the

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[127] *Id.* at 188.

[128] 746 Phil. 736 (2014) [Per J. Leonen, Second Division].

[129] *Monana v. MEC Global Shipmanagement and Manning Corporation, et al.*, 746 Phil. 736, 756-757 (2014) [Per J. Leonen, Second Division].

[130] *Rollo*, pp. 28-29.

M/V Mineral Water. Certainly, a wrongful act was committed against him.

We also reinstate and increase the award of exemplary damages to ₱50,000.00 in view of the award of moral damages. In addition, the award of exemplary damages should serve as a warning to shipping companies and manning agencies that it is their obligation to ensure safe working conditions for our seafarers.

As petitioner was forced to litigate in order to receive compensation for the unexpired portion of his contract and compensation for what he suffered at the hands of CO Oleksiy, attorney's fees are also awarded.

We must change the notion that injuries refer to only the physical kind. Injuries can come in many forms — physical, emotional, or psychological. It is high-time that we recognize sexual harassment on board vessels as a risk faced by our seafarers. We also cannot disregard the possibility that Toliongco felt shame over what had happened. Victims of sexual abuse usually take time before reporting to the proper authorities. Perhaps, more so if they are male as society has made it hard for male victims of sexual harassment to come out and report. At its core, sexual harassment is not an issue of gender but an issue of power and it may take time to find solutions.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. Respondents are liable to pay petitioner following: (1) US$1,389.20 for the unexpired portion of the contract (US$604.00 basic monthly salary x 2.30 months); (2) Moral damages amounting to ₱100,000.00; (3) Exemplary damages amounting to ₱50,000.00; and (4) Attorney's fees amounting to 10% of the total monetary award. All these shall earn legal interest at the rate of six percent (6%) from the finality of this Decision until fully paid.[131]

SO ORDERED.

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

Gesmundo, J., on wellness leave.

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[131] *Nacar v. Gallery Frames*, 716 Phil. 806 (206) [Per J. Peralta, *En Banc*].

SECOND DIVISION

[G.R. No. 237036. July 8, 2020]

ABOITIZ POWER RENEWABLES, INC./TIWI CONSOLIDATED UNION (APRI-TCU) ON BEHALF OF FE R. RUBIO, MA. VICTORIA A. BELMES, ELEANORE D. DALDE, RICARDO B. COMPETENTE, and VICENTE A. MIRANDILLA; APRI-TIWI EMPLOYEES LABOR UNION (APRI-TIELU) ON BEHALF OF VIRGILIO G. MACINAS, ROY D. DACULLO, ARNEL C. REPOTENTE, and JAIME B. SARILLA; and APRI-TIWI GEOTHERMAL POWER PLANT PROFESSIONAL/ TECHNICAL EMPLOYEES UNION-DIALOGWU (APRI-TGPPPTEU-D) ON BEHALF OF VENER I. DELA ROSA, ARVID G. MUNI, ALVIN Y. SALONGA, ALVIN M. ENGUERO, MA. BLANCA I. FALCON, and SALVE V. LIZARDO, *petitioners*, *vs.* **ABOITIZ POWER RENEWABLES, INC., MICHAEL B. PIERCE, ATTY. MARTIN JOHN YASAY, JUAN FELIPE ALFONSO, ARNEL SUMAGUI, WILFREDO G. SARMAGO, and ROBERTO L. URBANO,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED ON APPEAL, AS THE COURT IS NOT A TRIER OF FACTS; EXCEPTIONS.— [I]t should be noted that in a Resolution dated July 31, 2017, this Court resolved to deny the petition in G.R. No. 230254 or the Torrente case. In the said Resolution, this Court affirmed the findings of the CA that the Decision of the NLRC as to the said case had now attained finality due to the failure of the petitioners to file a motion for reconsideration within the ten (10)-day period. More pointedly, this Court reiterated therein the settled rule that factual findings of the CA, which coincide with those of the LA and the NLRC

are generally accorded respect and finality by this Court. Even then, in this petition for review on *certiorari*, petitioners claimed that there was a gross misappreciation of the evidence, which warrants consideration of this Court. Essentially, petitioners asked for the review of the factual findings of the LA, NLRC, and the CA. It is settled that only questions of law may be raised on appeal under this remedy for the reason that this Court is not a trier of facts. Nevertheless, this Court may review the facts where: (1) the findings and conclusions of the LA, on one hand, and the NLRC and the CA, on the other, are inconsistent on material and substantial points; (2) the findings of the NLRC and the CA are capricious and arbitrary; and (3) the CA's findings that are premised on a supposed absence of evidence are in fact contradicted by the evidence on record.

2. ID.; ID.; ID.; ID.; PARAMETERS OF THE COURT'S JUDICIAL REVIEW FROM THE RULE 65 DECISION OF THE COURT OF APPEALS ON A LABOR CASE; THE COURT EXAMINES THE COURT OF APPEALS DECISION FROM THE PRISM OF WHETHER IT CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), NOT ON THE BASIS OF WHETHER THE LATTER'S DECISION ON THE MERITS OF THE CASE WAS CORRECT; DECISION OF THE COURT OF APPEALS, AFFIRMED.— In the case of *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, this Court reiterated the adoption of particular parameters of judicial review from the CA's Rule 65 Decision on a labor case, to *wit*: In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct*. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of

the NLRC decision challenged before it. Thus, the ultimate question to resolve is whether the CA correctly ruled that the NLRC did not commit grave abuse of discretion in finding that: (1) there was a redundancy; (2) there was no illegal dismissal; and (3) there was no unfair labor practice. Here, the LA, the NLRC, and the CA were unanimous in concluding that the petitioners, who are officers or members of the petitioner unions, were legally dismissed by reason of a valid redundancy program by APRI, and that APRI did not commit unfair labor practice in the form of union busting. The Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion. The Decision of the NLRC was premised on substantial evidence and was consistent with law and jurisprudence.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REDUNDANCY, WHEN EXISTS; WHILE THE DETERMINATION OF WHETHER THE EMPLOYEES' SERVICES ARE NO LONGER NECESSARY OR SUSTAINABLE, AND THEREFORE, PROPERLY TERMINABLE FOR REDUNDANCY, IS AN EXERCISE OF BUSINESS JUDGMENT; THE EMPLOYER MUST, HOWEVER, PROVE ITS GOOD FAITH IN ABOLISHING THE REDUNDANT POSITIONS, AS WELL AS THE EXISTENCE OF FAIR AND REASONABLE CRITERIA IN THE SELECTION OF EMPLOYEES WHO WILL BE DISMISSED FROM EMPLOYMENT DUE TO REDUNDANCY.— Redundancy is an authorized cause for termination of employment under Article 298 (formerly Article 283) of the Labor Code. It exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise." It can be due to "a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise." The determination of whether the employees' services are no longer necessary or sustainable, and therefore, properly terminable for redundancy, is an exercise of business judgment. In making such decision, however, management must not violate the law nor declare redundancy without sufficient basis. To ensure that the dismissal is not implemented arbitrarily, jurisprudence requires the employer to prove, among others, its *good faith in*

abolishing the redundant positions as well as *the existence of fair and reasonable criteria in the selection of employees who will be dismissed from employment due to redundancy.* Such fair and reasonable criteria may include, but are not limited to: *(a)* less preferred status, *i.e.*, temporary employee; *(b)* efficiency; and *(c)* seniority.

4. ID.; ID.; ID.; ID.; REQUISITES FOR A VALID IMPLEMENTATION OF THE REDUNDANCY PROGRAM; COMPLIED WITH.— In upholding the legality of the employees' dismissal, the NLRC ruled that the evidence submitted by APRI showed compliance to all the four (4) requisites for a valid implementation of the redundancy program. These included the following: (1) written notice served on both the employees and the DOLE one (1) month prior to the intended date of dismissal; (2) payment of separation pay and the additional ₱400,000.00; (3) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished; and (4) good faith in abolishing the redundant positions. The good faith of APRI can be gleaned from its showing that the services of the affected employees were indeed in excess of what is required by the company. Meanwhile, the Right-Sizing Program, the study in which the redundancy program was based, showed the implementation guidelines and criteria used by APRI in determining redundant positions, which this Court also found to be fair and reasonable.

5. ID.; ID.; ID.; ID.; AN EMPLOYER MAY ONLY BE HELD LIABLE FOR UNFAIR LABOR PRACTICE IF IT CAN BE SHOWN THAT HIS ACTS AFFECT IN WHATEVER MANNER THE RIGHT OF HIS EMPLOYEES TO SELF-ORGANIZE, WHICH MUST BE PROVED BY SUBSTANTIAL EVIDENCE.— As regards the claim of unfair labor practice in the form of union busting, this Court finds that the record of this case is also bereft of any substantial evidence to support the charge against APRI. Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. To prove the existence of unfair labor practice, substantial

evidence has to be presented. Petitioners' assertion that APRI's redundancy program was meant to interfere with or frustrate petitioners' union activities and negotiation of CBA was a bare conclusion and unsupported by sufficient proof.

APPEARANCES OF COUNSEL

Jose P. Dialogo, Jr. for petitioners.
Cadiz Tabayoyong & Partners for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 141100 promulgated on February 21, 2017 and its Resolution[3] dated January 11, 2018, affirming the Decision[4] of the National Labor Relations Commission (NLRC) rendered on December 18, 2014, which upheld the findings of the Labor Arbiter that the employees represented by the three petitioner unions were not illegally dismissed.

The Parties

Aboitiz Power Renewables, Inc. (APRI) is a corporation engaged in the operation of the Tiwi Geothermal Power Plant

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[1] *Rollo*, pp. 11-39.

[2] Penned by Associate Justice Rosmari D. Carandang (now a member of this Court), with Associate Justices Mario V. Lopez (now a member of this Court) and Myra V. Garcia-Fernandez, concurring; *id.* at 40-66.

[3] *Id.* at 67-69.

[4] Penned by Commissioner Mercedes R. Posada-Lacap, with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring; *id.* at 92-144.

in Tiwi, Albay. Respondents Michael Pierce (Pierce), Atty. Martin John Yasay (Atty. Yasay), Juan Felipe Alfonso, Arnel Sumagui, Wilfredo Sarmago, and Roberto Urbano were included in the complaint for illegal dismissal and unfair labor practice in their capacity as officers of APRI.[5]

The three (3) petitioners are unions representing former employees of APRI, who were allegedly illegally dismissed in September 2013. The three (3) unions are: (a) Aboitiz Power Renewables, Inc.-Tiwi Consolidated Union (APRI-TCU), the supervisory union, which was in the process of negotiating their economic proposal; (b) APRI-Tiwi Employees Labor Union (APRI-TIELU), which represents the rank-and-file employees and was about to conclude their collective bargaining agreement (CBA); and (c) APRI-Tiwi Geothermal Power Plant Professional/ Technical Employees Union-Dialogwu (APRI-TGPPPTEU-D), which represents the professional/technical employees and was undergoing a petition for certification election before Med Arbiter in the Department of Labor and Employment (DOLE) Regional Office.[6]

Petitioner APRI-TCU represents the following supervisory employees: Fe R. Rubio, Ma. Victoria A. Belmes, Eleanore D. Dalde, Ricardo B. Competente, and Vicente A. Mirandilla. Meanwhile, APRI-TIELU represents the following rank-and-file: Virgilio G. Macinas, Roy D. Dacullo, Arnel C. Repotente, and Jaime B. Sarilla. Lastly, petitioner APRI-TGPPPTEU-D represents the following employees: Vener I. Dela Rosa, Arvid G. Muni, Alvin Y. Salonga, Alvin M. Enguero, Ma. Blanca I. Falcon, and Salve V. Lizardo.

The Facts and the Antecedent Proceedings

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

On September 16, 2013, APRI called for a town hall meeting, wherein the employees were informed that the company will

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[5] *Id.* at 42.

[6] *Id.*

implement a redundancy program that would result in the removal of around twenty percent (20%) of its current employees. According to Atty. Yasay, APRI's Assistant Vice President for Legal and Commercial Services, the program was being carried out in light of the declining steam production in the Tiwi Plant. APRI also cited the adoption of the Oracle Enterprise Business Suit, which streamlined its supply and financial system, as the further cause for the redundancy of several positions within the company. In the afternoon of the same day, APRI's representatives began to individually meet the employees. The affected employees were informed that their position in the company was found to be redundant and that their employment will be terminated on October 20, 2013. They were given and made to sign a Notice of Redundancy[7] dated September 20, 2013, which served as the written notice of their inclusion in the redundancy program. They were also made to sign a Release, Waiver and Quitclaim[8] and were given the option of signing a letter[9] addressed to Pierce, APRI's President and Chief Operating Officer. In the said letter, it was stated that the employees recognize the company's right to exercise the redundancy program and that they exercise the option not to report for work from the receipt of the Notice of Redundancy up to October 20, 2013, the date when their termination becomes effective.

As a consequence of their termination because of the redundancy program, the affected employees were given two

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[7] *Id.* at 472-473, 480-481, 489-490, 498-499, 507-508, 516-517, 525-526, 534-535, 543-544, 551-552, 560-561, 569-570, 578-579, 587-588, 595-596, 604-605, 613-614, 621-622, 630-631, 639-640, 648-649, 657-658, 666-667, 674-675.

[8] *Id.* at 477-479, 485-487, 494-496, 503-505, 512-514, 521-523, 530-532, 539-541, 547-549, 556-558, 565-567, 574-576, 583-585, 592-594, 600-602, 609-611, 617-619, 626-628, 635-637, 644-646, 653-655, 662-664, 671-673, 679-681.

[9] *Id.* at 474-475, 482-483, 491-492, 500-501, 509-510, 518-519, 527-528, 536-537, 545-546, 553-554, 562-563, 571-572, 580-581, 589-590, 597-598, 606-607, 615-616, 623-624, 632-633, 641-642, 650-651, 659-660, 668-669, 676-677.

(2) manager's checks.[10] The first check represented the separation pay, which was composed of the following:

1. Separation pay of one (1) month of the basic salary rate per year of service in May 26, 2009 to May 31, 2011;
2. Separation pay of one and a half (1.5) month of basic salary rate per year of service in June 1, 2011 to the present;
3. Converted unused vacation leaves;
4. Converted unused sick leaves;
5. Pro-rated 13th month pay;
6. Salary from September 21 to October 20, 2013; and
7. Last salary pay.[11]

The second manager's check was in the amount of ₱400,000.00, as the one-time special assistance to each of the affected employees.[12]

In addition to the affected employees who assented to the redundancy program, some employees[13] also tendered their voluntary resignation. These employees likewise received two (2) manager's checks[14] consisting of the same components as those affected by the redundancy program, and were also made to sign a Release, Waiver and Quitclaim.[15]

Feeling aggrieved that they were forced to accept the redundancy program or forced to resign, the said employees had the incident of their termination recorded through a police blotter. Subsequently, they also filed complaints for illegal dismissal, illegal suspension (for employee Felicito Torrente),

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[10] *Id.* at 476, 484, 493, 502, 511, 520, 529, 538, 546, 555, 564, 573, 582, 591, 599, 608, 625, 634, 643, 652, 661, 670, 678.

[11] *Id.* at 43.

[12] *Id.*

[13] *Id.* at 102-103; Angel M. Barredo, Emil B. Chiong, Ricardo B. Competente, Vener I. Dela Rosa, Maria C. Jebulan, Vicente A. Mirandilla, Arvid G. Muni, Crispin B. Pabeliña.

[14] *Id.* at 689, 694, 699, 704, 709, 714, 719, 724.

[15] *Id.* at 690-692, 695-697, 700-702, 705-707, 710-712, 715-717, 720-722, 725-727.

unfair labor practice for union busting, and claims for 13th month pay, retirement benefits, damages, and attorney's fees.[16]

In their complaint, employees contended that: (1) APRI failed to comply with the notice requirement for redundancy; (2) the Notice of Redundancy given to them and the notice to the DOLE contained self-serving allegations without any evidence that justified the exercise of the redundancy program as an authorized cause for termination; (3) APRI has not shown that it was overmanned and failed to show proof on the decline on steam production that justified its redundancy program; and (4) APRI failed to show the criteria used to determine which employees will be removed due to redundancy in their positions. Lastly, they alleged that their removal was equivalent to union busting and unfair labor practice since it came amidst the negotiations between their respective unions and APRI.[17]

APRI, for its part, countered that the removal of the employees was a valid exercise of its prerogative to declare redundant positions. According to APRI, there were two circumstances that led for it to carry out a right-sizing study, which thereby revealed the redundancy in the staffing of the company, to wit: (1) there was a decline in the steam production in its geothermal plant in Tiwi, which meant that the plant was not utilizing its full capacity; and (2) the use of upgraded version of Oracle Business Enterprise, that interfaced its Supply Management Systems to its Financial Systems.[18]

Moreover, APRI emphasized that it complied with the requisites for a valid dismissal on the ground of redundancy. It was claimed that the notice of redundancy to the employees and the notice to the DOLE were both compliant to the thirty (30)-day period required by law. APRI asserted that the affected employees received not only the required separation pay but also an additional ₱400,000.00, which was over and above of

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[16] *Id.* at 44.

[17] *Id.*

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

what it was bound to give. Lastly, APRI pointed out that the right-sizing study led the company to come up with fair and reasonable criteria to be used in determining which employees would be subject to the redundancy program. APRI maintained that the redundancy program was implemented in good faith.[19]

As regards employees who were allegedly forced to resign, APRI claimed that these employees voluntarily resigned having executed written resignations which contain words of gratitude, which was an indicia of voluntariness of their resignations. Finally, as to the allegation of union busting or unfair labor practice, APRI argued that these issues were moot and already academic considering that during the mandatory conference, the parties had limited the issue to the validity of the redundancy program.[20]

Ruling of the Labor Arbiter

On March 21, 2014, Executive Labor Arbiter (ELA) Jose C. Del Valle, Jr. (Del Valle, Jr.) rendered a Decision[21] dismissing the complaints for illegal dismissal for lack of merit. ELA Del Valle, Jr. ratiocinated that the employees were legally and validly dismissed due to the implementation of APRI's redundancy program. He found that: (1) APRI complied with the requisites for a valid redundancy program, *i.e.*, written notices were sent to and received by the affected employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (2) employees were given separation pay and an additional ₱400,000.00 as an act of grace; (3) APRI used fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished; and (4) there was good faith on the part of APRI in abolishing the redundant positions. He rejected the employees' assertion of unfair labor practice and union busting, and held that the fact that APRI implemented the redundancy program in the midst

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[19] *Id.* at 45.

[20] *Id.*

[21] Not attached to the *rollo*.

of negotiation for CBA alone will not suffice to declare the company guilty of unfair labor practice.[22]

Feeling aggrieved, the affected thirty-two (32) employees[23] filed an appeal before the NLRC. Some of these employees were members of the three (3) petitioner unions.

Ruling of the NLRC

In a Decision[24] dated December 18, 2014, the NLRC also found that APRI had properly carried out its redundancy program, thus, it ruled that the dismissal of the employees on the basis of redundancy of their respective positions was valid. It likewise ruled that the resignation of the following employees: Angel M. Barredo, Emil B. Chiong, Ricardo B. Competente, Vener I. Dela Rosa, Maria C. Jebulan, Vicente A. Mirandilla, Arvid G. Muni, and Crispin B. Pabeliña, were voluntary and valid. Lastly, it was held that the employees failed to show that the actions of APRI constitute unfair labor practice. According to the NLRC, in order to prove that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim, in which the employees failed to show.

The affected employees filed a Motion for Reconsideration[25] but was denied in a Resolution[26] dated March 31, 2015.

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

[23] *Id.* at 97-99; Ricardo B. Competente, Vicente A. Mirandilla, Tito L. Brizuela, Jr., Felecito C. Torrente, Ma. Victoria A. Belmes, Fe R. Rubio, Eleanore D. Dalde, Crispin B. Pabeliña, Arvid G. Muni, Alvin Y. Salonga, Emil B. Chiong, Maria C. Jebulan, Emmanuel R. Pesebre, Jaime M. De Jesus, Jr., Vicente Jonas C. Zepeda, Vener I. Dela Rosa, Alvin M. Enguero, Jaime B. Sarilla, Arnel C. Repotente, Roy D. Dacullo, Angel M. Barredo, Asterio C. Credo, Jr., Jose D. Cañezo, Jr., Odon Q. Verbo, Jr., Bonifacio R. Brosas, Miguel C. Comot, Jr., Sandie C. Ner, Elmer C. Dacuno, Raul C. Brosas, Virgilio G. Macinas, Ma. Blanca I. Falcon, Salve V. Lizardo.

[24] *Id.* at 92-144.

[25] Not attached to the *rollo*.

[26] Not attached to the *rollo*.

Accordingly, three (3) petitions were filed before the CA to appeal the Decision of the NLRC, namely: (1) CA-G.R. SP No. 139214, entitled, *Felecito C. Torrente, et al. vs. NLRC and AP Renewables, Inc.* (Torrente case); (2) CA-G.R. SP No. 140436, entitled, *Engr. Tito Brizuela, Jr. vs. NLRC and AP Renewables, Inc., et al.* (Brizuela case); and (3) CA-G.R. SP No. 141100, entitled, *APRI-TICU, et al. vs. AP Renewables, Inc., et al.* (Unions' case). Both the Brizuela case and the Unions' case were consolidated with the Torrente case (the case with the lowest docket number) on August 14, 2015 and on October 5, 2015, respectively.

Judgment of the CA

At the outset, the CA dismissed the Torrente case citing that the petitioners therein filed their Motion for Reconsideration before the NLRC beyond the ten (10)-day reglementary period. Thus, the CA held that the Decision of the NLRC was already final as to them.[27]

Anent the cases of Brizuela and the three unions, the CA affirmed the ruling of the Labor Arbiter (LA) and the NLRC that the employees were validly dismissed on account of APRI's implementation of its redundancy program. According to the CA, all the four (4) requisites for a valid implementation of the program were sufficiently proven by APRI.[28] The CA likewise ruled that the petitioners failed to present substantial evidence in support of their charge of unfair labor practice against APRI.[29] The CA disposed, thusly:

WHEREFORE, premises considered, the consolidated petitions are **DENIED**, there being no grave abuse of discretion on the part of the public respondent in rendering the assailed Decision dated December 18, 2014 and the Resolution dated March 31, 2015.

SO ORDERED.[30] (Emphasis on the original)

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[27] *Rollo*, p. 53.

[28] *Id.* at 54.

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

[30] *Id.* at 65.

Dissatisfied, Brizuela and the three (3) unions filed their motions for reconsideration, which were denied in a Resolution[31] dated January 11, 2018. In the said resolution, the CA noted that based on their records, petitioners in the Torrente case filed a petition for review on *certiorari* under Rule 45 before the Supreme Court docketed as G.R. No. 230254.

This is an appeal by the unions in behalf of their members or officers, who were affected by the subject redundancy program and those who were allegedly forced to resign.

Issues

(1) Whether or not the CA erred in upholding the validity of APRI's Redundancy Program;

(2) Whether or not the CA erred in upholding the validity of the dismissal from employment of petitioners' officers and members; and

(3) Whether or not CA erred in discounting unfair labor practice in the form of union busting against APRI and the other respondents.

Our Ruling

The Court denies the petition.

Prefatorily, it should be noted that in a Resolution[32] dated July 31, 2017, this Court resolved to deny the petition in G.R. No. 230254 or the Torrente case. In the said Resolution, this Court affirmed the findings of the CA that the Decision of the NLRC as to the said case had now attained finality due to the failure of the petitioners to file a motion for reconsideration within the ten (10)-day period. More pointedly, this Court reiterated therein the settled rule that factual findings of the CA, which coincide with those of the LA and the NLRC are generally accorded respect and finality by this Court.

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[31] *Id.* at 67-69.

[32] *Id.* at 1270-1271.

Even then, in this petition for review on *certiorari*, petitioners claimed that there was a gross misappreciation of the evidence, which warrants consideration of this Court. Essentially, petitioners asked for the review of the factual findings of the LA, NLRC, and the CA.

It is settled that only questions of law may be raised on appeal under this remedy for the reason that this Court is not a trier of facts. Nevertheless, this Court may review the facts where: (1) the findings and conclusions of the LA, on one hand, and the NLRC and the CA, on the other, are inconsistent on material and substantial points; (2) the findings of the NLRC and the CA are capricious and arbitrary; and (3) the CA's findings that are premised on a supposed absence of evidence are in fact contradicted by the evidence on record.[33]

In the case of *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*,[34] this Court reiterated the adoption of particular parameters of judicial review from the CA's Rule 65 Decision on a labor case, to *wit*:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[35] (Emphasis in the original)

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[33] *Soriano, Jr. v. NLRC*, 550 Phil. 111, 125 (2007).

[34] 809 Phil. 106 (2017).

[35] *Id.* at 121, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) and *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

Thus, the ultimate question to resolve is whether the CA correctly ruled that the NLRC did not commit grave abuse of discretion in finding that: (1) there was a redundancy; (2) there was no illegal dismissal; and (3) there was no unfair labor practice. Here, the LA, the NLRC, and the CA were unanimous in concluding that the petitioners, who are officers or members of the petitioner unions, were legally dismissed by reason of a valid redundancy program by APRI, and that APRI did not commit unfair labor practice in the form of union busting.

The Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion. The Decision of the NLRC was premised on substantial evidence and was consistent with law and jurisprudence.

Redundancy is an authorized cause for termination of employment under Article 298 (formerly Article 283) of the Labor Code. It exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise." It can be due to "a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise." The determination of whether the employees' services are no longer necessary or sustainable, and therefore, properly terminable for redundancy, is an exercise of business judgment. In making such decision, however, management must not violate the law nor declare redundancy without sufficient basis. To ensure that the dismissal is not implemented arbitrarily, jurisprudence requires the employer to prove, among others, its *good faith in abolishing the redundant positions* as well as *the existence of fair and reasonable criteria in the selection of employees who will be dismissed from employment due to redundancy.* Such fair and reasonable criteria may include, but are not limited to: *(a)* less preferred status, *i.e.*, temporary employee; *(b)* efficiency; and *(c)* seniority.[36]

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[36] *Coca-Cola Femsa Philippines v. Macapagal*, G.R. No. 232669, July 29, 2019. (Citations omitted)

In upholding the legality of the employees' dismissal, the NLRC ruled that the evidence submitted by APRI showed compliance to all the four (4) requisites for a valid implementation of the redundancy program. These included the following: (1) written notice served on both the employees and the DOLE one (1) month prior to the intended date of dismissal;[37] (2) payment of separation pay and the additional ₱400,000.00;[38] (3) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished;[39] and (4) good faith in abolishing the redundant positions.[40]

The good faith of APRI can be gleaned from its showing that the services of the affected employees were indeed in excess of what is required by the company. Meanwhile, the Right-Sizing Program,[41] the study in which the redundancy program was based, showed the implementation guidelines and criteria used by APRI in determining redundant positions, which this Court also found to be fair and reasonable.

As regards the claim of unfair labor practice in the form of union busting, this Court finds that the record of this case is also bereft of any substantial evidence to support the charge against APRI.

Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. To prove the existence of unfair labor practice, substantial evidence has to be presented.[42]

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[37] *Rollo*, p. 116.

[38] *Id.* at 124.

[39] *Id.* at 125.

[40] *Id.* at 128.

[41] *Id.* at 426-471.

[42] *San Fernando Coca-Cola Rank-and-File Union v. Coca-Cola Bottlers Philippines, Inc.*, 819 Phil. 326, 337-330 (2017), citing *Zambrano v. Philippine Carpet Manufacturing*, 811 Phil. 569 (2017).

Petitioners' assertion that APRI's redundancy program was meant to interfere with or frustrate petitioners' union activities and negotiation of CBA was a bare conclusion and unsupported by sufficient proof.

In sum, this Court finds that the rulings of the LA, the NLRC, and the CA were predicated on the evidence on record and prevailing jurisprudence. We also found no compelling reason to depart from the general rule that the unanimous findings of these three tribunals are binding upon this Court.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 141100 dated February 21, 2017 and the Resolution dated January 11, 2018 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Gaerlan,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 237864. July 8, 2020]

EDWIN S. VILLANUEVA and NIDA V. VILLANUEVA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED.—** [T]he Court clarifies that only questions of law may be raised in a petition for review on *certiorari*. x x x A question of law is raised when the petitioner is merely asking the court to determine whether the law was properly applied on the given facts and evidence without probing into or reviewing the evidence on record.

2. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SECTION 3 (D) ON CORRUPT PRACTICES OF PUBLIC OFFICERS; ELEMENTS.—** For one to be found guilty [of Corrupt practices of public officers,] under [Section 3 (d) of RA 3019], the following elements must be present and proven beyond reasonable doubt: (a) the accused is a public officer; (b) he or she accepted or has a member of his or her family who accepted employment in a private enterprise; and, (c) such private enterprise has a pending official business with the public officer during the pendency of official business or within one year from its termination.

3. **ID.; ID.; ID.; PRIVATE INDIVIDUALS MAY BE SUED AND INDICTED TOGETHER WITH THE CO-CONSPIRING PUBLIC OFFICER IN ABIDANCE WITH THE POLICY OF RA 3019.—** Edwin was the Provincial Director of TESDA — Aklan Province at the time of the commission of the crime, x x x [His wife] Nida, accepted employment in RACE, a private enterprise [which] had pending official business with TESDA-Aklan. [T]hough a private citizen, [Nida] can be validly charged in conspiracy with her husband in the commission of the crime. It has long been settled that private individuals may be sued and indicted together with the co-conspiring public officer in abidance with the policy of RA 3019, x x x Additionally, Section 9 of RA 3019 concretizes the conclusion that the anti-graft practices law applies to both public and private individuals. x x x It is also worthy to mention that by its nature, violation of Section 3 (d) of RA 3019 is considered *malum prohibitum*. As such, the commission of the act as defined by law determines whether the legal provision was violated or not.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT VENTILATED BEFORE THE LOWER COURT DO NOT MERIT THE ATTENTION OF THE COURT.— [T]he Court has consistently ruled that, in order to uphold the basic principles of fair play, justice and due process, issues and arguments not ventilated before the lower court do not merit the attention of the Court.

5. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SECTION 3 (D) OF THE CORRUPT PRACTICES OF PUBLIC OFFICERS; PENALTY.— The penalty for violation of Section 3 (d) of RA 3019 is found in Section 9 of the same law: x x x In its assailed Decision, the Sandiganbayan sentenced both petitioners to suffer the indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory penalty of perpetual disqualification from holding office. As such, the penalty imposed is upheld for being in consonance with RA 3019.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Office of the Special Prosecutor for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] promulgated on January 12, 2018 and the Resolution[3] dated March 7, 2018

[1] *Rollo*, Vol. I, pp. 12-40.

[2] Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. De La Cruz and Edgardo M. Caldona, concurring; *id.* at 46-61.

[3] Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. De La Cruz and Edgardo M. Caldona, concurring; *id.* at 63-67.

of the Sandiganbayan (First Division), in Criminal Case No. SB-14-CRM-0346, which found petitioners Edwin S. Villanueva and Nida V. Villanueva guilty beyond reasonable doubt of violation of Section 3 (d) of Republic Act No. (RA) 3019,[4] or the Anti-Graft and Corrupt Practices Act.

Facts and Procedural Antecedents

The instant case stemmed from an Information[5] charging petitioners Edwin S. Villanueva (Edwin) and Nida V. Villanueva (Nida; collectively, petitioners) with violation of Section 3 (d) of RA 3019, the accusatory portion of which states as follows:

> In September 2010, or thereabouts, in Kalibo, Aklan, Philippines, and within this Honorable Court's jurisdiction, above-named accused EDWIN S. VILLANUEVA (Edwin), a public officer, being then the Provincial Director of Technical Education and Skills Development Authority (TESDA), Aklan Provincial Office, committing the offense in relation to his office, conspiring and confederating with his wife, NIDA Y. VILLANUEVA (Nida), did then and there willfully, unlawfully, and criminally have Nida accept employment as In-house Competency Assessor of Rayborn-Agzam Center for Education, Inc., (RACE), a private competency assessment center which has a pending official business with Edwin. Edwin, among other things, approved RACE's TESDA accreditation, and exercised jurisdiction over appeals regarding RACE's assessments.
>
> CONTRARY TO LAW.[6]

Rayborn-Agzam Center for Education, Inc. (RACE), is a private competency assessment center accredited by the Technical Education and Skills Development Authority (TESDA) on November 12, 2010. RACE conducts competency assessment in Food and Beverage Services National Certification (NC) II, Housekeeping NC II, and Household Services NC II, which are needed by candidates or applicants for work in hotels and restaurants domestic or abroad.[7]

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[4] August 17, 1960.

[5] *Rollo*, Vol. I, pp. 68-69.

[6] *Id.* at 68.

[7] *Id.* at 16.

The prosecution averred that sometime in February 2010, complainant Emily M. Raymundo (Raymundo), the Manager of RACE, sought the help of Nida in establishing RACE. Petitioner Nida then became one of the incorporators of RACE. To commence the incorporation of RACE, an indorsement from TESDA was obtained as a requirement in its application for registration with the Securities and Exchange Commission (SEC). An Indorsement Letter[8] dated March 31, 2010 was issued and signed by Edwin, then Provincial Director of TESDA-Aklan.

After the incorporation of RACE, on September 10, 2010, Nida was employed by RACE as an In-House Assessor for Food and Beverages Services NC II, Household Services NC II, and Housekeeping NC II within the period June 1, 2010 until June 1, 2012.[9]

On November 10, 2010, RACE's accreditation as a Competency Assessment Center was approved and signed by petitioner Edwin and was confirmed by TESDA Director Buen S. Mondejar.[10]

On the part of the defense, Nida counter-argued that she was enticed to join RACE with the noble purpose of putting up a TESDA accredited training center which was aimed to help the poor people of Aklan as well as the scholars of TESDA in Aklan. She became an incorporator without any financial obligation and her signature was mainly needed to constitute an odd-numbered Board of Directors.[11] Nida claimed that her husband Edwin was not aware that she entered into a Contract of Employment[12] with RACE.[13]

Edwin denied having knowledge that his wife was one of the incorporators of RACE when he signed the Indorsement

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[8] *Id.* at 343.

[9] *Id.* at 458-459.

[10] *Id.* at 455-457.

[11] *Id.* at 492.

[12] *Id.* at 458.

[13] TSN dated October 18, 2017, p. 22.

Letter to SEC. He also reasoned that it was TESDA's focal person, Ely Arinson, who is tasked to scrutinize all submitted documents and that the act of signing the Indorsement Letter is merely ministerial on his part.[14]

The Ruling of the Sandiganbayan

The Sandiganbayan held that all the elements of the crime charged are present in this case and were duly proven by the prosecution, to wit: (a) that petitioner Edwin is a public officer at the time of commission of the crime; (b) that Nida, Edwin's wife, entered into a Contract of Employment with RACE, a private enterprise; *and* (c) that RACE had a pending business with Edwin during the pendency of the official business when Edwin signed the Indorsement Letter of RACE to SEC and when he signed and approved RACE's TESDA accreditation.[15]

On January 12, 2018, the Sandiganbayan rendered a Decision, finding the petitioners guilty beyond reasonable doubt of violation of Section 3 (d) of RA 3019. The dispositive portion of the Sandiganbayan reads as follows:

> WHEREFORE, in view of the foregoing, this Court finds accused Edwin S. Villanueva and Nida Y. Villanueva GUILTY beyond reasonable doubt of violation of Section 3 (d) of R.A. No. 3019 and each is sentenced to suffer the indeterminate penalty of imprisonment for 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.
>
> SO ORDERED.[16]

On January 29, 2018, the petitioners moved for the reconsideration[17] of the Sandiganbayan Decision, to which, the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), filed its Comment/Opposition thereto.[18]

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[14] *Rollo*, Vol. I, p. 53.

[15] *Id.* at 57-58.

[16] *Id.* at 60.

[17] *Rollo*, Vol. II, pp. 874-885.

[18] *Id.* at 886-892.

On March 7, 2018, the Sandiganbayan denied the said motion through the now-assailed Resolution.[19]

Hence, the instant petition.

Issue

The primordial issue for the Court's resolution is whether or not the Sandiganbayan correctly convicted spouses Edwin and Nida Villanueva for violation of Section 3 (d) of RA 3019.

Our Ruling

The present petition is denied for lack of merit.

At the outset, the Court clarifies that only questions of law may be raised in a petition for review on *certiorari*.[20]

Herein respondent claimed that the present petition is procedurally infirm as the petitioners raised pure questions of facts. We disagree.

A question of law is raised when the petitioner is merely asking the court to determine whether the law was properly applied on the given facts and evidence without probing into or reviewing the evidence on record.[21]

In the case at bench, petitioners are questioning whether the provisions of Section 3 (d) of RA 3019 are applicable in this case, considering that the entity into which Nida was employed is not considered a private entity in contemplation of the law. Moreover, petitioners question whether the lone testimony of Raymundo is sufficient to support the Sandiganbayan's findings. There is no doubt that these are questions of law, which calls for a resolution of what is the correct and applicable law to a given set of facts.

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[19] *Rollo*, Vol. I, pp. 63-67.

[20] *Carinan v. Spouses Cueto*, 745 Phil. 186, 192 (2014).

[21] *Mandaue Realty & Resources Corporation v. Court of Appeals*, 801 Phil. 27 (2016).

All the elements of Section 3 (d) of RA 3019 are present and duly proven

Section 3 (d) of RA 3019 provides that:

> 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
>
> (d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.
>
> x x x x x x x x x

For one to be found guilty under the foregoing provisions, the following elements must be present and proven beyond reasonable doubt:

(a) the accused is a public officer;
(b) he or she accepted or has a member of his or her family who accepted employment in a private enterprise; and,
(c) such private enterprise has a pending official business with the public officer during the pendency of official business or within one year from its termination.

After a judicious examination of the evidence on record, all the elements of violation of Section 3 (d) of RA 3019 are present and duly proven and established by the prosecution in the case at bench.

Firstly, Edwin was the Provincial Director of TESDA-Aklan Province at the time of the commission of the crime, which occurred in 2010. He was appointed on October 26, 2006 until his dismissal from the service after 2012.

His wife Nida, though a private citizen, can be validly charged in conspiracy with her husband in the commission of the crime. It has long been settled that private individuals may be sued

and indicted together with the co-conspiring public officer in abidance with the policy of RA 3019,[22] which states that:

> SEC. 1. Statement of policy. — It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

Additionally, Section 9 of RA 3019 concretizes the conclusion that the anti-graft practices law applies to both public and private individuals.

> SEC. 9. (a) Any public officer **or private person committing any of the unlawful acts or omissions enumerated in Sections 3**, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.
>
> x x x x x x x x x (Emphasis ours)

Secondly, it is undisputed that Nida accepted employment in RACE, which is a private enterprise, as an In-House Competency Assessor for the period June 1, 2010 until June 1, 2012.[23] She is not only an employee but also an incorporator or part owner of the said entity.[24]

In the present petition, herein petitioners asseverate that RACE, being a non-stock and non-profit TESDA accredited educational association, may not be within the purview of the "private enterprise" indicated in Section 3 (b) of RA 3019. According to petitioners, the "enterprise" referred to in the law connotes an entity primarily organized for profit.

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[22] *Go v. Sandiganbayan*, 549 Phil. 782 (2007).

[23] *Rollo*, Vol. I, pp. 458-459.

[24] *Id.* at 346 and 357.

Petitioners went on to argue that, despite being a relative of a public officer, Nida's profession falls under the exempted professions under Section 59, Book V of the Revised Administrative Code of 1987 (RAC).[25] They claimed that Nida's roles as a competency assessor is considered in the category of that of a teacher under the RAC.

It has not escaped the Court's attention that these are novel arguments raised for the first time on appeal. The Court has consistently ruled that, in order to uphold the basic principles of fair play, justice and due process, issues and arguments not ventilated before the lower court do not merit the attention of the Court.[26]

Nonetheless, the law is very clear and straightforward. A public officer or any member of his family cannot accept employment in a private enterprise with whom such public officer has a pending official business with during the pendency thereof or within one year from its termination as it is considered a

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[25] SECTION 59. Nepotism. — (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

[26] *Office of the President v. Cataquiz*, 673 Phil. 318, 343-344 (2011).

corrupt practice.[27] Regardless if the enterprise is for profit or not, stock or non-stock, the law does not distinguish. It is an elementary rule in statutory construction that: where the law does not distinguish, the courts should not distinguish.[28] *Ubi lex non distinguit, nec nos distinguere debemus*.

Thus, mere acceptance by Nida, a family member, of employment with RACE, which is a private non-stock and non-profit enterprise, renders petitioners liable under the law.

It is also worthy to mention that by its nature, violation of Section 3 (d) of RA 3019 is considered *malum prohibitum*. As such, the commission of the act as defined by law determines whether the legal provision was violated or not. The Court will adopt its ruling in *Go v. Sandiganbayan*,[29] citing *Luciano v. Estrella*,[30] wherein a private individual, who conspired with a public officer, was found guilty of violation of Section 3 (g) of RA 3019. In the said case, the Court ratiocinated in this manner:

> [T]he act treated thereunder [referring to Section 3(g) of RA 3019] partakes the nature of *malum prohibitum*; it is the commission of that act as defined by 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 public officers and private persons constituting graft or corrupt practices act or which may lead thereto.[31]

Thirdly, it was duly established that during the time that Nida accepted employment with RACE, the latter had a pending official business with TESDA over which Edwin had control and supervision as Provincial Director thereof.

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[27] *Atty. Valera v. Office of the Ombudsman*, 570 Phil. 368, 382 (2008).

[28] *Ifurung v. Carpio Morales*, G.R. No. 232131, April 24, 2018.

[29] *Supra* note 22.

[30] 145 Phil. 448 (1970).

[31] *Go v. Sandiganbayan*, *supra* note 22, at 799.

Upon the commencement of the incorporation of RACE with SEC, RACE's official business with TESDA likewise started when petitioner Edwin issued an indorsement dated March 31, 2010 to SEC (with regard to RACE's application for registration and incorporation with SEC). During the pendency of RACE's accreditation proceedings before TESDA, Nida entered into a Contract of Employment with RACE on September 20, 2020. RACE's accreditation with TESDA was approved on November 10, 2020.

To reiterate, there is no doubt that Nida's act of accepting employment occurred when RACE, a private enterprise, had a pending official business with TESDA-Aklan, which is under Edwin's control and supervision.

Edwin's claim that he merely performed a ministerial function when he signed the Indorsement Letter of RACE and when he approved its TESDA accreditation cannot be given credence.

A ministerial act leaves no room for the exercise of discretion in its performance, whereas, a discretionary act by its nature require the exercise of judgment. In *Cariño v. Capulong*,[32] this Court differentiated a ministerial act from a discretionary act:

> A purely ministerial act or duty, in contra-distinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.[33]

In the present case, the issuance of the subject Indorsement Letter to SEC and even the signing of the RACE's TESDA accreditation cannot be deemed a merely ministerial act on the part of Edwin. It is a discretionary act or function of a TESDA Provincial Director to sign the foregoing Indorsement Letter in accordance with certain laws.

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[32] 294 Phil. 594 (1993).

[33] *Id.* at 605.

As a Provincial Director, reasonable diligence and utmost prudence is expected from him in the handling of his official duties. The act of indorsement is more than a mechanical act of affixing one's signature on a piece of paper. A public officer is putting a seal of approval and is vouching for the identity and veracity of the person or entity whom he or she is indorsing. The Court agrees with the Sandiganbayan when it held that:

> Edwin claims that when he issued the letter endorsing RACE to SEC, no document was presented to him by RACE, making him unaware that his wife was among its proposed incorporators. This Court finds this implausible, and granting that it is true, quite imprudent and reckless on the part of a Provincial Director. At the very least, TESDA should have asked for a letter request, with a draft of RACE's Articles of Incorporation attached thereto, for the Provincial Director to inform himself of the primary purpose of the corporation he is about to endorse. A draft of RACE's By-Laws should also be attached so that the Provincial Director could assure himself, subject to the final verification of SEC, that 60% of the capitalization of the assessment center, its administration and control, is vested on Filipino citizens. To our mind, these are the minimum requirements that a judicious and diligent Provincial Director should look for before it endorses the incorporation of a competency assessment center. Inasmuch as we presume regularity in the performance of the duties of the Provincial Director, the only conclusion that can be drawn is that Edwin is familiar with the incorporation documents of RACE and was therefore already aware of his wife's involvement with RACE, when he gave his endorsement to it.[34]

Likewise, petitioners cannot extricate themselves from the claws of law by denying Edwin's knowledge of Nida's employment with RACE. Unsubstantiated denial is a weak defense and cannot be given credence as it is self-serving. From the findings of the Sandiganbayan, there is sufficient evidence to support the conclusion that Edwin was aware of the involvement of Nida with RACE.

All told, the Court upholds the ruling of the Sandiganbayan that petitioners are guilty beyond reasonable doubt of violation of Section 3 (d) of RA 3019.

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[34] *Rollo,* Vol. I, pp. 58-59.

The Penalty

The penalty for violation of Section 3 (d) of RA 3019 is found in Section 9 of the same law:

> Section 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

In its assailed Decision, the Sandiganbayan sentenced both petitioners to suffer the indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory penalty of perpetual disqualification from holding office. As such, the penalty imposed is upheld for being in consonance with RA 3019.

It bears to emphasize that public office is a public trust. Thus, public officers are exhorted to, at all times, serve the public with integrity, loyalty, and transparent accountability.

WHEREFORE, premises considered, this Court resolves to **DENY** the petition. The Decision of the Sandiganbayan in Criminal Case No. SB-14-CRM-0346 promulgated on January 12, 2018 and the Resolution dated March 7, 2018 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, Inting, and *Gaerlan,*[*] *JJ.,* concur.

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[*] Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 239299. July 8, 2020]

INTERCREW SHIPPING AGENCY, INC., STAR EMIRATES MARINE SERVICES and/or GREGORIO ORTEGA, *petitioners, vs.* **OFRECINO B. CALANTOC,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; IN REVIEWING THE COURT OF APPEALS' RULING IN A LABOR CASE, THE COURT EXAMINES THE CORRECTNESS OF THE APPELLATE COURT'S DECISION IN CONTRAST WITH THE REVIEW OF JURISDICTIONAL ERRORS UNDER RULE 65.— In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; DEFINED; MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— "In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition." Here, the CA found that the NLRC committed grave

abuse of discretion amounting to lack of jurisdiction when it granted petitioner's appeal before it. The Court defines grave abuse of discretion as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

3. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; TWO (2) ELEMENTS FOR COMPENSABILITY OF AN ILLNESS OR INJURY.— [T]here are two elements that must concur before an injury or illness is considered compensable: *first*, that the injury or illness must be work-related; and *second*, that the work-related injury or illness must have existed during the term of the seafarers' employment contract.

4. ID.; ID.; ID.; ID.; WORK-RELATED INJURY AND WORK-RELATED ILLNESS, DEFINED.— The "*work-related injury*," under the 2000 POEA-SEC, is defined as "*injury(ies)*" resulting in disability or death arising out of and in the course of employment; "*work-related illness*" is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," to wit: 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.

5. ID.; ID.; ID.; ID.; WHILE AN EMPLOYER IS NOT THE INSURER OF THE HEALTH OF THE EMPLOYEES, ONCE HE TAKES THE EMPLOYEES AS HE FINDS THEM, THEN HE ALREADY ASSUMES THE RISK OF LIABILITY; CASE AT BAR.— [T]he Court adheres to Commissioner Nieves E. Vivar-De Castro in saying that petitioners having engaged the respondent as hypersensitive as he is, they should now accept the liability for his ensuing ailment

in the course of his employment. It is not required that an employee must be in perfect health when he contracted the illness to be able to recover disability compensation. It is equally true, that while the employer is not the insurer of the health of the employees, once he [or she] takes the employees as it finds them, then he [or she] already assumes the risk of liability. In sum, despite respondent's pre-existing high blood pressure or hypertension, he was still initially declared fit for sea duty during his PEME. Therefore, his *meningioma* is presumed to have been brought about by the nature of his employment and occurred during and in the course of his employment.

6. **ID.; ID.; ID.; AN EMPLOYER IS MANDATED TO PAY THE SEAFARER DISABILITY BENEFITS FOR HIS PERMANENT TOTAL OR PARTIAL DISABILITY CAUSED BY THE WORK-RELATED ILLNESS OR INJURY ONCE THERE IS ALREADY A FINDING OF A PERMANENT, EITHER TOTAL OR PARTIAL, DISABILITY WITHIN THE 120-DAY PERIOD OR THE 240-DAY PERIOD; PERMANENT DISABILITY, EXPLAINED.—** Section 20(B)(6) of the POEA-SEC mandates the employer to pay the seafarer disability benefits for his [or her] permanent total or partial disability caused by the work-related illness or injury once there is already a finding of permanent either total or partial disability within the 120-day period or the 240-day period. A permanent disability essentially means a permanent reduction of the earning power of a seafarer to perform future sea or on board duties and permanent disability benefits serve as a means to alleviate the seafarer's financial condition on account of the level of injury or illness he [or she] incurred or contracted.

7. **ID.; ID.; ID.; LIABILITIES OF THE EMPLOYER TO THE SEAFARER; COMPENSATION AND BENEFITS ARE NOT ALTERNATIVE AND THE GRANT OF ONE DOES NOT NEGATE THE GRANT OF THE OTHERS.—** A reading of the three kinds of liabilities under Section 20(B) of the POEA-SEC means that the POEA-SEC intended to make the employer liable for (1) the seafarer's sickness allowance equivalent to his [or/her] basic wage in addition to the medical treatment that they must provide the seafarer with at their cost; ***and*** (2) seafarer's permanent total or partial disability as finally determined by the company-designated physician. The Court ratiocinated that

while Section 20 of the POEA-SEC did not state in clear terms that the employer's liabilities are cumulative in nature, which means to say that the employer is liable for the sickness allowance, medical expenses *and* disability benefits, it does not, however, state that the compensation and benefits are alternative or that the grant of one negates the grant of the others. This interpretation, in fact, is in accord with the constitutional policy that guarantees full protection to labor, both local and overseas.

8. ID.; ID.; PROVISIONS THEREOF MUST BE CONSTRUED FAIRLY, REASONABLY, AND LIBERALLY IN FAVOR OF THE SEAFARER.— Time and again, the Court is clear that the POEA-SEC is imbued with public interest. Accordingly, its provisions must be construed fairly, reasonably, and liberally in favor of the seafarer in the pursuit of his [or her] employment on board ocean-going vessels.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Cesar Cainglet for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure that seeks to annul and set aside the Decision[2] dated November 27, 2017 and the Resolution[3] dated May 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 141153, and to reinstate the Decision[4] dated

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[1] *Rollo*, pp. 32-47.

[2] *Id.* at 13-27; penned by Associate Justice Rodil V. Zalameda (now a member of the Court) with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring.

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

[4] CA *rollo*, pp. 25-38; penned by Commissioner Isabel G. Panganiban-Ortiguerra with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and the dissent of Commissioner Nieves E. Vivar-De Castro.

March 31, 2015 of the National Labor Relations Commission (NLRC) dismissing the complaint for disability compensation for lack of merit.

The Antecedents

On March 14, 2008, Intercrew Philippines Agency, Inc. (Intercrew Shipping) hired Ofrecino B. Calantoc (respondent) for its foreign principal, Star Emirates Marine Services (Star Emirates), as fourth engineer for a period of 12 months with a basic monthly salary of US$700.00. As such, respondent underwent a pre-employment medical examination and was declared "fit for sea duty," despite his high blood pressure.[5]

On March 20, 2008, respondent was deployed to join the vessel MV Oryx. Four months into his contract, respondent already experienced a slurring of speech, weakness on his right side, and was diagnosed with a mild stroke. However, he still continued his work on board the vessel, but he later on requested to be repatriated when his condition worsened.[6]

On July 14, 2008, respondent arrived in the Philippines. He immediately reported to Intercrew Shipping, Star Emirates and Gregorio Ortega, as the President/General Manager of Intercrew Shipping (collectively, petitioners) and requested for medical assistance, but to no avail. Respondent made several requests, but were repeatedly refused. He was then constrained to consult a doctor at his own expense.[7]

On January 29, 2009, respondent then underwent a Magnetic Resonance Imaging (MRI) examination which revealed a large convexity *meningioma*,[8] a tumor in the left frontoparietal region.

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[5] *Rollo*, p. 14.

[6] *Id.*

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

[8] *Id.* at 15. *Meningioma* is a tumor that forms on membranes that cover the brain and spinal cord just inside the skull. x x x. The causes of meningioma are not well understood. However, there are two known risk factors: Exposure to radiation, Neurofibromatosis type 2, a genetic disorder. WebMD, "Meningioma," http:// www.webmd.com/cancer/brain-cancer/meningioma-causes-symptoms-treatment#1>(last accessed 18 Sept. 2017).

On the same date, respondent was admitted to the University of Santo Tomas Hospital due to *dysphasia*. He was also assessed with *meningioma*, left parietal convexity, hypertension stage 2. On respondent's 10th day in the hospital, he underwent a surgery on his skull, *i.e.*, a "*left frontoparietal craniotomy for excision of meningioma and duraplasty*."[9]

Respondent now claimed that because of his illness he was unable to return to his customary work as a seafarer for more than 120 days. Petitioners repeatedly refused to grant him disability benefits. Thus, he filed a complaint claiming disability compensation, payment of medical expenses, damages, and attorney's fees.[10]

Petitioners, on the other hand, asserted that there was no accident or medical incident that happened on board the vessel during the period of respondent's employment; that respondent only requested to be signed off due to a pre-existing high blood pressure; that upon respondent's arrival, he was referred to the company-designated physician, but refused to undergo post-employment medical examination; and that respondent opted to collect his final pay and in fact, executed a release in petitioners' favor.[11]

For the petitioners, respondent failed to prove that he suffered a work-related illness during the term of his employment; that respondent's claim had already been rendered stale by his inaction for two years as when he was repatriated on July 15, 2008 and only filed the complaint on December 21, 2010.[12]

Ruling of the Labor Arbiter (LA)

On August 28, 2014, LA Jaime M. Reyno rendered a Decision[13], the dispositive portion of which reads:

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[9] *Id.*

[10] *Id.*

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

[12] *Id.* at 16.

[13] CA *rollo*, pp. 124-133.

WHEREFORE, premises considered, judgment is hereby rendered ordering Intercrew Shipping Agency/Star Emirates marine Services/ Gregorio Ortega to pay complainant Ofrecino B. Calantoc the amount of SIXTY THOUSAND US DOLLARS ($60,000.00) representing full disability benefits plus ten percent (10%) thereof as and for attorney's fees.

Respondents are likewise liable to pay complainant the amount of ₱557,062.50 as medical reimbursement plus the amount of US$2,800.00 as sickness wages.

All other claims are dismissed.

SO ORDERED.[14]

Ruling of the NLRC

On March 31, 2015, the NLRC rendered a Decision,[15] with Commissioner Nieves E. Vivar-De Castro, dissenting. The dispositive portion of the Decision reads in this wise:

WHEREFORE, premises considered, the appeal is GRANTED; and the assailed Decision of the Labor Arbiter is SET ASIDE. The complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[16]

Respondent then filed a Motion for Reconsideration.[17]

On May 15, 2015, the NLRC denied the motion through a Resolution.[18]

In his Petition for *Certiorari*[19] under Rule 65 of the Rules of Court before the CA, respondent raised the following grounds for the latter's consideration, to wit:

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[14] *Id.* at 133.

[15] *Id.* at 25-38.

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

[17] *Id.* at 248-258.

[18] *Id.* at 39-41.

[19] *Id.* at 1-22.

I. THE [NLRC] (SIXTH DIVISION) GRAVELY ABUSED [THEIR] DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SETTING ASIDE THE DECISION OF THE HONORABLE [LA].

II. THE [NLRC] (SIXTH DIVISION) GRAVELY ABUSED [THEIR] DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, DISENTITLING [RESPONDENT] TO PERMANENT TOTAL DISABILITY BENEFITS[,] MEDICAL REIMBURSEMENT AND FULL SICKNESS ALLOWANCE AS STATED IN THE CONTRACT AND THE POEA STANDARD EMPLOYMENT CONTRACT.

III. THE [NLRC] (SIXTH DIVISION) GRAVELY ABUSED [THEIR] DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION DISMISSING THE CASE DISENTITLING [RESPONDENT] TO DAMAGES AND ATTORNEY'S FEES.[20]

Ruling of the CA

On November 27, 2017, the CA rendered the assailed Decision[21] finding merit in the petition. It approved the Dissenting Opinion of Commissioner Nieves E. Vivar-De Castro as to why respondent's illness is compensable. The dispositive portion of the assailed Decision reads as follows:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. Accordingly, the Decision dated 31 March 2015 and Resolution dated 15 May 2015 rendered by the National Labor Relations Commission is hereby ANNULLED and SET ASIDE and the Decision of the Labor Arbiter dated 28 August 2014 is REINSTATED with MODIFICATION, in that attorney's fees in the amount of one thousand US dollars (US$1,000.00) or its equivalent in Philippine pesos, computed at the exchange rate prevailing at the time or actual payment, should be paid.

The monetary judgment due to the petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of the Decision until fully satisfied.

SO ORDERED.[22]

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[20] *Id.* at 10.

[21] *Rollo*, pp. 13-27.

[22] *Id.* at 26.

Feeling aggrieved, petitioners filed a Motion for Reconsideration.[23]

On May 10, 2018, the CA issued the assailed Resolution[24] denying the motion.

Hence, the instant petition.

Issues

THAT RESPONDENT-SEAFARER'S SIGN OFF FROM THE VESSEL WAS DUE TO WORK-RELATED MEDICAL GROUNDS CANNOT BE PRESUMED. RECORDS OF THIS CASE REVEAL THAT RESPONDENT SIGNED OFF ON 15 JULY 2008 DUE TO HIS VOLUNTARY REQUEST.

CIRCUMSTANCES SUBSEQUENT TO RESPONDENT'S SIGN OFF BELIE THE CLAIM. RESPONDENT DID NOT DEMAND FOR POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN 3 DAYS FROM ARRIVAL—INSTEAD HE RECEIVED HIS FINAL WAGES ON 23 JULY 2008. IN SUPPORT OF HIS CLAIM, RESPONDENT PRESENTED A MEDICAL ABSTRACT DATED 20 FEBRUARY 2009, 7 MONTHS *AFTER* HIS SIGN OFF. MEANWHILE, THE COMPLAINT FOR DISABILITY COMPENSATION WAS FILED ONLY ON 26 JANUARY 2011, ALMOST 3 YEARS AFTER SIGN OFF.

THERE IS NO PROOF ON RECORD THAT RESPONDENT'S ALLEGED ILLNESS IS WORK-RELATED. UNDER THE POEA CONTRACT, ONLY WORK-RELATED ILLNESSES SUFFERED DURING THE TERM OF EMPLOYMENT ARE COMPENSABLE, WORK-RELATION CANNOT BE PRESUMED. NO LESS THAN THE SUPREME COURT HAS RULED THAT THE BURDEN OF PROOF TO PROVE WORK-RELATION BELONGS TO THE SEAFARER WHO IS CLAIMING COMPENSATION.

THE CLAIM WAS DENIED BY PETITIONERS ON JUST AND VALID GROUNDS. RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES.[25] (Italics in the original.)

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[23] *Id.* at 73-80.

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

[25] *Id.* at 38.

Our Ruling

The petition is without merit.

"Preliminarily the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[26]

"In labor case, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[27]

Here, the CA found that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it granted petitioner's appeal before it. The Court defines grave abuse of discretion as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[28] It must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in

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[26] *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *UST v. Samahang Manggagawa ng UST, et al.*, 809 Phil. 212, 219-220 (2017), further citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016).

[27] *Id.*

[28] *Ramiro Lim & Sons Agricultural Co., Inc. v. Guilaran*, G.R. No. 221967, February 6, 2019 citing *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591-592 (2007).

contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[29]

Given the foregoing, the Court finds that the CA did not err in ascribing grave abuse of discretion on the part of the NLRC as the latter's finding that there is no sufficient evidence in the case to conclude that respondent suffered from a work-related illness and is, therefore, not entitled to permanent and total disability benefits is obviously not in accord with evidence on record and settled legal principles of labor law.

In this case, respondent executed his employment contract with petitioners on March 14, 2008. Thus, the provisions of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC)[30] are applicable and should govern the parties' relations.

Section 20(B)(6) of the 2000 POEA-SEC provides:

SECTION 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 his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Given the foregoing provision, there are two elements that must concur before an injury or illness is considered

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[29] *Id.*

[30] Philippine Overseas Employment Administration Memorandum Circular No. 09, Series of 2000.

compensable: *first*, that the injury or illness must be work-related; and *second*, that the work-related injury or illness must have existed during the term of the seafarers' employment contract.[31]

The "*work-related injury*," under the 2000 POEA-SEC, is defined as "*injury(ies)*" resulting in disability or death arising out of and in the course of employment; "*work-related illness*" is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," to wit:

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.[32]

In this case, it is undisputed that in the Pre-Employment Medical Examination (PEME)[33] of respondent, under his medical history, he suffered from or had been told that he has a high blood pressure. It is likewise beyond dispute that respondent's mild cerebro-vascular accident or stroke is a compensable disease under Section 32-A of the 2000 POEA-SEC, as correctly found by the NLRC.[34]

However, the Court adheres to the findings of both the LA and the CA that petitioners, despite knowing that respondent has a high blood pressure, gave the latter a clean bill of health, through the former's accredited clinic, before deployment which

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[31] *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.*, 767 Phil. 488, 497 (2015), citing *Magsaysay Maritime Services, et al. v. Laurel*, 707 Phil. 210, 221 (2013); *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 317 (2009).

[32] *Id.* at 497-498.

[33] CA *rollo*, p. 201.

[34] *Id.* at 31.

leads to a conclusion that whatever illness respondent suffers on board the vessel is work-related. It goes without saying, too, that respondent's work as a seafarer could have attributed to the development of his *meningioma*.[35]

In the words of the LA, "[*w*]*hile on board the vessel,* [*respondent*] *is exposed to extremes in temperature brought about by the harshness of sea travel and the elements of the sea and has no choice of the food that they eat because whatever are their provisions, the same shall be served to them*."[36]

Further, the Court adopts the CA's approval of Commissioner Nieves E. Vivar-de Castro's Dissenting Opinion, which reads:

> Moreover, the Complainant's hypertension, while pre-existing is merely one of the factors that caused his stroke. Conversely, the nature and conditions of the Complainant's employment also took part in the resulting illness which he had suffered. These include, as aptly stated by the Labor Arbiter *a quo*, the Complainant's exposure to extreme temperatures brought about by the harshness of sea travel and the elements of the sea, the quality and condition of the food he ate, as well as, the strain and stress that he had to suffer brought about by his duties and tasks on board the vessel. Otherwise stated, such nature and conditions of work at the very least increased the risk of contracting the illness, or aggravated his pre-existing hypertension that led to his stroke, and for which he should be compensated therefor. As earlier mentioned, that the work contributed even to a small degree to the development or aggravation of the disease is enough to warrant compensation. x x x
>
> It may not be amiss to note at this juncture that due to the lack of proper medical treatment after his repatriation, the Complainant's medical condition worsened which ultimately led to a finding of *Meningioma*, a kind of brain tumor which is often described as slow-growing x x x. To my mind, despite having been discovered or diagnosed six (6) months after the Complainant's repatriation, the said illness nevertheless manifested at the first instance when he suffered a stroke while on board the vessel. x x x[37]

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[35] *Id.* at 129-130; *rollo*, p. 23.

[36] CA *rollo*, p. 130.

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

Thus, the Court adheres to Commissioner Nieves E. Vivar-De Castro in saying that petitioners having engaged the respondent as hypersensitive as he is, they should now accept the liability for his ensuing ailment in the course of his employment.[38]

It is not required that an employee must be in perfect health when he contracted the illness to be able to recover disability compensation.[39] It is equally true, that while the employer is not the insurer of the health of the employees, once he takes the employees as he finds them, then he already assumes the risk of liability.[40]

In sum, despite respondent's pre-existing high blood pressure or hypertension, he was still initially declared fit for sea duty during his PEME. Therefore, his *meningioma* is presumed to have been brought about by the nature of his employment and occurred during and in the course of his employment. This goes without saying that respondent is entitled to total and permanent disability benefits because, as aptly found by both the labor arbiter and the CA, he would not be able to resume to his position as a fourth engineer or, at least, be hired by other maritime employers.[41]

Section 20(B)(6) of the POEA-SEC mandates the employer to pay the seafarer disability benefits for his permanent total or partial disability caused by the work-related illness or injury once there is already a finding of permanent either total or partial disability within the 120-day period or the 240-day period.[42] A permanent disability essentially means a permanent reduction of the earning power of a seafarer to perform future

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[38] *Id.* at 33.

[39] *Id.*, citing *Seagull Shipmanagement and Tran., Inc. v. NLRC*, 388 Phil. 906, 914 (2000).

[40] *Id.*

[41] *Id.* at 128.

[42] *The Late Alberto B. Javie, et al. v. Philippine Transmarine Carriers, Inc., et al.*, 738 Phil. 374, 387 (2014).

sea or on board duties and permanent disability benefits serve as a means to alleviate the seafarer's financial condition on account of the level of injury or illness he incurred or contracted.[43]

A reading of the three kinds of liabilities under Section 20(B) of the POEA-SEC means that the POEA-SEC intended to make the employer liable for (1) the seafarer's sickness allowance equivalent to his basic wage in addition to the medical treatment that they must provide the seafarer with at their cost; ***and*** (2) seafarer's permanent total or partial disability as finally determined by the company-designated physician.[44]

The Court ratiocinated that while Section 20 of the POEA-SEC did not state on clear terms that the employer's liabilities are cumulative in nature, which means to say that the employer is liable for the sickness allowance, medical expenses *and* disability benefits, it does not, however, state that the compensation and benefits are alternative or that the grant of one negates the grant of the others.[45] This interpretation, in fact, is in accord with the constitutional policy that guarantees full protection to labor, both local and overseas.[46]

Time and again, the Court is clear that the POEA-SEC is imbued with public interest. Accordingly, its provisions must be construed fairly, reasonably, and liberally in favor of the seafarer in the pursuit of his employment on board ocean-going vessels.[47]

All told, the Court finds it proper the award to respondent of the following amounts to wit: (1) US$60,000.00 as permanent total disability benefit;[48] (2) US$2,800.00 as sickness

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[43] *Id.* at 388. Citation omitted.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 389.

[47] *Id.* at 388-389.

[48] *Rollo*, p. 24.

allowance;[49] (3) ₱557,062.50 as medical expenses;[50] and (4) US$1,000.00 as attorney's fees.[51]

In accordance with *Nacar v. Gallery Frames*,[52] the monetary awards shall earn a legal interest of 6% *per annum* computed from finality of the Decision in this case until full satisfaction thereof.

WHEREFORE, the petition is **DENIED**. The Decision dated November 27, 2017 and the Resolution dated May 10, 2018 of the Court of Appeals in CA-G.R. SP No. 141153 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239777. July 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JULIAN SILVEDERIO III *y* JAVELOSA,** *accused-appellant.*

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[49] *Id.* at 25.

[50] *Id.*

[51] *Id.*

[52] 716 Phil. 267 (2013).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SYLLABUS

1. **CRIMINAL LAW; MURDER; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** To successfully prosecute the crime of Murder, the following elements must be established: *(1)* that a person was killed; *(2)* that the accused killed him or her; *(3)* that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and *(4)* that the killing is not parricide or infanticide. In this case, the above elements were established: *(1)* the victim, Glenn N. Lasafin, was killed; *(2)* accused-appellant was positively identified by Bonitillo as the one who killed the victim; *(3)* the victim's killing was attended by treachery, a qualifying circumstance; and *(4)* the killing is neither parricide nor infanticide.

2. **ID.; ID.; ID.; TREACHERY; DEFINED; TWO (2) ELEMENTS.—** Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. To properly appreciate treachery, two elements must be present: *(1)* at the time of the attack, the victim was not in a position to defend himself; and *(2)* the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; CAUSE OF ACCUSATION; A SUPPOSED INSUFFICIENCY IN THE ALLEGATION OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY IN THE INFORMATION IS DEEMED WAIVED BY FAILURE OF THE ACCUSED TO FILE EITHER A MOTION TO QUASH THE INFORMATION OR A MOTION FOR A BILL OF PARTICULARS BEFORE HIS ARRAIGNMENT; CASE AT BAR.—** Accused-appellant's contention that the Information did not sufficiently allege the qualifying circumstance of treachery fails. x x x Contrarily, the Court finds that the Information in the instant case adequately alleges the qualifying circumstance

of treachery. As the CA aptly ruled, the Information states all the circumstances surrounding the killing of the victim — that is, accused-appellant shot him several times even when he was already kneeling down and was deprived of the opportunity to defend himself. Even assuming that the Information in this case does not sufficiently allege treachery, accused-appellant is deemed to have waived the supposed defect. x x x [A]ccused-appellant in the instant case failed to file either a motion to quash the Information or a motion for a bill of particulars before his arraignment. Hence, he is deemed to have waived the supposed insufficiency in the allegation of treachery in the Information.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE ISSUES INVOLVE MATTERS OF CREDIBILITY OF WITNESSES, THE FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES, AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS, ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT.— The Court has ruled, time and again, that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because it is the trial court that has the unique opportunity to observe the demeanor of witnesses; and the trial court is in the best position to discern whether or not the witnesses are telling the truth. Generally, the appellate courts will not overturn the trial court's findings unless it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. As such, the Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, with respect to the probative value of Bonitillo's testimony in this case.

5. CRIMINAL LAW; PENALTIES; ADMINISTRATIVE MATTER NO. 15-08-02-SC (GUIDELINES FOR THE PROPER USE OF THE PHRASE *"WITHOUT ELIGIBILITY FOR PAROLE"* IN INDIVISIBLE PENALTIES); AN ACCUSED-APPELLANT IMPOSED WITH THE PENALTY OF *RECLUSION PERPETUA* IS INELIGIBLE

FOR PAROLE; APPENDING THE QUALIFICATION "WITHOUT ELIGIBILITY FOR PAROLE" TO THE PENALTY, NOT REQUIRED; CASE AT BAR.— [W]ith respect to the imposition of the penalty of *reclusion perpetua*, the CA ruled that accused-appellant shall be ineligible for parole pursuant to RA 9346. The Court finds that there is no need to add the qualification "without eligibility for parole" in this case. Administrative Matter (A.M.) No. 15-08-02-SC pertinently provides: Parole is extended only to those convicted of divisible penalties. *Reclusion perpetua* is an indivisible penalty and carries no minimum nor maximum period. x x x With no "minimum penalty" imposable on those convicted of a crime punishable by *reclusion perpetua*, then even prior to the enactment of R.A. No. 9346, persons sentenced by final judgment to *reclusion perpetua* could not have availed of parole under the Indeterminate Sentence Law. x x x To reiterate, Article 248 of the RPC, as amended by RA 7659, punishes Murder by *reclusion perpetua* to death. It is worthy to note that the RTC meted out the penalty of *reclusion perpetua, not* "death but reduced to *reclusion perpetua* pursuant to RA 9346." The Court finds the RTC's imposition correct. In this case, apart from the qualifying circumstance of treachery, no ordinary mitigating or aggravating circumstances have been established. Under Article 63 of the RPC, one of the rules in cases where the law prescribes a penalty composed of two indivisible penalties is that "when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied." Accordingly, applying A.M. No. 15-08-02-SC, as afore-quoted, there is no more need to append the phrase "without eligibility for parole" in the penalty of *reclusion perpetua* that was imposed by the RTC.

6. **CIVIL LAW; DAMAGES; MODIFICATION OF AWARD OF CIVIL INDEMNITY AND DAMAGES, PROPER.—** The distinction is also crucial in the determination of the proper amount of civil indemnity and damages to be awarded. The CA in this case imposed the following amounts: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the finality of judgment until full payment. As stated in *People v. Jugueta*, these amounts are imposed where the penalty is death but reduced to *reclusion perpetua* because of RA 9346. Since the penalty imposed in this case is *reclusion*

perpetua only, the proper amounts are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, temperate damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim; this amount is imposed, upon accused-appellant since no documentary evidence of burial or funeral expenses was presented in court. In addition, the civil indemnity, moral damages, exemplary damages, and temperate damages payable by accused-appellant are subject to interest at the rate of 6% *per annum* from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

INTING, *J.*:

This resolves the appeal[1] filed by Julian Silvederio III *y* Javelosa (accused-appellant) assailing the Decision[2] dated January 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02344. The CA Decision affirmed the Decision[3] dated July 20, 2016 of Branch 39, Regional Trial Court (RTC), Iloilo City in Criminal Case No. 12-71289 for Murder.

The Antecedents

Accused-appellant was charged in an Information[4] dated May 15, 2012, the accusatory portion of which reads:

That on or about the 10th day of May 2012, in the City of Iloilo, Philippines and within the jurisdiction of this Court, the above named

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[1] See Notice of Appeal dated February 19, 2018; *rollo*, pp. 21-23.

[2] *Id.* at 3-20; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Gabriel T. Robeniol, concurring.

[3] CA *rollo*, pp. 53-58; penned by Presiding Judge Victorino Oliveros Maniba, Jr.

[4] Records, pp. 1-2.

accused, armed with a firearm of unknown caliber, and with intent to kill did then and there wilfully, unlawfully and feloniously shoot several times one Glenn N. Lasafin with the said firearm and with treachery employed means to weaken the defense of the victim, by suddenly shooting at the victim without provocation, and by shooting the victim again even when he was already kneeling down; thus depriving him the opportunity to defend himself, thereby inflicting upon the latter mortal wounds at the trunk and extremity which was the cause of Glenn N. Lasafin's death.

CONTRARY TO LAW.[5]

Upon his arraignment on May 30, 2012, accused-appellant interposed a plea of not guilty.[6] Pre-trial and trial ensued.

The prosecution alleged that on May 10, 2012, Glenn N. Lasafin (victim), Jethro Bonitillo (Bonitillo), Boy, and Kid went to Aura Chillout Lounge (Aura) at Smallville for a drinking spree.[7] While the four were drinking, the victim requested Bonitillo to accompany him to the restroom.[8] On their way to the restroom, accused-appellant accosted them and asked the victim, "*Ano ka parakoy ka?*" ("What are you, a policeman?").[9] Bonitillo told the victim not to mind accused-appellant.[10] When they were about to enter the restroom, they heard a gunshot.[11] Bonitillo looked at the direction from where the gunshot came and then heard another gunshot. This time, Bonitillo saw that the victim was hit in his upper left arm.[12] While the victim was holding his upper left arm with his right hand, accused-appellant approached and shot him with a .38 revolver. The victim fell

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[5] *Id.* at 1.

[6] See Order dated May 30, 2012, *id.* at 26.

[7] TSN, June 27, 2013, p. 24.

[8] *Id.* at 25.

[9] *Id.* at 26-27.

[10] *Id.* at 27.

[11] *Id.* at 28.

[12] *Id.* at 29.

after the third gunshot hit his left chest.[13] He was brought to the hospital but was later declared dead.[14]

Leopoldo Vasquez (Vasquez) was on duty as a bouncer at Aura on May 10, 2012.[15] After hearing the three gunshots, he proceeded to the scene and saw the victim lying near the door of the restroom. He also saw accused-appellant holding a .38 revolver. He confronted accused-appellant and said, "*Why did you shoot him? Just surrender to me*."[16] Accused-appellant ran away and threw the gun. Vasquez called out the security guards to help him chase accused-appellant. Vasquez and the security guards ran after accused-appellant until they reached and took hold of him at EMCOR Building.[17] The police officers of Mandurriao Police Station responded.

Vasquez and the security guards looked for the .38 revolver, which was thrown to a grassy portion, Dela Cruz, the security guard at Aura, found the firearm.[18]

The defense interposed denial. It alleged that accused-appellant, together with Bryan, Puloy, Drope, Rabrab, Jake, May, Roy, Roy's girlfriend, and Roy's friend were at Aura at around 10:30 p.m. or 10:40 p.m. of May 9, 2012 until the early morning of May 10, 2012.[19] While they were drinking, Bryan, Puloy, and Rabrab went to the restroom. When they returned to their table, Bryan informed accused-appellant that somebody from another table accosted them.[20] Accused-appellant told his

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

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

[15] TSN, November 27, 2013, p. 4.

[16] *Id.* at 6.

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

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

[19] TSN, November 25, 2015, p. 3.

[20] *Id.* at 4.

friends not to mind it and that they were there to enjoy and not to create trouble. After a few minutes, somebody from the other table shouted and asked Bryan, "*What do you want? Are you going to fight?*" Accused-appellant stood up, faced the man from the other table, and told him that he and his friends were there to just drink and enjoy. Minutes later, someone from behind accused-appellant struck him with a bottle of Red Horse beer on the left side of his head. As a result, accused-appellant fell. His friends fought with the group from the other table. Suddenly, he heard two gunshots. As his head was hit by the beer bottle, he just crawled on the floor. Bryan, Puloy, and Jake ran towards him and helped him stand. While they were going downstairs from Aura, they heard another gunshot which caused them to run in different directions. While walking away from Aura, accused-appellant fell due to overindulgence in alcohol and the blood oozing from his head. After he fell, the bouncers and the security guards held him.[21] Later, they boarded accused-appellant in a patrol car where a police officer told him that he was a suspect of the incident. They then brought him to the hospital for identification by the victim and the witnesses. However, Bonitillo and the victim were not able to identify him.[22]

The Ruling of the RTC

On July 20, 2016, the RTC rendered its Decision[23] finding accused-appellant guilty beyond reasonable doubt of Murder under Article 248 of the Revised Penal Code (RPC). It ruled that the prosecution was able to prove that the killing of the victim was qualified by treachery. Thus, it sentenced accused-appellant to suffer the penalty of *reclusion perpetua* and ordered him to pay the heirs of the victim the sums of ₱75,000.00 as civil indemnity and ₱50,000.00 as moral damages, and the costs of suit.

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[21] *Id.* at 5-6.

[22] *Id.* at 7.

[23] CA *rollo*, pp. 53-58.

The Ruling of the CA

On January 19, 2018, the CA rendered its Decision[24] affirming the conviction of accused-appellant for Murder. With respect to the imposition of the penalty of *reclusion perpetua*, the CA ruled that accused-appellant shall be ineligible for parole pursuant to Republic Act No. (RA) 9346.[25] As to the damages, the CA modified the awards by increasing the civil indemnity to ₱100,000.00, the moral damages to ₱100,000.00, and the exemplary damages to ₱100,000.00. It also declared that all the monetary awards shall earn interest at the legal rate of 6% *per annum* from the date of the finality of its Decision until full payment.

Hence, the present appeal. Per Resolution[26] dated August 14, 2019, the parties manifested that they are adopting their respective appellate briefs before the CA as their supplemental briefs.

Accused-appellant raises the following grounds: *(1)* the prosecution failed to prove his guilt beyond reasonable doubt for the crime of Murder; and *(2)* the Information did not sufficiently allege the qualifying circumstance of treachery.

The Court's Ruling

The appeal has no merit.

Murder is defined and punished under Article 248 of the RPC, as amended by RA 7659,[27] to wit:

Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder

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[24] *Rollo*, pp. 3-20.

[25] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," approved on June 24, 2006.

[26] *Rollo*, pp. 41-42.

[27] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and for Other Purposes," approved on December 13, 1993.

and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With *treachery*, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity; x x x (Italics supplied.)

x x x x x x x x x

To successfully prosecute the crime of Murder, the following elements must be established: *(1)* that a person was killed; *(2)* that the accused killed him or her; *(3)* that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and *(4)* that the killing is not parricide or infanticide.[28]

In this case, the above elements were established: *(1)* the victim, Glenn N. Lasafin, was killed; *(2)* accused-appellant was positively identified by Bonitillo as the one who killed the victim; *(3)* the victim's killing was attended by treachery, a qualifying circumstance; and *(4)* the killing is neither parricide nor infanticide.

As regards the appreciation of treachery, the Court affirms the RTC and the CA in finding the presence of this qualifying circumstance in the commission of the crime.

Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[29] The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.[30]

To properly appreciate treachery, two elements must be present: *(1)* at the time of the attack, the victim was not in a

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[28] *People v. Cirbeto*, G.R. No. 231359, February 7, 2018, 855 SCRA 234, 242, citing *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

[29] Paragraph 16, Article 14, REVISED PENAL CODE.

[30] *People v. Albino*, G.R. No. 229928, July 22, 2019, citing *People v. Watamama*, 734 Phil. 673, 682 (2014).

position to defend himself; and *(2)* the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[31]

The RTC and the CA correctly ruled that the prosecution was able to prove that treachery attended the killing of the victim. As found by the RTC, the victim was already hit on his upper left arm when he sat on the stairs leading to the comfort room. Without prior altercation or exchange of blows between the victim and accused-appellant, the victim was unable to defend himself and was unaware when accused-appellant shot him.[32] On the other hand, accused-appellant knew fully well that the victim was already injured and in no position to defend himself. Accused-appellant made sure that his objective would be accomplished by "deliberately approaching the injured and unarmed victim and when he was already near and surely would not miss, shot [the victim] on the chest when [the victim] was almost standing up."[33] Evidently, the form of attack employed by accused-appellant ensured the commission of the crime without risk to himself.

Accused-appellant's contention that the Information did not sufficiently allege the qualifying circumstance of treachery fails. What is more, his reliance upon the case of *People v. Valdez, et al.*[34] *(Valdez)* is untenable. The informations in *Valdez* merely mentioned that the killings were qualified by treachery, among others. As such, the Court ruled that the averments of the informations to the effect that the two accused, Police Officer II Eduardo Valdez and Edwin Valdez, "*with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did . . . assault, attack and employ personal violence upon*" the victims "*by then and there shooting* [*them*] *with a gun, hitting* [*them*]" on various parts of their bodies

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[31] *People v. Racal*, 817 Phil. 665, 677-678 (2017), citing *People v. Las Piñas, et al.*, 739 Phil. 502, 524 (2014).

[32] CA *rollo*, p. 57.

[33] *Id.* at 58.

[34] 679 Phil. 279 (2012).

"*which* [*were*] *the direct and immediate cause of* [*their*] *death*[*s*]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings.[35]

Contrarily, the Court finds that the Information in the instant case adequately alleges the qualifying circumstance of treachery. As the CA aptly ruled, the Information states all the circumstances surrounding the killing of the victim — that is, accused-appellant shot him several times even when he was already kneeling down and was deprived of the opportunity to defend himself.[36]

Even assuming that the Information in this case does not sufficiently allege treachery, accused-appellant is deemed to have waived the supposed defect. In *People v. Solar*,[37] the Court affirmed the ruling in *Valdez*[38] that "*it is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done 'with treachery' or 'with abuse of superior strength' or 'with evident premeditation' without specifically describing the acts done by the accused that made any or all of such circumstances present*." Nevertheless, the Court modified the conviction of therein accused-appellant Rolando Solar *y* Dumbrique from Homicide to Murder due to his failure to timely question the sufficiency of the Information, *viz.*:

> To recall, in the present case, Rolando did not question the supposed insufficiency of the Information filed against him through either a motion to quash or motion for bill of particulars. He voluntarily entered his plea during the arraignment and proceeded with the trial. Thus, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the attendant circumstances. In other words, Rolando is deemed to have understood the acts imputed against him by the Information. The CA therefore erred in modifying Rolando's conviction

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[35] *Id.* at 294. Italics supplied.

[36] *Rollo*, p. 14.

[37] G.R. No. 225595, August 6, 2019.

[38] *Supra* note 34.

in the way that it did when he had effectively waived the right to question his conviction on that ground.

It is for this reason that the Court modifies Rolando's conviction for Homicide to Murder — he failed to question the sufficiency of the Information by availing any of the remedies provided under the procedural rules, namely: either by filing a motion to quash for failure of the Information to conform substantially to the prescribed form, or by filing a motion for bill of particulars. Again, he is deemed to have waived any of the waivable defects in the Information filed against him.[39]

Similarly, accused-appellant in the instant case failed to file either a motion to quash the Information or a motion for a bill of particulars before his arraignment. Hence, he is deemed to have waived the supposed insufficiency in the allegation of treachery in the Information.

As regards Bonitillo's credibility as a witness, the Court is not persuaded by accused-appellant's averment that Bonitillo cannot be considered competent and credible and the RTC should not have relied on his testimony. The Court is likewise unconvinced that accused-appellant's identification as the perpetrator of the crime by Bonitillo was highly suspect and tainted with improbabilities.

On this score, the Court totally affirms the following findings of the CA:

Accused-appellant contends that Bonitillo could have easily identified who made the first 2 shots, because he (Bonitillo) and the victim were only four (4) steps away from the table of accused-appellant. To this Court, it is not an issue whether or not Bonitillo could have identified who fired the first 2 shots. The incredibility presented by accused-appellant is irrelevant for Bonitillo admitted that he was not able to see who fired the 2 shots because it was dark inside the disco house. Also, the charge of murder qualified by treachery against accused-appellant is based on the circumstance that accused-appellant approached and shot the victim who was already wounded and in kneeling position.

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[39] *People v. Solar, supra* note 37.

We have no reason to disturb the finding of the RTC in finding credence to the version of the prosecution. The trial court is in the best position to assess the credibility of witnesses and their testimonies for it is in the position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.

The purported inconsistency, if indeed Bonitillo saw accused-appellant threw away the firearm or he was only informed by the security guards about it, is inconsequential because Bonitillo had declared that he saw accused-appellant shot the victim. It is well-settled that discrepancies and inconsistencies in the testimony of a witness referring to minor details which do not touch the essence of the crime do not impair his credibility. The minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of a witness, as well as his positive identification of accused-appellant as the perpetrator of the crime. Bonitillo's eyewitness account on the killing is credible because it is a categorical, clear and positive assertion of a fact.[40]

x x x x x x x x x

There is no doubt that Bonitillo saw and identified accused-appellant who came near the victim and shot him at the chest:

Q: And do you know who was this person who fired the third shot?

A: Yes Sir, I saw his face.

Q: Who is he?

A: Julian Silvederio.

x x x x x x x x x

Q: You said that you are the boyfriend of the sister of Julian Silvederio III, what did you do upon seeing him because you know each other?

A: I shouted, Noy, it's Jethro, the boyfriend of JP, that's my friend, what's our fault?[41]

The Court has ruled, time and again, that when the issues involve matters of credibility of witnesses, the findings of the

[40] *Id.* at 14-15. Citations omitted.

[41] *Id.* at 16.

trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[42] This is so because it is the trial court that has the unique opportunity to observe the demeanor of witnesses; and the trial court is in the best position to discern whether or not the witnesses are telling the truth.[43] Generally, the appellate courts will not overturn the trial court's findings unless it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case.[44] As such, the Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, with respect to the probative value of Bonitillo's testimony in this case.

All told, the conclusion of the RTC and the CA that accused-appellant is guilty beyond reasonable doubt of Murder is affirmed. However, the Court needs to make a modification with respect to the penalty and monetary awards.

As earlier mentioned, with respect to the imposition of the penalty of *reclusion perpetua*, the CA ruled that accused-appellant shall be ineligible for parole pursuant to RA 9346. The Court finds that there is no need to add the qualification "without eligibility for parole" in this case.

Administrative Matter (A.M.) No. 15-08-02-SC[45] pertinently provides:

> Parole is extended only to those convicted of divisible penalties. *Reclusion perpetua* is an indivisible penalty and carries no minimum nor maximum period. x x x With no "minimum penalty" imposable on those convicted of a crime punishable by *reclusion perpetua*, then

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[42] *People v. Cirbeto*, *supra* note 28 at 246.

[43] *Id.*

[44] *People v. Agalot*, G.R. No. 220884, February 21, 2018, 856 SCRA 317, citing *People v. Gerola*, 813 Phil. 1055, 1064 (2017).

[45] Entitled "Guidelines for the Proper Use of the Phrase '*Without Eligibility for Parole*' in Indivisible Penalties," took effect on August 4, 2015.

even prior to the enactment of R.A. No. 9346, persons sentenced by final judgment to *reclusion perpetua* could not have availed of parole under the Indeterminate Sentence Law.

x x x x x x x x x

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole*" *shall be used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

To reiterate, Article 248 of the RPC, as amended by RA 7659, punishes Murder by *reclusion perpetua* to death. It is worthy to note that the RTC meted out the penalty of *reclusion perpetua*, not "death but reduced to *reclusion perpetua* pursuant to RA 9346."

The Court finds the RTC's imposition correct. In this case, apart from the qualifying circumstance of treachery, no ordinary mitigating or aggravating circumstances have been established. Under Article 63[46] of the RPC, one of the rules in cases where

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[46] Article 63 of the Revised Penal Code provides:

ART. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

the law prescribes a penalty composed of two indivisible penalties is that "when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied." Accordingly, applying A.M. No. 15-08-02-SC, as afore-quoted, there is no more need to append the phrase "without eligibility for parole" in the penalty of *reclusion perpetua* that was imposed by the RTC.

The distinction is also crucial in the determination of the proper amount of civil indemnity and damages to be awarded. The CA in this case imposed the following amounts: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the finality of judgment until full payment. As stated in *People v. Jugueta*,[47] these amounts are imposed where the penalty is death but reduced to *reclusion perpetua* because of RA 9346. Since the penalty imposed in this case is *reclusion perpetua* only, the proper amounts are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, temperate damages in the amount of ₱50,000.00 shall be awarded in favor of the heirs of the victim; this amount is imposed, upon accused-appellant since no documentary evidence of burial or funeral expenses was presented in court.[48] In addition, the civil

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1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Italics supplied.)

[47] 783 Phil. 806 (2016).

[48] *Id.* at 853.

indemnity, moral damages, exemplary damages, and temperate damages payable by accused-appellant are subject to interest at the rate of 6% *per annum* from the finality of this Decision until fully paid.[49]

WHEREFORE, the appeal is **DENIED**. The Decision dated January 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02344 is **AFFIRMED** with **MODIFICATION**.

Accused-appellant Julian Silvederio III *y* Javelosa is found **GUILTY** of the crime of Murder defined and punished under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, and is sentenced to suffer the penalty of *reclusion perpetua*. He is **ORDERED** to **PAY** the heirs of Glenn N. Lasafin the following amounts: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. All the monetary awards are subject to interest at the rate of 6% *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 241591. July 8, 2020]

ABC,[*] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[49] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 282 (2013).

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

[*] The identity of the victim or any information to establish or compromise

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; WHERE THERE IS A CONFLICT BETWEEN THE *FALLO* OR THE DISPOSITIVE PART AND THE BODY OF THE DECISION OR ORDER, THE *FALLO* PREVAILS ON THE THEORY THAT THE *FALLO* IS THE FINAL ORDER AND BECOMES THE SUBJECT OF EXECUTION, WHILE THE BODY OF THE DECISION MERELY CONTAINS THE REASONS OR CONCLUSIONS OF THE COURT ORDERING NOTHING; HOWEVER, WHERE ONE CAN CLEARLY AND UNQUESTIONABLY CONCLUDE FROM THE BODY OF THE DECISION THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THE BODY OF THE DECISION WILL PREVAIL.— The CA did not commit any reversible error which would warrant the exercise of the Court's discretionary appellate jurisdiction. As correctly ruled by the CA, the clear findings of the Family Court is that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in his indictment for Criminal Case No. 37119-R which charged him for his act of insertion of a finger into the victim's anal orifice; and that only one instance of Sexual Assault was established which pertained to Criminal Case No. 37120-R committed by petitioner by his insertion of a finger into AAA's genitalia. Thus, it is only just and proper to correct the dispositive portion to reflect the exact findings and conclusions of the Family Court as the Court already settled in *Cobarrubias*, *viz.*: The general rule is that where there is a conflict between the *fallo*,

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her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing. However, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail.

2. ID.; ID.; MOTION TO QUASH; DOUBLE JEOPARDY; ELEMENTS THEREOF; NO VIOLATION OF ACCUSED'S RIGHT AGAINST DOUBLE JEOPARDY WHERE THERE WAS NO VALID JUDGMENT OF ACQUITTAL.— Anent petitioner's claim of violation of his right against double jeopardy, no less than the 1987 Constitution guarantees the right of the accused against double jeopardy, thus: Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent. However, the Court finds that the fourth element is wanting. There was indeed a valid Information for the crime of Sexual Assault in Criminal Case No. 37120-R over which the Family Court had jurisdiction and to which petitioner entered a plea of not guilty. After the trial, a judgment was rendered and promulgated, the dispositive portion of which acquitted petitioner in Criminal Case No. 37120-R, but found him guilty beyond reasonable doubt in Criminal Case No. 37119-R. What is peculiar in this case is that there was a typographical error in the docket number of the criminal cases for Sexual Assault when the Family Court interchangeably and inadvertently mistook and associated Criminal Case No. 37120-R as the Information that indicted petitioner for the act of insertion of his finger in the anal orifice of his victim, although the body of the decision was very clear in its findings that the only crime that was proven was Sexual Assault committed by petitioner in inserting his finger into AAA's genitals. Under the foregoing circumstances, there could be no

valid judgment of acquittal in Criminal Case No. 37120-R. Thus, the correction thereof is warranted; hence there is no valid acquittal in Criminal Case No. 37120-R to speak of.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE STRAIGHTFORWARD AND CATEGORICAL TESTIMONY OF THE VICTIM AND HER POSITIVE IDENTIFICATION OF THE ACCUSED MUST PREVAIL OVER THE UNCORROBORATED AND SELF-SERVING DENIAL OF THE LATTER; A YOUNG GIRL'S REVELATION THAT SHE HAD BEEN RAPED OR SEXUALLY ASSAULTED, COUPLED WITH HER VOLUNTARY SUBMISSION TO MEDICAL EXAMINATION AND WILLINGNESS TO UNDERGO PUBLIC TRIAL WHERE SHE COULD BE COMPELLED TO GIVE OUT THE DETAILS OF AN ASSAULT ON HER DIGNITY, CANNOT BE SO EASILY DISMISSED AS MERE CONCOCTION.— As regards petitioner's contention that the court *a quo* failed to consider the inconsistencies in the prosecution's evidence, the Court agrees with the findings of both the Family Court and the CA as to the credibility of AAA who was only 10 years old at the time of the incident. The straightforward and categorical testimony of AAA and her positive identification of petitioner must prevail over the uncorroborated and self-serving denial of the latter. Moreover, AAA, being a child-victim, the Court is inclined to normally give full weight and credit to her testimony, since when a girl of tender age and immaturity says that she has been raped, or as in this case, sexually assaulted, she says in effect all that is necessary to show that rape has in fact been committed. A young girl's revelation that she had been raped or sexually assaulted, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.

4. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, INCLUDING ITS EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES, MUST BE ACCORDED RESPECT AND NOT BE DISTURBED ON APPEAL, EXCEPT WHEN THE TRIAL COURT IS SHOWN TO HAVE OVERLOOKED, MISAPPREHENDED, OR MISAPPLIED ANY FACT OR CIRCUMSTANCE OF

WEIGHT AND SIGNIFICANCE, WHICH, IF CONSIDERED, WOULD HAVE AFFECTED THE RESULT OF THE CASE.— [T]he Court sees no cogent reason to deviate from the unanimous findings and legal conclusions reached by the trial court and the appellate court with respect to the guilt of petitioner as charged. More specifically, the Court puts great weight on the factual findings of the trial judge who heard the testimonies of the witnesses and observed their demeanor while they testified. Time and again, the Court has stressed that factual findings of the trial court, including its evaluation of the credibility of witnesses and their testimonies, must be accorded respect and not be disturbed on appeal, except when the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and significance, which, if considered, would have affected the result of the case. This is especially true where, as in the case herein, the trial court's findings were affirmed by the appellate court.

5. CRIMINAL LAW; SEXUAL ASSAULT UNDER PARAGRAPH 2, ARTICLE 266-A OF THE REVISED PENAL CODE, IN RELATION TO SECTION 5 (B), ARTICLE III OF RA 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); ELEMENTS THEREOF, PRESENT; THE MINORITY OF THE VICTIM AND THE RELATIONSHIP BETWEEN THE ACCUSED AND THE VICTIM IS SUFFICIENT FOR ACCUSED TO EXERT INFLUENCE UPON THE VICTIM, AS THE ACCUSED IS THE VICTIM'S GRANDFATHER.— The Court equally holds that all the elements of Sexual Assault are present in the instant case. Contrary to petitioner's argument, it should be noted that the relationship between petitioner and his victim is sufficient for petitioner to exert "influence" upon AAA, in addition to the latter's minority. The foregoing notwithstanding, pursuant to *People v. Tulagan (Tulagan)*, the nomenclature of the crime should be modified to Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b), Article III of RA 7610 otherwise known as the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, considering AAA was only 10 years old when the crime was committed against her.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Similarly as to the award for damages, the Court again conforms to *Tulagan* which pegged civil indemnity for Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b) of RA 7610 at ₱50,000.00, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Rules of Court assailing the Decision[2] dated January 23, 2018 and the Resolution[3] dated August 20, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39617 which affirmed with modification the Consolidated Judgment[4] dated January 19, 2017 of the Family Court of Baguio City (Family Court) in Criminal Case Nos. 37118-R, 37119-R, and 37120-R finding ABC (petitioner) guilty beyond reasonable doubt for Sexual Assault defined under paragraph 2, Article 266-A of the Revised Penal Code (RPC) and penalized under Section 5 (b) of Republic Act No. (RA) 7610, otherwise known as the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

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[1] *Rollo*, pp. 13-41.

[2] *Id.* at 45-61; penned by Associate Justice Pedro B. Corales with Associate Justices Jose C. Reyes, Jr. (now a member of the Court) and Elihu A. Ybañez, concurring.

[3] *Id.* at 63-65; penned by Associate Justice Pedro B. Corales with Associate Justices Mario V. Lopez (now a member of the Court) and Elihu A. Ybañez, concurring.

[4] *Id.* at 86-107; penned by Presiding Judge Mia Joy C. Oalleres-Cawed.

Antecedents

Three separate Informations were filed against petitioner as follows:

Criminal Case No. 37118-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, actuated by lust, did then and there willfully, unlawfully, feloniously commit an act of lasciviousness on the person of private complainant "AAA", a ten-year old child, by making a "push and pull" motion on the part of vagina of said "AAA", a ten-year old child, and thereafter, mashed her breast, to her great damage and prejudice.

The offense is attended by the aggravating circumstances of minority and relationship as the accused is the grandfather of AAA.

CONTRARY TO LAW.[5]

Criminal Case No. 37119-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual assault against "AAA", a ten-year old minor, by inserting his finger in the anal orifice of said "AAA", a ten-year old minor.

The offense is attended by the aggravating circumstances of minority and relationship as Accused is the grandfather of AAA.

CONTRARY TO LAW.[6]

Criminal Case No. 37120-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual assault against "AAA", a

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[5] *Id.* at 47. Emphasis omitted.

[6] *Id.* Emphasis omitted.

ten-year old minor, by inserting his finger in the vagina of said "AAA", a ten-year old minor.

The offense is attended by the aggravating circumstances of minority and relationship as accused is the grandfather of AAA.

CONTRARY TO LAW.[7]

Upon arraignment, petitioner pleaded not guilty to the crimes charged.[8]

During the trial, AAA testified that she was 10 years old and an incoming Grade 5 learner in a school in La Union at the time of the incidents. She was staying in her grandmother's house in Baguio for a vacation when herein petitioner, who likewise resides with her grandmother, started molesting her.[9] She testified that petitioner, whom she later identified in court, fondled her breasts and vagina. With the aid of the anatomically correct dolls, AAA demonstrated how petitioner placed his hand inside the underwear that she was wearing, groped her genitals, and inserted his forefinger inside her vagina.[10]

The testimonies of the medico-legal officer and the social welfare officer, who corroborated AAA's narration were dispensed with upon stipulation of the parties.

Petitioner waived his right to testify in his defense.[11]

Ruling of the Family Court

In the Consolidated Judgment[12] dated January 19, 2017, the Family Court found petitioner guilty beyond reasonable doubt for Sexual Assault in Criminal Case No. 37119-R, but acquitted him for the other crimes of Acts of Lasciviousness and the

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[7] *Id.* at 48. Emphasis omitted.

[8] *Id.* at 88.

[9] *Id.* at 89.

[10] *Id.* at 91.

[11] *Id.* at 94.

[12] *Id.* at 86-107.

other charge for Sexual Assault. The dispositive portion of the decision reads:

> *WHEREFORE*, in view of all the foregoing, accused [ABC] is found:
>
> a) In Criminal Case No. 37118-R, NOT GUILTY by reason of reasonable doubt;
>
> b) In Criminal Case No. 37119-R GUILTY beyond reasonable doubt of the offense defined under paragraph 2, Article 266-A of the Revised Penal Code and penalized under Section 5 (b) of RA 7610.
>
> He is sentenced to suffer the indeterminate sentence of twelve (12) years and one day of *reclusion temporal* minimum as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.
>
> In line with prevailing jurisprudence, he is ordered to pay AAA Php30,000.00 as civil indemnity *ex-delicto and* PhP30,000.00 as moral damages or a total of PhP60,000.00, with an interest of 6% per annum from the finality of the decision until its full satisfaction.
>
> c) In Criminal Case No. 37120-R, NOT GUILTY by reason of reasonable doubt;
>
> Considering that the accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law.
>
> *SO ORDERED*.[13]

The Family Court found the evidence against petitioner insufficient to establish beyond reasonable doubt that he made "push and pull" motions on AAA's vagina while mashing her breasts; thus, it acquitted him for Acts of Lasciviousness.[14]

With respect to the other two charges for Sexual Assault, the Family Court ruled that only one instance was proven: the

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[13] *Id.* at 106-107.

[14] *Id.* at 95.

act of petitioner in inserting his finger inside AAA's vagina. The Family Court appreciated the spontaneous, natural, and consistent declaration of AAA that it was petitioner who molested her.[15]

Aggrieved, petitioner appealed his conviction and argued that the Family Court erroneously convicted him of Sexual Assault in Criminal Case No. 37119-R since the allegations therein pertained to the act of insertion of a finger into AAA's anal orifice which the Family Court itself found unsupported by evidence. He nevertheless contended that his acquittal in Criminal Case No. 37120-R should be sustained pursuant to his right against double jeopardy.

Ruling of the CA

In the Decision[16] dated January 23, 2018, the CA ruled that there was a typographical error in the dispositive portion of the Family Court's Decision; clarified that the verdict clearly referred to petitioner's conviction for Rape by Sexual Assault in Criminal Case No. 37120-R and not in Criminal Case No. 37119-R; and accordingly acquitted petitioner in the latter case.[17] The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is hereby DENIED. The January 19, 2017 Consolidated Judgment of the Regional Trial Court, Branch 4, Baguio City in Criminal Case Nos. 37118-R, 37119-R, and 37120-R is AFFIRMED with MODIFICATIONS. As modified and corrected, accused-appellant *ABC* is found GUILTY beyond reasonable doubt in Criminal Case No. 37120-R of rape by sexual assault under paragraph 2 of Article 266-A of the Revised Penal Code and sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal*, as maximum, and is ordered to pay private complainant *AAA* civil indemnity, moral damages, and exemplary damages, each amounting to ₱30,000.00 which shall earn 6% interest *per annum* from the date of finality of this Decision until

[15] *Id.* at 99.

[16] *Id.* at 3-12.

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

fully paid. *ABC* is found NOT GUILTY by reason of reasonable doubt in Criminal Case No. 37119-R. All other aspects of the Consolidated Judgment stand.

SO ORDERED.[18]

The CA ruled that petitioner should be convicted for Rape by Sexual Assault for his act of inserting his finger into AAA's genitals as charged in Criminal Case No. 37120-R and that the correction of the typographical error in the dispositive portion of the Family Court Consolidated Judgment would not put him in double jeopardy citing the case of *Cobarrubias v. People*[19] *(Cobarrubias)*.

Undeterred, petitioner filed the instant petition.

The Issues before the Court

The issues for the Court's resolution are as follows: (1) whether or not double jeopardy had set in for Criminal Case No. 37120-R; and (2) whether the conviction should be upheld with petitioner's assertion that the victim's testimony was incredible and conflicting. He contended that he was already acquitted in Criminal Case No. 37120-R; hence, his conviction therein violates his right against double jeopardy. Furthermore, petitioner reiterated that the testimony of AAA is full of inconsistencies and lapses that affect her credibility.

Our Ruling

The petition is bereft of merit.

The CA did not commit any reversible error which would warrant the exercise of the Court's discretionary appellate jurisdiction. As correctly ruled by the CA, the clear findings of the Family Court is that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in his indictment for Criminal Case No. 37119-R which charged him for his act of insertion of a finger into the victim's anal orifice; and that only one instance of Sexual Assault was established which

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

[19] 612 Phil. 984 (2009).

pertained to Criminal Case No. 37120-R committed by petitioner by his insertion of a finger into AAA's genitalia. Thus, it is only just and proper to correct the dispositive portion to reflect the exact findings and conclusions of the Family Court as the Court already settled in *Cobarrubias*, *viz.*:

> The general rule is that where there is a conflict between the *fallo*, or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing. However, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail.[20]

In *Cobarrubias*, there was a clerical error in the *fallo* or the dispositive portion of Presiding Judge Florentino M. Alumbres' Order dated March 20, 2001, which should have dismissed Criminal Case No. 94-5038 for Homicide instead of Criminal Case No. 94-5037 for Illegal Possession of Firearms, as discussed in the body of the order. Accordingly, it was ruled therein that it was only just and proper to correct the dispositive portion to reflect the exact findings and conclusions of the trial court.

Anent petitioner's claim of violation of his right against double jeopardy, no less than the 1987 Constitution guarantees the right of the accused against double jeopardy, thus:

> Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach. For double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent.[21]

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[20] *Id.* at 996. Citations omitted.

[21] *People v. Alejandro*, G.R. No. 223099, January 11, 2018, 851 SCRA 120, 127, citing *Chiok v. People*, 774 Phil. 230, 247-248 (2015).

However, the Court finds that the fourth element is wanting. There was indeed a valid Information for the crime of Sexual Assault in Criminal Case No. 37120-R over which the Family Court had jurisdiction and to which petitioner entered a plea of not guilty. After the trial, a judgment was rendered and promulgated, the dispositive portion of which acquitted petitioner in Criminal Case No. 37120-R, but found him guilty beyond reasonable doubt in Criminal Case No. 37119-R. What is peculiar in this case is that there was a typographical error in the docket number of the criminal cases for Sexual Assault when the Family Court interchangeably and inadvertently mistook and associated Criminal Case No. 37120-R as the Information that indicted petitioner for the act of insertion of his finger in the anal orifice of his victim, although the body of the decision was very clear in its findings that the only crime that was proven was Sexual Assault committed by petitioner in inserting his finger into AAA's genitals. Under the foregoing circumstances, there could be no valid judgment of acquittal in Criminal Case No. 37120-R. Thus, the correction thereof is warranted; hence there is no valid acquittal in Criminal Case No. 37120-R to speak of.

As regards petitioner's contention that the court *a quo* failed to consider the inconsistencies in the prosecution's evidence, the Court agrees with the findings of both the Family Court and the CA as to the credibility of AAA who was only 10 years old at the time of the incident. The straightforward and categorical testimony of AAA and her positive identification of petitioner must prevail over the uncorroborated and self-serving denial of the latter. Moreover, AAA, being a child-victim, the Court is inclined to normally give full weight and credit to her testimony, since when a girl of tender age and immaturity says that she has been raped, or as in this case, sexually assaulted, she says in effect all that is necessary to show that rape has in fact been committed.[22] A young girl's revelation that she had been raped or sexually assaulted, coupled with her voluntary submission to medical examination and

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[22] *People v. Tulagan*, G.R. No. 227363, March 12, 2019, citing *People v. Garcia*, 695 Phil. 576, 588-589 (2012).

willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[23]

Veritably, the Court sees no cogent reason to deviate from the unanimous findings and legal conclusions reached by the trial court and the appellate court with respect to the guilt of petitioner as charged. More specifically, the Court puts great weight on the factual findings of the trial judge who heard the testimonies of the witnesses and observed their demeanor while they testified. Time and again, the Court has stressed that factual findings of the trial court, including its evaluation of the credibility of witnesses and their testimonies, must be accorded respect and not be disturbed on appeal, except when the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and significance, which, if considered, would have affected the result of the case.[24] This is especially true where, as in the case herein, the trial court's findings were affirmed by the appellate court.[25]

The Court equally holds that all the elements of Sexual Assault are present in the instant case. Contrary to petitioner's argument, it should be noted that the relationship between petitioner and his victim is sufficient for petitioner to exert "influence" upon AAA, in addition to the latter's minority.

The foregoing notwithstanding, pursuant to *People v. Tulagan*[26] *(Tulagan)*, the nomenclature of the crime should be modified to Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b), Article III of RA 7610 otherwise known as the *Special Protection of Children Against*

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[23] *Id.*

[24] *People v. Ambatang*, 808 Phil. 236, 242 (2017), citing *People v. De Jesus*, 695 Phil. 114, 122 (2012), further citing *People v. Jubail*, 472 Phil. 527, 546 (2004).

[25] *Bastian v. Hon. Court of Appeals, et al.*, 575 Phil. 42, 55 (2008), citing *People v. Aguila*, 539 Phil. 698, 718 (2006).

[26] G.R. No. 227363, March 12, 2019.

Child Abuse, Exploitation and Discrimination Act, considering AAA was only 10 years old when the crime was committed against her.

Similarly as to the award for damages, the Court again conforms to *Tulagan* which pegged civil indemnity for Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b) of RA 7610 at ₱50,000.00, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

WHEREFORE, the petition is **DENIED**. The Decision dated January 23, 2018 and the Resolution dated August 20, 2018 of the Court of Appeals in CA-G.R. CR No. 39617 is **AFFIRMED** with **MODIFICATION**. Accordingly, petitioner ABC is found guilty beyond reasonable doubt of Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610 in Criminal Case No. 37120-R and is sentenced to suffer the indeterminate penalty of twelve (12) years, one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Petitioner ABC is further **ORDERED to PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, which shall all earn interest at 6% *per annum* from finality of judgment until fully paid.

SO ORDERED.

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

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 241729. July 8, 2020]

MICHAEL DAVID T. CASTAÑEDA, JUSTIN FRANCIS D. REYES, FRANCISCO JOSE TUNGPALAN VILLEGAS, DANIEL PAUL MARTIN C. BAUTISTA and VIC ANGELO G. DY, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; REMEDY OF RECONSIDERATION OF THE TRIAL COURT'S ORDER OF DISMISSAL OR ACQUITTAL OF A CRIMINAL CASE; DISCUSSED.— [I]f a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration thereof may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned. The remedy of reconsideration may be made only by the public prosecutor, or in the case of an acquittal, by the State, through the OSG. On the other hand, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal, or appeal therefrom insofar as the civil aspect thereof is concerned. If the court denies the motion for reconsideration, the private complainant or offended party may appeal or file the petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or adequate remedy in the ordinary course of law.

2. ID.; CIVIL PROCEDURE; COMPUTATION OF TIME; IF THE LAST DAY OF THE PERIOD FALLS ON A SATURDAY, TIME SHALL NOT RUN UNTIL THE NEXT WORKING DAY; APPLIED IN CASE AT BAR.— The facts show that the OSG received the trial court's Order denying its motion for reconsideration on April 12, 2016. Therefore, it had until June 11, 2016 within which to file the petition for *certiorari* before the CA. Considering that June 11, 2016 fell on a Saturday, the filing of the petition on the next working day, June 13, 2016, was within the reglementary period. Section 1, Rule 22 of the

Rules of Court provides: SECTION 1. *How to compute time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

3. ID.; CRIMINAL PROCEDURE; DISMISSAL OF A CRIMINAL CASE DONE WITH GRAVE ABUSE OF DISCRETION IS VOID AND CAN NEVER BECOME FINAL, HENCE, DOUBLE JEOPARDY DOES NOT EXIST.— [A]n order, decision, or resolution rendered with grave abuse of discretion amounting to lack or excess of jurisdiction is a void judgment. It is no judgment at all in legal contemplation, and can never become final, contrary to petitioners' claim. x x x Corollarily, inasmuch as the RTC's dismissal of the criminal case against petitioners was void for having been done with grave abuse of discretion amounting to lack or excess of jurisdiction, it is as if there was no acquittal or dismissal of the cases at all. Hence, double jeopardy does not exist in this case.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; ANY PARTY TO A CASE MAY DEMAND EXPEDITIOUS ACTION OF ALL OFFICIALS WHO ARE TASKED WITH THE ADMINISTRATION OF JUSTICE.— Section 16, Article III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.

5. ID.; ID.; ID.; ID.; IN DISMISSING CRIMINAL CASES BASED ON THE RIGHT OF ACCUSED TO SPEEDY TRIAL, COURTS CAREFULLY WEIGH THE CIRCUMSTANCES ATTENDING EACH CASE.— [T]he right to a speedy disposition of cases should be understood to be a relative or

flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Case law teaches that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is allowed to elapse without a party having his case tried in dismissing criminal cases based on the right of the accused to speedy trial, courts carefully weigh the circumstances attending each case. They should balance the right of the accused and the right of the State to punish people who violate its penal laws. Factors such as the length of delay, reason for the delay, the defendant's assertion or non-assertion of the right, and prejudice to the defendant resulting from the delay, must be considered.

6. ID.; ID.; ID.; ID.; ID.; THE RIGHT TO A SPEEDY TRIAL CANNOT BE SUCCESSFULLY INVOKED WHERE TO SUSTAIN IT WOULD RESULT IN A CLEAR DENIAL OF DUE PROCESS TO THE PROSECUTION.— In the early ease of *People v. Hon. Gines, et al.*, the Court [ruled:] x x x the right to a speedy trial shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. It secures rights to a defendant but, certainly, it does not preclude the rights of public justice. In the same manner, in *Valencia v. Sandiganbayan*, the Court emphasized that the right to speedy trial cannot be successfully invoked where to sustain it would result in a clear denial of due process to the prosecution. While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. Verily, the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent. x x x [Here,] the Court appreciates the RTC's obedience to the newly implemented Revised Guideline for Continuous Trial of Criminal Cases. But, as discussed by the CA, strict adherence to the rules is never meant to collide with the constitutional right to due process. Although periods for trial have been stipulated, these periods are not absolute. Where periods have been set, certain exclusions are allowed by law. After all, one must recognize the fact that judicial proceedings do not exist in a vacuum and

must contend with the realities of everyday life. In spite of the prescribed time limits, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial is a relative term and must necessarily be a flexible concept.

7. ID.; ID.; ID.; RIGHT AGAINST DOUBLE JEOPARDY; REQUISITES.— The three requisites of double jeopardy are: (*1*) a first jeopardy must have attached prior to the second; (*2*) the first jeopardy must have been validly terminated; and (*3*) a second jeopardy must be for the same offense as that in the first. Legal jeopardy attaches only: (*1*) upon a valid indictment; (*2*) before a competent court; (*3*) after arraignment; (*4*) when a valid plea has been entered; and (*5*) when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused.

8. ID.; ID.; ID.; ID.; CANNOT BE INVOKED IN THE REINSTATEMENT OF A CASE DISMISSED FOR FAILURE TO PROSECUTE WHEN THERE WAS NO VIOLATION OF THE RIGHT TO SPEEDY TRIAL.— The Court has consistently held in an unbroken line of cases that dismissal of cases on the ground of failure to prosecute is equivalent to an acquittal that would bar further prosecution of the accused for the same offense. Be that as it may, these dismissals were predicated on the clear right of the accused to speedy trial. These cases are not applicable to this case considering that the right of the petitioners to a speedy trial has not been violated by the State.

APPEARANCES OF COUNSEL

Alexandre John A. Villanueva for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

It must be emphasized that the State, like any other litigant, is entitled to its day in court, and to a reasonable opportunity

to present its case. A hasty dismissal, instead of unclogging dockets, has actually increased the workload of the justice system as a whole and caused uncalled for delays in the final resolution of this and other cases.[1]

This Consolidated Verified Petition for Review on *Certiorari*[2] seeks to reverse and set aside the Decision[3] dated June 1, 2018 and the Resolution[4] dated August 16, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146064, which nullified the Orders dated December 22, 2015[5] and February 19, 2016[6] of Branch 57, Regional Trial Court (RTC), Makati City in Criminal Case No. 14-1950.

The Antecedents

Michael David T. Castañeda, Justin Francis D. Reyes, Francisco Jose Tungpalan Villegas, Daniel Paul Martin C. Bautista, and Vic Angelo G. Dy (petitioners) were charged with violation of Republic Act No. (RA) 8049 or the Anti-Hazing Law under an Information filed before the RTC of Makati City. Docketed as Criminal Case No. 14-1950, the Information stemmed from the death of Guillo Cesar Servando during the initiation rites of Tau Gamma Phi Fraternity, La Salle-College of Saint Benilde Chapter, on July 11, 2014 at One Archer's Place Condominium.

At the arraignment on December 8, 2015, petitioners pleaded "not guilty."[7] Trial ensued.

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[1] *People v. Hon. Leviste*, 385 Phil. 525, 538 (1996).

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

[3] *Id.* at 113-137; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court) with Associate Justices Ramon A. Cruz and Ma. Luisa C. Quijano-Padilla, concurring.

[4] *Id.* at 212.

[5] *Id.* at 57-58; penned by Presiding Judge Honorio E. Guanlao, Jr.

[6] *Id.* at 59.

[7] *Id.* at 218.

The prosecution was given three trial dates to present its evidence. It requested that subpoenas be issued to the following witnesses, namely: Aurelio Servando, Patricia Servando, John Paul Raval, Lorenze Anthony Agustin, Levin Roland Flores, Kurt Michael Almazan, Jemar Pajarito, and Luis Solomon Arevalo. The subpoena sent to Levin Roland Flores was returned with a notation "moved out" from the given address, while the subpoenas sent to Jemar Pajarito and Luis Solomon Arevalo, coursed through the Witness Protection Program (WPP), were returned with the information that they were discharged from the WPP. In the meantime, the subpoenas sent to witnesses Aurelio Servando, Patricia Servando, John Paul Raval, Lorenze Anthony Agustin, and Kurt Michael Almazan were served.[8]

During the December 10, 2015 hearing, no witnesses for the prosecution appeared. Upon the motion of the prosecution, the RTC issued a Notice to Explain to each of the witnesses ordering them to explain why they should not be cited for contempt for defying the RTC's Order. The notices were sent through registered mail but until December 17, 2015, no return was received by the RTC.[9]

On December 15, 2015, when no witnesses appeared to testify, the prosecution moved for the issuance of warrants of arrest against the witnesses which the RTC denied for being premature.[10] On December 17, 2015, the prosecution once again moved for the issuance of warrants of arrest against the witnesses for being absent for the third time, but the motion was likewise denied by the RTC. At that point, the petitioners moved for the dismissal of the case, invoking their right to speedy trial.[11]

In an Order[12] dated December 22, 2015, the RTC dismissed the case insofar as the petitioners were concerned. It decreed:

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[8] *Id.* at 219.

[9] *Id.*

[10] *Id.* at 219.

[11] *Id.*

[12] *Id.* at 57-58.

WHEREFORE, foregoing premises duly considered and finding the motion to dismiss to be meritorious, the Court hereby orders the above titled case DISMISSED in so far as the said accused/movants are concerned. Accordingly, accused Daniel Paul Martin Bautista, Francisco Jose Villegas, Justin Francis Reyes, Vic Angelo Dy and Michael David Castañeda are hereby ordered released immediately from detention, unless there is a valid cause for their continued detention.

SO ORDERED.[13]

The prosecution moved for a reconsideration of the Order, but the motion was denied on February 19, 2016.[14] In the same Order, the RTC granted the petitioners' motion to lift, set aside, and cancel the hold departure order earlier issued against them.

Subsequently, the People of the Philippines (respondent) filed a Petition for *Certiorari*[15] with the CA. In the assailed Decision, the CA reinstated Criminal Case No. 14-1950 and ordered the immediate resetting of the presentation of evidence of respondent. The CA said:

> Indeed, the present case is peculiar in itself. As stated, the three settings in question were only a few days apart from each other and clustered all within a week's time. How can there be denial of private respondents' right to speedy trial when we only speak of no more than seven days of supposed delay and when the witnesses concerned were not even shown to have received the earlier notices to explain sent out to them by the trial court?
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> x x x x x x x x x
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> While courts recognize the accused's right to speedy trial and adheres to a policy of speedy administration of justice, the State may not be deprived of a reasonable opportunity to fairly prosecute criminals. The Supreme Court has invariably held that delay *per se* does not offend one's right to speedy trial. It is the unjustified delay which does.[16]

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[13] *Id.* at 58.

[14] See Order dated February 19, 2016, *id.* at 59.

[15] *Id.* at 35-56.

[16] *Id.* at 133-135.

Petitioners filed an Urgent Motion for Reconsideration,[17] but it was denied by the CA in the assailed Resolution.

Hence, this petition raising the following issues:

1. WHETHER DOUBLE JEOPARDY HAS SET IN IN FAVOR OF PETITIONERS;
2. WHETHER THE FILING OF THE PETITION IN THE CA IS VIOLATIVE OF THE DOUBLE JEOPARDY RULE;
3. WHETHER THE PETITION IN THE CA WAS FILED OUT OF TIME; AND
4. WHETHER THE PETITION IN THE CA IS MOOT AND ACADEMIC.[18]

Petitioners averred that the absence of all the witnesses during the prosecution's chosen dates for its presentation of evidence is its fault[19] and that it was unfair to make them suffer for the subpoenaed witnesses' failure to testify. Furthermore, they should be accorded the benefit of speedy disposition and trial especially since they were subjected to continuous trial. They did no wrong and yet they are now being placed twice in jeopardy for the refusal of the prosecution's witnesses to testify.[20]

In its Comment,[21] the respondent, represented by the Office of the Solicitor General (OSG), asserted that double jeopardy has not set in against the petitioners. Considering the procedural antecedents of the case, no unreasonable delay attended the proceedings below. The prosecution was only given three trial dates to present its evidence all within a span of a week. From petitioners' arraignment on December 8, 2015, it took merely nine days for the trial court to dismiss the case.[22] It must also

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[17] *Id.* at 138-155.

[18] *Id.* at 9.

[19] *Id.* at 14.

[20] *Id.* at 26.

[21] *Id.* at 217-238.

[22] *Id.* at 225.

be pointed out that there were no returns yet as regards the Notices to Explain sent to each of the witnesses. Evidently, the postponements made by the prosecution were not without good cause and the alleged delays that may have attended the case were not unreasonable.[23]

In their Reply,[24] petitioners submitted that Criminal Case No. 14-1950 has long been quashed. As such, there was no longer any information or case for which proceedings may resume. To reinstate Criminal Case No. 14-1950 would violate their right to due process of law and is tantamount to grave abuse of discretion.[25]

The Court's Ruling

After a judicious study of the case, the Court resolves to deny the present petition for lack of merit.

The Court shall resolve first the preliminary issues.

First, petitioners claim that Criminal Case No. 14-1950 has already been quashed by the RTC of Makati City for failure of the respondent to make a second amendment to its Information. Nevertheless, the scanned copy of the alleged Resolution dated April 20, 2016 of the RTC printed in the present petition had no evidentiary value. It was nothing but a snapshot of a court's Order. At best, it is only a private document that could not be admitted as evidence in this judicial proceeding until it is first properly authenticated.

Second, petitioners contend that the respondent's Petition for *Certiorari* was filed out of time since the dismissal of the case on December 22, 2015 was immediately final and executory. According to them, the 60-day period to file the Petition for *Certiorari* commenced on December 22, 2015 and run up to February 21, 2016.

The petitioners are wrong.

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[23] *Id.* at 226.

[24] *Id.* at 247-260.

[25] *Id.* at 256-257.

Contrary to the petitioners' claim that there is no room for a reconsideration of the trial court's order of dismissal, settled is the rule that if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration thereof may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned. The remedy of reconsideration may be made only by the public prosecutor, or in the case of an acquittal, by the State, through the OSG. On the other hand, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal, or appeal therefrom insofar as the civil aspect thereof is concerned. If the court denies the motion for reconsideration, the private complainant or offended party may appeal or file the petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or adequate remedy in the ordinary course of law.[26]

The facts show that the OSG received the trial court's Order denying its motion for reconsideration on April 12, 2016. Therefore, it had until June 11, 2016 within which to file the petition for *certiorari* before the CA. Considering that June 11, 2016 fell on a Saturday, the filing of the petition on the next working day, June 13, 2016, was within the reglementary period. Section 1, Rule 22 of the Rules of Court provides:

> SECTION 1. *How to compute time*. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Besides, an order, decision, or resolution rendered with grave abuse of discretion amounting to lack or excess of jurisdiction

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[26] *Cu v. Small Business Guarantee and Finance Corporation*, 815 Phil. 617, 628-629 (2017), citing *Mobilia Products, Inc. v. Umezawa*, 493 Phil. 85, 108 (2005).

is a void judgment. It is no judgment at all in legal contemplation, and can never become final, contrary to petitioners' claim.[27] The Court discussed in one case:

> The petitioners are correct in claiming that an order or resolution of the Sandiganbayan ordering the dismissal of criminal cases becomes final and executory upon the lapse of 15 days from notice thereof to the parties, and, as such, is beyond the jurisdiction of the graft court to review, modify or set aside, if no appeal therefrom is filed by the aggrieved party. However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. **A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved**. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.[28] (Emphasis supplied)

Corollarily, inasmuch as the RTC's dismissal of the criminal case against petitioners was void for having been done with grave abuse of discretion amounting to lack or excess of jurisdiction, it is as if there was no acquittal or dismissal of the cases at all. Hence, double jeopardy does not exist in this case.

This brings us to the main issue of the present petition: was there a violation of petitioners right to speedy disposition of their cases to warrant the dismissal thereof?

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[27] *People v. Sandiganbayan, (Fourth Division), et al.*, 829 Phil. 660, 673 (2018), citing *Guevarra v. 4th Division of the Sandiganbayan*, 494 Phil. 378, 388 (2005).

[28] *Guevarra v. 4th Division of the Sandiganbayan, id.*, citing *People v. Court of Appeals*, 475 Phil. 568, 576 (2004) and *Ramos v. Court of Appeals*, 259 Phil. 1122, 1135-1136 (1989).

The Court answers in the negative.

Section 16, Article III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.[29]

Withal, it must be stressed that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Case law teaches that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is allowed to elapse without a party having his case tried.[30] In dismissing criminal cases based on the right of the accused to speedy trial, courts carefully weigh the circumstances attending each case. They should balance the right of the accused and the right of the State to punish people who violate its penal laws.[31] Factors such as the length of delay, reason for the delay, the defendant's assertion or non-assertion of the right, and prejudice to the defendant resulting from the delay, must be considered.[32]

In the early case of *People v. Hon. Gines, et al.*,[33] the Court found that the right of the accused to a speedy trial was not

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[29] *Revuelta v. People*, G.R. No. 237039, June 10, 2019, citing *Inocentes v. People, et al.*, 789 Phil. 318, 333-334 (2016).

[30] *Id.* citing *Coscolluela v. Sandiganbayan, et al.*, 714 Phil. 55, 61 (2013).

[31] *People v. Tampal*, 314 Phil. 35, 41 (1995).

[32] *Revuelta v. People, supra*, citing *Gonzales v. Sandiganbayan*, 276 Phil. 323, 334 (1991).

[33] 274 Phil. 770 (1991).

violated and held that the dismissal of the case as regards the private respondents was premature and erroneous. According to the Court, the right to a speedy trial shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. It secures rights to a defendant but, certainly, it does not preclude the rights of public justice.[34]

In the same manner, in *Valencia v. Sandiganbayan*,[35] the Court emphasized that the right to speedy trial cannot be successfully invoked where to sustain it would result in a clear denial of due process to the prosecution. While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. Verily, the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[36]

In the petition at bench, a careful review of the series of events and the circumstances surrounding the proceedings before the trial court would show that there was no delay contemplated under the Constitution to support petitioners' assertion that their right to speedy disposition of the case against them were violated.

Consider the following:

After arraignment and pre-trial on December 8, 2015, the presentation of the respondent's evidence was set on December 10, 15, and 17, 2015. In the first hearing, the prosecution witnesses did not appear, prompting the trial court to send notices requiring them to explain their absence on the scheduled hearing date. Yet again, on December 15, 2015, the prosecution witnesses failed to attend the second scheduled hearing. Thereupon, the

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[34] *Id.* at 777. Citations omitted.

[35] 510 Phil. 70 (2005).

[36] *Id.* at 86, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917 (2004).

respondent moved for the issuance of warrants of arrest against the absent witnesses. The trial court denied the motion for being premature since there were still no returns on the Notices to Explain previously sent to the witnesses. On December 17, 2015, the prosecution moved once more for the issuance of the warrants of arrest against the witnesses for being absent for the third time. Lamentably, the motion was similarly denied by the trial court. In the same hearing, the petitioners moved for the dismissal of their case invoking their right to speedy trial. On December 22, 2015, trial court dismissed the case against petitioners even though it had not received the returns on its earlier Notices to Explain to the witnesses.

From the foregoing, it must be noted that Criminal Case No. 14-1950 was only postponed thrice and for a period of less than a month. The facts in field in no way indicate that the prosecution of the petitioners had been unjustly delayed by the prosecution, specifically the failure of its witnesses to attend the scheduled hearing. The trial court should have given the prosecution a fair opportunity to prosecute its case. The settled rule is that the right to speedy trial allows reasonable continuance so as not to deprive the prosecution of its day in court.[37] The CA explained:

> To begin with, the three supposed hearing dates were set and clustered all within the same week. The first hearing was set on December 10, 2015, where the prosecution witnesses did not appear. On that occasion, the trial court sent out notices to the prosecution witnesses requiring them to explain their absence during the first scheduled hearing date. During the second scheduled hearing on December 15, 2015, again, the prosecution witnesses did not come. This compelled the People to move for issuance of warrants of arrest against the absent witnesses. Respondent judge denied the motion for allegedly being premature since there were no returns yet on the earlier notices to explain sent out to these witnesses. During the third scheduled hearing on October 17, 2015, or only two days later, the trial court granted the defense's motion to dismiss, citing as ground

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[37] *People v. Tampal, supra* note 31 at 44, citing *People v. Judge Pablo,* 187 Phil. 190 (1980).

respondents' right to speedy trial. This, notwithstanding the fact that at that time, the court still had not yet received the returns on its earlier notices to explain.

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To recall, days before the dismissal of the case, the trial court itself refused to issue warrants of arrest on the witnesses because there were yet no returns on the notices to explain earlier sent out to the latter. Two days later, **the trial court dismissed the case, albeit at that time, the circumstances obtaining two days ago had not changed: there was still no proof that the witnesses were served with the trial court's notices to explain**.[38] (Emphasis supplied)

The Court appreciates the RTC's obedience to the newly implemented Revised Guideline for Continuous Trial of Criminal Cases.[39] But, as discussed by the CA, strict adherence to the rules is never meant to collide with the constitutional right to due process. Although periods for trial have been stipulated, these periods are not absolute. Where periods have been set, certain exclusions are allowed by law. After all, one must recognize the fact that judicial proceedings do not exist in a vacuum and must contend with the realities of everyday life. In spite of the prescribed time limits, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial is a relative term and must necessarily be a flexible concept.[40]

Finally, as mentioned earlier, petitioners cannot invoke their right against double jeopardy. The three requisites of double jeopardy are: *(1)* a first jeopardy must have attached prior to the second; *(2)* the first jeopardy must have been validly terminated; and *(3)* a second jeopardy must be for the same offense as that in the first. Legal jeopardy attaches only: *(1)* upon a valid indictment; *(2)* before a competent court; *(3)* after

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[38] *Rollo*, pp. 129-130, 131.

[39] Administrative Matter No. 15-06-10-SC.

[40] *Tan v. People*, 604 Phil. 68, 84 (2009), citing *Solar Team Entertainment, Inc. v. Judge How*, 393 Phil. 172, 184 (2000).

arraignment; *(4)* when a valid plea has been entered; and *(5)* when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent or the accused.[41]

The Court has consistently held in an unbroken line of cases that dismissal of cases on the ground of failure to prosecute is equivalent to an acquittal that would bar further prosecution of the accused for the same offense. Be that as it may, these dismissals were predicated on the clear right of the accused to speedy trial. These cases are not applicable to this case considering that the right of the petitioners to a speedy trial has not been violated by the State.[42] In fact, the order of dismissal was rendered by the RTC, and as held by the CA, acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Significantly, the criminal case was dismissed at petitioners' instance and thus, with their express consent. For these reasons, petitioners cannot invoke their rights against double jeopardy. There was no violation of petitioners' rights to speedy trial and the criminal case against them was correctly ordered to be reinstated.

WHEREFORE, the petition is **DENIED**. The Decision dated June 1, 2018 and the Resolution dated August 16, 2018 of the Court of Appeals in CA-G.R. SP No. 146064 are **AFFIRMED**. Accordingly, Branch 57, Regional Trial Court, Makati City is **DIRECTED** to proceed with judicious dispatch in concluding the case in accordance with law.

SO ORDERED.

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

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[41] *People v. Tampal, supra* note 31 at 44-45, citing *People v. Judge Vergara*, 293 Phil. 610, 616-618 (1993).

[42] *Id.* at 45.

[*] Designated additional member per Special Order No. 2780 dated May 11, 2020.

SECOND DIVISION

[G.R. No. 249990. July 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RANILO S. SUAREZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.

2. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY PROCEDURE; EXPLAINED.— To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the

person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the [DOJ], and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; STRICT COMPLIANCE IS ENJOINED; SAVING CLAUSE IN CASE OF NON-COMPLIANCE; APPLICATION THEREOF REQUIRES THE PROSECUTION TO DULY EXPLAIN THE REASONS FOR THE LAPSES AND THAT THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE BE PROVEN AS A FACT. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items were properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article Il of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

APPEARANCES OF COUNSEL

Public Attorney's Office for plaintiff-appellee.
Office of the Solicitor General for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated February 13, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01366-MIN, which affirmed the Decision[3] dated September 4, 2013 of the Regional Trial Court of Panabo City, Branch 4 (RTC) in Criminal Case No. 284-2008, finding accused-appellant Ranilo S. Suarez (accused-appellant) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC charging accused-appellant with Illegal Sale of Dangerous Drugs. It was alleged that in the afternoon of July 16, 2008, operatives of the Philippine Drug Enforcement Agency (PDEA) Regional Office, Davao City implemented a buy-bust operation in **Panabo City, Davao Del Norte**, against accused-appellant,

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[1] See Notice of Appeal dated July 25, 2019; CA *rollo*, pp. 122-123.

[2] *Rollo*, pp. 4-21. Penned by Associate Justice Evalyn M. Arellano-Morales, with Associate Justices Oscar V. Badelles and Florencia M. Mamauag, Jr., concurring.

[3] CA *rollo*, pp. 36-46. Penned by Judge Dorothy P. Montejo-Gonzaga.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] See *rollo*, pp. 4-5.

during which, one (1) transparent plastic sachet containing white crystalline substance was recovered from him. The seized item was then placed inside a sealed evidence pouch. When the PDEA operatives noticed that people had started to gather around them, they, together with the accused-appellant, immediately left on board their service vehicle. On the way to their office, the PDEA operatives alighted the vehicle to conduct the marking of the seized item. Upon reaching the PDEA office, they turned over the seized item and the buy-bust money, and presented accused-appellant, to the duty desk officer. Since the witnesses for the inventory and photography were not available at that time, Investigating Officer 2 Hazel B. Ortoyo (IO2 Ortoyo) took custody of the seized item and put it inside her locker at the office, with only she having accessed thereto. The following day, IO2 Ortoyo brought the seized items to the **crime laboratory in Ecoland, Davao City (which is geographically located in Davao Del Sur)** where the inventory and photography took place in the presence of the representatives from the media and the Department of Justice (DOJ), an elected barangay official, and a photographer. Thereafter, the arresting officers brought accused-appellant and the seized item to the **Philippine National Police (PNP) Provincial Crime Laboratory in Tagum City, Davao Del Norte** where, after a qualitative examination, the seized item tested positive for 0.1524 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[6]

For his part, accused-appellant denied the charge against him, claiming, instead that during that time, he was playing volleyball at the public plaza when two (2) persons approached him, introduced themselves as live-in partners, and inquired about his mother's house for rent. He then accompanied the couple to the said house. Upon reaching the house, accused-appellant noticed that the lady made a phone call, and all of a sudden, seven (7) persons arrived in the area. Immediately thereafter, accused-appellant was handcuffed, frisked, and asked where he kept the drugs. He claimed that the men found nothing from him. Subsequently, he was brought to the volleyball court,

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

where the apprehending officers took and searched his bag, but also found nothing. He testified that he was brought to the crime laboratory, and that it was the first time he saw the alleged *shabu*.[7]

In a Decision[8] dated September 4, 2013, the RTC found accused-appellant guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00.[9] It ruled that the prosecution was able to sufficiently prove all the elements of Illegal Sale of Dangerous Drugs, and that the integrity of the *corpus delicti* was preserved. It gave credence to the clear and convincing testimonies of the prosecution witnesses, and hence, should prevail over the accused-appellant's uncorroborated and self-serving defenses of denial and frame-up.[10]

Aggrieved, accused-appellant appealed[11] to the CA.

In a Decision[12] dated February 13, 2019, the CA affirmed the RTC ruling. It ruled that the prosecution substantially complied with the statutory requirement for the admissibility of the seized item, as it found that the chain of custody was continuous, and that the identity, integrity, and evidentiary value of the seized item were preserved. It held that the fact that the marking was only made inside the vehicle does not automatically impair the evidentiary value of the seized item since to be able to create a first line in the chain of custody requirement, what is only required is that the marking be made in the presence of accused-appellant and upon immediate confiscation, as in this case. Moreover, it gave credence to the testimony of IO2 Ortoyo

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

[8] CA *rollo*, pp. 36-46.

[9] *Id.* at 46.

[10] *Id.* at 41-46.

[11] See Notice of Appeal dated October 17, 2014; *id.* at 12.

[12] *Rollo*, pp. 4-21.

that she preserved the integrity of the seized item by keeping the same in her locker at the PDEA office, where she was the only one who had access, as well as to her explanation that the required witnesses were only available the following day. Finally, it did not give credence to accused-appellant's defenses of frame-up and alibi since he failed to adduce clear and convincing evidence to prove the same.[13] Hence, this instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellant's conviction for the crime charged.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[14] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[15] Failing to prove the integrity of the *corpus*

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[13] *Id.* at 8-20.

[14] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[15] See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[16]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[17] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[18] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[19]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if

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[16] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563 and 570, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[17] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 388-390, *People v. Crispo, supra* note 14; *People v. Sanchez*, *supra* note 14; *People v. Magsano, supra* note 14; *People v. Manansala, supra* note 14; *People v. Miranda*, *supra* note 14; and *People v. Mamangon*, *supra* note 14. See also *People v. Viterbo*, *supra* note 15.

[18] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[19] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

prior to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the [DOJ], and any elected public official";[20] or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[21] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[22]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[23] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[24]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[25] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items were properly preserved.[26] The foregoing is based on the saving

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[20] See Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[21] See Section 21, Article II of RA 9165, as amended by RA 10640.

[22] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda, supra* note 14. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[23] See *People v. Miranda, id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang, supra* note 16, at 1038.

[24] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang, id.*

[25] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[26] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

clause found in Section 21 (a),[27] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[28] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[29] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[30]

Notably, the Court, in *People v. Miranda*,[31] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[32]

As will be explained hereunder, the apprehending officers committed various irregularities which constitute as deviations from the chain of custody rule.

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[27] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**[.]" (Emphasis supplied)

[28] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**." (Emphasis supplied)

[29] *People v. Almorfe, supra* note 26.

[30] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[31] *Supra* note 14.

[32] See *id*.

First, while the Court finds that the arresting officers were justified in not immediately conducting the marking, inventory, and photography of the seized item at the place of arrest as people had started to gather around them, it is highly irregular for them to stop the vehicle on the highway in order to mark the seized item, before arriving at the PDEA Regional Office, Davao City to conduct the same thereat.[33]

Second, while the Court finds justifiable the conduct of inventory and photography of the seized item the following morning in order for the arresting officers to secure the presence of the required witnesses,[34] the Court finds it irregular that instead of bringing the required witnesses to the PDEA Regional Office, Davao City, they needlessly transported accused-appellant and the seized item to the crime laboratory in Ecoland, Davao City, for the conduct of such activities.[35]

As aforestated, the marking, inventory, and photography of the seized item must be made either immediately after the arrest, or if there are justifiable reasons, at the nearest police station or at the nearest office of the apprehending team. Unfortunately, the prosecution failed to acknowledge, much less, justify the foregoing deviations.

Third, after the conduct of the inventory and photography in the crime laboratory in Ecoland, Davao City, which is geographically located in Davao Del Sur, they again needlessly transported accused-appellant and the seized item to the **PNP Provincial Crime Laboratory in Tagum City, Davao Del Norte**. In an attempt to justify such course of action, the arresting officers reasoned that the seized item needs to undergo qualitative examination in the province where the buy-bust operation was

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[33] See *rollo*, pp. 11-12.

[34] The arrest in this case happened prior to the enactment of RA 10640, and as such, the required witnesses are: *(a)* an elected public official; *(b)* a DOJ representative; and *(c)* a media representative. (See *People v. Bangalan*, *supra* note 22).

[35] See *rollo*, pp. 13-14.

implemented.[36] However, contrary to the actuations of the arresting officers, there is nothing in RA 9165 or its IRR which requires that the crime laboratory of the province where the buy-bust operation was implemented should be the one which shall conduct qualitative examination of the items seized therefrom.

In view of the foregoing unjustified deviations from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the dangerous drug purportedly seized from accused-appellant was compromised, thereby warranting his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 13, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 01366-MIN is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellant Ranilo S. Suarez is **ACQUITTED** of Illegal Sale of Dangerous Drugs. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

Let entry of judgment be issued immediately.

SO ORDERED.

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

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[36] See *id.* at 14-15.

[*] Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

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— Republic Act No. 7877, otherwise known as the Anti-Sexual Harassment Act of 1995, was the first criminal statute enacted in the Philippines to penalize sexual harassment; it was adopted pursuant to the declared policy that "the State shall value the dignity of every individual, enhance the development of its human resources, guarantee full respect for human rights, and uphold the dignity of workers, employees, applicants for employment, students or those undergoing training, instruction or education." (*Id.*)

— Section 4(b) of Republic Act No. 7877 further requires employers and heads of offices to create a "committee on decorum and investigation of cases on sexual harassment"; pursuant to this, all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations, were required to create their own Committee on Decorum and Investigation. (*Id.*)

— Under Republic Act No. 7877, an act of sexual harassment may result in three distinct liabilities: criminal, civil, and administrative; an action for each can proceed independently of the others; in a criminal action, the accused is prosecuted for a wrong committed against society itself or the State whose law he or she violated; in a civil action, a defendant is sued by the plaintiff in an effort to correct a private wrong; the purpose of an administrative action, on the other hand, is to protect the public service by imposing administrative sanctions to an erring public officer. (*Id.*)

Penalties — Conviction under Republic Act No. 7877 subjects the offender to criminal penalties; under Section 7, any person who violates the law shall, upon conviction, be penalized by imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than 10,000.00 nor more than 20,000.00, or both such fine and imprisonment at the discretion of the court. (Escandor *vs.* People, G.R. No. 211962, July 6, 2020) p. 119

intent is immaterial; mere commission is sufficient to warrant a conviction. (*Id.*)

— There is no time period within which a victim is expected to complain about sexual harassment; the time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee. (*Id.*)

ANTI-VIOLENCE AGAINST WOMEN AND CHILDREN ACT OF 2004 (R.A. NO. 9262)

Application of — Section 5 enumerates the various "acts of violence against women and their children," generally defined as: SECTION 3. *Definition of Terms.* — any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty; paragraphs (a), (b), and (c) of Section 5 specifically refer to acts of "physical violence," which, under the law, includes "acts that include bodily or physical harm." (Kane *vs.* Roggenkamp, G.R. No. 214326, July 6, 2020) p. 159

— Section 5(a) of Republic Act No. 9262, or the Anti-Violence Against Women and Children Act of 2004: SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts: (a) Causing physical harm to the woman or her child; (b) Threatening to cause the woman or her child physical harm; (c) Attempting to cause the woman or her child physical harm. (*Id.*)

APPEALS

censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable before the Court of Appeals under Rule 43 of the Rules of Court; the Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, considered final and unappealable. (Yatco *vs.* Office of the Deputy Ombudsman for Luzon, *et al.,* G.R. No. 244775, July 6, 2020) p. 282

Appeal from the decisions of the Ombudsman in criminal cases — In cases when the aggrieved party is questioning the Office of the Ombudsman's findings of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*. (Yatco *vs.* Office of the Deputy Ombudsman for Luzon, *et al.,* G.R. No. 244775, July 6, 2020) p. 282

— *Kuizon* and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals. (*Id.*)

— With respect to criminal charges, the Court has settled that the remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause is to file a petition for *certiorari* under Rule 65 of the Rules of Court and the petition should be filed not before the CA, but before the Supreme Court. (*Id.*)

Appeal from the Labor Arbiter's decision — Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's decision, provides: ART. 229 (223) Appeal. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the

— Including its evaluation of the credibility of witnesses and their testimonies, must be accorded respect and not be disturbed on appeal, except when the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and significance, which, if considered, would have affected the result of the case. (ABC *vs.* People, G.R. No. 241591, July 8, 2020) p. 901

Petition for review on certiorari to the Supreme Court under Rule 45 — A question of fact requires this Court to review the truth or falsity of the allegations of the parties, which includes assessment of the probative value of the evidence presented, or when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties. (Ganancial *vs.* Cabugao, G.R. No. 203348, July 6, 2020) p. 1

— Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases; however, where, like in the instant case, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on one hand, and those of the CA, on the other hand, it becomes proper for this Court, in the exercise of its equity jurisdiction, to review the facts and re-examine the records of the case. (Parayday, *et al. vs*. Shogun Shipping Co., Inc., G.R. No. 204555, July 6, 2020) p. 25

— In a Rule 45 Petition of a Rule 65 ruling, this Court does not resolve factual issues except in ascertaining whether the Court of Appeals erred in finding that the Commission did or did not gravely abuse its discretion in deciding the labor case; this Court generally resolves questions of law because it is not a trier of facts. (Jacob *vs.* First Step Manpower Int'l Services, Inc., *et al.,* G.R. No. 229984, July 8, 2020) p. 771

— In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65; Rule 45 limits the

provided that the observance of the reglementary periods for each notice of disallowance allow it, and he or she has a similar argument or defense in all disallowances, subject to the payment of filing fees, which shall be assessed on the basis of aggregate amount of the disallowed transactions subject of the appeal. (*Id.*)

— Only one filing fee shall be paid for every appeal, regardless of the number of petitioners, as filing fees are paid not to enrich the COA as a quasi-judicial tribunal, but to merely defray its expenses in the handling of cases, and avoid tremendous losses to the agency and to the government as well; notices of disallowances issued against many employees of one government agency can be paid by the agency in lump sum. (*Id.*)

— The Auditees may appeal the notice of disallowance, subject to the payment of legal fees; the right to appeal is not a constitutional, natural or inherent right, but a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute; as such, the law may validly provide limitations or qualifications to the exercise thereof. (*Id.*)

Grant of allowance — The burden of proving the validity or legality of the grant of allowance or benefits lies with the government agency or entity granting the allowance or benefit and the employee claiming the same; the non-participation of the employees who actually received the disallowed benefits does not prevent the court from determining the issue of whether the COA gravely abused its discretion in declaring the entity's issuance as illegal. (The Department of Foreign Affairs, represented by Undersecretary Rafael E. Seguis, *et al. vs.* The Commission on Audit, G.R. No. 194530, July 7, 2020) p. 339

Power — The Commission *en banc* has the power to promulgate its own rules concerning pleadings and practice before it or before any of its offices, provided such rules shall not diminish, increase, or modify substantive rights. (The Department of Foreign Affairs, represented by

— As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same; the law also requires that the inventory and photography be done in the presence of the accused or his counsel, as well as the required witnesses: representatives from the media and the DOJ, and any elected public official. (People *vs.* Anicoy, XXX, *defendant (minor-pleaded guilty)*, G.R. No. 240430, July 6, 2020) p. 251

— In illegal drugs cases, there should be proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence; to establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (*Id.*)

— The Court has held that the prosecution has the positive duty to demonstrate strict observance of the chain of custody rule and "as such, they must have the initiative to not only acknowledge, but also justify any perceived deviations from the said procedure during the proceedings before the trial court"; any procedural lapses must be explained, and the justifiable ground for non-compliance must be proven as a fact by the prosecution. (People *vs.* Sioson, G.R. No. 242686, July 7, 2020) p. 562

— The IRR of R.A. No. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. (People *vs.* Sanico *a.k.a.* "Marlon Bob," G.R. No. 240431, July 7, 2020) p. 514

— To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies: (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

beyond reasonable doubt, and hence, warrants an acquittal. (People *vs.* Suarez, G.R. No. 249990, July 8, 2020) p. 932

— In order to ensure Sioson's conviction for the illegal sale of dangerous drugs, the prosecution must satisfactorily establish: (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, for the charge of illegal sale of dangerous drugs; while the elements of illegal possession of dangerous drugs are: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug, for the illegal possession charge. (People *vs.* Sioson, G.R. No. 242686, July 7, 2020) p. 562

— In such cases of illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, it is essential that the prosecution successfully demonstrate, with moral certainty, the identity of the subject drugs, especially since the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to do so, renders the evidence for the State insufficient to prove the guilt of the accused, hence, warrants an acquittal. (*Id.*)

Illegal sale of prohibited drugs — In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the procured object is properly presented as evidence in court and is shown to be the same drugs seized from the accused." (People *vs.* Sanico *a.k.a.* "Marlon Bob," G.R. No. 240431, July 7, 2020) p. 514

— In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges; it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. (*Id.*)

Stipulation on — Whatever stipulations agreed upon in them must be complied with in good faith; however, the freedom to stipulate is not absolute; under Article 1306 of the Civil Code, parties cannot agree on stipulations that are "contrary to law, morals, good customs, public order, or public policy." (CJH Development Corporation *vs.* Aniceto, G.R. No. 224006, July 6, 2020) p. 193

— When parties enter into contracts, they are free to stipulate on the terms and conditions of their agreement as they may deem convenient; contracts have the force of law between the contracting parties. (*Id.*)

Voidable contracts — Vitiation of consent by means of fraud is a ground for the annulment of a voidable contract, and not for the nullification of a void contract. (Ganancial *vs.* Cabugao, G.R. No. 203348, July 6, 2020) p. 1

CORPORATIONS

Doctrine of piercing the veil of corporate fiction — The doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service. (Parayday, *et al. vs.* Shogun Shipping Co., Inc., G.R. No. 204555, July 6, 2020) p. 25

— The doctrine will only come into play once the court has already acquired jurisdiction over the corporation; only then would it be allowed to present evidence for or against piercing the veil of corporate fiction. (*Id.*)

— The general doctrine of separate juridical personality provides that a corporation has a legal personality separate and distinct from that of its stockholders and other corporations to which it may be connected; it is a well-established rule in labor proceedings that the Labor Arbiter, or this Court for that matter, cannot acquire jurisdiction over the person of the respondent until he/she is validly served with summons, or that he/she voluntarily appears in court. (*Id.*)

— In the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*, the Court expounded on this constitutional imperative by emphasizing the structure of our judicial system; the trial courts decide on questions of fact and law in the first instance; the intermediate courts resolve both questions of fact and law; and the Court generally decides only questions of law; as a constitutional mechanism, the doctrine of hierarchy of courts is established to enable the Court to concentrate on its constitutional tasks, guided by the judicial compass in disposing of matters without need for factual determination. (*Id.*)

CRIMINAL PROCEDURE

Double jeopardy — Legal jeopardy attaches only: (*1*) upon a valid indictment; (*2*) before a competent court; (*3*) after arraignment; (*4*) when a valid plea has been entered; and (*5*) when the defendant was acquitted or convicted, or the case was dismissed or otherwise terminated without the express consent of the accused. (Castañeda, *et al. vs.* People, G.R. No. 241729, July 8, 2020) p. 916

— Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites in order for double jeopardy to attach; for double jeopardy to attach, the following elements must concur: *(1)* a valid information sufficient in form and substance to sustain a conviction of the crime charged; *(2)* a court of competent jurisdiction; *(3)* the accused has been arraigned and had pleaded; and *(4)* the accused was convicted or acquitted or the case was dismissed without his express consent. (ABC *vs.* People, G.R. No. 241591, July 8, 2020) p. 901

— The Court has consistently held in an unbroken line of cases that dismissal of cases on the ground of failure to prosecute is equivalent to an acquittal that would bar further prosecution of the accused for the same offense. (Castañeda, *et al. vs.* People, G.R. No. 241729, July 8, 2020) p. 916

undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned; the remedy of reconsideration may be made only by the public prosecutor, or in the case of an acquittal, by the State, through the OSG; the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal, or appeal therefrom insofar as the civil aspect thereof is concerned; if the court denies the motion for reconsideration, the private complainant or offended party may appeal or file the petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or adequate remedy in the ordinary course of law. (Castañeda, *et al. vs.* People, G.R. No. 241729, July 8, 2020) p. 916

DAMAGES

Attorney's fees — *"J" Marketing Corporation v. Sia*, Jr. has ruled that "no attorney's fees and litigation expenses can automatically be recovered even if a party wins, as it is not the fact of winning alone that entitles recovery of such items, but rather the attendance of special circumstances, the enumerated exceptions in Article 2208 of the New Civil Code." (Ganancial *vs*. Cabugao, G.R. No. 203348, July 6, 2020) p. 1

Exemplary damages — Exemplary damages, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner. (Magtibay *vs.* Airtrac Agricultural Corporation and/or Ian Philippe W. Cuyegkeng, President, *et al.*, G.R. No. 228212, July 8, 2020) p. 750

Moral damages — A robotic allegation that one suffered anxiety and sleepless nights, or a seemingly haphazard conversion of these disturbed feelings into some pecuniary equivalent, without more, will not automatically entitle a party to moral damages. (Ganancial *vs*. Cabugao, G.R. No. 203348, July 6, 2020) p. 1

— Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary

EMPLOYMENT, TERMINATION OF

was withheld up to the time of actual reinstatement; where reinstatement is no longer viable as an option, separation pay equivalent to one month for every year of service should be awarded as an alternative. (Magtibay *vs.* Airtrac Agricultural Corporation and/or Ian Philippe W. Cuyegkeng, President, *et al.*, G.R. No. 228212, July 8, 2020) p. 750

— There being no authorized cause for petitioner's dismissal under DO 14-01 or Article 297 of the Labor Code, what should apply here instead are the usual remedies or relief which illegally or constructively dismissed employees are entitled to, *viz.*: (1) reinstatement or separation pay equivalent to one (1) month salary for every year of service; and (2) backwages; these two (2) are exclusive and awarded conjunctively. (Ador *vs.* Jamila and Company Security Services, Inc., *et al.*, G.R. No. 245422, July 7, 2020) p. 572

Redundancy — Redundancy is an authorized cause for termination of employment under Article 298 (formerly Article 283) of the Labor Code; it exists when "the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise"; it can be due to "a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise." (Aboitiz Power Renewables, Inc./Tiwi Consolidated Union (APRI-TCU) on Behalf of Fe R. Rubio, *et al. vs.* Aboitiz Power Renewables, Inc., *et al.*, G.R. No. 237036, July 8, 2020) p. 839

— The determination of whether the employees' services are no longer necessary or sustainable, and therefore, properly terminable for redundancy, is an exercise of business judgment; in making such decision, however, management must not violate the law nor declare redundancy without sufficient basis; to ensure that the dismissal is not implemented arbitrarily, jurisprudence requires the employer to prove, among others, its good

ESTOPPEL

Estoppel by laches — Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial. (Venadas *vs.* Bureau of Immigration, G.R. No. 222471, July 7, 2020) p. 433

EVIDENCE

Best evidence rule — The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content of the documents; this is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy, completeness, and authenticity of the documents submitted into evidence. (Basagan *vs.* Espina, A.C. No. 8395, July 8, 2020) p. 654

Burden of proof — The party who alleges a fact has the burden of proving it, as bare allegations warrant no merit; it is incumbent upon the plaintiff who is claiming a right to prove his case, and the defendant to prove its own allegations to buttress its claim that it is not liable. (Parcon-Song *vs.* Parcon, joined by her husband Joaquin A. Parcon, *et al.*, G.R. No. 199582, July 7, 2020) p. 364

Clear and convincing evidence — Clear and convincing evidence is less than proof beyond reasonable doubt but greater than preponderance of evidence; the degree of believability upon an imputation of fraud in a civil case is higher than that of an ordinary civil case, the latter generally requiring only a preponderance of evidence to meet the required burden of proof. (Ganancial *vs.* Cabugao, G.R. No. 203348, July 6, 2020) p. 1

Presentation of — Errors in, or even absence of, notarization on a deed of mortgage will not invalidate an already perfected mortgage agreement; if anything, these would only depreciate the evidentiary value of the said written deed, as the same would be demoted from a public

constitutionality of Section 9 of Republic Act No. 10641 will not be resolved by the court, as it is not the very *lis mota* of the case. (Parcon-Song *vs.* Parcon, joined by her husband Joaquin A. Parcon, *et al.*, G.R. No. 199582, July 7, 2020) p. 364

— The question of constitutionality of a law will only be passed upon by the Court if it is properly raised and presented in the case and indispensable to the resolution of the case, that is, the issue of constitutionality must be the very *lis mota* presented; courts avoid ruling on constitutional questions and are obligated to presume that the acts of Congress are valid, unless the contrary is clearly shown. (*Id.*)

Judgments or orders — Article VIII, Section 14 of the Constitution provides that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based," and that "no petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor." (Ganancial *vs.* Cabugao, G.R. No. 203348, July 6, 2020) p. 1

— Rule 36, Section 1 of the Rules of Court embraced this constitutional mandate, directing that "a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court." (*Id.*)

Power of judicial review — A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it; for a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of

— The mere passage of the law does not *per se* absolutely determine the justiciability of a particular case attacking the law's constitutionality. (*Id.*)

— The power of judicial review is the power of the Courts to test the validity of executive and legislative acts for their conformity with the Constitution; through such power, the judiciary enforces and upholds the supremacy of the Constitution. (*Id.*)

— The power of judicial review, like all powers granted by the Constitution, is subject to certain limitations; petitioner must comply with all the requisites for judicial review before this Court may take cognizance of the case; the requisites are: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. (Parcon-Song *vs.* Parcon, joined by her husband Joaquin A. Parcon, *et al.*, G.R. No. 199582, July 7, 2020) p. 364

— The rule is that courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging; the controversy must be justiciable, definite and concrete, touching on the legal relations of parties having adverse legal interests. (Joint Ship Manning Group, Inc., *et al. vs.* Social Security System, *et al.*, G.R. No. 247471, July 7, 2020) p. 596

— When a law is questioned before the Supreme Court, the presumption is in favor of its constitutionality and the burden is squarely on the shoulders of the one alleging unconstitutionality to prove invalidity beyond reasonable doubt by negating all possible bases for the constitutionality of a statute. (*Id.*)

Unfair labor practice — Refers to acts that violate the workers' right to organize; there should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization; an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. (Aboitiz Power Renewables, Inc./Tiwi Consolidated Union (APRI-TCU) on Behalf of Fe R. Rubio, *et al. vs.* Aboitiz Power Renewables, Inc., *et al.*, G.R. No. 237036, July 8, 2020) p. 839

LABOR STANDARDS

Kinds of employees — There are four kinds of employees: (1) regular employees or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee; (3) seasonal employees or those who work or perform services which are seasonal in nature, and the employment is for the duration of the season; and (4) casual employees or those who are not regular, project, or seasonal employees; jurisprudence later added a fifth kind, the fixed term employee. (Magtibay *vs.* Airtrac Agricultural Corporation and/or Ian Philippe W. Cuyegkeng, President, *et al.*, G.R. No. 228212, July 8, 2020) p. 750

Nature of employment — Depends on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and in some cases, even the length of time of the performance and its continued existence. (Magtibay *vs.* Airtrac Agricultural Corporation and/or Ian Philippe W. Cuyegkeng, President, *et al.*, G.R. No. 228212, July 8, 2020) p. 750

by it, were to be litigated anew in the same case upon any and every subsequent appeal; without it, there would be endless litigation. (Land Bank of the Philippines *vs.* Heirs of Rene Divinagracia, substituted by his heirs, namely: Tranquilino Rene, *et al.*, G.R. No. 226650, July 8, 2020) p. 718

— Law of the case is defined as the *opinion delivered on a former appeal*; it means that whatever is once irrevocably established, the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. (*Id.*)

— The law of the case does not have the finality of *res judicata* as it applies only to the same case; whereas *res judicata* forecloses parties or privies in one case by what has been done in another case; in the principle of the law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. (*Id.*)

LEASE

Contract of — A lease agreement is void where the same is the result of a *pactum commissorium*; contracts whose purpose is contrary to law are void and inexistent from the beginning. (Eupena *vs.* Bobier, G.R. No. 211078, July 8, 2020) p. 685

— *Consing v. Jamandre*, this Court ruled that the stipulation in a lease contract, which authorized the sublessor to take possession of the premises without judicial action, is valid and binding because the stipulation is in the nature of a resolutory condition; *Consing* teaches that while Article 1673 provides for judicial action to eject the lessee, it is only required if the lease contract has no special provision granting the cancellation of the lease. (CJH Development Corporation *vs.* Aniceto, G.R. No. 224006, July 6, 2020) p. 193

contract are revived; it is presumed by law that the lessor is amenable to its renewal. (*Id.*)

— When there is an implied lease, the lease will continue based on the period of payment; for instance, if the lease is paid monthly, the implied lease would only be renewed every month; the implied lease is a lease with a definite period, and it is "terminable at the end of each month upon demand to vacate by the lessor"; on the other hand, if the lessor refuses to renew the lease, it is necessary for him or her to furnish the lessee with a formal notice to vacate the premises; if the lessee continues to possess the premises against the lessor's will, the lessee would be holding the property illegally and a judicial action may be filed. (*Id.*)

LITIS PENDENTIA

Principle of — *Litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious"; the following requisites must concur for *litis pendentia* to be present: (1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of rights asserted and relief prayed for; and (3) the identity of the two (2) cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. (Kane *vs.* Roggenkamp, G.R. No. 214326, July 6, 2020) p. 159

LOCAL GOVERNMENT CODE

Persons accountable for local government funds — Section 340 of the Local Government Code on persons accountable for local government funds provides: SECTION 340. *Persons Accountable for Local Government Funds* - Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title; other local officers who, though not accountable

MALVERSATION

Commission of — The elements of malversation of public funds are: (1) that the offender is a public officer; (2) that he or she had custody or control of funds or property by reason of the duties of his or her office; (3) that those funds or property were public funds or property for which he [or she] was accountable; and (4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. (Baya *vs*. The Honorable Sandiganbayan (2ND Division), *et al*. G.R. Nos. 204978-83, July 6, 2020) p. 57

MORTGAGES

Doctrine of mortgagee in good faith — A bank should not necessarily be made liable if it did not investigate or inspect the property, if the circumstances reveal that an investigation would still not yield a discovery of any anomaly, or anything that would arouse suspicion on the mortgaged property. (Parcon-Song *vs.* Parcon, joined by her husband Joaquin A. Parcon, *et al.*, G.R. No. 199582, July 7, 2020) p. 364

— A mortgage is deemed valid if the mortgagee relied in good faith on what appears on the face of the certificate of title, even if the mortgagor fraudulently acquired the title to the property; when an innocent mortgagee who relies upon the correctness of a certificate of title consequently acquires rights over the mortgaged property, the courts cannot disregard such rights. (*Id.*)

— If the certificate of title indicates nothing that will raise concern, and the mortgagee is unaware of any defect in the title or any other problematic circumstance surrounding the property, the mortgagee is not required to further investigate; rationale; the burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder, as the latter are more

MURDER

Elements of — To successfully prosecute the crime of Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. (People *vs.* Silvederio III, G.R. No. 239777, July 8, 2020) p. 884

— To sustain a conviction for murder, the prosecution must prove the following essential elements, to wit: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing does not amount to parricide or infanticide. (People *vs.* Alcala, *et al*., G.R. No. 233319, July 7, 2020) p. 498

NOTARIES PUBLIC

Duties — Notaries public must dutifully abide by the Lawyer's Oath and the Code of Professional Responsibility; they must avoid committing falsehoods or consent to the doing of any; they must stand as vanguards against any illegal and immoral arrangements in the execution of documents. (Heirs of Odylon Unite Torrices, represented by Sole Heir Miguel B. Torrices *vs.* Galano, A.C. No. 11870, July 7, 2020) p. 331

— The conferment of a notarial commission embodies the correlative duty to observe the basic requirements in the performance of notarial duties with utmost care to avoid the erosion of the public's confidence in the integrity of a notarized document. (*Id.*)

Notarization of documents — Notarization is an act invested with substantive public interest, as it results to the conversion of a private document into a public instrument, thereby making it admissible in evidence without further proof of its authenticity; by law, a notarized document is entitled to full faith and credit. (Heirs of Odylon Unite

that the procedural vehicles taken when these remedies are filed in the deciding forum are proper and thus, are to be given due course; Rule 31 of the Rules of Court, which applies suppletorily in cases before the Ombudsman, provides that consolidation involves actions that are already *pending* before the Court. (*Id.*)

Rules of Procedure of the Office of the Ombudsman — According to Section 4, Rule II of A.O. 7 entitled "Rules of Procedure of the Office of the Ombudsman," supporting witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation; affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths. (Villa-Ignacio *vs.* Chua, G.R. No. 220535, July 8, 2020) p. 698

— Section iii(n) of Administrative Order (A.O.) 16, series of 2003; a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired, is disqualified from acting on the complaint or participating in the proceedings. (*Id.*)

OMNIBUS ELECTION CODE (B.P. NO. 881)

Section 195 — We rule Section 195 of the OEC to be *mala in se*; the applicable portion of Section 195 forbids the *intentional* tearing or defacing of the ballot or the placement of a distinguishing mark; "marks made by the voter unintentionally do not invalidate the ballot; neither do marks made by some person other than the voter"; if these innocuous marks do not violate the constitutional duty to secure the secrecy of the ballot and preserve the sanctity and integrity of the electoral process, then We can reasonably conclude that such marking does not constitute an election offense, as in this case. (Cardona *vs.* People, G.R. No. 244544, July 6, 2020) p. 265

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

3-Day Mandatory Reportorial Requirement — A seafarer claiming disability benefits is required to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from repatriation, and non-compliance thereof results in the forfeiture of the seafarer's claim for disability benefits; rationale; exceptions. (Toliongco *vs.* Court of Appeals, *et al.*, G.R. No. 231748, July 8, 2020) p. 803

— *Ebuenga v. Southfield Agencies* explained the rationale for the 3-day reportorial requirement: The 3-day mandatory reporting requirement must be strictly observed since within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment. (*Id.*)

— Petitioner's non-compliance with the three-day reportorial requirement is justified, as his mental faculties have hindered him from doing so because of trauma inflicted on him caused by the incidents of sexual harassment at the hands of chief officer while on board the sea vessel. (*Id.*)

Disability benefits — A reading of the three kinds of liabilities under Section 20(B) of the POEA-SEC means that the POEA-SEC intended to make the employer liable for (1) the seafarer's sickness allowance equivalent to his basic wage in addition to the medical treatment that they must provide the seafarer with at their cost; *and* (2) seafarer's permanent total or partial disability as finally determined by the company-designated physician. (Intercrew Shipping Agency, Inc., *et al. vs.* Calantoc, G.R. No. 239299, July 8, 2020) p. 869

— As consistently held by the Court, at most, petitioner's general statements as to whether his illnesses are work-related *and* suffered during the term of his contract, surmise mere possibilities, but definitely not the lenient probability required by law to be entitled to disability

reportorial requirement, but because there is barely any evidence to support the claim for disability benefits. (*Id.*)

— We have held, time and again, that a PEME cannot be relied upon to reflect a seafarer's true state of health since it is not exploratory and may just disclose enough for employers to decide whether a seafarer is fit for overseas employment. (Razonable, Jr. *vs.* Torm Shipping Philippines, Inc. *et al.*, G.R. No. 241620, July 7, 2020) p. 543

Work-related injuries — It is not required that an employee must be in perfect health when he contracted the illness to be able to recover disability compensation; it is equally true, that while the employer is not the insurer of the health of the employees, once he takes the employees as he finds them, then he already assumes the risk of liability. (Intercrew Shipping Agency, Inc., *et al. vs.* Calantoc, G.R. No. 239299, July 8, 2020) p. 869

— The "*work-related injury*," under the 2000 POEA-SEC, is defined as "*injury(ies)*" resulting in disability or death arising out of and in the course of employment; "*work-related illness*" is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied," to wit: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. (*Id.*)

PLEADINGS

Filing and service of papers and processess — Applying Section 3, Rule 13 of the Rules of Court, the date of mailing shall be considered as the date of filing when a pleading is filed by registered mail; it does not matter when the court actually receives the mailed pleading.

— Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier; registered mail is then complete upon actual receipt or five (5) days after the postmaster's initial notice; an addressee is given only a limited period to act on a notice as "the purpose is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure." (*Id.*)

— Service by registered mail is complete when it is delivered to the recipient's address and received by a person of sufficient discretion to receive it; receipt by the counsel's driver of the trial court's order, is deemed receipt by the counsel, where there are evidence that the driver had long been authorized by the counsel to receive papers and processes on his behalf. (*Id.*)

— Service upon the parties' counsels of record is tantamount to service upon the parties themselves, but service upon the parties themselves is not considered service upon their lawyers; the reason is simple, the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. (*Id.*)

— Under Rule 13, Section 5, service may either be personal or by mail, however, should personal service or service by mail be unavailable, service may be made through substituted service. (*Id.*)

— When a party is represented by counsel, "notices of all kinds, including motions, pleadings, and orders must be served on said counsel and notice to him is notice to client." (*Id.*)

PRESUMPTIONS

Conclusive presumptions — The lessee is barred from questioning the lessor's ownership of the leased premises

— Pursuant to Article 266-B, paragraph 1, the rape is qualified when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. (People *vs.* AAA, G.R. No. 248777, July 7, 2020) p. 639

QUALIFYING CIRCUMSTANCE

Treachery — To properly appreciate treachery, two elements must be present: *(1)* at the time of the attack, the victim was not in a position to defend himself; and *(2)* the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. (People *vs.* Silvederio III, G.R. No. 239777, July 8, 2020) p. 884

— Treachery is the direct employment of means, methods, or forms in the execution of the crime against persons which tends directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. (*Id.*)

RAPE

Commission of — A victim's failure to resist another person's vigorous advances does not equate to consenting to sexual abuse. (People *vs.* Ibañez, G.R. No. 231984, July 6, 2020) p. 233

— Article 266-A(1) of the Revised Penal Code, as amended, enumerates the elements of rape by sexual intercourse: Article 266-A. Rape; When and How Committed; rape is committed 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or

grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (*Id.*)

— In any case, survivors of such cruelty in the hands of their relatives or any person for that matter must not be blamed for any action, or lack thereof, that they take when suddenly forced to respond to a threat; people differ in how they address danger; there is no blueprint on how a victim should act when violated; there is no certainty as to how one would react; what is certain, however, is that a person who forces sexual congress on another is a rapist; rapists' acts must never be attributed to their victims. (*Id.*)

— It is a well-entrenched principle that "the force used in the commission of rape need not be overpowering or absolutely irresistible"; "tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary"; after all, resistance is not an element of rape. (People *vs.* Tamano, G.R. No. 227866, July 8, 2020) p. 726

— To sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt: (i) that the accused had carnal knowledge of the victim**;** and (ii) that said act was accomplished (a) through the use of force or intimidation**,** or (b) when the victim is deprived of reason or otherwise unconscious, or (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented. (*Id.*)

Guiding principles in determining the innocence or guilt of accused — To determine the innocence or guilt of the accused in rape cases, the courts are guided by three

well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *vs.* AAA, G.R. No. 248777, July 7, 2020) p. 639

RES JUDICATA

Concept — Petitioner's acquittal in the case for violation of Section 5(a) of Republic Act No. 9262 is not *res judicata* on the action for damages under Article 33 of the Civil Code; one of the elements of *res judicata* is the identity of causes of action, with "cause of action" being the "act or omission by which a party violates a right of another"; while the criminal action and the action for damages arise from the same act or omission, the alleged physical violence committed by petitioner against respondent; these actions violate two (2) different rights of respondent: (1) her right not to be physically harmed by an intimate partner under Republic Act No. 9262; and (2) her right to recover damages for bodily injury under Article 33 of the Civil Code. (Kane *vs.* Roggenkamp, G.R. No. 214326, July 6, 2020) p. 159

REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS)

Issuance of formal charge — The Officer-in-Charge (OIC) was not entirely unauthorized to issue and sign the formal charge, as he was presumed to be acting under the cloak of the authority of the Department of Justice and under the supervision of the commissioner of the Bureau of Immigration. (Venadas *vs.* Bureau of Immigration, G.R. No. 222471, July 7, 2020) p. 433

2004 RULES ON NOTARIAL PRACTICE

Application of — Aside from the physical presence of the affiant during the notarization of a document, the Notarial Rules also requires the presentation of a competent evidence of the affiant's identity *if* he or she is not personally known to the notary public; "competent evidence of identity" is defined under Section 12, Rule II of the Notarial Rules. (Leano *vs.* Salatan, A.C. No. 12551, July 8, 2020) p. 667

Duties — A Notary Public is prohibited from performing a notarial act in the absence of the signatories to the instrument; the notarization of a document in the absence of the parties is a breach of duty; this is clear from Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice. (Heirs of Odylon Unite Torrices, represented by Sole Heir Miguel B. Torrices *vs.* Galano, A.C. No. 11870, July 7, 2020) p. 331

Notarial certificate — Section 5(b), Rule IV of the same Rules provides that a notary public shall not affix his official signature or seal on a notarial certificate that is *incomplete*; by definition, a notarial certificate pertains to "the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seat, and states the facts attested to by the notary public in a particular notarization as provided for by these Rules." (Leano *vs.* Salatan, A.C. No. 12551, July 8, 2020) p. 667

Notarial register — It is settled that "a notary public is personally accountable for all entries in his notarial register"; delegation of his notarial function of recording entries in his notarial register to his office clerk is in itself a clear violation of the Notarial Rules, as well as Rule 9.01, Canon 9 of the CPR. (Leano *vs.* Salatan, A.C. No. 12551, July 8, 2020) p. 667

SEPARATION OF POWERS

Principle of — The principle of separation of powers has in the main wisely allocated the respective authority of

including claims arising from the Social Security System coverage. (*Id.*)

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application of — The Court equally holds that all the elements of Sexual Assault are present in the instant case; contrary to petitioner's argument, it should be noted that the relationship between petitioner and his victim is sufficient for petitioner to exert "influence" upon AAA, in addition to the latter's minority; the foregoing notwithstanding, pursuant to *People v. Tulagan,* the nomenclature of the crime should be modified to Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610 otherwise known as the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*, considering AAA was only 10 years old when the crime was committed against her. (ABC *vs.* People, G.R. No. 241591, July 8, 2020) p. 901

STATUTES

Application of laws — "All statutes, including those of local application and private laws, shall be published as a condition for their effectivity"; however, the Court clarified that "interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public" and "letters of instruction issued by administrative superiors relative to guidelines to be followed by their subordinates in the performance of their duties" need not be published. (Villafuerte, Governor of the Province of Camarines Sur, *et al. vs.* Cordial, Jr., Mayor of Caramoan, Camarines Sur, *et al.*, G.R. No. 222450, July 7, 2020) p. 419

Procedural rules — As declared in *Alonso v. Villamor*, "technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts; there

— It is settled that "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." (*Id.*)

— Settled is the rule that delay in reporting the incident does not weaken AAA's testimony; delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief; this is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny; only when the delay is unreasonable or unexplained may it work to discredit the complainant. (People *vs.* AAA, G.R. No. 248777, July 7, 2020) p. 639

— Suffice it to state 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. (People *vs.* Yumol, G.R. No. 225600, July 7, 2020) p. 461

— The Court explained in *People v. Pareja* that the assessment of the witness' credibility is best left to the trial court judge in view of his/her unique opportunity to observe the witness' deportment and demeanor on the stand; this vantage point is not available to the appellate courts; the findings of the trial court, when affirmed by the CA, are generally binding and conclusive upon this Court. (People *vs.* Tamano, G.R. No. 227866, July 8, 2020) p. 726

— The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape. (People *vs.* Yumol, G.R. No. 225600, July 7, 2020) p. 461

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