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REPORTS ON CASES

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SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

JULY 28, 2020

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Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 9334. July 28, 2020]

CONRADO ABE LOPEZ, *petitioner, vs.* **ATTY. ARTURO C. MATA, ATTY. WILFREDO M. SENTILLAS, and ATTY. GINES N. ABELLANA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY BE COMMISSIONED FOR NOTARIZATION WHICH IS IMPRESSED WITH SUBSTANTIAL PUBLIC INTEREST. — Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may be commissioned. It is not a purposeless ministerial act of acknowledging documents executed by parties willing to pay fees for notarization. A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

2. ID.; ID.; NOTARIZATION OF A PRIVATE DOCUMENT CONVERTS IT INTO A PUBLIC INSTRUMENT MAKING IT ADMISSIBLE IN COURT WITHOUT FURTHER PROOF OF ITS AUTHENTICITY, HENCE NOTARIES PUBLIC MUST OBSERVE THE HIGHEST DEGREE OF CARE IN COMPLYING WITH THE BASIC REQUIREMENTS TO PRESERVE THE PUBLIC'S CONFIDENCE IN THE INTEGRITY OF THE NOTARIAL SYSTEM.— In the

performance of his or her duties, a notary public must observe the highest degree of care in complying with the basic requirements to preserve the public's confidence in the integrity of the notarial system. This is because notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit on its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties, lest, the public's confidence in the integrity of the document will be undermined.

3. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; COMPETENCE EVIDENCE OF IDENTITY; COMMUNITY TAX CERTIFICATE; CANNOT BE CONSIDERED AS COMPETENT EVIDENCE OF IDENTITY AS IT DOES NOT BEAR THE PHOTOGRAPH AND SIGNATURE OF ITS OWNER; CASE AT BAR. — Surely, a CTC cannot be considered competent evidence of identity as it does not bear the photograph and signature of its owner. As such, Atty. Sentillas could not have properly verified whether the person who appeared before was in fact complainant Conrado. Although this does not, by itself, conclusively establish that complainant did not personally appear before Atty. Sentillas when the Second SPA was notarized, it is nevertheless sufficient to constitute a violation of the 2004 Rules on Notarial Practice.

4. ID.; ID.; SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM OR HER TO ATTEST TO THE CONTENTS AND TRUTHFULNESS OF THE STATEMENTS THEREIN; CASE AT BAR. — A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him or her to attest to the contents and truthfulness of the statements therein. x x x Certainly, a notary public does not surrender his sworn duty to ascertain a person's identity for the sheer reason that the person before him was with a judge. The presumption of regularity in favor of a public official does not extend to the judge's private transactions. As with the case of Atty. Sentillas, the alleged Conrado Lopez who appeared before him was armed only with CTC No. 09046232. As discussed, this is not considered competent evidence of identity under the 2004 Rules on Notarial Practice.

5. ID.; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 1 AND RULE 1.01 THEREOF; MANDATE THE LAWYER TO PROMOTE RESPECT FOR LAW AND PROHIBIT THE LAWYER FROM ENGAGING IN DISHONEST CONDUCT; CASE AT BAR. — Canon 1 and Rule 1.01 of the Code of Professional Responsibility mandates the lawyer to promote respect for law and prohibits the lawyer from engaging in dishonest conduct. x x x By affixing their notarial seal on the instrument, respondents Sentillas and Mata, in effect, proclaimed to the world that (1) all the parties therein personally appeared before them; (2) they are all personally known to them; (3) they were the same persons who executed the instruments; (4) they inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before them that they voluntarily and freely executed the same when in truth and in fact, respondents Sentillas and Mata notarized the documents without properly ascertaining the identity of the persons who appeared before them and the genuineness of their signatures. These infractions are reprehensible constituting not only dishonesty but also malpractice.

6. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED ADMINISTRATIVE CODE OF 1917; SECTION 246 THEREOF; MANDATES THE SUBMISSION OF EACH MONTH'S ENTRIES IN THE NOTARIAL REGISTER TO THE CLERK OF COURT OF THE FIRST INSTANCE (NOW THE REGIONAL TRIAL COURT); VIOLATION THEREOF IS A GROUND FOR REVOCATION OF NOTARIAL COMMISSION; CASE AT BAR. — Just like Atty. Mata and Sentillas, Atty. Abellana notarized the Deed of Sale dated June 28, 2004 with only a CTC presented as competent evidence of identity. This time, the use of the CTC as competent proof of identity was sanctioned under Section 251 of the Revised Administrative Code of 1917, the law applicable at the time of notarization. x x x But Section 246 of the same Code mandates the submission of each month's entries in the notarial register to the Clerk of Court of the First Instance (now Regional Trial Court) of the province within the first ten (10) days of the following month. x x x Atty. Gines N. Abellana failed to comply with the above requirement. Per Certification dated December 6, 2011 of the Notarial Section, Office of the Clerk of Court of Cebu City, Atty. Abellana did not file his notarial report for 2004. x x x Failure of the notary to send the copy of the entries

to the proper Clerk of Court of First Instance within the first ten (10) days of the month next following is a ground for revocation of notarial commission under Section 249 of the Revised Administrative Code of 1917.

7. LEGAL ETHICS; ATTORNEYS; SUSPENSION OR DISBARMENT PROCEEDINGS; MAY PROCEED REGARDLESS OF COMPLAINANT'S INTEREST OR LACK THEREOF; INVOLVE NO PRIVATE INTEREST AND AFFORD NO REDRESS FOR PRIVATE GRIEVANCE BUT UNDERTAKEN TO PRESERVE COURTS OF JUSTICE FROM THE OFFICIAL MINISTRATION OF PERSONS UNFIT TO PRACTICE THEM. — Complainant's desistance, however, does not exonerate respondents or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of complainant's interest or lack thereof. What matters is, whether on the basis of the facts borne out by the record, the charge had been proven. This rule is premised on the nature of disciplinary proceedings which is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.

APPEARANCES OF COUNSEL

Romualdo M. Jubay for complainant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

By Complaint dated December 28, 2011, complainant Conrado Abe Lopez charged respondents Atty. Arturo C. Mata,

Atty. Wilfredo M. Sentillas, and Atty. Gines N. Abellana with dishonesty, malpractice, and violation of the 2004 Rules on Notarial Practice with prayer for disbarment.

The Complaint Affidavit

Complainant[1] essentially alleged:

Moises Legaspino married twice during his lifetime. During his first marriage, he sired Francisco, Basilia, Amando, Mamerto, and Honorata, all surnamed Legaspino. When Moises' first wife died, he got married to Victoria Lopez who had a son, Restituto Lopez, his (Conrado's) adoptive father.

Moises and Victoria passed away, leaving a 49,817 square meter parcel of land to their heirs. Half of the property was adjudicated to Moises' children from his first marriage, while the other half, to Restituto.[2] Meanwhile, Honorata died without a will, leaving her share in the property to her children Basilio, Pedro, Victoriano, Crisostomo, Regulada, Juan and Patricia, all surnamed Lucmayon.[3] Eventually, the shares of Moises' other children from his first marriage were consolidated in the name of Honorata's son Pedro.[4] As a result, the property was divided in the following manner:

1) 20,637 square meters to Spouses Pedro Lucmayon and Anastacia Sacayan by virtue of the sales in their favor including the 712 square meters as Pedro's share being the direct heir of Honorata Legaspino Lucmayon;

2) 24,908 square meters to Honorata Lopez and Conrado Lopez being the heirs of Restituto Lopez; and

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[1] *Rollo*, pp. 1-8.

[2] *Id.* at 10.

[3] *Id.*

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

3) 712 square meters each for Basilio Lucmayon, Victoriano Lucmayon, Patricia Lucmayon, Crisostomo Lucmayon, Regulada Lucmayon Monteroso, and Juan Lucmayon.[5]

On December 29, 1953, Restituto executed the "*Katapusang Panugon (Testamento) Intervivos*" (Katapusang Panugon) wherein he bequeathed to Conrado the 24,908 sqm property he inherited, identified as Lot No. 1696-H[6] erroneously written as Lot No. 1718.[7] But since Conrado was then only eight (8) years old, Restituto kept possession of the document. After Restituto died, the document was left in the possession of Conrado's mother Honorata Abe Lopez.[8]

Fast forward to the early 2000s, Judge Rogelio Lucmayon, Presiding Judge of MTCC Branch 1, Mandaue City and son of Pedro Lucmayon, asked Conrado to execute a special power of attorney (First SPA) in favor of his (Judge Lucmayon's) friends[9] because he wanted to sell the property they inherited to Cebu Progress Development Company. Complainant acceded to the request and executed the First SPA on July 12, 2004 before Atty. Arturo C. Mata.[10]

On October 11, 2004, Judge Lucmayon requested anew for Conrado to execute another SPA (Second SPA), this time naming him (Judge Lucmayon) as Attorney-in-Fact. Though Conrado admitted to signing the document, he did not personally appear before the notary public to have the Second SPA notarized. It was Judge Lucmayon who had it notarized by Atty. Wilfredo M. Sentillas.[11]

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[5] *Id.* at 12.

[6] *Id.* at 1.

[7] *Id.* at 19.

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

[9] Wilfredo Apawan, Vicenta Cobarde, and Leopoldo Capangpangan, *id.* at 2.

[10] *Id.*

[11] *Id.*

On October 28, 2004, Judge Lucmayon asked Conrado a third time to sign an SPA (Third SPA) which was purportedly required by the vendees before paying for the property in full. Conrado was not aware that the Third SPA contained a "Waiver of Rights, Interest, Possession, and Ownership over Lot No. 1696-H." Just like the Second SPA, he did not personally appear before notary public Atty. Arturo C. Mata.[12]

After Conrado signed all the documents requested by Judge Lucmayon, the latter asked him for the Katapusang Panugon.[13] To his surprise, Judge Lucmayon commented that he had no share in Lot 1696-H because the figures "1696" were only written in pen under the typewritten words "Lot No. 1718." But he could not have been the one who wrote those figures since he was only eight (8) years old when the Katapusang Panugon was executed. In fact, he only got hold of the document just before his mother died in 1982.[14]

Later, Conrado discovered the existence of a Deed of Sale dated June 28, 2004 where he allegedly sold his share in Lot No. 1696-H to one Loreto Lecanda.[15] The Deed of Sale was notarized by Atty. Gines N. Abellana, albeit complainant denied signing the document, let alone personally appearing before Atty. Abellana to have it notarized. Per Certification dated December 6, 2011 of the Notarial Section, Office of the Clerk of Court, Cebu City, Atty. Abellana did not file his notarial report for 2004.[16]

Hence, complainant charged Attys. Mata, Sentillas and Abellana with dishonesty, malpractice and violation of the 2004 Rules on Notarial Practice.

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[12] *Id.* at 3.

[13] *Id.*

[14] *Id.*

[15] Son of Honorata Abe Lopez with her second husband; *id.* at 5.

[16] *Id.* at 5-6.

Meanwhile, Pedro Lucmayon filed a case against Conrado for Quieting of Title (Civil Case No. T-1937) attaching the documents notarized by respondents.

On the other hand, by Complaint Affidavit[17] dated September 23, 2009, Conrado charged Judge Lucmayon, Atty. Sentillas and Atty. Mata with Falsification of Public Document and Use of Falsified Document before the Office of the City Prosecutor, Cebu. The complaint got dismissed per Amended Resolution[18] dated September 14, 2010.

Respondents' Answers

Atty. Wilfredo M. Sentillas invoked the presumption of regularity. He asserted that since Conrado admitted having signed the Second SPA, it is presumed that he did so before the presence of a notary public.[19] Conrado resorted to filing the present complaint to malign his name after failing to obtain a favorable result from the Office of the City Prosecutor.[20]

Atty. Arturo C. Mata, on the other hand, countered that Conrado had no cause of action because he voluntarily signed the "Waiver of Rights, Interest, Possession, and Ownership of Lot No. 1696-H"[21] and allowed Judge Lucmayon to look for a notary public to notarize the document. The name of Atty. Wilfredo M. Sentillas, with whom he shared the same office, was already stamped on the document as the notary. But upon Judge Lucmayon's request, he notarized the document instead.

He honestly believed that Conrado was among the three (3) persons who were with Judge Lucmayon at the time the document was presented to him for notarization. Out of respect for Judge Lucmayon before whom he appeared for some cases and who

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

[18] *Id.* at 82-85.

[19] IBP-CBD Report and Recommendation, p. 5, unnumbered page.

[20] *Rollo*, p. 69.

[21] IBP-CBD Report and Recommendation, p. 4, unnumbered page.

was a close friend of Atty. Sentillas, he no longer required Judge Lucmayon and his companions to sign the document again nor asked any questions.[22]

Lastly, **Atty. Gines N. Abellana** neither denied nor admitted the charges because the complaint he received allegedly lacked page five (5). He nevertheless averred that the non-submission of his 2004 Notarial Report and the absence of copy of the Deed of Sale dated June 28, 2004 he notarized in the Notarial Section of the Office of the Clerk of Court, RTC Cebu, City were immaterial to the charges against him.[23] More, the complaint did not contain any verification and certification against forum shopping.[24]

Report and Recommendation of the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD)

In its Report and Recommendation dated October 26, 2013,[25] the IBP-CBD recommended:

> WHEREFORE, premises considered, it is respectfully recommended that:
>
> The notarial commissions of respondents Mata, Sentillas and Abellana be revoked and they be disqualified from reappointment as notary public for a period of two (2) years and be suspended from the practice of law for a period of three (3) months. They are likewise warned that a repetition of the same or similar offense on the future shall be dealt with more severely.

According to the IBP-CBD, Atty. Sentillas failed to secure competent proof of affiant's identity when he notarized the Second SPA.

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[22] *Rollo*, pp. 64-65.

[23] IBP-CBD Report and Recommendation, p. 5, unnumbered page.

[24] *Rollo*, p. 155.

[25] IBP-CBD Report and Recommendation, pp. 1-11, unnumbered page.

Atty. Mata, on the other hand, failed to ensure it was indeed Conrado who was with Judge Lucmayon when he notarized the Third SPA. Too, he admitted not asking for competent proof of identity out of respect for Judge Lucmayon.

Lastly, Atty. Abellana had been remiss in his duty to submit his 2004 Notarial Report as shown by Certification dated December 6, 2011. Worse, the Deed of Absolute Sale dated June 28, 2004 notarized and designated as Doc. No. 16, Page No. 5, Book No. 41, Series of 2004 was never submitted to the Clerk of Court nor the Executive Judge. This cast doubt on whether Conrado indeed executed said document.

Resolutions of the IBP-Board of Governors (BOG)

By Resolution[26] dated October 11, 2014, the IBP Board of Governors affirmed with modification. Atty. Mata and Atty. Sentillas' recommended suspension from the practice of law was increased to six (6) months while Atty. Abellana's to three (3) years in view of a previous sanction, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and for Respondents' failure to exercise due diligence in the performance of their duties as Notaries Public in violation of the 2004 Rules on Notarial Practice, Respondents' notarial commissions are ***immediately REVOKED***. Further, **they are DISQUALIFIED for reappointment as a notary public for two years. Atty. Arturo C. Mata and Atty. Wilfredo M. Sentillas are hereby SUSPENDED from the practice of law for six (6) months.** In view of his previous sanction, where a stern warning was made that a commission of another unethical conduct would cause the imposition of higher sanction, Atty. Gines N. Abellana is SUSPENDED from practice of law for three (3) years.[27]

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[26] Notice of Resolution, unnumbered page.

[27] Atty. Wilfredo M. Sentillas' Motion for Reconsideration, pp. 1-2, unnumbered page.

Respondents Atty. Sentillas'[28] and Atty. Abellana's[29] Motion for Reconsideration was denied under Resolution[30] dated May 28, 2016.

Meanwhile, on September 13, 2016, respondents filed a Motion to Dismiss Administrative Complaint[31] on ground that Civil Case No. T-1937, the main reason for filing this administrative case, was amicably settled on June 10, 2016. The settlement was approved by the Regional Trial Court (RTC), Branch 59, Toledo City on July 27, 2016. Complainant likewise executed an Affidavit of Desistance dated June 10, 2016 alleging that respondents were innocent notaries public.

On February 6, 2017, the IBP elevated the entire records for the Court's consideration since the IBP Resolution was merely recommendatory in nature and does not attain finality without the Court's final action.

Issue

Should respondents be sanctioned for violation of the 2004 Rules on Notarial Practice?

Ruling

The Court adopts the IBP-CBD's factual findings but modifies the recommended penalty.

Notarization is not an empty, meaningless, or routinary act. It is impressed with substantial public interest, and only those who are qualified or authorized may be commissioned. It is not a purposeless ministerial act of acknowledging documents

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[28] Atty. Wilfredo M. Sentillas' Motion for Reconsideration, pp. 1-8, unnumbered page.

[29] Atty. Gines N. Abellana's Motion for Reconsideration, pp. 1-4, unnumbered page.

[30] Integrated Bar of the Philippines – Board of Governors, Notice of Resolution, unnumbered page.

[31] Unnumbered page.

executed by parties willing to pay fees for notarization.[32] A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[33]

In the performance of his or her duties, a notary public must observe the highest degree of care in complying with the basic requirements to preserve the public's confidence in the integrity of the notarial system.[34] This is because notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit on its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties, lest, the public's confidence in the integrity of the document will be undermined.[35]

Here, respondents miserably failed to live up to their duties as notaries public when they committed irregularities relative to the notarization of the Second SPA, Third SPA, and the Deed of Sale dated June 28, 2004.

Atty. Sentillas and Atty. Mata failed to ascertain the identity of the "Conrado Lopez" who allegedly appeared before them.

a. Atty. Wilfredo M. Sentillas

Section 2 (b), Rule IV of the 2004 Rules on Notarial Practice provides:

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

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[32] See *Sappayani v. Gasmen*, 768 Phil. 1-8 (2015).

[33] See *Bartolome v. Basilio*, 771 Phil. 1, 9 (2015).

[34] See *Lim v. Acero*, A.C. No. 11025, October 2, 2019.

[35] See *Soriano v. Basco*, 507 Phil. 410, 416 (2005).

(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.[36] (emphasis added)

Here, Conrado admitted having signed the Second SPA naming Judge Lucmayon as Attorney-in-Fact but nevertheless disclaimed personally appearing before Atty. Sentillas when it was notarized. Against this allegation, Atty. Sentillas simply invoked in his favor the presumption of regularity in the performance of official duties.[37]

Unfortunately, the presumption does not offer Atty. Sentillas much respite. For the Second SPA contained a glaring defect that effectively overcame the presumption — the affiant presented a mere Community Tax Certificate (CTC) when he had the Second SPA notarized by Atty. Sentillas.

Section 12, Rule II of the 2004 Rules on Notarial Practice provides:

SECTION 12. ***Competent Evidence of Identity***. — The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; 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 each personally knows the individual and shows to the notary public documentary identification.[38]

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[36] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004.

[37] See *Chua v. Westmont Bank*, 683 Phil. 56-69 (2012).

[38] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004.

Surely, a CTC cannot be considered competent evidence of identity[39] as it does not bear the photograph and signature of its owner. As such, Atty. Sentillas could not have properly verified whether the person who appeared before was in fact complainant Conrado. Although this does not, by itself, conclusively establish that complainant did not personally appear before Atty. Sentillas when the Second SPA was notarized, it is nevertheless sufficient to constitute a violation of the 2004 Rules on Notarial Practice.

In ***Heir of Unite v. Guzman***,[40] Atty. Raymund P. Guzman was suspended from the practice of law for six (6) months, his commission as notary public, revoked, and was prohibited from being commissioned as notary public for two (2) years for failing to require Torrices to provide competent evidence of identity before he affixed his signature as a notary public. This fact was clear from the Deed itself which showed that Torrices presented only his CTC when it was notarized.

b. Atty. Arturo C. Mata

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him or her to attest to the contents and truthfulness of the statements therein.[41]

In his Comment,[42] respondent Atty. Mata admitted he was remiss in observing this rule when he notarized the Third SPA with "Waiver of Rights, Interest, Possession, and Ownership," thus:

"But I maintained and honestly believed that the complainant was one of the three (3) persons who was with Judge Lucmayon in my office that the judge insinuated to have already signed the document.

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[39] See *Lim v. Acero*, A.C. No. 11025, October 2, 2019.

[40] A.C. No. 12062, July 2, 2018.

[41] See *Villarin v. Sabate, Jr.*, 382 Phil. 1-7 (2000).

[42] *Rollo*, pp. 64-65.

I could not have asked him to sign again or asked some questions out of respect for the judge where I appeared in his sala in some of my cases and known to me to be a close "compadre" of Atty. Wilfredo M. Sentillas with whom I shared the same office not as an associate, or partner but as a separate distinct office of my own."[43]

x x x x x x x x x

Certainly, a notary public does not surrender his sworn duty to ascertain a person's identity for the sheer reason that the person before him was with a judge. The presumption of regularity in favor of a public official does not extend to the judge's private transactions. As with the case of Atty. Sentillas, the alleged Conrado Lopez who appeared before him was armed only with CTC No. 09046232. As discussed, this is not considered competent evidence of identity under the 2004 Rules on Notarial Practice.

Atty. Sentillas' and Atty. Mata's failure to ascertain complainant's identity is tantamount to dishonesty and malpractice.

Canon 1 and Rule 1.01 of the Code of Professional Responsibility mandates the lawyer to promote respect for law and prohibits the lawyer from engaging in dishonest conduct, *viz.*:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.[44]

By affixing their notarial seal on the instrument, respondents Sentillas and Mata, in effect, proclaimed to the world that (1) all the parties therein personally appeared before them; (2) they are all personally known to them; (3) they were the same persons who executed the instruments; (4) they inquired

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[43] *Id.* at 65.

[44] Code of Professional Responsibility, June 21, 1988.

into the voluntariness of execution of the instrument; and (5) they acknowledged personally before them that they voluntarily and freely executed the same[45] when in truth and in fact, respondents Sentillas and Mata notarized the documents without properly ascertaining the identity of the persons who appeared before them and the genuineness of their signatures. These infractions are reprehensible constituting not only dishonesty but also malpractice.

By their conduct, they have eroded the public's trust and confidence in the notarial system. Certainly, these are grounds for the revocation of their notarial commission. Rule IX, Section 1 (b) subparagraphs 7 and 8 provide:

RULE XI

Revocation of Commission and Disciplinary Sanctions

SECTION 1. *Revocation and Administrative Sanctions*. — (a) The Executive Judge shall revoke a notarial commission for any ground on which an application for a commission may be denied.

x x x x x x x x x

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

x x x x x x x x x

(7) fails to require the presence of a principal at the time of the notarial act;

(8) fails to identify a principal on the basis of personal knowledge or competent evidence;[46]

So must it be.

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[45] See *Atty. Dela Cruz v. Atty. Zabala*, 485 Phil. 83, 89 (2004).

[46] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004.

Atty. Gines N. Abellana failed to comply with the Administrative Code of 1917

Just like Atty. Mata and Sentillas, Atty. Abellana notarized the Deed of Sale dated June 28, 2004 with only a CTC presented as competent evidence of identity. This time, the use of the CTC as competent proof of identity was sanctioned under Section 251 of the Revised Administrative Code of 1917, the law applicable at the time of notarization, *viz.*:

SECTION 251. *Requirement as to notation of payment of (cedula) residence tax.* — Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each (cedula) residence certificate as aforesaid.[47]

But Section 246 of the same Code mandates the submission of each month's entries in the notarial register to the Clerk of Court of the First Instance (now Regional Trial Court) of the province within the first ten (10) days of the following month, thus:

SECTION 246. *Matters to be entered therein.* — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by hi[m] for his services as notary in connection therewith, and; when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

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[47] Revised Administrative Code of 1917, Act No. 2711, March 10, 1917.

When a notary public shall protest any draft, bill of exchange, or promissory note, he shall make a full and true record in his notarial register of all his proceedings in relation thereto, and shall note therein whether the demand or the sum of money therein mentioned was made, of whom, when, and where; whether he presented such draft, bill, or note; whether notices were given, to whom, and in what manner; where the same was made, and when, and to whom, and where directed; and of every other fact touching the same.

At the end of each week the notary shall certify in his register the number of instruments executed, sworn to, acknowledged, or protested before him; or if none such, certificate shall show this fact.

A certified copy of each month's entries as described in this section and a certified copy of any instrument acknowledged before them shall within the first ten days of the month next following be forwarded by the notaries public to the clerk of the Court of First Instance of the province and shall be filed under the responsibility of such officer: Provided, That if there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of the certified copies herein required.[48] *(Emphases supplied)*

Atty. Gines N. Abellana failed to comply with the above requirement. Per Certification dated December 6, 2011 of the Notarial Section, Office of the Clerk of Court of Cebu City, Atty. Abellana did not file his notarial report for 2004.

For Atty. Abellana, such omission is immaterial to the charges against him.

Unremorseful as he was, his attitude all the more bolsters the fact that he does not respect nor intend to follow his duties as a notary public. To remind him, as a notary public, respondent is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment are sacrosanct. He cannot simply disregard

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[48] Revised Administrative Code of 1917, Act No. 2711, March 10, 1917.

the requirements and solemnities of the rules governing the notarization of documents.[49]

Failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten (10) days of the month next following is a ground for revocation of notarial commission under Section 249[50] of the Revised Administrative Code of 1917.

In ***Protacio vs. Mendoza***,[51] the Court suspended respondent's commission as a notary public for one (1) year for his failure to send to the Clerk of Court of the proper trial court the entries in his notarial registry. The case served as basis for the Court's subsequent ruling in ***Soriano v. Basco***.[52]

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[49] See *Soriano v. Basco*, 507 Phil. 410-416 (2005).

[50] **SECTION 249.** *Grounds for revocation of commission.* — The following derelictions of duty on the part of a notary public, shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

(a) The failure of the notary to keep a notarial register.

(b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

(c) **The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten days of the month next following.**

(d) The failure of the notary to affix to acknowledgments the date of expiration of his commission, as required by law.

(e) The failure of the notary to forward his notarial register, when filled, to the proper clerk of court.

(f) The failure of the notary to make the proper notation regarding cedula certificates.

(g) The failure of a notary to make report; within a reasonable time, to the proper judge of first instance concerning the performance of his duties, as may be required by such judge.

(h) Any other dereliction or act which shall appear to the judge to constitute good cause for removal.

(Revised Administrative Code of 1917, Act No. 2711, March 10, 1917).

[51] 443 Phil. 12-23 (2003).

[52] 507 Phil. 410-416 (2005).

Here, the Court takes judicial notice that in A.C. No. 3452, Atty. Gines N. Abellana was already suspended for six (6) months from the practice of law and sternly warned. There, the Court found that Atty. Abellana had failed to live up to the expectations of honesty, integrity and trustworthiness in his dealings with his client when he resorted to outright falsification to mislead his client into believing that he had been performing his duties as counsel. More, during the IBP investigation, he knowingly submitted two (2) documents which turned out to be forged and spurious.[53]

The Court therefore deems it sufficient to impose upon Atty. Gines N. Abellana a six (6)-month suspension from the practice of law, revoke his notarial commission, if any, and bar him from being commissioned as notary public for one (1) year.

Complainant's desistance is not a ground for the dismissal of this administrative case against respondents.

The Court notes that complainant executed an Affidavit of Desistance dated June 10, 2016. It was executed together with the amicable settlement between the parties in Civil Case No. T-1937 which was approved by the RTC, Branch 59, Toledo City on July 27, 2016.

Complainant's desistance, however, does not exonerate respondents or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of complainant's interest or lack thereof. What matters is, whether on the basis of the facts borne out by the record, the charge had been proven. This rule is premised on the nature of disciplinary proceedings which is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken

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[53] See *Samonte v. Abellana*, 736 Phil. 718, 731 (2014).

for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[54]

Penalty

Atty. Wilfredo M. Sentillas and **Atty. Arturo C. Mata** are found guilty of violation of the 2004 Rules on Notarial Practice for failure to ascertain complainant's identity and for notarizing the Second and Third SPAs with only a CTC presented as proof of identity tantamount to dishonesty and malpractice. Pursuant to ***Heir of Unite v. Guzman***,[55] they are suspended from the practice of law for six (6) months, their incumbent commission as notaries public, if any, revoked, and are hereby prohibited from being commissioned as notaries public for two (2) years.

Atty. Gines N. Abellana is found guilty of violating Section 246 of the Administrative Code of 1917 for failure to submit his notarial register for the year 2004. He is suspended from the practice of law for six (6) months, his incumbent notarial commission, if any, revoked, and is prohibited from being commissioned as such for one (1) year.

WHEREFORE, Atty. Wilfredo M. Sentillas and **Atty. Arturo C. Mata** are **GUILTY** of violation of Section 2 (b), Rule IV and Section 12, Rule II of the 2004 Rules on Notarial Practice. They are **SUSPENDED** from the practice of law for six (6) months, their incumbent commission as notaries public, if any, **REVOKED**, and are hereby **PROHIBITED** from being **COMMISSIONED** as notaries public for two (2) years.

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[54] See *Bautista v. Bernabe*, 517 Phil. 236, 241 (2006).

[55] A.C. No. 12062, July 2, 2018.

Atty. Gines N. Abellana is found **GUILTY** of violating Section 246 of the Administrative Code of 1917 for failure to submit his notarial register for the year 2004. He is **SUSPENDED** from the practice of law for six (6) months, his incumbent commission as notary public, if any, **REVOKED**, and **PROHIBITED** from being **COMMISSIONED** notary public for one (1) year.

This Decision takes effect immediately. Let copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

Respondents must inform the Office of the Bar Confidant of the exact date of receipt of this Decision for the purpose of reckoning the period of their suspension from the practice of law, revocation of notarial commission, and disqualification from being commissioned as notaries public. After completing their suspension, respondents are required to submit to the Office of the Bar Confidant the Certifications from the Office of the Executive Judge of the court where they principally practice their profession and from the Integrated Bar of the Philippines Local Chapter of their affiliation affirming that they have ceased and desisted from the practice of law during their suspension.

Within two (2) weeks from the submission of these certifications, the Office of the Bar Confidant shall submit the same to the Court.

SO ORDERED.

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

EN BANC

[A.C. No. 11543. July 28, 2020]

SUSAN BASIYO and ANDREW WILLIAM SIMMONS, *complainants, vs.* **ATTY. JOSELITO C. ALISUAG,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS SHALL UPHOLD THE DIGNITY AND AUTHORITY OF THE COURT; VIOLATED WHEN LAWYER DEFIED THE LAWFUL ORDERS OF THE COURT. — As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. A lawyer who willfully disobeys a court order requiring him to do something may not only be cited and punished for contempt but may also be disciplined as an officer of the court. Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. This is especially so, as in the instant case, where respondent deliberately defied the lawful orders of the Court, thereby transgressing Canon 11 of the Code of Professional Responsibility which requires a lawyer to observe and maintain the respect due the courts.

APPEARANCES OF COUNSEL

Rocamora Timbacaya Law Office for complainants.

R E S O L U T I O N

PERALTA, *C.J.*:

Before Us are the Manifestations[1] of Andrew Simmons (*Simmons*) dated July 18, 2018 and January 10, 2019, respectively,

[1] *Rollo,* pp. 183-186; 191-193.

with regard to Atty. Joselito C. Alisuag's (*Atty. Alisuag*) non-compliance with the Court's directives pursuant to the Court's Decision[2] dated September 26, 2017.

To recapitulate, complainants Susan Basiyo and Andrew William Simmons filed an administrative complaint against Atty. Joselito C. Alisuag for deceit, falsification, and malpractice, in violation of the Code of Professional Responsibility, for his: (1) failure to file a case for which his professional services was rendered; (2) failure to render a complete accounting of the expenses incurred relative to the purchase of the subject property; and (3) failure to return the remaining unutilized money, after numerous demands.

In Resolution No. XX-2012-594[3] dated December 29, 2012, the Integrated Bar of the Philippines (*IBP*)-Board of Governors reversed the recommendation of the IBP-CBD to dismiss the complaint, and instead, found Atty. Alisuag guilty of deceit and falsification, and recommended his suspension from the practice of law for a period of two (2) years.

In the Court's Decision[4] dated September 26, 2017, the Court sustained the findings and recommendation of the IBP-Board of Governors. The Court found Atty. Alisuag's acts to be in violation of the provisions of the Code of Professional Responsibility when he failed to: (1) file the suit against Ganzon; (2) secure the required environmental permits, (3) refused to account for the amounts given to him by the complainants, and (4) return the remaining unutilized money given to him. The dispositive portion of the said Decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Joselito C. Alisuag from the practice of law for two (2) years effective upon his receipt of this Decision, **REVOKES** his notarial commission, if presently commissioned, and

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[2] *Id*. at 152-158.

[3] *Id*. at 127.

[4] *Supra* note 2.

PERPETUALLY DISQUALIFIES him from being commissioned as a notary public, **ORDERS** him to **RENDER** the necessary accounting of expenses incurred relative to the purchase of the property and **RETURN** to complainants Susan Basiyo and Andrew William Simmons the remaining unutilized amount within sixty (60) days from notice of this Decision, and **WARNS** him that a repetition of the same or similar offense, including the failure to render the necessary accounting and to return any remaining amount, shall be dealt with more severely.

Let copies of this decision be included in the personal record of Atty. Joselito C. Alisuag and entered in his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.[5]

On December 16, 2017, Atty. Alisuag moved for reconsideration.[6] He claimed that complainants never demanded an accounting of the amounts paid, thus, he did not make one. He also shifted the blame to the brokers as the ones who did the estimates.

In a Resolution[7] dated January 10, 2018, the Court resolved to deny with finality Atty. Alisuag's motion for reconsideration as no substantial arguments were presented to warrant the reversal of the questioned Decision.

Subsequently, in the subject Manifestation dated July 18, 2018, Simmons averred that despite Atty. Alisuag's receipt of the Decision dated September 26, 2017, and the Resolution dated January 10, 2018, which denied his motion for reconsideration, Atty. Alisuag has yet to comply with the Court's Order.

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[5] *Id*. at 157-158.

[6] *Id*. at 163-167.

[7] *Id*. at 170.

On October 9, 2018, the Court resolved to require Atty. Alisuag to comment on Simmons' Manifestation.[8]

On January 10, 2019, in his Second Manifestation, Simmons averred that ten (10) months has already lapsed from the time Atty. Alisuag received the Court's decision on March 5, 2018, however, the latter still refused to comply with the Court's directive to render the necessary accounting of expenses. Thus, Simmons prayed that the Court impose a more severe penalty upon Atty. Alisuag.

RULING

In the instant case, there is no question that Atty. Alisuag utterly disrespected the lawful orders by the Court by ignoring the Decision dated September 26, 2017, to render the necessary accounting of expenses incurred relative to the purchase of the property, and to return to complainants the remaining unutilized amount given to him. Upon verification with the records, Atty. Alisuag received the said Court's Decision on December 1, 2017 as per Registry Receipt No. 4879.[9] In fact, he was able to file his motion for reconsideration.[10] He also received Resolution dated January 10, 2018 which denied his motion for reconsideration on March 5, 2018, as per Registry Receipt No. 12232.[11] Moreover, it also appears that all the subject manifestations of Simmons which reiterated Atty. Alisuag's non-compliance with the Court's directives, were, likewise, deemed received by the latter, as shown by the registry receipts. In a Resolution dated October 9, 2018, the Court required Atty. Alisuag to file his Comment on Simmons' Manifestation, which he also received on January 4, 2019 (sic), as per Registry Receipt No. 117063.[12] However, as per Report for Agenda dated

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

[9] *Id*. at 150.

[10] *Supra* note 6.

[11] *Rollo*, p. 170.

[12] *Id*. at 205.

November 22, 2019, Atty. Alisuag has yet to comply with the Court's directives. Clearly, Atty. Alisuag's obstinate refusal to comply with several Court's directives show a blatant disregard of the system he has vowed to support.

By his cavalier conduct, as shown by his repeated failure to comply with the Court's directives, Atty. Alisuag exhibited lack of respect for the authority of the Court. A resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively.[13] His obstinate refusal to comply therewith not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of our lawful orders which is only too deserving of reproof.[14]

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. A lawyer who willfully disobeys a court order requiring him to do something may not only be cited and punished for contempt but may also be disciplined as an officer of the court.[15]

Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. This is especially so, as in the instant case, where respondent deliberately defied the lawful orders of the Court, thereby transgressing Canon 11 of the Code of Professional Responsibility which requires a lawyer to observe and maintain the respect due the courts.[16]

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.

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[13] *Ong v. Atty. Grijaldo*, 450 Phil. 113 (2003).

[14] *Id.*

[15] *Cuizon v. Atty. Macalino*, 477 Phil. 569, 575-576 (2004).

[16] See *Ong v. Grijaldo*, *supra* note 13.

For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[17]

Rule 138, Section 27 of the Rules of Court states:

> SEC. 27. *Attorneys removed or suspended by Supreme Court on what grounds.* – A member of the bar may be removed 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 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 so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

WHEREFORE, premises considered, Atty. Joselito C. Alisuag is hereby **SUSPENDED** from the practice of law for an additional period of one (1) year (from his original two [2] years suspension) and **WARNED** that a repetition of the same or similar offense will be dealt with more severely.

Atty. Joselito C. Alisuag is **DIRECTED** anew to **RENDER** the necessary accounting of expenses incurred relative to the purchase of the property and **RETURN** to complainants Susan Basiyo and Andrew William Simmons the remaining unutilized amount given to him, pursuant to the Decision dated September 26, 2017, within sixty (60) days from notice of this Decision.

Atty. Joselito C. Alisuag is **DIRECTED** to **INFORM** the Court of the date of his receipt of this Resolution, to determine the reckoning point when his suspension shall take effect.

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[17] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 574 (2014).

Let copies of this Resolution be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to **APPEND** a copy of this Resolution to the record of respondent as member of the Bar.

SO ORDERED.

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

Leonen, J., on leave.

FIRST DIVISION

[A.C. No. 12724. July 28, 2020]

SYLVIA R. RIVERA, *complainant, vs.* **ATTY. BAYANI P. DALANGIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; "UNLAWFUL," "DISHONEST," AND "DECEITFUL" CONDUCT, DEFINED. — An "unlawful" conduct refers to any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law. It does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straight forwardness. A "deceitful" conduct means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

2. ID.; ID.; RESPONDENT EXHIBITED DISHONESTY IN FEIGNING THAT HE DID NOT REPRESENT COMPLAINANT IN A CIVIL CASE; RESPONDENT SHOULD HAVE BEEN CIRCUMSPECT IN NOTARIZING A DOCUMENT KNOWING THAT A COMPULSORY HEIR WAS LEFT OUT; TAKEN TOGETHER, RESPONDENT FELL SHORT OF THE STANDARDS EXPECTED OF A LAWYER IN UPHOLDING THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION; PENALTY.— Atty. Dalangin exhibited dishonesty in feigning that he did not represent Sylvia. x x x Verily, there is no way Atty. Dalangin could forget that Sylvia is his client. The theory that he counseled only Nicasio and Emily can hardly be given credit. Likewise, Atty. Dalangin cannot deny that Sylvia is Teofilo's wife or that she has an interest in the disputed land. As such, Atty. Dalangin should have been circumspect in notarizing the deed of absolute sale over Teofilo's property knowing that a legal heir was left out. The transaction disregarded the rules on succession that the widow is a compulsory heir of the decedent. Corollarily, Atty. Dalangin should have refused the notarization of the deed. x x x Taken together, Atty. Dalangin acted short of the standards expected of a lawyer in upholding the integrity and dignity of the legal profession. Applying prevailing jurisprudence, we modify the penalty and impose upon Atty. Dalangin the immediate revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for a period of six months.

APPEARANCES OF COUNSEL

Romeo V. Viloria for complainant.

D E C I S I O N

LOPEZ, *J.*:

It is imperative that all lawyers live by the law.[1] Any lawyer who engages in deceitful conduct deserves administrative

[1] *De Guzman v. Atty. De Dios*, 403 Phil. 222, 226 (2001).

sanctions. One such instance is present in this complaint for disbarment against a lawyer who exhibited dishonesty in feigning that he did not represent a client resulting in violations of the rules on notarial practice.

ANTECEDENTS

Sylvia Rivera, the surviving spouse of the late Teofilo Rivera, and Nicasio Rivera, Teofilo's son from another woman, filed a civil case for annulment of documents, cancellation of title and damages against Felipe Pecache and the Register of Deeds of Nueva Ecija before the Regional Trial Court (RTC) docketed as Civil Case No. 1470. The controversy is over a land registered in Teofilo's name under Transfer Certificate of Title (TCT) No. NT-217758. However, the RTC dismissed the complaint for lack of merit. Immediately, Sylvia and Nicasio elevated the case to the Court of Appeals (CA) docketed as CA-G.R. CV No. 53694. The CA affirmed the RTC's findings. Aggrieved, Sylvia and Nicasio sought assistance from Atty. Bayani Dalangin who prepared a motion for reconsideration. In due course, the CA granted the motion and ruled in favor of Sylvia and Nicasio. Upon finality of the decision, Atty. Dalangin filed a motion for execution of judgment and then a motion to clarify writ of execution.

Later, Sylvia discovered that Nicasio and his wife Emily de Luna executed on June 14, 2009 an Affidavit of Self-Adjudication with Sale[2] involving Teofilo's property. The land was sold for ₱100,000.00 to Spouses James Martin and Mary Ann Wy, who were later issued TCT No. N-47751 in their names.[3] Aggrieved, Sylvia charged Nicasio and Emily of estafa through falsification.[4] Thereafter, Sylvia wrote to Spouses Wy and expressed her intention to recover the property by tendering payment of ₱100,000.00 and consigning the amount in court in case of refusal.[5]

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[2] *Rollo,* Vol. 1, pp. 21-22.

[3] *Id.* at 2.

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

[5] *Id.* at 36-37.

Meantime, Sylvia filed a complaint for the annulment of the affidavit of self-adjudication with sale against Spouses Wy, Nicasio and Emily and the cancellation of TCT No. N-47751 before the RTC. Likewise, Sylvia consigned the ₱100,000.00 in court.[6] In their answer, the Spouses Wy attached a Deed of Absolute Sale[7] dated May 28, 2009 with a consideration of ₱4,000,000.00 and notarized by Atty. Dalangin. However, Sylvia claimed that the deed was antedated to prevent the consignment. Moreover, Atty. Dalangin was aware that Sylvia has an interest over the property of her late husband.[8]

Thus, Sylvia filed a Complaint[9] for disbarment against Atty. Dalangin on grounds of deceit and dishonesty before the Integrated Bar of the Philippines (IBP) docketed as Commission on Bar Discipline (CBD) Case No. 11-3237. As supporting evidence, Sylvia submitted a certification from the Office of the Clerk of Court that Atty. Dalangin did not submit his notarial reports for the period February 6, 2008 to December 31, 2009.[10]

On the other hand, Atty. Dalangin denied that Sylvia was his client and argued that it was Nicasio who hired his services.[11] Also, Atty. Dalangin explained that the disputed property was previously registered under TCT No. NT-217758 solely in the name of Teofilo Rivera. He has no knowledge that Sylvia is the lawful wife of the late Teofilo. Further, Atty. Dalangin maintained that the deed of absolute sale in favor of Spouses Wy was not ante-dated. As proof, he presented a page from his notarial register showing that the deed was executed on May 28, 2009. Finally, Atty. Dalangin countered that he submitted on October 11, 2011 his notarial reports for the years 2008 and 2009.[12]

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[6] *Id.* at 3 and 29-33.

[7] *Id.* at 38-40.

[8] *Id.* at 4.

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

[10] *Id.* at 45.

[11] *Id.* at 47-52.

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

On July 20, 2016, the IBP CBD reported that Atty. Dalangin violated the Code of Professional Responsibility and the Rules on Notarial Practice. It found that Atty. Dalangin previously acted as Sylvia's counsel and that the notarization of the deed of absolute sale was anomalous. Accordingly, it recommended the suspension of Atty. Dalangin in the practice of law for two years, immediate revocation of his notarial commission, and disqualification from being appointed as notary for two years[13] *viz.*:

> Respondent became a counsel for the plaintiffs-appellants in Civil Case No. 1470 (CA-G.R. CV No. 53694) entitled Sylvia R. Rivera and Nicasio Rivera vs. Felipe Pecache. Although he denied lawyering for plaintiffs-appellants before the CA, his client, Emily de Luna, wife of Nicasio Rivera in her [*Sinumpaang Salaysay*] dated December 19, 2011 enumerated in detail how respondent became their lawyer, she admitted to have lost their case before the RTC and the CA so in their desire to appeal the Decision to the Supreme Court, they asked the help of respondent who was then working at the Public Attorney's Office (PAO) and he helped them prepare their Motion for Reconsideration before the CA without consideration although they told him that ½ of the property will go to him. This resulted to an Amended Decision favorable to them. They then asked him to file a motion for execution on behalf of the plaintiffs at the RTC and at that time, he was no longer connected with the PAO.
>
> Exhibit D which is the Motion for Execution signed and filed by respondent stated that he is appearing as counsel for the "plaintiffs" without distinguishing between plaintiffs Narciso and Sylvia. This is evidence that respondent also acted as counsel for complainant, and he is estopped from claiming otherwise. Exhibit E which is a Motion to Clarify Writ of Execution was likewise signed and filed by respondent as counsel for the "plaintiffs." It is difficult to believe that respondent had not at all inquired into the details of the case and the background of the case before filing pleadings on behalf of them. Any reasonably prudent attorney would inquire into the facts of the case before accepting a request to file any pleading. The said

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[13] *Rollo*, Vol. 2, pp. 474-485; penned by IBP Investigating Commissioner Dominica L. Dumangeng-Rosario.

motions are substantial evidence that there was an Attorney-Client relationship between complainant and respondent.

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On the issue of the execution of Deed of Sale dated May 28, 2009, it was admitted that respondent prepared and notarized the said Deed for Four Million Pesos (PHP4,000,000.00) in favor of Spouses Wy, signed solely by vendor Narciso it being his inheritance. This by itself is anomalous, dishonest and done in bad faith intended to prejudice the rights of the complainant. First, in the Civil Case where he became counsel for plaintiffs, it was alleged therein that the heirs of Teofilo are the surviving spouse, herein complainant and Narciso, his son by another woman. Having knowledge of this fact, he should not have proceeded with the said transaction with only one of the plaintiffs executing the sale without the participation of his other client, to her great loss. Art. 998 of the Civil Code provides that if a widow or widower survives with illegitimate children, such widow or widower shall be entitled to one-half of the inheritance, and the illegitimate children or descendants, whether legitimate or illegitimate, to the other half. Second, there has to be a settlement of estate and partition of the properties of the deceased so that the proper estate tax be paid first before the heirs to whom the property is adjudicated could legally sell their respective portions. Sad to say that these were not done by the respondent who, as counsel should have properly advised his client.

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In light of the foregoing facts and legal basis, respondent is found to have violated his Lawyer's Oath, the x x x Canons of Professional Responsibility and failed to faithfully comply with the rules on notarial practice, thus it is recommended that he be SUSPENDED from the practice of law for a two-year period. It is further recommended that his present notarial commission, if any, be REVOKED, and that he be DISQUALIFIED from reappointment as a notary public for a period of two (2) years. He should also be WARNED that any similar act or infraction in the future shall be a cause for Disbarment considering his previous disciplinary cases.

RESPECTFULLY SUBMITTED.[14]

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[14] *Id.* at 477-485.

The IBP Board of Governors adopted the Commission's findings.[15] Atty. Dalangin moved for a reconsideration.[16] On October 4, 2018, the IBP partly granted the motion and removed the penalty of suspension, thus:

RESOLVED to PARTIALLY GRANT the Respondent's Motion for Reconsideration by reducing the recommended penalty to Immediate revocation of the notarial commission, if subsisting, and, Disqualification from being commissioned as a notary public for a period of two (2) years.[17]

RULING

The Court adopts the IBP's findings with modification as to the penalty.

The Code of Professional Responsibility clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. Apropos are Canons 1 and 7, to wit:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

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[15] *Id.* at 472.

[16] *Id.* at 486-495.

[17] *Id.* at 517.

An "unlawful" conduct refers to any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law. It does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straight forwardness. A "deceitful" conduct means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[18]

Here, Atty. Dalangin exhibited dishonesty in feigning that he did not represent Sylvia. Foremost the caption in Civil Case No. 1470 and CA-G.R. CV No. 53694 is entitled "*Sylvia Reyes Rivera & Nicasio Rivera v. Felipe Pecache and the Register of Deeds of Nueva Ecija*." Atty. Dalangin even moved for execution[19] of judgment with preliminary words "*Plaintiffs, unto this Honorable Court, most respectfully states*."[20] The motion to clarify writ of execution that Atty. Dalangin filed was similarly worded.[21] Verily, there is no way Atty. Dalangin could forget that Sylvia is his client. The theory that he counseled only Nicasio and Emily can hardly be given credit.

Likewise, Atty. Dalangin cannot deny that Sylvia is Teofilo's wife or that she has an interest in the disputed land. As such, Atty. Dalangin should have been circumspect in notarizing the deed of absolute sale over Teofilo's property knowing that a legal heir was left out. The transaction disregarded the rules on succession that the widow is a compulsory heir of the decedent.[22] Corollarily, Atty. Dalangin should have refused the

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[18] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 556 (2014).

[19] *Rollo*, Vol. 1, pp. 110-112.

[20] *Id.* at 110.

[21] *Id.* at 115-117.

[22] CIVIL CODE, Art. 887 (3).

notarization of the deed. The 2004 Rules on Notarial Practice[23] provides that:

RULE IV

Powers and Limitations of Notaries Public

x x x x x x x x x

SECTION 4. *Refusal to Notarize*. — A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:

(a) the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral;

x x x x x x x x x

Moreover, we find that Atty. Dalangin did not timely submit his notarial reports. Admittedly, he submitted the certified copies of his notarial register for 2008 and 2009 only on October 11, 2011 or 43 months late from the date of his commission as notary public on February 6, 2008. The Rules on Notarial Practice is explicit that a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required.[24]

However, there is no proof that Atty. Dalangin antedated the deed of absolute sale. Suffice it to say that a notarial register enjoys the presumption of regularity absent contrary evidence.[25] In this case, he presented a page from the notarial register showing that the deed was executed on May 28, 2009 or before the affidavit of self-adjudication dated June 14, 2009. Quite

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[23] A.M. No. 02-8-13-SC promulgated on July 6, 2004.

[24] *Id.*, Rule VI, Section 2 (h).

[25] See *Bote v. Judge Eduardo*, 491 Phil. 198, 202-203 (2005).

the contrary, Sylvia failed to substantiate such accusation. On this point, we reiterate that the quantum of proof in administrative complaints against lawyers is clearly preponderant evidence and the burden rests upon the complainant.[26] The bare allegations of misconduct are insufficient to support a case for disbarment.

Lastly, it bears emphasis that the only issue in disciplinary proceedings against lawyers is their fitness to continue in the practice of law. The findings have no material bearing on other judicial action which the parties may choose to file against each other. Furthermore, these proceedings do not involve a trial but only an investigation into the conduct of lawyers.[27] Hence, this Court cannot delve on the question whether the deed of absolute sale deprived Sylvia of her inheritance which must be threshed out in a proper civil action.

Taken together, Atty. Dalangin acted short of the standards expected of a lawyer in upholding the integrity and dignity of the legal profession. Applying prevailing jurisprudence, we modify the penalty and impose upon Atty. Dalangin the immediate revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for a period of six months.[28]

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[26] *De Zuzuarregui, Jr. v. Atty. Soguilon*, 589 Phil. 64, 71 (2008). See also *Reyes v. Atty. Nieva*, 794 Phil. 360 (2016).

[27] *Alpha Insurance and Surety Co., Inc. v. Castañeda*, A.C. No. 12428, March 18, 2019, citing *Heenan v. Atty. Espejo*, 722 Phil. 528 (2013).

[28] In *Garcia v. Atty. Manuel*, 443 Phil. 479 (2003), the Court found respondent guilty of dishonesty and abused the confidence of his client for failing to file the ejectment suit despite asking for and receiving from the complainant the money intended as filing fees. The Court imposed the penalty of suspension from the practice of law for a period of six months. Also, in *Aquino v. Atty. Barcelona*, 431 Phil. 59 (2002), Atty. Barcelona deliberately misrepresented to his client that he was able to successfully facilitate the restructuring of his client's loan with a bank through his "connection." On the basis of said false pretenses, he collected ₱60,000.00 from his client. Atty. Barcelona was thus charged with misconduct and for which he was suspended by the Court for a period of six months.

We remind all lawyers that membership in the legal profession is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.[29] To say that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be over emphasized. Considering that, of all classes and professions, lawyers are most sacredly bound to uphold the law, it is imperative that they live by the law.[30]

FOR THESE REASONS, Atty. Bayani P. Dalangin is found **GUILTY** of violation of Canons 1 and 7 of the Code of Professional Responsibility and Section 4, Rule IV and Section 2 (h), Rule VI of the 2004 Rules on Notarial Practice. Accordingly, Atty. Dalangin's notarial commission is **IMMEDIATELY REVOKED**. He is also **DISQUALIFIED** from being commissioned as a notary public for a period of two years and **SUSPENDED** from the practice of law for a period of six months. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

The suspension in the practice of law, the prohibition from being commissioned as notary public, and the revocation of his notarial commission, if any, shall take effect immediately upon respondent's receipt of this decision. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

SO ORDERED.

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

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[29] *Rivera v. Atty. Corral*, 433 Phil. 331, 342 (2002).

[30] *Resurreccion v. Sayson*, 360 Phil. 313, 315 (1998).

FIRST DIVISION

[A.C. No. 12734. July 28, 2020]

BUKIDNON COOPERATIVE BANK, represented by General Manager WILHELMIA P. FERRER, *complainant, vs.* **ATTY. JOSE VICENTE M. ARNADO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT'S DESISTANCE WILL NOT AUTOMATICALLY RESULT IN THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT. — The issue in disciplinary proceedings against lawyers is their fitness to continue in the practice of law aimed at protecting the court and the public against reprehensible practices. As such, the dismissal of the administrative case cannot depend on the unilateral decision of the complainant who is considered merely as a witness especially if the records could establish the liability of the erring lawyer. Hence, Bukidnon Cooperative's desistance will not result in the automatic dismissal of the disbarment complaint. Section 5, Rule 139-B of the Rules of Court is explicit that "*[n]o investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.*"

2. ID.; ID.; BY FAILING TO EXAMINE DOCUMENTARY EVIDENCE, WHICH TURNED OUT TO BE ALTERED, RESPONDENT DID NOT OBSERVE GREATER CARE TO PREVENT THE COURT FROM BEING MISLED; WHILE PRIOR KNOWLEDGE OF THE ALTERATION AND THAT HE WILLFULLY SUBMITTED THE FALSE EVIDENCE WERE NOT ESTABLISHED, RESPONDENT'S CARELESSNESS DOES NOT FREE HIM FROM LIABILITY. — [I]t was clearly established that the electronic tickets premarked as exhibits were altered. The representative of VIA Philippines attested to this fact and Mr. Encabo failed to substantiate that any error occurred in the system. Atty. Arnado cannot hide on the simple excuse that

he has no expertise to determine the authenticity of these documents especially that the introduction of such evidence can potentially mislead the trial court. Also, Atty. Arnado cannot rely solely on his client's narrations without inquiry when the circumstances call him to be more meticulous. Indeed, lawyers must diligently familiarize themselves as to the nature of the cases they would represent. This flows from the duty to advise clients of their "*candid and honest opinion on the merits and probable results*" of the litigation and to ensure that their representation will remain within the bounds of law. Yet, Atty. Arnado failed to examine the electronic tickets and notice that some of them have no booking reference number. It is of no moment that Mr. Encabo printed the tickets and handed them for pre-marking. The fact remains that Atty. Arnado did not observe greater care to prevent the Court from being misled. His indifference further negates any claim of good faith. x x x [I]t was not established that Atty. Arnado had prior knowledge of the alteration and that he willfully submitted for pre-marking the false evidence. Quite the contrary, the judicial affidavit of Mr. Encabo clarified that Atty. Arnado had no hand in the preparation and printing of the documents. Yet, his carelessness does not free him from liability.

APPEARANCES OF COUNSEL

Arnado Arnado & Associates for respondent.

D E C I S I O N

LOPEZ, *J.*:

Every member of the bar must be on his guard, lest through oversight or inadvertence, the way he conducts his case or the evidence he presents could conceivably result in a failure of justice.[1] Here, we determine the administrative liability of a lawyer who submitted documentary evidence for pre-marking which turned out to be altered.

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[1] *Berenguer v. Carranza*, 136 Phil. 75, 81 (1969).

ANTECEDENTS

On November 15, 2013, Bukidnon Cooperative Bank (Bukidnon Cooperative) engaged the services of Asiatique International Travel & Tours Services Co., Ltd. to reserve hotel accommodations and to purchase airplane tickets bound for Singapore from November 27 to 30, 2013 for its board of directors and employees. Noel Encabo (Mr. Encabo), the owner of Asiatique International, received ₱244,640.00 from Bukidnon Cooperative as advance payment.[2] However, a day before the departure, Mr. Encabo advised Bukidnon Cooperative to postpone its travel abroad because the accommodations were not yet confirmed.[3] Accordingly, Bukidnon Cooperative cancelled the trip and asked for a refund but Mr. Encabo did not heed the demand.

Aggrieved, Bukidnon Cooperative filed an action for sum of money against Mr. Encabo before the Municipal Trial Court in Cities docketed as Civil Case No. 2241. On the other hand, Mr. Encabo, through his counsel Atty. Jose Vicente Arnado (Atty. Arnado), blamed Bukidnon Cooperative for cancelling the trip after the airplane tickets were already issued. He explained that the tickets were non-refundable and any reimbursement was contingent on the airline company's approval. Moreover, any refund was processed using the VIA Philippines system which could take some time.

At the pre-trial conference, Atty. Arnado asked another lawyer to appear on his behalf and to pre-mark four electronic tickets which Cebu Pacific Airline issued on November 18, 2013 for a flight on November 27, 2013.[4] The four tickets bore the "VIA" logo but two of them have no booking reference number. The tickets were then marked as Exhibits 8, 9, 10 and 11.[5] Bukidnon

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[2] *Rollo,* p. 16.

[3] *Id.* at 20.

[4] *Id.* at 168-171.

[5] *Id.* at 43.

Cooperative learned that Mr. Encabo's Pre-Trial Brief[6] did not mention any electronic tickets as documentary evidence. Thus, Bukidnon Cooperative moved for the issuance of a subpoena against VIA Philippines to verify the genuineness of the tickets. During trial, VIA Philippines' representative testified that the four electronic tickets marked as Exhibits 8, 9, 10 and 11 were altered. The two tickets without booking reference were not genuine while the tickets with reference number correspond to different flight schedule, airline company and set of passengers. As supporting evidence, VIA Philippines submitted the correct electronic printouts of tickets.[7]

With these, Bukidnon Cooperative filed a disbarment complaint against Atty. Arnado before the Integrated Bar of the Philippines (IBP).[8] Bukidnon Cooperative alleged that Atty. Arnado failed to examine the authenticity of the evidence before presenting them in court and tolerated the commission of fraud in pre-marking altered documents. In his answer, Atty. Arnado claimed good faith because there was no indication that the electronic tickets were not genuine and he has no expertise to determine their authenticity. Further, Atty. Arnado presented Mr. Encabo's judicial affidavit clarifying that he did not participate in the printing of the tickets.[9]

Later, Bukidnon Cooperative withdrew the administrative case against Atty. Arnado.[10] On November 10, 2017, the IBP Commission on Bar Discipline recommended the dismissal of the complaint and held that Atty. Arnado has no knowledge on

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

[7] *Id.* at 71-73. The ticket was issued by Tigerair Philippines with a scheduled flight on May 31, 2013.

[8] *Id.* at 2-4.

[9] *Id.* at 181-182.

[10] *Id.* at 96, 99-100, 125. The bank resolved to withdraw the following cases: (1) Criminal Case No. 2500-14b2503-14 against Mr. Encabo and Atty. Arnado; (2) Civil Case No. 2241 against the travel agency and Mr. Encabo; and (3) CBD Case No. 15-4733 against Atty. Arnado.

the alteration of evidence.[11] The IBP Board of Governors affirmed the Commission's findings and recommendation.[12]

RULING

The issue in disciplinary proceedings against lawyers is their fitness to continue in the practice of law aimed at protecting the court and the public against reprehensible practices. As such, the dismissal of the administrative case cannot depend on the unilateral decision of the complainant who is considered merely as a witness especially if the records could establish the liability of the erring lawyer.[13] Hence, Bukidnon Cooperative's desistance will not result in the automatic dismissal of the disbarment complaint. Section 5, Rule 139-B of the Rules of Court is explicit that "*[n]o investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.*"[14]

Notably, the lawyer's oath mandates members of the bar to "*do no falsehood, nor consent to the doing of any court.*" Also, Canon 10 of the Code of Professional Responsibility provides that "*[a] lawyer owes candor, fairness and good faith to the Court*." Specifically, Rule 10.01 states that "*[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 an artifice.*" Here, Atty. Arnado did not measure up to the exacting standards of candor and honesty towards the court.

Foremost, it was clearly established that the electronic tickets pre-marked as exhibits were altered. The representative of VIA Philippines attested to this fact and Mr. Encabo failed to substantiate that any error occurred in the system. Atty. Arnado

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[11] *Id.* at 187-191; penned by Commissioner Oliver A. Cachapero.

[12] *Id.* at 185.

[13] See *Rangwani v. Atty. Diño*, 486 Phil. 8, 18 (2004).

[14] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 419 (2013).

cannot hide on the simple excuse that he has no expertise to determine the authenticity of these documents especially that the introduction of such evidence can potentially mislead the trial court. Also, Atty. Arnado cannot rely solely on his client's narrations without inquiry when the circumstances call him to be more meticulous. Indeed, lawyers must diligently familiarize themselves as to the nature of the cases they would represent. This flows from the duty to advise clients of their "*candid and honest opinion on the merits and probable results*" of the litigation[15] and to ensure that their representation will remain within the bounds of law.[16] Yet, Atty. Arnado failed to examine the electronic tickets and notice that some of them have no booking reference number. It is of no moment that Mr. Encabo printed the tickets and handed them for pre-marking. The fact remains that Atty. Arnado did not observe greater care to prevent the Court from being misled.[17] His indifference further negates any claim of good faith.

In several instances, we penalized lawyers for dishonesty. In *Porac Trucking, Inc. v. Court of Appeals (15th Div.)*[18] and *Ordonio v. Atty. Eduarte*,[19] the erring lawyers were held guilty of committing falsehood and were suspended from the practice of law for a period of six months. In *Benguet Electric Cooperative v. Flores*[20] and *Perea v. Atty. Almadro*,[21] a similar malfeasance was dealt with more severely and the respondents were suspended for one year. In this case, however, it was not established that Atty. Arnado had prior knowledge of the alteration and that he willfully submitted for pre-marking the false evidence.

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[15] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15, Rule 15.05.

[16] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 19.

[17] See *supra* note 1.

[18] 279 Phil. 736 (1991).

[19] 283 Phil. 1064 (1992).

[20] 350 Phil. 889 (1998).

[21] 447 Phil. 434 (2003).

Quite the contrary, the judicial affidavit of Mr. Encabo clarified that Atty. Arnado had no hand in the preparation and printing of the documents. Yet, his carelessness does not free him from liability. In *Berenguer v. Carranza*,[22] we reprimanded a lawyer whose inattention led to the introduction of a false affidavit, *viz.*:

> **Even if there be no intent to deceive, therefore, a lawyer whose conduct, as in this case, betrays inattention or carelessness should not be allowed to free himself from a charge thereafter instituted against him by the mere plea that his conduct was not willful and that he has not consented to the doing of the falsity.**
>
> A lawyer's oath is one impressed with the utmost seriousness; it must not be taken lightly. Every lawyer must do his best to live up to it. There would be a failure of justice if courts cannot rely on the submission as well as the representations made by lawyers, insofar as the presentation of evidence, whether oral or documentary, is concerned. **If, as unfortunately happened in this case, even without any intent on the part of a member of the bar to mislead the court, such deplorable event did occur, he must not be allowed to escape the responsibility that justly attaches to a conduct far from impeccable.**[23] (Emphases supplied.)

Time and time again, lawyers have been admonished to remember that they are officers of the court, and that while they owe their clients the duty of complete fidelity and the utmost diligence, they are likewise held to strict accountability insofar as candor and honesty towards the court is concerned.

FOR THESE REASONS, Atty. Jose Vicente M. Arnado is **REPRIMANDED** and **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

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

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[22] 136 Phil. 75 (1969).

[23] *Supra* note 1.

EN BANC

[A.M. No. RTJ-17-2503. July 28, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. FERNANDO F. FLOR, JR., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; JUDGES OUGHT TO SIMPLY APPLY BASIC, SIMPLE AND WELL-KNOWN RULES AND JURISPRUDENCE, AS ANYTHING LESS IS IGNORANCE OF THE LAW; DISREGARD OF THE SETTLED PROCEDURES IN THE GRANT OF BAIL REFLECTS GROSS IGNORANCE OF THE LAW. — Judges should maintain competence and diligence which are prerequisites to the due performance of judicial office. Their role in the administration of justice requires a continuous study of the law and jurisprudence. A contrary rule will not only lessen the faith of the people in the courts but will also defeat the fundamental role of the judiciary to render justice and promote the rule of law. Thus, unfamiliarity with the laws and procedures is a sign of incompetence which betrays the confidence of the public in the courts. Indeed, judges ought to simply apply basic, simple and well-known rules and jurisprudence. Anything less is ignorance of the law. In that light, we find that Judge Flor, Jr.'s disregard of the settled procedures in granting bail reflects gross ignorance of the law.

2. ID.; ID.; ID.; DUTIES OF A JUDGE IN RESOLVING BAIL APPLICATIONS. — [I]t is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with *reclusion perpetua* or life imprisonment. As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. Yet, the determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence. A hearing is likewise required for the trial court to consider the factors in fixing the

amount of bail. Notably, this Court outlined the duties of a judge in resolving bail applications, to wit: 1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation; 2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; 3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution; 4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond x x x; otherwise petition should be denied.

3. ID.; ID.; ID.; A JUDGE WHO GRANTS BAIL APPLICATIONS WITHOUT PRIOR HEARING AND FAILS TO STATE THE FACTUAL AND LEGAL REASONS FOR THE GRANT OF BAIL IN HIS ORDERS OR RESOLUTIONS, COMMITS GROSS IGNORANCE OF THE LAW AND PROCEDURE, WHICH IS CLASSIFIED AS A SERIOUS CHARGE; PROPER IMPOSABLE PENALTY. — Judge Flor, Jr. granted bail in Criminal Case No. 7826 without a hearing because the accused is a minor and a mental retardate. However, the *2009 Revised Rules on Children in Conflict with the Law* is explicit that a child charged with a capital offense shall not be entitled to bail when evidence of guilt is strong. x x x [T]he determination of the requisite evidence is a matter of judicial discretion. Consequently, absent a prior hearing, the order granting bail can hardly be a product of Judge Flor, Jr.'s sound discretion. Also, Judge Flor, Jr. exhibited cavalier indifference to the rules when he allowed in Criminal Case No. 7091 the motion to reduce bail without a hearing. This is contrary to the clear mandate of the *Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial* that a motion to reduce bail shall enjoy priority in the hearing of cases. Lastly, Judge Flor, Jr. conceded that the orders/ resolutions granting bail in Criminal Case Nos. 6964, 7060, 7348-49 and 7409 did not contain a summary of the prosecution evidence. In numerous cases, we held that the order granting or refusing bail must contain a summary of the evidence which is an aspect of judicial due process for both the prosecution and the defense. x x x. Taken together, Judge Flor, Jr. committed

gross ignorance of the law and procedure in granting bail applications without a prior hearing and in not stating the factual and legal reasons in his Orders or Resolutions. This administrative offense is classified as a serious charge and is punishable by any of the following penalties: (1) fine of more than ₱20,000.00 but not exceeding ₱40,000.00; (2) suspension from office for more than three but not exceeding six months, without salary and other benefits; (3) or dismissal from service, with forfeiture of all benefits except accrued leave credits.

4. **ID.; ID.; ID.; PENALTY OF DISMISSAL FROM THE SERVICE, IMPOSED UPON THE RESPONDENT JUDGE FOR MULTIPLE COUNTS OF GROSS IGNORANCE OF THE LAW; THE COURT COULD NO LONGER AFFORD TO BE LENIENT TO A JUDGE WHO REPEATEDLY COMMITS INFRACTIONS AND REFUSES TO CORRECT HIS WAYS DESPITE PREVIOUS WARNING, LEST IT WOULD GIVE THE PUBLIC THE IMPRESSION THAT INCOMPETENCE AND REPEATED OFFENDERS ARE BEING COUNTENANCED IN THE JUDICIARY. —** The multiple counts of gross ignorance of the law in this case and the previous misconduct in A.M. No. RTJ-06-1995 raised a serious question on Judge Flor, Jr.'s competence and integrity in the performance of his functions as a magistrate. Indeed, the several occasions that Judge Flor, Jr. disregarded the rules in granting bail applications could have been the subject of different administrative complaints which deserve separate penalties for each violation. As such, the Court could no longer afford to be lenient this time, lest it would give the public the impression that incompetence and repeated offenders are being countenanced in the judiciary. Considering Judge Flor, Jr.'s repeated infractions and refusal to correct his ways despite previous warning, the Court is constrained to impose the supreme penalty of dismissal.

5. **ID.; ID.; ID.; WHEN A JUDGE HIMSELF BECOMES THE TRANSGRESSOR OF ANY LAW WHICH HE IS SWORN TO APPLY, HE PLACES HIS OFFICE IN DISREPUTE, ENCOURAGES DISRESPECT FOR THE LAW AND IMPAIRS PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY ITSELF; JUDGES ARE EXPECTED TO EXHIBIT MORE THAN JUST A CURSORY ACQUAINTANCE WITH STATUTES AND PROCEDURAL RULES AND TO APPLY THEM PROPERLY IN ALL GOOD**

FAITH. — [W]e remind that when a judge himself becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself, thus: To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence. **Hence, they are expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith**. They are likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith. Further, judges should administer their office with due regard to the integrity of the system of law itself, remembering that they are not depositories of arbitrary power, but are judges under the sanction of law. **It must be emphasized that this Court has formulated and promulgated rules of procedure to ensure the speedy and efficient administration of justice. Wanton failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law**.

D E C I S I O N

PER CURIAM:

If ordinary people are presumed to know the law, judges are duty-bound to actually know and understand it.[1] Here, the judge's patent disregard of elementary rules in the grant of bail applications constitutes gross ignorance of the law which merits administrative sanction.

ANTECEDENTS

Atty. Jona Gay Pua-Mendoza, Clerk of Court of the Regional Trial Court Branch 28 of Bayombong, Nueva Vizcaya, wrote a letter[2] to the Office of Deputy Court Administrator stating

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[1] *Ogka Benito v. Judge Balindong*, 599 Phil. 196, 204 (2009).

[2] *Rollo*, pp. 8-9.

that Judge Fernando Flor, Jr. granted bail in criminal cases involving illegal sale of dangerous drugs, which is a non-bailable offense. As evidence, Atty. Pua-Mendoza submitted the corresponding orders/resolutions and transcript of stenographic notes. Specifically, in Criminal Case Nos. 6964,[3] 7060,[4] 7348-49[5] and 7409,[6] the orders/resolutions granting bail did not contain a summary of the prosecution evidence. In Criminal Case No. 6998,[7] there was no hearing on the motion to reduce bail. In Criminal Case No. 7091,[8] there was no summary of the prosecution evidence and a hearing on the motion to reduce bail. Lastly, in Criminal Case No. 7826,[9] the accused's motion for reconsideration to allow bail was granted without a hearing.

Judge Flor, Jr. admitted that he issued the orders/resolutions without a summary of the prosecution evidence. Moreover, Judge Flor, Jr. explained that he granted bail in Criminal Case No. 7826 without a hearing because "*the accused, though 17 years old, has a mental capacity of a 10-year-old (Grade 5) boy.*"[10] Lastly, Judge Flor, Jr. pleaded compassion in view of his application for early retirement.[11]

On May 8, 2017, the Office of the Court Administrator found Judge Flor, Jr. guilty of gross ignorance of the law and recommended a fine of ₱50,000.00.[12] The OCA also noted that

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[3] *Id.* at 11.

[4] *Id.* at 17.

[5] *Id.* at 655-712.

[6] *Id.* at 30.

[7] *Id.* at 16.

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

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

[10] *Id.* at 857.

[11] *Id.* at 835-857.

[12] *Id.* at 944.

Judge Flor, Jr. had been previously fined with ₱20,000.00 when he issued a warrant of arrest knowing that the private complainant is his wife.[13] The OCA's factual findings are as follow:

> I. Criminal Case No. 6998, People vs. Khris [*sic*] Directo, for Violation of Article II, Section 5, R.A. 9165
>
> On May 15, 2013, accused filed an Urgent Motion for Bail. Pre-trial conference was set on May 23, 2013, on motion of the public prosecutor and the defense counsel. On June 28, 2013, the pre-trial conference was terminated and a Pre-Trial Order was issued on the same date. On September 18, 2013, the prosecution presented the testimonies of SPO2 Diosdado Pascual and PSI James Bad-e. x x x The court issued a Resolution on December 23, 2013, allowing the accused to post bail in the amount of Two Hundred Thousand (₱200,000.00). The accused, on the same day, filed a Motion for Reduction of Bail which was granted and the bail was reduced to ₱100,000.00.
>
> II. People vs. Freddie Aquino y Bayaua, Criminal Case No. 7091, for Violation of Article II, Section 5, R.A. 9165
>
> After the termination of the pre-trial conference, accused on February 18, 2014, filed a Petition for Bail. x x x [After presentation of some of the prosecution witnesses], the court granted the motion to post bail in Criminal Case No. 7091 on December 12, 2014. x x x [The accused' motion to reduce bail] was granted on January 28, 2015. On January 29, 2015, accused filed a Supplemental Motion for Reduction of Bail praying that the total reduced bail be further reduced to ₱170,000.00. The public prosecutor wrote a marginal note submitting the motion to the sound discretion of the court. Thus, on February 3, 2015, the court granted the motion and the bail was accordingly reduced to ₱170,000.00.
>
> III. People vs. Edgar Allan Cadano and Johfen [*sic*] Garingan y Sandoval, Criminal Case No. 7826, for Violation of Section 5 of R.A. No. 9165
>
> The case involves a child in conflict with the law (CICL). Accused Johnfel [*sic*] Garingan was 17 years old and 6 months old when he

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[13] *Tenenan v. Judge Flor, Jr.*, 560 Phil. 296 (2007).

was arrested. x x x The case was originally raffled to Branch 29, a Family Court, but the presiding judge inhibited. x x x Records reveal that there is a pending Motion for Reconsideration filed by counsel to allow him to post bail which the court granted on February 6, 2015.

x x x x x x x x x

Going now to the crux of the controversy, we find Judge Flor liable for gross ignorance of the law for his failure to conduct hearings on the Motion to Reduce Bail in Criminal Case Nos. 6998 and 7091 and on the Motion for Reconsideration of the Order denying bail in Criminal Case No. 7826.

x x x x x x x x x

In both cases [Criminal Case Nos. 6998 and 7091], Judge Flor complied with the requirement of hearing under Section 7, Rule 114 of the Rules of Court. However, when both accused moved for the reduction of the bail, he granted the motions filed by the accused without conducting a hearing or requiring the public prosecutor to comment on the motion in Criminal Case No. 6998.

x x x x x x x x x

Judge Flor in haste granted the motion for reduction of bail in Criminal Case No. 6998 without giving the prosecution the chance to be heard. In Criminal Case No. 7091, although the public prosecutor had a marginal note on the motion submitting the motion to the sound discretion of the court, Judge Flor should have conducted a hearing to ascertain if the public prosecutor was not contesting the reduced amount of bail x x x.

It is also noted that a cursory reading of the resolutions issued in Criminal Case Nos. 6964, 7060, 7348[-49], 7409 and 7091 shows that Judge Flor failed to make a brief summary of evidence adduced by the prosecution, which is necessary to determine whether he has adequate basis for granting bail. This was admitted by Judge Flor in his Comment.

x x x x x x x x x

Also, the procedural necessity of a hearing relative to the grant of bail cannot be dispensed with especially in this case where the accused is charged with a capital offense. Utmost diligence is required of trial judges in granting bail especially in cases where bail is not

a matter of right. Certain procedure must be followed in order that the accused would be present during trial. As a responsible judge, Judge Flor must not be swayed by the mere representations of the parties; instead he should look into the real and hard facts of the case.

x x x x x x x x x

x x x It is respectfully recommended for the consideration of the Honorable Court that:

x x x x x x x x x

(3) respondent Judge Flor be found **GUILTY** of **CROSS IGNORANCE OF THE LAW** and, accordingly, be **FINED** in the amount of Fifty Thousand Pesos (₱50,000.00) to be paid to the Court within thirty (30) days from notice.[14] (Emphases supplied; citations omitted.)

RULING

The Court adopts the OCA's findings with modification as to the penalty.

Judges should maintain competence and diligence which are prerequisites to the due performance of judicial office.[15] Their role in the administration of justice requires a continuous study of the law and jurisprudence.[16] A contrary rule will not only lessen the faith of the people in the courts but will also defeat the fundamental role of the judiciary to render justice and promote the rule of law.[17] Thus, unfamiliarity with the laws and procedures is a sign of incompetence which betrays the confidence of the public in the courts.[18] Indeed, judges ought to simply apply basic, simple and well-known rules and jurisprudence. Anything less

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[14] *Rollo*, pp. 937-944.

[15] New Code of Judicial Conduct for the Philippine Judiciary, Canon 6. A.M. No. 03-05-01-SC, promulgated on April 27, 2004 and effective on June 1, 2004.

[16] *Taborite v. Judge Sollesta*, 456 Phil. 51, 57-58 (2003).

[17] *Ogka Benito v. Judge Balindong*, *supra* note 1.

[18] *Department of Justice v. Judge Mislang*, 791 Phil. 219, 228 (2016).

is ignorance of the law.[19] In that light, we find that Judge Flor, Jr.'s disregard of the settled procedures in granting bail reflects gross ignorance of the law.

Foremost, it is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with *reclusion perpetua* or life imprisonment.[20] As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. Yet, the determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence.[21] A hearing is likewise required for the trial court to consider the factors in fixing the amount of bail.[22] Notably, this Court outlined the duties of a judge in resolving bail applications,[23] to wit:

1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;[24]

2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;[25]

3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;

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[19] *Philippine Investment Two (SPV-AMC), Inc. v. Mendoza*, A. M. No. RTJ-18-2538, November 21, 2018, 886 SCRA 197, 209.

[20] CONSTITUTION (1987), Art. III, Sec. 13. See also RULES OF COURT (1997), Rule 114, Section 7.

[21] *Gimeno v. Judge Arcueno, Sr.*, 320 Phil. 463, 468 (1995).

[22] RULES OF COURT (1997), Rule 114, Section 9.

[23] *Atty. Gacal v. Judge Infante*, 674 Phil. 324, 339 (2011) citing *Cortes v. Catral*, 344 Phil. 415 (1997).

[24] RULES OF COURT (1997), Rule 114, Section 18.

[25] RULES OF COURT (1997), Rule 114, Sections 7 and 8.

4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond x x x;[26] otherwise petition should be denied.[27]

Admittedly, Judge Flor, Jr. granted bail in Criminal Case No. 7826 without a hearing because the accused is a minor and a mental retardate. However, the *2009 Revised Rules on Children in Conflict with the Law* is explicit that a child charged with a capital offense shall not be entitled to bail when evidence of guilt is strong.[28] As discussed, the determination of the requisite evidence is a matter of judicial discretion.[29] Consequently, absent a prior hearing, the order granting bail can hardly be a product of Judge Flor, Jr.'s sound discretion.[30] Also, Judge Flor, Jr. exhibited cavalier indifference to the rules when he allowed in Criminal Case No. 7091 the motion to reduce bail without a hearing. This is contrary to the clear mandate of the *Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial* that a motion to reduce bail shall enjoy priority in the hearing of cases.[31]

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[26] RULES OF COURT (1997), Rule 114, Section 19.

[27] *Atty. Gacal v. Judge Infante, supra* at 339.

[28] Section 28 of A.M. No. 02-1-18-SC (December 1, 2009) states: "*When Bail Not a Matter of Right.* — **No child charged with an offense punishable by *reclusion perpetua* or life imprisonment shall be admitted to bail when evidence of guilt is strong**. In this case, the court shall commit the youth to a detention home or youth rehabilitation center, or in the absence thereof, to the care of a provincial, city or municipal jail as provided for in Section 27 of this Rule, which shall be responsible for the appearance of the child in court whenever required. (Emphasis supplied.)

[29] In *Montalbo v. Santamaria*, 54 Phil. 955, 964 (1930), this Court held that the respondent judge is duty bound to exercise judicial discretion conferred upon him by law to determine whether in the case at bar, the proof is evident or the presumption of guilt is strong against the defendant and to grant or deny the petition for provisional liberty.

[30] See *Baylon v. Sison*, 313 Phil. 99 (1995).

[31] Section 3 of A.M. No. 12-11-2-SC (March 18, 2014) states: "*When Amount of Bail may be Reduced.* — If the accused does not have the financial ability to post the amount of bail that the court initially fixed, he may move for its reduction, submitting for that purpose such documents or

Lastly, Judge Flor, Jr. conceded that the orders/resolutions granting bail in Criminal Case Nos. 6964, 7060, 7348-49 and 7409 did not contain a summary of the prosecution evidence. In numerous cases,[32] we held that the order granting or refusing bail must contain a summary of the evidence which is an aspect of judicial due process for both the prosecution and the defense. As *Aleria, Jr. v. Hon. Velez*[33] aptly discussed:

> x x x [T]he court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong. The summary of evidence for the prosecution which contains the judge's evaluation of the evidence may be considered as an aspect of judicial due process for both the prosecution and the defense.[34]

Taken together, Judge Flor, Jr. committed gross ignorance of the law and procedure in granting bail applications without a prior hearing and in not stating the factual and legal reasons in his Orders or Resolutions. This administrative offense is classified as a serious charge[35] and is punishable by any of the following penalties: (1) fine of more than ₱20,000.00 but not exceeding ₱40,000.00; (2) suspension from office for more than three but not exceeding six months, without salary and other

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affidavits as may warrant the reduction he seeks. **The hearing of this motion** shall enjoy priority in the hearing of cases. (Emphasis supplied.)

[32] *Paderanga v. CA*, 317 Phil. 862 (1995); *Santos v. Ofilada*, 315 Phil. 11 (1995); *People v. Casingal*, 312 Phil. 945 (1995); *Guillermo v. Reyes*, 310 Phil. 176 (1995); *People v. Nano*, 282 Phil. 164 (1992); and *People v. San Diego*, 135 Phil. 514 (1968). In *Director Carpio v. Judge Maglalang*, 273 Phil. 240, 251 (1991), this Court invalidated the order of respondent judge granting bail to the accused because "[w]ithout summarizing the factual basis of its order granting bail, the court merely stated the number of prosecution witnesses but not their respective testimonies, and concluded that the evidence presented by the prosecution was not 'sufficiently strong' to deny bail to Escano."

[33] 359 Phil. 141 (1998).

[34] *Id.* at 148.

[35] RULES OF COURT (1997), Rule 140, Section 8, as amended.

benefits; (3) or dismissal from service, with forfeiture of all benefits except accrued leave credits.[36]

The multiple counts of gross ignorance of the law in this case and the previous misconduct in A.M. No. RTJ-06-1995 raised a serious question on Judge Flor, Jr.'s competence and integrity in the performance of his functions as a magistrate.[37] Indeed, the several occasions that Judge Flor, Jr. disregarded the rules in granting bail applications could have been the subject of different administrative complaints which deserve separate penalties for each violation.[38] As such, the Court could no longer afford to be lenient this time, lest it would give the public the impression that incompetence and repeated offenders are being countenanced in the judiciary. Considering Judge Flor, Jr.'s repeated infractions and refusal to correct his ways despite previous warning, the Court is constrained to impose the supreme penalty of dismissal.

All told, we remind that when a judge himself becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself,[39] thus:

> To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence. **Hence, they are expected to exhibit more than just a cursory acquaintance with statutes and procedural rules and to apply them properly in all good faith**. They are likewise expected to demonstrate mastery of the principles of law, keep abreast of prevailing jurisprudence, and discharge their duties in accordance therewith.

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[36] RULES OF COURT (1997), Rule 140, Section 11 (A), as amended.

[37] *Peralta v. Judge Omelia*, 720 Phil. 60, 86 (2013).

[38] *Office of the Court Administrator v. Villarosa*, A.M. No. RTJ-20-2578, January 28, 2020.

[39] *Gacad v. Judge Clapis, Jr.*, 691 Phil. 126, 142 (2012), citing *Tan v. Rosete*, 481 Phil. 189 (2004).

Further, judges should administer their office with due regard to the integrity of the system of law itself, remembering that they are not depositories of arbitrary power, but are judges under the sanction of law. **It must be emphasized that this Court has formulated and promulgated rules of procedure to ensure the speedy and efficient administration of justice. Wanton failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law**.[40] (Emphases supplied).

FOR THESE REASONS, the Court finds Judge Fernando F. Flor, Jr. **GUILTY** of Gross Ignorance of the Law and **ORDERS** his **DISMISSAL** from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

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

Leonen, J., on leave.

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[40] *Judge Cabatingan, Sr. (Ret.) v. Judge Arcueno*, 436 Phil. 341, 347-348 (2002).

FIRST DIVISION

[A.M. No. RTJ-20-2584. July 28, 2020]
(Formerly OCA IPI No. 18-4841-RTJ)

HORTENCIA R. CAYABYAB, *complainant, vs.* **PRESIDING JUDGE IRINEO P. PANGILINAN, JR., Regional Trial Court, Branch 58, Angeles City, Pampanga,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION; DECIDING A CASE FOUR (4) MONTHS AFTER IT WAS SUBMITTED FOR DECISION, RESPONDENT HAD CLEARLY INCURRED DELAY; RESPONDENT COULD HAVE ASKED FOR EXTENSION FROM THE COURT AS JUDGES, BY THEMSELVES, CANNOT EXTEND THE PERIOD FOR DECIDING CASES BEYOND THE PERIOD AUTHORIZED BY LAW. — Article VIII, Section 15 of the 1987 Constitution expressly prescribes that all cases or matters must be decided or resolved by the lower courts within three (3) months from date of submission. In parallel, Canon 6, Section 5 of the New Code of Judicial Conduct requires judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Hence, in deciding Criminal Case No. 10-5530 four (4) months after it was submitted for decision, Judge Pangilinan had clearly incurred delay. x x x [I]n cases where a judge is unable to comply with the reglementary period for deciding cases or matters, he or she can, for good reasons, ask for an extension from the Court. As a general rule, requests for extension are granted by the Court in cognizance of the heavy caseload of the trial courts. Granting that Judge Pangilinan had good reasons for his delay, it remains a given fact that he failed to ask for an extension of time from the Court within which to resolve Criminal Case No. 10-5530. Judges, by themselves, cannot extend the period for deciding cases beyond that authorized by law. As a result of his failure to ask for extension, whether deliberate or not, Judge Pangilinan promulgated his decision in Criminal Case No. 10-5530 beyond the period allowed by law. Time and again, the Court has

impressed upon judges the importance of deciding cases promptly and expeditiously because the notion of delay in the disposition of cases and matters undermines the people's faith and confidence in the judiciary. The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. As it happens here, the number of times that the promulgation date of Criminal Case No. 10-5530 was re-scheduled and the consequent undue delay in resolving it have, actually, raised a nagging doubt in Cayabyab's mind that something irregular was afoot. This is the kind of misgiving from the public that the Court wants to prevent. At the same time, any delay in the administration of justice, *no matter how brief*, deprives the litigant of his or her right to a speedy disposition of his or her case.

2. ID.; ID.; ID.; PENALTY; HAVING BEEN PREVIOUSLY REPRIMANDED, THE COURT DEEMS IT PROPER TO IMPOSE THE PENALTY OF FINE. — Classified as a less serious charge under Section 9, Rule 140 of the Rules of Court, as amended, undue delay in rendering a decision or order is penalized with either suspension without pay for a period of not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not more than ₱20,000.00. The OCA recommended that Judge Pangilinan be merely reprimanded on the ground that this is his first offense for undue delay in rendering a decision. In its Report and Recommendation, however, the OCA noted that Judge Pangilinan was previously reprimanded with warning by the Court in A.M. No. RTJ-18-2544 entitled "*The Station Commander, Mabalacat City Police Station v. Judge Irineo P. Pangilinan, Jr.*" for gross ignorance of the law. Thus, under the circumstances, the Court deems the penalty of fine in the amount of ₱10,000.00 appropriate.

3. ID.; ID.; KNOWINGLY RENDERING AN UNJUST JUDGMENT AND GROSS IGNORANCE OF THE LAW, EXPLAINED; BEING DIFFERED IN THE APPLICATION AND INTERPRETATION OF THE LAW AS WELL AS IN THE APPRECIATION OF THE EVIDENCE, NOT ADEQUATE PROOF OF KNOWINGLY RENDERING UNJUST JUDGMENT OR GROSS IGNORANCE OF THE LAW. — As with the other

charges of knowingly rendering an unjust judgment and gross ignorance of the law, the Court affirms the recommendation of the OCA to dismiss these charges. Knowingly rendering an unjust judgment constitutes a serious criminal offense under Article 204 of the Revised Penal Code (RPC). To commit the offense, the offender must be a judge who is adequately shown to have rendered an unjust judgment, not one who merely committed an error of judgment or taken the unpopular side of a controversial point of law. x x x In the same manner, gross ignorance of the law is the disregard of basic rules and settled jurisprudence. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions. x x x A judge may also be administratively liable for gross ignorance of the law if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. For liability to attach, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his or her judgment. x x x A perusal of the assailed Decision in Criminal Case No. 10-5530 by Judge Pangilinan hardly shows that he knowingly and deliberately rendered an unjust judgment or disregarded basic rules or settled jurisprudence. x x x Hence, although Judge Pangilinan and Judge Buan differed in their application and interpretation of Article 183 of the RPC, this is not adequate proof that Judge Pangilinan knowingly rendered an unjust decision or was grossly ignorant of the law. Again, for one, a sweeping claim will not suffice, absent any showing of bad faith, dishonesty, hatred, corruption or some other like

motive. Likewise, following what the Court further held in *Bacar*, the fact that Judge Pangilinan's appreciation of the evidence differed from that of Cayabyab, which could be biased, does not warrant the conclusion that Judge Pangilinan has rendered an unjust judgment nor that he is ignorant of the law. In the absence of any indication (1) that the trial court's conclusion is based entirely on speculations; (2) that there is grave abuse of discretion; (3) that the court, in making its findings went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; or, that the judgment is based on a misapprehension of facts; or, that the presiding judge is blatantly biased, the general rule that the trial court's findings of fact should be given great weight still stands.

D E C I S I O N

CAGUIOA, *J.*:

This is an administrative complaint[1] against Judge Irineo P. Pangilinan, Jr. (Judge Pangilinan), former Presiding Judge of the Municipal Trial Court in Cities of Angeles City, Branch 1, and now Presiding Judge of the Regional Trial Court (RTC) of Angeles City, Branch 58, for alleged undue delay in rendering a decision, for knowingly rendering an unjust judgment and gross ignorance of the law.

The Case

Complainant Hortencia R. Cayabyab (Cayabyab) was the private complainant in Criminal Case No. 10-5530 entitled "*People of the Philippines v. Maria Melissa Cayabyab y Robles*" for Perjury filed before the court of Judge Pangilinan. Cayabyab charged her adopted daughter, the accused, of "willfully, unlawfully and feloniously execut[ing] an Affidavit of Loss, stating under oath that the owner's duplicate copy of Transfer Certificate of Title [(TCT) N]o. 92191 was lost, when

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[1] *Rollo*, pp. 2-9.

in truth and in fact, [the] accused kn[e]w very well that [it was] in the possession of [Cayabyab]."[2]

Cayabyab avers that the promulgation of judgment of Criminal Case No. 10-5530 was originally set on July 28, 2016. Despite no request for extension of time from Judge Pangilinan within which to decide the case, the promulgation was reset thrice. It was only on October 20, 2016 when Judge Pangilinan handed down a decision acquitting the accused.[3]

Cayabyab asserts further that Judge Pangilinan exhibited gross ignorance of the law and prevailing jurisprudence in his decision. She points out the categorical finding of Judge Pangilinan therein that the accused deliberately executed the affidavit of loss subject of the case with the knowledge that the owner's duplicate copy of title was not missing but was actually in the possession of Cayabyab. Cayabyab stresses that this was proof enough of the accused's willful and deliberate assertion of falsehood, which was a material fact since it would be used in the petition for issuance of a new certificate of title and an eventual sale of the property. Despite this finding, however, Judge Pangilinan acquitted the accused because her lying was done without malice or evil intent, considering that the accused was the registered owner of the property under TCT No. 92191 and could very well, therefore, sell the property.[4]

Cayabyab points out that the decision of Judge Pangilinan was reversed and set aside for having been issued with grave abuse of discretion in a Decision[5] by Judge Irin Zenaida S. Buan (Judge Buan) of the RTC of Angeles City, Branch 56.[6]

Finally, Cayabyab relays to the Court the information she received during the pendency of Criminal Case No. 10-5530

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[2] *Id.* at 10.

[3] *Id.* at 3, 47.

[4] *Id.* at 4-5, 47.

[5] *Id.* at 17-21.

[6] *Id.* at 6, 47.

that the accused and Judge Pangilinan belong to the same church and that a pastor from their congregation interceded before Judge Pangilinan on behalf of the accused.[7]

In his Comment,[8] Judge Pangilinan counters that the complaint merits an outright dismissal for being malicious, baseless, and unfounded. He labels the complaint as mere harassment after Cayabyab received an unfavorable decision in Criminal Case No. 10-5530. Judge Pangilinan asserts that her remedy as a litigant lies with the courts and not with the Office of the Court Administrator (OCA).[9]

Judge Pangilinan also denies that there was delay in deciding Criminal Case No. 10-5530. He claims that its promulgation was originally scheduled on June 16, 2016. Hence, when the promulgation was reset to July 28, 2016, it was still within the 90-day period under the Constitution within which to decide a case.[10]

Judge Pangilinan also explains that the parties had several pending suits in his sala and knowing their familial relationship, he only wanted them to eventually reconcile. He categorically denies knowing the accused personally or of having met her at all. He finds malice in the allegations of Cayabyab that he let a pastor intervene on behalf of the accused. Judge Pangilinan stresses the fact that Cayabyab did not even attempt to file a motion for his inhibition if she indeed doubted his impartiality.[11]

Report and Recommendation

In its Report and Recommendation,[12] the OCA found merit in the allegation that Judge Pangilinan caused undue delay in

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[7] *Id.* at 6, 47-48.

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

[9] *Id.* at 26-27, 48.

[10] *Id.* at 27, 48.

[11] *Id.* at 27-29, 48.

[12] *Id.* at 47-51.

rendering a decision when Criminal Case No. 10-5530 was promulgated only on October 20, 2016, or after four (4) months from the time the case was submitted for decision on June 16, 2016. The OCA found his explanation of exerting efforts to have the parties come to an amicable agreement untenable in light of this glaring proof that there was delay in deciding the case within the period fixed by law. Noting the penalties prescribed under Rule 140 of the Rules of Court, as amended, the OCA saw it fit to temper the penalty to a reprimand, considering that this is Judge Pangilinan's first offense for undue delay in rendering a decision.[13]

As with the charges of knowingly rendering an unjust judgment and gross ignorance of the law, the OCA recommended that these be dropped. The OCA held that Cayabyab failed to discharge her burden to prove that Judge Pangilinan was moved by bad faith, dishonesty, hatred, or some like motive when he ruled on Criminal Case No. 10-5530. In particular, Cayabyab failed to prove that Judge Pangilinan acquitted the accused simply because they belong to the same church.[14]

The OCA likewise held that the propriety of Judge Pangilinan's decision was a judicial matter and beyond the mandate of this administrative proceeding. Even if the RTC of Angeles City, Branch 56 had reversed and set aside Criminal Case No. 10-5530 for having been issued with grave abuse of discretion, the OCA held that a finding of grave abuse of discretion alone is not a ground for disciplinary proceedings. A judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him or her administratively liable, absent any proof that his or her judicial errors are tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do injustice.[15]

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[13] *Id.* at 49.

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

[15] *Id.* at 50.

The Issue

Whether Judge Pangilinan should be administratively held liable for undue delay in rendering a decision, of knowingly rendering an unjust judgment and gross ignorance of the law.

The Court's Ruling

The Court agrees with the findings of the OCA, with a modification on the penalty imposed on Judge Pangilinan.

Article VIII, Section 15 of the 1987 Constitution expressly prescribes that all cases or matters must be decided or resolved by the lower courts within three (3) months from date of submission. In parallel, Canon 6, Section 5 of the New Code of Judicial Conduct[16] requires judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Hence, in deciding Criminal Case No. 10-5530 four (4) months after it was submitted for decision, Judge Pangilinan had clearly incurred delay.

Judge Pangilinan explains that the delay was due to his desire to have the parties settle the case amicably. This justification, to the mind of the Court, is not reasonable under the circumstances, considering that the criminal case of perjury was a case against public interest which had already reached the conclusion of its trial proper.

Also, in cases where a judge is unable to comply with the reglementary period for deciding cases or matters, he or she can, for good reasons, ask for an extension from the Court. As a general rule, requests for extension are granted by the Court in cognizance of the heavy caseload of the trial courts.[17] Granting that Judge Pangilinan had good reasons for his delay, it remains a given fact that he failed to ask for an extension of time from

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[16] ADOPTING THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY, A.M. No. 03-05-01-SC, April 27, 2004.

[17] See *Bangalan v. Turgano*, A.M. No. RTJ-12-2317 (Formerly OCA I.P.I. No. 10-3378-RTJ), July 25, 2012, 677 SCRA 451, 455.

the Court within which to resolve Criminal Case No. 10-5530. Judges, by themselves, cannot extend the period for deciding cases beyond that authorized by law.[18] As a result of his failure to ask for extension, whether deliberate or not, Judge Pangilinan promulgated his decision in Criminal Case No. 10-5530 beyond the period allowed by law.

Time and again, the Court has impressed upon judges the importance of deciding cases promptly and expeditiously because the notion of delay in the disposition of cases and matters undermines the people's faith and confidence in the judiciary.[19] The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved.[20] As it happens here, the number of times that the promulgation date of Criminal Case No. 10-5530 was re-scheduled and the consequent undue delay in resolving it have, actually, raised a nagging doubt in Cayabyab's mind that something irregular was afoot. This is the kind of misgiving from the public that the Court wants to prevent. At the same time, any delay in the administration of justice, *no matter how brief*, deprives the litigant of his or her right to a speedy disposition of his or her case.[21]

Classified as a less serious charge under Section 9, Rule 140 of the Rules of Court, as amended, undue delay in rendering a decision or order is penalized with either suspension without pay for a period of not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not more than ₱20,000.00. The OCA recommended that Judge

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[18] *Belleza v. Cobarde*, A.M. No. RTJ-04-1867 (Formerly OCA I.P.I. No. 03-1690-RTJ), February 17, 2005, 451 SCRA 632, 636.

[19] See *Bangalan v. Turgano*, *supra* note 17, at 455.

[20] *Office of the Court Administrator v. Casalan*, A.M. No. RTJ-14-2385 (Formerly A.M. No. 14-4-115-RTC), April 20, 2016, 790 SCRA 575, 585.

[21] *Belleza v. Cobarde*, *supra* note 18, at 635.

Pangilinan be merely reprimanded on the ground that this is his first offense for undue delay in rendering a decision. In its Report and Recommendation, however, the OCA noted that Judge Pangilinan was previously reprimanded with warning by the Court in A.M. No. RTJ-18-2544 entitled "*The Station Commander, Mabalacat City Police Station v. Judge Irineo P. Pangilinan, Jr.*" for gross ignorance of the law. Thus, under the circumstances, the Court deems the penalty of fine in the amount of ₱10,000.00 appropriate.

As with the other charges of knowingly rendering an unjust judgment and gross ignorance of the law, the Court affirms the recommendation of the OCA to dismiss these charges.

Knowingly rendering an unjust judgment constitutes a serious criminal offense under Article 204 of the Revised Penal Code (RPC). To commit the offense, the offender must be a judge who is adequately shown to have rendered an unjust judgment, not one who merely committed an error of judgment or taken the unpopular side of a controversial point of law.[22] In *In re AMA Land, Inc.*,[23] the Court held that when the administrative charge equates to a criminal offense, such that the judicial officer may suffer the heavy sanctions of dismissal from the service, the showing of culpability on the part of the judicial officer should be nothing short of proof beyond reasonable doubt, especially because the charge is penal in character.[24] Thus, the Court therein elucidated on the elements of the offense of knowingly rendering an unjust judgment in this wise:

> x x x The term knowingly means "sure knowledge, conscious and deliberate intention to do an injustice." Thus, the complainant must not only prove beyond reasonable doubt that the judgment is patently

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[22] *Re: Verified Complaint for Disbarment of AMA Land, Inc. (represented by Joseph B. Usita) against Court of Appeals Associate Justices Hon. Danton Q. Bueser, Hon. Sesinando E. Villon and Hon. Ricardo R. Rosario*, OCA I.P.I. No. 12-204-CA-J, March 11, 2014, 718 SCRA 335, 341-342.

[23] *Id.*

[24] *Id.* at 341.

contrary to law or not supported by the evidence but that it was also made with deliberate intent to perpetrate an injustice. Good faith and the absence of malice, corrupt motives or improper consideration are sufficient defenses that will shield a judge from the charge of rendering an unjust decision. In other words, the judge was motivated by hatred, revenge, greed or some other similar motive in issuing the judgment. Bad faith is, therefore, the ground for liability. x x x[25]

In the same manner, gross ignorance of the law is the disregard of basic rules and settled jurisprudence.[26] Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of a clear and unmistakable provision of the Constitution upends this presumption and subjects the magistrate to corresponding administrative sanctions.[27] Thus, in *Office of the Court Administrator v. Dumayas*,[28] the Court held that since the violated constitutional provision in that case was so elementary, failure to abide by it constituted gross ignorance of the law, without even a need for the complainant to prove any malice or bad faith on the part of the judge.[29]

A judge may also be administratively liable for gross ignorance of the law if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[30] For liability to attach, the assailed order, decision or actuation of the judge in the

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[25] *Id.* at 342.

[26] *Department of Justice v. Mislang*, A.M. Nos. RTJ-14-2369 (Formerly OCA I.P.I. No. 12-3907-RTJ) and RTJ-14-2372 (Formerly OCA I.P.I. No. 11-3736-RTJ), July 26, 2016, 798 SCRA 225, 234.

[27] *Id.* at 234-235.

[28] A.M. No. RTJ-15-2435 (Formerly A.M. No. 15-08-246-RTC), March 6, 2018, 857 SCRA 394.

[29] *Id.* at 412.

[30] *Id.*

performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.[31] As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.[32] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his or her judgment.[33]

Verily, the Court has held that all that is expected of a judge is that he or she follow the rules prescribed to ensure a fair and impartial hearing, assess the different factors that emerge therefrom and bear on the issues presented, and on the basis of the conclusions he or she finds established, with only his or her conscience and knowledge of the law to guide him or her, adjudicate the case accordingly.[34]

A perusal of the assailed Decision[35] in Criminal Case No. 10-5530 by Judge Pangilinan hardly shows that he knowingly and deliberately rendered an unjust judgment or disregarded basic rules or settled jurisprudence.

To hold one liable for perjury which is the deliberate making of untruthful statements upon any material matter, before a competent person authorized to administer oath, in cases in

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[31] *Department of Justice v. Mislang, supra* note 26, at 235.

[32] *Causing v. Dela Rosa*, OCA IPI No. 17-4663-RTJ, March 7, 2018, 857 SCRA 503, 514.

[33] *Andres v. Nambi*, A.C. No. 7158, March 9, 2015, 752 SCRA 110, 117.

[34] See *De la Cruz v. Concepcion*, A.M. No. RTJ-93-1062, August 25, 1994, 235 SCRA 597, 607, citing *Vda. de Zabala v. Pamaran*, A.C. No. 200-J, June 10, 1971, 39 SCRA 430, 433. See also *Re: Judge Silverio S. Tayao, RTC, Br. 143, Makati*, A.M. Nos. 93-8-1204 and RTJ-93-978, February 7, 1994, 229 SCRA 723, 734.

[35] *Rollo*, pp. 10-16.

which the law requires such oath, Article 183 of the RPC requires that the following requisites must concur: (a) the accused made a statement under oath or executed an affidavit upon a material matter; (b) the statement or affidavit was made before a competent officer, authorized to receive and administer oaths; (c) in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and (d) the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.[36] It is not disputed that the accused in Criminal Case No. 10-5530 is the registered owner of the subject property. Her version of the story was that Cayabyab kept TCT No. 92191. When accused supposedly demanded that TCT No. 92191 be returned to her, Cayabyab informed her it was lost. Accused claimed that her lawyer then advised her to execute the affidavit of loss and submit the same to the Register of Deeds in order to protect her rights over the subject property.[37] Judge Pangilinan found, however, that accused had the motive to lie in the affidavit on account of the fact that she admitted being desirous of selling the subject property. Judge Pangilinan, nonetheless, acquitted the accused despite this finding. The acquittal was moored on the conclusion that the act of the accused was done without malice, considering that she was the registered owner of the subject property under TCT No. 92191. Indeed, good faith or lack of malice is a defense against the element of a willful and deliberate assertion of a falsehood in the crime of perjury,[38] and the acquittal rendered by Judge Pangilinan was his interpretation of this defense in favor of the accused. Should this interpretation be later found erroneous, this is but an error in the application of law and the appreciation of evidence which cannot be considered outright as amounting to gross ignorance of the law. The Court in *Bacar v. De Guzman, Jr.*,[39] (*Bacar*) had this to say:

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[36] *Asturias v. Serrano*, A.C. No. 6538 (Formerly CBD Case No. 03-1159), November 25, 2005, 476 SCRA 97, 105-106.

[37] *Rollo*, p. 13.

[38] *Asturias v. Serrano*, *supra* note 36, at 106.

[39] A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328.

Not every error or mistake of a judge in the performance of his duties makes him liable therefor. To hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that he has erred, would be nothing short of harassment and would make his position unbearable. For no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[40]

Hence, although Judge Pangilinan and Judge Buan differed in their application and interpretation of Article 183 of the RPC,[41] this is not adequate proof that Judge Pangilinan knowingly rendered an unjust decision or was grossly ignorant of the law. Again, for one, a sweeping claim will not suffice, absent any showing of bad faith, dishonesty, hatred, corruption or some other like motive. Likewise, following what the Court further held in *Bacar*, the fact that Judge Pangilinan's appreciation of the evidence differed from that of Cayabyab, which could be biased, does not warrant the conclusion that Judge Pangilinan has rendered an unjust judgment nor that he is ignorant of the law. In the absence of any indication (1) that the trial court's conclusion is based entirely on speculations; (2) that there is grave abuse of discretion; (3) that the court, in making its findings went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; or, that the judgment is based on a misapprehension of facts; or, that the presiding judge is blatantly biased, the general rule that the trial court's findings of fact should be given great weight still stands.[42]

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[40] *Id.* at 338.

[41] To recall, Judge Buan of the RTC of Angeles City, Branch 56 reversed this ruling of Judge Pangilinan, holding that the issue in Criminal Case No. 10-5530 is not whether the accused can legally sell the subject property but whether she willfully made a false statement in her affidavit. See *rollo*, pp. 17-21.

[42] See *Bacar v. De Guzman, Jr.*, *supra* note 39, at 339.

Finally, in *Sacmar v. Reyes-Carpio*,[43] the Court had the occasion to rule that:

> An administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by his erroneous order or judgment. Administrative remedies are neither alternative nor cumulative to judicial review where such review is available to the aggrieved parties and the same has not yet been resolved with finality. *For until there is a final declaration by the appellate court that the challenged order or judgment is manifestly erroneous, there will be no basis to conclude whether respondent judge is administratively liable.* x x x[44] (Italics in the original)

Here, Judge Pangilinan pointed out that there was a pending motion for reconsideration filed by the accused of the decision by Judge Buan when this administrative complaint was filed. Said motion was resolved against the accused but subsequently, an appeal was filed before the Court of Appeals and remains pending to date.[45] Notably, these facts were never rebutted by Cayabyab.

WHEREFORE, respondent Judge Irineo P. Pangilinan, Jr. of the Regional Trial Court of Angeles City, Branch 58 is hereby found **GUILTY** of **UNDUE DELAY IN RENDERING A DECISION** for which he is **FINED** in the amount of **₱10,000.00**. He is warned that a repetition of the same or a similar act will be dealt with more severely. The other charges are hereby dismissed for lack of merit.

SO ORDERED.

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

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[43] A.M. No. RTJ-03-1766 (Formerly OCA IPI No. 00-979-RTJ), March 28, 2003, 400 SCRA 32.

[44] *Id.* at 36.

[45] *Rollo,* p. 31.

FIRST DIVISION

[G.R. No. 190654. July 28, 2020]

KARJ GLOBAL MARKETING NETWORK, INC., *petitioner, vs.* **MIGUEL P. MARA,**[*] *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL BOND; AN APPEAL BY THE EMPLOYER FROM A JUDGMENT INVOLVING MONETARY AWARD MAY BE PERFECTED ONLY UPON THE POSTING OF A CASH OR SURETY BOND; EXCEPTIONS. — Article 223 of the Labor Code requires the posting of a cash or surety bond when the judgment appealed from involves a monetary award. x x x. Indeed, as the CA ruled, the posting of the bond is "an *indispensable* requisite for the perfection of an appeal by the employer." As the Court held in *Viron Garments Manufacturing, Co., Inc. v. NLRC (Viron)*, the mandatory nature of the bond "is clearly limned in the provision that an appeal by the employer may be perfected '*only upon the posting of a cash or surety bond*.' The word 'only' makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected." As against this rule, the Court has recognized exceptional circumstances where it relaxed the requirement for an appeal bond. As held in *Lepanto Consolidated Mining Corp. v. Icao*: x x x [T]his Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases. In *Your Bus Lines v. NLRC*, the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision. While the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list. In *Blancaflor v. NLRC*, the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have

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[*] Also referred to as Miguel Angel P. Mara in some parts of the records.

been the basis of the amount of the bond to be posted. In *Cabalan Pastulan Negrito Labor Association v. NLRC*, petitioner-appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay. The plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted by this Court. In *UERM-Memorial Medical Center v. NLRC*, we allowed the appellant-employer to post a property bond in lieu of a cash or surety bond. The assailed judgment involved more than ₱17 million; thus, its execution could adversely affect the economic survival of the employer, which was a medical center.

2. ID.; ID.; ID.; ID.; PURPOSE OF AN APPEAL BOND; THE EXISTENCE OF INSOLVENCY PROCEEDINGS IS DEEMED AN EXCEPTIONAL CIRCUMSTANCE TO WARRANT THE LIBERAL APPLICATION OF THE RULES REQUIRING AN APPEAL BOND; WHEN THE LAW DOES NOT CLEARLY PROVIDE A RULE OR NORM FOR THE TRIBUNAL TO FOLLOW IN DECIDING A QUESTION SUBMITTED, BUT LEAVES TO THE TRIBUNAL THE DISCRETION TO DETERMINE THE CASE IN ONE WAY OR ANOTHER, THE JUDGE MUST DECIDE THE QUESTION IN CONFORMITY WITH JUSTICE, REASON AND EQUITY, IN VIEW OF THE CIRCUMSTANCES OF THE CASE; RULE ON REQUIREMENT OF AN APPEAL BOND SHOULD BE LIBERALLY APPLIED TO CASE AT BAR. — To determine whether to allow a liberal application of the rule on bonds, it is crucial to understand, especially in this case, whether respondent stands to lose the security provided by the appeal bond as the purpose of the appeal bond, as held in *Viron*, is to ensure that when the workers prevail, they will receive the money judgment in their favor: The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims. Here, the Court deems the existence of the insolvency proceedings as an exceptional circumstance to warrant the liberal application

of the rules requiring an appeal bond. The failure to file an appeal bond did not contradict the need to ensure that respondent, if his claim is deemed valid, will receive the money judgment. The rule on a requirement of an appeal bond cannot operate in a vacuum. "[W]hen the law does not clearly provide a rule or norm for the tribunal to follow in deciding a question submitted, but leaves to the tribunal the discretion to determine the case in one way or another, the judge must decide the question in conformity with justice, reason and equity, in view of the circumstances of the case." Here, there seems to be an absence of rule or norm to follow on whether to require an appeal bond when the appealing employer is subject of involuntary liquidation proceedings. But the NLRC, mandated to act with justice, reason and equity, should have allowed the appeal and ruled on the merits considering the circumstances of the case.

3. ID.; ID.; ID.; MONEY CLAIMS OF AN EMPLOYEE AGAINST AN EMPLOYER THAT IS UNDERGOING INSOLVENCY PROCEEDINGS SHALL BE CONSIDERED AS A CONTINGENT CLAIM; THUS, AN EMPLOYEE MAY PROSECUTE HIS OR HER CASE BEFORE THE LABOR TRIBUNALS, AND IN CASE OF FAVORABLE JUDGMENT, THE EXECUTION THEREOF SHALL BE STAYED FOLLOWING SECTION 60 OF THE INSOLVENCY ACT, AS THE INSOLVENCY PROCEEDINGS IS THE ONLY PROCEEDING WHERE ALL CREDITORS OF THE EMPLOYER MAY ESTABLISH THEIR CLAIMS. — It is beyond dispute that money claims arising from employer-employee relationship are within the original and exclusive jurisdiction of the LA and the NLRC. x x x Following Article 217 of the Labor Code, and given the LA's and NLRC's exclusive and original jurisdiction to rule on money claims of an employee, such case may only be filed and ruled upon by the LA and NLRC. However, when an employer is undergoing insolvency proceedings, Article 217 of the Labor has to be read together with Section 60 of the Insolvency Law which states that a creditor may be allowed to proceed with the suit to ascertain the amount due to it but the execution of which shall be stayed x x x. Further, during the pendency of the insolvency proceedings, the measure of protection for the employee is to have the claim considered as a contingent claim before the insolvent court following Section 55 of the Insolvency Act.

x x x. Thus, like any other contingent claim, the employee may prosecute his case before the labor tribunals, and exhaust other remedies, until he or she obtains a final and executory judgment. Assuming the employee obtains a favorable money judgment, the execution will be stayed following Section 60 of the Insolvency Act because, x x x the insolvency proceedings is the **only** proceeding where all creditors of the employer may establish their claims.

4. **ID.; ID.; ID.; DURING BANKRUPTCY, INSOLVENCY OR LIQUIDATION PROCEEDINGS INVOLVING THE EXISTING PROPERTIES OF THE EMPLOYER, THE EMPLOYEES HAVE THE ADVANTAGE OF HAVING THEIR UNPAID WAGES AND MONETARY CLAIMS SATISFIED AHEAD OF CERTAIN CLAIMS WHICH MAY BE PROVED THEREIN. —** Assuming the insolvent corporation undergoes liquidation, the measure of protection given to employees is stated in Article 110 of the Labor Code, which provides for preference for unpaid wages and monetary claims even before the payment of claims of the government and other creditors. x x x. Article 110, in fact, can only be enforced in liquidation proceedings as held in *Development Bank of the Philippines v. Secretary of Labor (DBP)*: **In this jurisdiction, bankruptcy, insolvency and general judicial liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right such as that established in Article 110 of the Labor Code** x x x. What Article 110 means in the context of an insolvent employer is "that during bankruptcy, insolvency or liquidation proceedings involving the existing properties of the employer, the employees have the advantage of having their unpaid wages satisfied ahead of certain claims which may be proved therein."

5. **ID.; ID.; ID.; OUTRIGHT DISMISSAL OF THE APPEAL IS NOT PROPER, WHERE THE LAW ITSELF PROVIDES MANY MEASURES OF PROTECTION FOR THE EMPLOYEE, SUCH THAT AN APPEAL BEFORE THE NLRC MAY BE ALLOWED TO PROCEED DESPITE THE LACK OF AN APPEAL BOND.—** x x x [A]n employee of an employer who is undergoing insolvency proceedings has many layers of protection starting from being allowed to prosecute his claim, registering a contingent claim before the insolvency court, and finally,

enjoying a preference in case the assets of the corporation are ordered liquidated to pay for its debts. Here, petitioner informed the labor tribunals of the pendency of the insolvency proceedings. In fact, it also informed the NLRC that it had apprised the insolvency court of the pendency of the case in its Motion to Suspend Proceedings. Even as it wanted a suspension of the proceedings, it still filed a Notice of Appeal and Memorandum of Appeal *Ad Cautelam*. It was therefore an error for the NLRC to dismiss the appeal outright when the foregoing shows that the law itself provides many measures of protection for the employee, such that an appeal before the NLRC may be allowed to proceed despite the lack of an appeal bond.

6. ID.; ID.; ID.; WHILE THE COURT, WHEN IT FINDS THAT A LOWER COURT OR QUASI-JUDICIAL BODY IS IN ERROR, MAY SIMPLY AND CONVENIENTLY NULLIFY THE CHALLENGED DECISION, RESOLUTION OR ORDER AND REMAND THE CASE THERETO FOR FURTHER APPROPRIATE ACTION, IT IS WELL WITHIN THE CONSCIENTIOUS EXERCISE OF ITS BROAD REVIEW POWERS TO REFRAIN FROM DOING SO AND INSTEAD CHOOSE TO RENDER JUDGMENT ON THE MERITS WHEN ALL MATERIAL FACTS HAVE BEEN DULY LAID BEFORE IT AS WOULD BUTTRESS ITS ULTIMATE CONCLUSION, IN THE PUBLIC INTEREST AND FOR THE EXPEDITIOUS ADMINISTRATION OF JUSTICE, SUCH AS WHERE THE ENDS OF JUSTICE WOULD NOT BE SUBSERVED BY THE REMAND OF THE CASE. — As a general rule, the Court would have directed the remand of the case, reinstated the appeal, and directed the NLRC to rule on the merits. But the ends of justice would not be subserved by doing so considering the length of time that this case has been on-going. It is imperative that the Court already rule on the merits considering the time that has lapsed since the labor tribunals have rendered their decisions and given that all the material facts are before the Court. As the Court held in *Cabalan Pastulan Negrito Labor Association v. NLRC*: While this Court, when it finds that a lower court or quasi-judicial body is in error, may simply and conveniently nullify the challenged decision, resolution or order

and remand the case thereto for further appropriate action, it is well within the conscientious exercise of its broad review powers to refrain from doing so and instead choose to render judgment on the merits when all material facts have been duly laid before it as would buttress its ultimate conclusion, in the public interest and for the expeditious administration of justice, such as where the ends of justice would not be subserved by the remand of the case.

7. ID.; ID.; ID.; CLAIM FOR 14TH MONTH PAY AND REIMBURSEMENTS, NOT PROVED BY SUBSTANTIAL EVIDENCE, WHICH IS THE AMOUNT OF RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION, EVEN IF OTHER MINDS, EQUALLY REASONABLE, MIGHT CONCEIVABLY OPINE OTHERWISE; MERE ALLEGATION IS NOT PROOF OF EVIDENCE. — x x x. [T]he Court finds respondent's claims without merit. Substantial evidence has been defined as "that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise." Here, respondent failed to prove his entitlement to his claims. Although he submitted an Offer Sheet that showed he is entitled to 14th month pay, the validity of this Offer Sheet was controverted by the evidence of petitioner showing that the signatory thereto was not one of its stockholders or officers at the time the Offer Sheet was executed. The Offer Sheet was executed on December 5, 2003, but Banzon only started working for petitioner on September 6, 2004, and he was likewise not reported as an officer or stockholder of petitioner in its 2003 GIS. As to the reimbursements for repairs of the cars, respondent also failed to prove his entitlement to it. He failed to submit any document to prove that he incurred expenses for the repair and maintenance of the car. "Mere allegation is not proof or evidence." Given this, the Court denies his claim for reimbursements. Given the foregoing, the Court also denies respondent's claim for attorney's fees.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated October 19, 2009 and Resolution[3] dated December 17, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 109424. The CA affirmed the findings of the National Labor Relations Commission (NLRC) that petitioner Karj Global Marketing Network, Inc. (petitioner) failed to perfect its appeal, so that the Labor Arbiter's (LA) decision finding respondent Miguel P. Mara (respondent) entitled to 14th month pay and a refund of his car's maintenance expenditures, damages and attorney's fees has already become final and executory.

Facts

The facts are summarized by the CA as follows:

> On 6 July 2006, Respondent MIGUEL ANGEL P. MARA (hereinafter Respondent) instituted a complaint before the Labor Arbiter against the Petitioner for non-payment of 14th month pay and refund of his car's maintenance expenditures, damages and attorney's fees.
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> In March 2004, Respondent commenced his employment with the Petitioner as Assistant General Manager. In his complaint, Respondent alleged that the Petitioner agreed to grant him with a "retention incentive 14th month bonus" pursuant to the Offer Sheet purportedly executed by the Petitioner; that in said Offer Sheet, Petitioner likewise undertook to provide Respondent with a brand new Isuzu Fuego or its equivalent and that it shall also shoulder Respondent's car's repairs and maintenance costs.

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[1] *Rollo*, pp. 8-46, excluding the Annexes.

[2] *Id.* at 50-59. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose Catral Mendoza and Romeo F. Barza, concurring.

[3] *Id.* at 48.

On the other hand, in its position paper, Petitioner contested the Respondent's allegations, contending that the 14th month bonus being claimed by the latter is discretionary in nature and that there is no document that would show that such gratuity is part of the regular compensation of the employees. Likewise, Petitioner rejected Respondent's claim for reimbursements of car repairs alleging that per the company car policy, in order that the Respondent could be entitled to such benefit, he should have used a brand new or second hand Toyota Altis and not a 1999 Black BMW used by the Respondent, hence, Respondent's claim for such reimbursements failed to comply with the procedure laid down by [the] company car policy.

On 16 October 2006, Labor Arbiter ARTHUR L. AMANSEC rendered a decision, the *fallo* thereof reads:

> WHEREFORE, judgment is hereby made ordering the respondents to pay the complainant ₱198,800.00 or 14th month pay benefit for the years 2004 and 2005. The respondents are also ordered to refund to the complainant the amount of ₱289,000.00 as company car maintenance costs.
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> Other claims are dismissed for lack of merit.
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> SO ORDERED.

Aggrieved thereby, Petitioner filed an appeal before the NLRC.

It came to pass that prior to the issuance of the aforesaid Labor Arbiter's decision, three creditors of the Petitioner instituted before the Regional Trial Court (RTC) of Para[ñ]aque City a *Petition for Involuntary Insolvency* against the Petitioner which was raffled to Branch 196, which on 2 October 2006, issued an Order, ruling thus:

> As a consequence of the filing of the petition, respondent corporation in the petition is enjoined from disposing, in any manner, of its property except in so far as it concerns the ordinary operations of commerce or industry in which it is engaged in and furthermore, from making any payments outside of necessary or legitimate expenses of its business or industry so long as the proceeding is pending.
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> SO ORDERED.

Meanwhile, on 28 November 2008, the NLRC dismissed Petitioner's appeal, dispositively holding as follows:

> With the appeal having been filed without the required bond, we have no recourse but to dismiss respondent's appeal for non-perfection.
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> SO ORDERED.[4]

Petitioner thus filed a petition for *certiorari* with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioner's appeal despite the RTC Order[5] dated October 2, 2006 (RTC Order), which petitioner claims was a legal justification for not posting the cash or surety bond normally required for an appeal.[6]

In its Decision, the CA affirmed the NLRC, ruling that an appeal bond is an indispensable requirement in perfecting an appeal before the NLRC. Accordingly, the CA held that the NLRC did not commit any error in dismissing petitioner's appeal.[7]

The CA further found petitioner's claim that the RTC Order prohibited it from disposing of its property as baseless as the posting of the bond did not mean that petitioner had to dispose a portion of its property. And even if such constituted a disposal of property, it would not have been a violation of the RTC Order because the case involves payment of an employee's benefits, which is within the ambit of a legitimate operation of petitioner's business.[8]

For the CA, given that an appeal is a statutory privilege, petitioner should have complied strictly with the rules on appeal.[9] The NLRC therefore did not commit grave abuse of discretion when it ruled that petitioner failed to perfect its appeal.[10]

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[4] *Id.* at 50-53; citations omitted.

[5] *Id.* at 177.

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

[7] *Id.* at 56.

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

[9] *Id.* at 57.

[10] *Id.* at 58.

Aggrieved, petitioner filed a motion for reconsideration, but this was denied.

Hence, this Petition.

Petitioner claims that it was barred from posting the bond following the RTC Order, the dispositive portion of which is quoted here anew:

> As a consequence of the filing of the petition, respondent corporation in the petition is enjoined from disposing, in any manner, of its property except in so far as it concerns the ordinary operations of commerce or industry in which it is engaged in and furthermore, from making any payments outside of necessary or legitimate expenses of its business or industry so long as the proceeding is pending.
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> SO ORDERED.[11]

Records show that petitioner filed its Motion to Suspend Proceedings[12] dated November 2, 2006, and alleged that it received the LA's Decision on October 27, 2006,[13] while it received the RTC Order on October 9, 2006.[14] Petitioner further stated in its motion that it informed the RTC of the pendency of the case filed by respondent.[15]

Eventually, petitioner filed a Notice of Appeal and Memorandum of Appeal *Ad Cautelam*[16] dated November 6, 2006.

Issue

The question for the Court is whether the CA was correct in affirming the NLRC's strict adherence to the requirement

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[11] *Id.* at 177.

[12] *Id.* at 170-176.

[13] *Id.* at 170.

[14] *Id.* at 171.

[15] *Id.* at 175.

[16] *Id.* at 282-308.

for the posting of an appeal bond in order to perfect an appeal before it.

The Court's Ruling

The Petition is granted. The CA erred in affirming the NLRC.

Liberal application of the requirement for an appeal bond

Article 223 of the Labor Code requires the posting of a cash or surety bond when the judgment appealed from involves a monetary award.

> **Art. 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
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> x x x x x x x x x
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> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

Indeed, as the CA ruled, the posting of the bond is "an *indispensable* requisite for the perfection of an appeal by the employer."[17] As the Court held in *Viron Garments Manufacturing, Co., Inc. v. NLRC*[18] (*Viron*), the mandatory nature of the bond "is clearly limned in the provision that an appeal by the employer may be perfected '*only upon the posting of a cash or surety bond*.' The word 'only' makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected."[19]

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[17] *Viron Garments Manufacturing Co., Inc. v. NLRC*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342. Italics in the original.

[18] *Id.*

[19] *Id.* at 342. Italics in the original.

As against this rule, the Court has recognized exceptional circumstances where it relaxed the requirement for an appeal bond. As held in *Lepanto Consolidated Mining Corp. v. Icao*:[20]

> x x x [T]his Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases. In *Your Bus Lines v. NLRC*, the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision. While the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list. In *Blancaflor v. NLRC*, the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted. In *Cabalan Pastulan Negrito Labor Association v. NLRC*, petitioner-appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay. The plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted by this Court. In *UERM-Memorial Medical Center v. NLRC*, we allowed the appellant-employer to post a property bond in lieu of a cash or surety bond. The assailed judgment involved more than ₱17 million; thus, its execution could adversely affect the economic survival of the employer, which was a medical center.[21] (Citations removed)

To determine whether to allow a liberal application of the rule on bonds, it is crucial to understand, especially in this case, whether respondent stands to lose the security provided by the appeal bond as the purpose of the appeal bond, as held in *Viron*, is to ensure that when the workers prevail, they will receive the money judgment in their favor:

> The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to discourage employers from using an appeal to delay, or

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[20] G.R. No. 196047, January 15, 2014, 714 SCRA 1.

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

even evade, their obligation to satisfy their employees' just and lawful claims.[22]

Here, the Court deems the existence of the insolvency proceedings as an exceptional circumstance to warrant the liberal application of the rules requiring an appeal bond. The failure to file an appeal bond did not contradict the need to ensure that respondent, if his claim is deemed valid, will receive the money judgment.

The rule on a requirement of an appeal bond cannot operate in a vacuum. "[W]hen the law does not clearly provide a rule or norm for the tribunal to follow in deciding a question submitted, but leaves to the tribunal the discretion to determine the case in one way or another, the judge must decide the question in conformity with justice, reason and equity, in view of the circumstances of the case."[23]

Here, there seems to be an absence of rule or norm to follow on whether to require an appeal bond when the appealing employer is subject of involuntary liquidation proceedings. But the NLRC, mandated to act with justice, reason and equity, should have allowed the appeal and ruled on the merits considering the circumstances of the case.

It is beyond dispute that money claims arising from employer-employee relationship are within the original and exclusive jurisdiction of the LA and the NLRC. Article 217 of the Labor Code states:

Art. 217. ***Jurisdiction of the Labor Arbiters and the Commission.*** — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

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[22] *Viron Garments Manufacturing Co., Inc. v. NLRC*, *supra* note 17, at 342.

[23] *Lepanto Consolidated Mining Corp. v. Icao*, *supra* note 20, at 13.

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(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, **all other claims arising from employer-employee relations**, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (Emphasis supplied and underscoring supplied)

Following Article 217 of the Labor Code, and given the LA's and NLRC's exclusive and original jurisdiction to rule on money claims of an employee, such case may only be filed and ruled upon by the LA and NLRC.

However, when an employer is undergoing insolvency proceedings, Article 217 of the Labor Code has to be read together with Section 60 of the Insolvency Law[24] which states that a creditor may be allowed to proceed with the suit to ascertain the amount due to it but the execution of which shall be stayed:

SECTION 60. No creditor, proving his debt or claim, shall be allowed to maintain any suit therefor against the debtor, but shall be deemed to have waived all right of action and suit against him, and all proceedings already commenced, or any unsatisfied judgment already obtained thereon, shall be deemed to be discharged and surrendered thereby; and after the debtor's discharge, upon proper application and proof to the court having jurisdiction, all such proceedings shall be dismissed, and such unsatisfied judgments satisfied of record: *Provided*, That no valid lien existing in good faith thereunder shall be thereby affected. A creditor proving his debt or claim shall not be held to have waived his right of action or suit against the debtor when a discharge has have been refused or the proceedings have been determined without a discharge. No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question

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[24] Act No. 1956, May 20, 1909. The Insolvency Law was the law in effect at the time of the NLRC's dismissal of the appeal on November 28, 2008. The Financial Rehabilitation and Insolvency Act (FRIA) of 2010, or Republic Act No. 10142, was signed into law on July 18, 2010.

of the debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: *Provided,* **That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid.** (Emphasis and underscoring supplied)

Further, during the pendency of the insolvency proceedings, the measure of protection for the employee is to have the claim considered as a contingent claim before the insolvent court following Section 55 of the Insolvency Act.

SECTION 55. In all cases of contingent debts and contingent liabilities, contracted by the debtor, and not herein otherwise provided for, the creditor may make claim therefor and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order of the final dividend; or he may, at any time, apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall be done in such manner as the court shall order, and it shall be allowed for the amount so ascertained.

Thus, like any other contingent claim, the employee may prosecute his case before the labor tribunals, and exhaust other remedies, until he or she obtains a final and executory judgment. Assuming the employee obtains a favorable money judgment, the execution will be stayed following Section 60 of the Insolvency Act because, as will be discussed below, the insolvency proceedings is the **only** proceeding where all creditors of the employer may establish their claims.

Assuming the insolvent corporation undergoes liquidation, the measure of protection given to employees is stated in Article 110 of the Labor Code, which provides for preference for unpaid wages and monetary claims even before the payment of claims of the government and other creditors. It states:

Art. 110. ***Worker Preference in Case of Bankruptcy.*** — In the event of bankruptcy or liquidation of an employer's business, his

workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

Article 110, in fact, can only be enforced in liquidation proceedings as held in *Development Bank of the Philippines v. Secretary of Labor*[25] *(DBP)*:

> **In this jurisdiction, bankruptcy, insolvency and general judicial liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right such as that established in Article 110 of the Labor Code**, for these are in rem proceedings binding against the whole world where all persons having any interest in the assets of the debtor are given the opportunity to establish their respective credits [*Philippine Savings Bank v. Lantin, supra; Development Bank of the Philippines v. Santos, supra*].[26] (Emphasis and underscoring supplied)

What Article 110 means in the context of an insolvent employer is "that during bankruptcy, insolvency or liquidation proceedings involving the existing properties of the employer, the employees have the advantage of having their unpaid wages satisfied ahead of certain claims which may be proved therein."[27]

The foregoing therefore shows that an employee of an employer who is undergoing insolvency proceedings has many layers of protection starting from being allowed to prosecute his claim, registering a contingent claim before the insolvency court, and finally, enjoying a preference in case the assets of the corporation are ordered liquidated to pay for its debts.

Here, petitioner informed the labor tribunals of the pendency of the insolvency proceedings. In fact, it also informed the NLRC that it had apprised the insolvency court of the pendency of

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[25] G.R. No. 79351, November 28, 1989, 179 SCRA 630.

[26] *Id.* at 635.

[27] *Id.* at 636.

the case in its Motion to Suspend Proceedings. Even as it wanted a suspension of the proceedings, it still filed a Notice of Appeal and Memorandum of Appeal *Ad Cautelam*. It was therefore an error for the NLRC to dismiss the appeal outright when the foregoing shows that the law itself provides many measures of protection for the employee, such that an appeal before the NLRC may be allowed to proceed despite the lack of an appeal bond.

Respondent is not entitled to 14th month pay and reimbursements

As a general rule, the Court would have directed the remand of the case, reinstated the appeal, and directed the NLRC to rule on the merits. But the ends of justice would not be subserved by doing so considering the length of time that this case has been on-going. It is imperative that the Court already rule on the merits considering the time that has lapsed since the labor tribunals have rendered their decisions and given that all the materials facts are before the Court. As the Court held in *Cabalan Pastulan Negrito Labor Association v. NLRC*:[28]

> While this Court, when it finds that a lower court or quasi[-]judicial body is in error, may simply and conveniently nullify the challenged decision, resolution or order and remand the case thereto for further appropriate action, it is well within the conscientious exercise of its broad review powers to refrain from doing so and instead choose to render judgment on the merits when all material facts have been duly laid before it as would buttress its ultimate conclusion, in the public interest and for the expeditious administration of justice, such as where the ends of justice would not be subserved by the remand of the case.[29]

Here, the claims and evidence of the parties, which form part of the records of this case, are as follows.

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[28] G.R. No. 106108, February 23, 1995, 241 SCRA 643.

[29] *Id.* at 658.

Respondent claims that he is entitled to 14th month pay in the amount of ₱198,800.00,[30] as supported by the December 5, 2003 Offer Sheet[31] which he and a certain Gregory Francis Banzon[32] (Banzon) signed. He also claimed he is entitled to a refund for expenses incurred for the repairs he made on his company car amounting to ₱289,939.00.[33] Respondent submitted a Vehicle Checklist[34] which showed the condition of the car when he returned the car.

On the other hand, petitioner denies that it is bound by the terms in the Offer Sheet as the signatory therein, Banzon, started working for petitioner only on September 6, 2004. This was supported by a Certificate by the Human Resources Head of petitioner.[35] Petitioner likewise submitted its 2003 General Information Sheet (GIS) which showed that Banzon was not one of its stockholders or officer.[36] Further, petitioner claimed that respondent failed to comply with the company car policy, which states that all charges for repairs and maintenance shall be supported by suppliers' invoices.[37]

Based on the foregoing, the Court finds respondent's claims without merit. Substantial evidence has been defined as "that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise."[38]

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[30] See *rollo*, p. 104.

[31] *Id.* at 106-107.

[32] Also referred to as Greg Banzon in some parts of the records.

[33] *Rollo*, p. 104.

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

[35] *Id.* at 132.

[36] *Id.* at 133-136.

[37] *Id.* at 128.

[38] *Sumifru (Philippines) Corp. v. Nagkahiusang Mamumuo sa Suyapa Farm (NAMASUFA-NAFLU-KMU)*, G.R. No. 202091, June 7, 2017, 826 SCRA 438, 450, citing *T & H Shopfitters Corp./Gin Queen Corp. v. T & H Shopfitters Corp./Gin Queen Workers Union*, 728 Phil. 168, 180-181 (2014).

Here, respondent failed to prove his entitlement to his claims. Although he submitted an Offer Sheet that showed he is entitled to 14th month pay, the validity of this Offer Sheet was controverted by the evidence of petitioner showing that the signatory thereto was not one of its stockholders or officers at the time the Offer Sheet was executed. The Offer Sheet was executed on December 5, 2003, but Banzon only started working for petitioner on September 6, 2004, and he was likewise not reported as an officer or stockholder of petitioner in its 2003 GIS.

As to the reimbursements for repairs of the cars, respondent also failed to prove his entitlement to it. He failed to submit any document to prove that he incurred expenses for the repair and maintenance of the car. "Mere allegation is not proof or evidence."[39] Given this, the Court denies his claim for reimbursements.

Given the foregoing, the Court also denies respondent's claim for attorney's fees.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated October 19, 2009 and Resolution dated December 17, 2009 of the Court of Appeals in CA-G.R. SP No. 109424 are **REVERSED and SET ASIDE**. Respondent's complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[39] *Expedition Construction Corporation v. Africa*, G.R. No. 228671, December 14, 2017, 849 SCRA 327, 343, citing *Villanueva v. Philippine Daily Inquirer, Inc.*, 605 Phil. 926, 937 (2009).

FIRST DIVISION

[G.R. No. 206673. July 28, 2020]

FIRST PHILIPPINE HOLDINGS CORPORATION, *petitioner*, *vs.* **SECURITIES AND EXCHANGE COMMISSION,** *respondent*.

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE (B.P. 68); AUTHORIZED THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO COLLECT AND RECEIVE FEES AS PRESCRIBED BY LAWS OR ITS RULES AND REGULATIONS; B.P. 68 IMPLIEDLY REPEALED THE SPECIFIC FEES PRESCRIBED UNDER R.A. 944 AND R.A. 3531 FOR INCORPORATING CORPORATIONS AND OTHER RELATED FEES BY DELEGATING TO THE SEC THE POWER TO PROMULGATE RULES PRESCRIBING DIFFERENT RATES TO BE COLLECTED. — A perusal of the three laws reveals that the first instance of implied repeal is present in this case. R.A. 944 specifically prescribed fees for the "examining and filing of articles of incorporation," among other fees. On the other hand, Section 139 of the Corporation Code embraced "Incorporation and other fees." Both provisions indisputably cover the same subject matter, *i.e.*, the prescribed fee for incorporating corporations and other related fees. It is likewise apparent that a substantial inconsistency exists between the terms of the three laws. R.A. 944 prescribed a specific rate of 1/10 of 1% of the authorized capital stock, but in no case less than ₱25.00 nor more than ₱1,000.00, and R.A. 3531 pegged the fee collectible for an amendment extending the term of a corporation's existence to the same. On the other hand, Section 139 of the Corporation Code authorized the SEC to "collect and receive fees as authorized by law *or* by rules and regulations promulgated by the Commission." The use of the term "or" is significant. In statutory construction, the term "or" "is a disjunctive [conjunction] indicating an alternative. It often connects a series of words or propositions indicating a choice of either." Undoubtedly therefore, Congress, by using the term "or", intended to authorize the SEC to choose to either collect

and receive the fees already "authorized by law" *or* to promulgate rules and regulations prescribing the rates and fees it will collect and receive. In other words, while the rates for the filing of articles of incorporation and other fees were previously specifically provided by law, Section 139 in relation to Section 143 of the Corporation Code impliedly repealed the same by delegating to the SEC the power to also promulgate rules prescribing different rates to be collected. The Court finds that such a construction is more consistent with the declared intent to infuse the SEC with the power and authority to determine and promulgate such rules and regulations it deems reasonably necessary for the performance of its duties. More importantly, any other construction would not only render the phrase "collect and receive fees as authorized by law" superfluous in light of the existing laws on the matter, but would also render the additional phrase, "authorized x x x by rules and regulations promulgated by the Commission" worthless.

2. ID.; ID.; ID.; ID.; THE PRESCRIBED RATE FOR EXTENDING A CORPORATION'S TERM UNDER SEC M.C. NO. 9, S. 2004 WAS UNREASONABLE; HAVING BEEN DECLARED SAID CIRCULAR INVALID, SEC M.C. NO. 1, S. 1986, APPLIED; SEC IS ORDERED TO RETURN TO PETITIONER THE EXCESS IN THE AMOUNT IT PAID. — It is settled that "[t]o be valid, implementing rules and regulations (IRRs) must be **reasonable.** Administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down." In the instant case, the SEC, the national government regulatory agency charged with supervision over the corporate sector, has been authorized to promulgate rules and regulations reasonably necessary to enable it to perform its duties and mandates. Its power to prescribe fees, and the reasonableness of the amount, must therefore be read in light of this regulatory function. In *Securities and Exchange Commission v. GMA Network, Inc.*, the Court likened the SEC's authority to prescribe rates to the rate-fixing power of administrative agencies and held that the only applicable standard to gauge the validity thereof is that the rate prescribed be reasonable, just, and proportionate to the service for which the fee is being collected.

Notably, the Court, in said case, found the filing fee of ₱1,212,200.00 for the extension of GMA's corporate term already unreasonable[.] x x x It bears emphasis that the fee of ₱1,212,200.00 is a far cry from the ₱24,000,000.00 imposed on herein petitioner, even after accounting for inflation. Indeed, the amount appears exorbitant and confiscatory for the mere filing, "processing, examination, and verification" of a single paragraph of petitioner's articles of incorporation, even if the same were to be done by the SEC's most competent "Certified Public Accountants, lawyers, technical staff and competent support personnel." Even if the Court were inclined to agree with the SEC that the instant fee was not a "mere" "processing fee", but rather, a "license fee" for the grant of a fresh period for a corporation to act as a juridical being for another 50 years, the amount would still be unreasonable. x x x [I]t was only in the instant SEC M.C. No. 9, S. 2004 that the fee cap or ceiling was altogether abandoned, giving rise to the exaction of significantly huge regulatory fees. Even assuming arguendo that the SEC is correct in holding that a corporation with more authorized capital stock requires more regulation and supervision, the Court has not been shown how such additional effort on the part of the SEC can reasonably amount to ₱24,000,000.00 or 12,000 times more than the minimum amount of ₱2,000.00. Likewise, no justification has been demonstrated to the Court for imposing the huge amount of ₱24,000,000.00 on herein petitioner simply because it also happens to be a public company. While a public company may be subject to stringent regulations and to periodic reportorial requirements under the SRC, the instant fee is being imposed on a corporation's authorized capital stock, regardless of whether or not the corporation falls within the definition of a "public company." In other words, SEC M.C. No. 9, S. 2004 would also apply to a non-public company with the same authorized capital stock as herein petitioner. Evidently therefore, any additional surveillance and regulation that may be needed for public companies and the additional costs associated therewith are **not remotely related to the instant fee.** This only further shows that the fee is not only exorbitant, it is also quite arbitrary. x x x In view of the foregoing discussion, the prescribed rate for extending a corporation's term under SEC M.C. No. 9, S. 2004 is hereby declared **invalid and unreasonable.** As discussed hereunder, the rate prescribed for extending a corporation's

term under SEC M.C. No. 9, S. 2004 is invalid. Remarkably, SEC M.C. No. 2, S. 1994 was likewise declared invalid in *Securities and Exchange Commission v. GMA Network, Inc.* As such, SEC M.C. No. 1, S. 1986 applies. Under said Circular, the filing fee for amending articles of incorporation, where the amendment consists of extending the term of corporate existence is 1/10 of 1% of the authorized capital stock but not less than ₱300.00 nor more than ₱100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than ₱200.00 nor more than ₱100,000.00 for stock corporations without par value. In the case at bar, it appears that petitioner paid the total amount of ₱24,200,000.00. As the maximum amount payable under SEC M.C. No. 1, S. 1986 is ₱100,000.00, the SEC is hereby ordered to return the excess in the total amount of ₱24,100,000.00 to petitioner, to be credited against future fees or charges.

APPEARANCES OF COUNSEL

Quiazon Macalintal Barot Torres Ibarra Sison & Damaso for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

> *"To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as freedom from arbitrariness."*[1]

This is a petition for review on *certiorari*[2] (Petition) under Rule 45 of the Rules of Court assailing the September 28, 2012[3]

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[1] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849, 860.

[2] *Rollo*, pp. 9-73.

[3] *Id.* at 76-78. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios.

and March 25, 2013[4] Resolutions of the Court of Appeals, Second Division (CA), in CA-G.R. SP No. 121883. The CA 1) dismissed First Philippine Holdings Corporation's (petitioner) petition for review and upheld the authority of the Securities and Exchange Commission (SEC) to impose a registration fee amounting to ₱24,000,000.00 for the extension of petitioner's corporate term,[5] and 2) denied petitioner's motion for reconsideration.[6]

The Facts and Antecedent Proceedings

The dispute hinges on the reasonableness of the filing fee imposed by the SEC's Company Registration and Monitoring Department (CRMD). Petitioner was charged a substantial amount of ₱24,000,000.00 for the amendment of its articles of incorporation to extend its term of corporate existence as a filing fee under SEC Memorandum Circular No. 9, Series of 2004 (SEC M.C. No. 9, S. 2004).[7] The facts were summarized by the SEC *en banc* as follows:

> [Petitioner] is a domestic stock corporation registered with the [SEC] on 30 June 1961 with SEC Registration Number 19073. Its term was set to expire on 30 June 2011. On 01 March 2007, its Amended Articles of Incorporation ("AOI") was approved by the majority vote of the Board of Directors and ratified on 21 May 2007 by the vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock, particularly, Articles II (Primary Purpose), IV (Extension of Corporate Term) and VI (Number of Directors).
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> The amendment which caused the subject of this appeal is Article IV, which provides:
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> "That the term for which the Corporation is to exist shall be [1)] fifty (50) years, from and after the date of incorporation, and 2) fifty (50) more years from and after the expiration of the

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

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] *Id.* at 19.

said original term of fifty (50) years, or fifty (50) years more from and after June 30, 2011."

Upon filing of the amended AOI, [petitioner] was assessed the filing fee for the extension of its corporate existence, based on paragraph 11 of [SEC M.C. No. 9, S. 2004]. **It states that the filing fee for the application of amended articles of incorporation where [the] amendment consists of extending the term of corporate existence, shall be 1/5 of 1% of the authorized capital stock, but not less than ₱2,000.00.**

Thus, based on [petitioner's] authorized capital stock (ACS) of TWELVE BILLION ONE HUNDRED MILLION PESOS (₱12,100,000,000.00), [petitioner], on 21 June 2007, was assessed the amount of TWENTY[-]FOUR MILLION TWO HUNDRED THOUSAND PESOS (₱24,200,000.00) for the amend[ment] of [its] articles of incorporation to extend its corporate term, which it paid on the same day.

Also on 21 June 2007, [petitioner] filed a letter dated 20 June 2007 expressing [its] "surprise and dismay" to find that it was required to pay filing fees in the amount of TWENTY[-]FOUR MILLION PESOS (₱24,000,000.00) under [SEC M.C. No. 9, S. 2004], recalling that ***ten years ago***, under SEC Memo[randum] Circular No. 02, s. 1994 [(SEC M.C. No. 2, S. 1994)], the examining and filing fee for amended articles of incorporation of both stock and non-stock corporations was only TWO HUNDRED PESOS (₱200.00). [Petitioner] questioned the reasonableness and necessity of the fee of ₱24,000,000.00 (₱24 million, as stated by [petitioner] in its documents, disregarding the amount of ₱200 thousand), and paid the fee under protest, "without prejudice to filing the appropriate position paper, among other things."

It was only four months later [or] on 17 October 2007, when [petitioner] filed its Position Paper, dated 2 October 2007, claiming that [SEC M.C. No. 9, S. 2004] that imposes the filing fee of 1/5 of 1% of the authorized capital stock for the extension of corporate term is not a valid exercise of its authority to promulgate administrative regulations, for not being reasonably necessary. [Petitioner] thus prayed that the amount of ₱24 million be reduced to TWO HUNDRED PESOS (₱200.00) per [SEC M.C. No. 2, S. 1994] and that the amount in excess be promptly refunded to the corporation.

In November of the same year, a few months after its application for extending its corporate term ha[d] been granted, [petitioner] filed

its application for the amendment of Article VII of its AOI by increasing its authorized capital stock to THIRTY-TWO BILLION ONE HUNDRED MILLION PESOS (₱32,100,000,000.00), and the Certificate of Filing of the Amended AOI was granted by the Commission on 23 November 2007. For this, it was assessed and it paid the amount of FORTY MILLION PESOS (₱40,000,000.00) as filing fee, based on paragraph fourteen also of [SEC M.C. No. 9, S. 2004], which provides that the filing fee for [the] increase of capital stock for corporations with par value is, 1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher[,] but not less than ₱1,000.00.

On 07 January 2009, the Commission Secretary issued an Order, informing [petitioner] that the ***02 October 2007 Position Paper is treated as an Appeal, from the assessment of the CRMD*** of the filing fee for extension of corporate term, approved on 25 June 2007. [Petitioner] was asked to pay the docket fee in the total amount of TWO THOUSAND TWENTY PESOS (₱2,020.00), which was assessed on 21 January 2009 and paid on the same day.

On 28 January 2009, the Commission Secretary issued an Order addressed to Atty. Benito Cataran, Director of CRMD, to file a Reply Memorandum within TEN (10) days upon receipt of the Order.

On 26 February 2009, CRMD filed its Reply Memorandum by way of Comment ("CRMD Comment"), declaring that the imposition of the filing fee of 1/5 of 1% of the authorized capital stock for the extension of corporate term under [SEC M.C. No. 9, S. 2004] is a valid exercise of the Commission's authority to promulgate administrative regulation. CRMD also indicated that the fifteen[-]day period within which to file the Petition for Review should be reckoned from the actual receipt by [petitioner] of the certificate and in the instant case, more than fifteen days have transpired before the filing of the petition.

In response, [petitioner] filed a Request for Time to File Reply to Comment on 18 March 2009, and acknowledged therein that it received the CRMD Comment on 11 March 2009 but prayed that it be granted until 26 March 2009 within which to file its Reply. Again, on 26 March 2009, [petitioner] filed a Request for Time to File Reply to Comment and prayed that it be given until 31 March 2009 to submit its Reply. It was only on 31 March 2009 when it filed its Reply, way beyond the [10-]day period required by the 2006 Rules of Procedure of the Commission ("2006 Rules"). In its Reply,

[petitioner] basically reiterated the contents of its 02 October 2007 Position Paper.[8]

The Ruling of the SEC *En Banc*

In its October 13, 2011 Decision,[9] the SEC *en banc* held that pursuant to the Corporation Code, Republic Act No. (R.A.) 3531,[10] the Securities Regulations Code (SRC), the Civil Code, and the Constitution, the imposition of the filing fee for the extension of a corporation's term, in the amount of 1/5 of 1% of the authorized capital stock, is a valid exercise of the SEC's authority to promulgate administrative regulations.[11]

Under the Corporation Code[12] and the SRC,[13] the SEC has the power and authority to promulgate rules and regulations reasonably necessary to enable it to perform its duties.[14] The SEC *en banc* reasoned that this authority includes the power to prescribe the fees necessary for the SEC to carry out its functions and mandates,[15] which entail a lot of expenditure on the part of the government.[16] Given that petitioner is a publicly listed company burdened with various reportorial requirements, the SEC *en banc* held that it is duty-bound to monitor petitioner's compliance for the protection of the investing public.[17] Contrary to petitioner's claim therefore, the fee imposed is not merely

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[8] *Id.* at 147-150. Emphasis and italics in the original; underscoring supplied.

[9] *Id.* at 147-161.

[10] AMENDMENT TO CORPORATION LAW RE: ARTICLES OF INCORPORATION, June 20, 1963.

[11] *Rollo*, p. 152.

[12] *Id.* at 94.

[13] *Id.* at 97.

[14] *Id.* at 98.

[15] *Id.*

[16] *Supra* note 11.

[17] *Id.* at 94-95.

for the processing of its application.[18] Rather, the approval of petitioner's application triggers the renewal of the regulatory functions of the SEC that will last for the next 50 years.[19] The SEC *en banc* held that petitioner, as a grantee of a mere privilege, should contribute to the expenses for its regulation for the next 50 years of its existence. In any event, the fee amounts to a reasonable ₱40,000.00 *per* month for 50 years.[20]

The SEC *en banc* further held that R.A. 3531,[21] which was purportedly never expressly repealed, authorizes the SEC to collect, for the extension of the corporate term, the same fees collectible for the filing of articles of incorporation.[22] Hence, the imposition of the 1/5 of 1% of the authorized capital stock for both the filing of the articles of incorporation and the extension of the corporate term is consistent with the law.[23]

In sum, the filing fee imposed is reasonable to cover the cost of not only issuing the license but also of the regulatory functions performed by the various departments of the SEC.[24]

Petitioner thus filed a petition for review under Rule 43 with the CA.[25]

The Ruling of the CA

In its September 28, 2012 Resolution,[26] the CA dismissed the petition and held that the SEC is authorized to promulgate such rules and regulations as it may consider appropriate for

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[18] *Id.* at 95.

[19] *Id.*

[20] *Id.*

[21] *Id.* at 96.

[22] *Supra* note 12.

[23] *Id.*

[24] *Id.* at 101.

[25] *Id.* at 13.

[26] *Supra* note 3.

the enforcement of the SRC and other pertinent laws. The CA held that this authority is broad enough to cover the fixing of reasonable rates to be imposed upon securities-related organizations.[27]

The CA further held that SEC M.C. No. 9, S. 2004 prescribing the filing fees for the extension of a corporation's life at the rate of 1/5 of 1% of authorized capital stock was reasonably necessary for the SEC to perform, monitor, and carry out its duties and functions to protect the investing public from fraudulent manipulations for the next 50 years.[28]

Petitioner filed a motion for reconsideration, which was denied by the CA in its March 25, 2013 Resolution.[29]

Petitioner thus filed the instant Petition under Rule 45 alleging, among others, that: 1) the SEC has no basis to impose the subject "filing fee" for the examination and amendment of petitioner's articles of incorporation, considering that none of the authorities cited by the SEC justify the imposition of the amount of ₱24,000,000.00;[30] 2) the SEC does not have the power and discretion to, by itself, independently fix and prescribe a legislative determination of the amount of fees it can collect;[31] 3) the filing fee is in the nature of a tax which the SEC has no power to impose;[32] and 4) the filing fee is not reasonably necessary and is, in fact, patently oppressive, confiscatory, and contrary to law, jurisprudence and the Constitution.[33]

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[27] *Id.* at 77.

[28] *Id.* at 77-78.

[29] *Supra* note 4.

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

[31] *Id.* at 28.

[32] *Id.*

[33] *Id.*

In its Comment,[34] the SEC, through the Office of the Solicitor General, argued that: 1) the SEC is authorized by law to impose filing fees for applications for amendment of articles of incorporation such as the case at bar;[35] 2) the constitutionality of a law cannot be collaterally attacked;[36] and 3) the assessed filing fee is not a tax and is reasonably necessary for regulation, which is the main task of the SEC.[37]

Issues

Stripped of verbiage, the issues may be summarized as follows: 1) whether the SEC is authorized to prescribe the rates for incorporation and other fees, and 2) whether the fee for the extension of a corporation's term in the amount of ₱24,000,000.00[38] is unreasonable, patently oppressive, and confiscatory.

The Court's Ruling

The Petition has partial merit. The SEC is authorized to promulgate rules and regulations to prescribe the rates for incorporation and other fees. However, in the exercise of said authority, the SEC imposed an unreasonable rate for the extension of a corporation's term.

The SEC was authorized to promulgate rules and regulations prescribing the rates for incorporation and other fees.

Petitioner claims that the SEC was only granted a general authority to collect and receive fees as authorized by law and

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[34] *Id.* at 331-351.

[35] *Id.* at 338.

[36] *Id.* at 343.

[37] *Id.* at 346-348.

[38] Computed under SEC M.C. No. 9, S. 2004 formula of 1/5 of 1% of authorized capital stock but not less than ₱2,000.00.

not the authority to determine and fix the rates thereof.[39] On the other hand, the SEC claims that it was authorized by law to prescribe filing fees for applications for amendment of articles of incorporation such as the case at bar.[40] The Court agrees with the SEC.

In 1953, Congress enacted R.A. 944[41] authorizing the SEC to collect and receive fees for the filing and examination of articles of incorporation, among others. The amount was pegged at 1/10 of 1% of the authorized capital stock, but in no case less than ₱25.00 nor more than ₱1,000.00.[42]

In 1963, R.A. 3531 authorized the SEC to collect and receive the same fees for an amendment extending the term of a corporation's existence as the fees collected under *existing* law for the filing of articles of incorporation, *i.e.*, 1/10 of 1% of the authorized capital stock, but in no case less than ₱25.00 or more than ₱1,000.00 prescribed under R.A. 944.

In 1976, Presidential Decree No. (P.D.) 902-A[43] reorganized the SEC in order to "make it a more potent, responsive and

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[39] *Rollo*, p. 31.

[40] *Supra* note 34.

[41] INCREASING THE FEES CHARGED BY THE SECURITIES AND EXCHANGE COMMISSION AND TO AUTHORIZE IT TO COLLECT AND RECEIVE FEES FOR CERTAIN SERVICES, June 20, 1953.

[42] R.A. 944, Sec. 1 (a), provides:

> Section 1. The Securities and Exchange Commission is hereby authorized to collect and receive fees for the following:
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> (a) *For examining and filing articles of incorporation of a corporation* — One-tenth of one *per centum* of the authorized capital stock, but in no case shall the fee be less than twenty-five pesos or more than one thousand pesos: *Provided*, That in case of shares without par value, each share shall be taken to be of the par value of one hundred pesos for the purpose of fixing the fee: *And provided, further*, That the fee for the examination and filing of articles of incorporation of a non-stock corporation shall be twenty-five pesos[.]

[43] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE

effective arm of the government to help in the implementation of these programs and to play a more active role in national-building." Said law likewise authorized the SEC to recommend to the President the revision and adjustment of the charges and fees it is authorized by law to collect.[44]

In 1980, the Corporation Code of the Philippines[45] was enacted. Under said law, the SEC was authorized to collect and receive fees as prescribed by law or by its rules and regulations. Sections 139 and 143 of the Corporation Code provided:

Section 139. *Incorporation and other fees*. — The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission. (n)[46]

Section 143. *Rule-making power of the Securities and Exchange Commission*. — The Securities and Exchange Commission shall have

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SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT, March 11, 1976.

[44] P.D. 902-A, Sec. 7 provides:

SECTION 7. The Commission is authorized to recommend to the President the revision, alteration, amendment or adjustment of the charges and fees, which by law, it is authorized to collect.

[45] Batas Pambansa Blg. 68 (B.P. 68), CORPORATION CODE OF THE PHILIPPINES, May 1, 1980.

[46] Notably, Sec. 139 of the Corporation Code was recently repealed by R.A. 11232 or the Revised Corporation Code of the Philippines, and now states:

SEC. 175. *Collection and Use of Registration, Incorporation and Other Fees*. — For a more effective implementation of this Code, the Commission is hereby authorized to collect, retain, and use fees, fines, and other charges pursuant to this Code and its rules and regulations. The amount collected shall be deposited and maintained in a separate account which shall form a fund for its modernization and to augment its operational expenses such as, but not limited to, capital outlay, increase in compensation and benefits comparable with prevailing rates in the private sector, reasonable employee allowance, employee health care services, and other insurance, employee career advancement and professionalization, legal assistance, seminars, and other professional fees.

the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

In addition, the Corporation Code included a repealing clause, which stated:

Section 146. *Repealing clause*. — Except as expressly provided by this Code, all laws or parts thereof inconsistent with any provision of this Code shall be deemed repealed. (n)

The foregoing provisions naturally give rise to the question of whether the Corporation Code impliedly repealed the specific fees prescribed under R.A. 944 and R.A. 3531, and if so, to what extent.

In *Bank of Commerce v. Planters Development Bank*,[47] the Court discussed the rules of statutory construction involving implied repeals, as follows:

An implied repeal transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws. Repeal by implication is not favored, unless manifestly intended by the legislature, or unless it is convincingly and unambiguously demonstrated, that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist; the legislature is presumed to know the existing law and would express a repeal if one is intended.

There are two instances of implied repeal. One takes place when the provisions in the two acts on the same subject matter are irreconcilably contradictory, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The other occurs when the later act covers the whole subject of the earlier

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[47] G.R. Nos. 154470-71 & 154589-90, September 24, 2012, 681 SCRA 521.

one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law.[48]

A perusal of the three laws reveals that the first instance of implied repeal is present in this case.

R.A. 944 specifically prescribed fees for the "examining and filing of articles of incorporation," among other fees.[49] On the other hand, Section 139 of the Corporation Code embraced "Incorporation and other fees."[50] Both provisions indisputably cover the same subject matter, *i.e.*, the prescribed fee for incorporating corporations and other related fees.

It is likewise apparent that a substantial inconsistency exists between the terms of the three laws. R.A. 944 prescribed a specific rate of 1/10 of 1% of the authorized capital stock, but in no case less than ₱25.00 nor more than ₱1,000.00,[51] and R.A. 3531 pegged the fee collectible for an amendment extending the term of a corporation's existence to the same.[52] On the other hand, Section 139 of the Corporation Code authorized the SEC to "collect and receive fees as authorized by law *or* by rules and regulations promulgated by the Commission." The use of the term "or" is significant. In statutory construction,

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[48] *Id.* at 545-546. Underscoring supplied.

[49] *Supra* note 41.

[50] B.P. 68, Sec. 139, provides:

Section 139. *Incorporation and other fees*. — The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission. (n). Underscoring supplied.

[51] R.A. 944, Sec. 1.

[52] R.A. 3531, Sec. 1 states:

Section 1. x x x

x x x x x x x x x

x x x *Provided, however,* That where the amendment consists in extending the term of corporate existence the Securities and Exchange Commission shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law for the filing of articles of incorporation." Underscoring supplied.

the term "or" "is a disjunctive [conjunction] indicating an alternative. It often connects a series of words or propositions indicating a choice of either."[53]

Undoubtedly therefore, Congress, by using the term "or," intended to authorize the SEC to choose to either collect and receive the fees already "authorized by law" *or* to promulgate rules and regulations prescribing the rates and fees it will collect and receive.[54] In other words, while the rates for the filing of articles of incorporation and other fees were previously specifically provided by law, Section 139 in relation to Section 143 of the Corporation Code impliedly repealed the same by delegating to the SEC the power to also promulgate rules prescribing different rates to be collected.

The Court finds that such a construction is more consistent with the declared intent to infuse the SEC with the power and authority to determine and promulgate such rules and regulations it deems reasonably necessary for the performance of its duties.[55] More importantly, any other construction would not only render the phrase "collect and receive fees as authorized by law" superfluous in light of the existing laws on the matter, but would also render the additional phrase, "authorized x x x by rules and regulations promulgated by the Commission" worthless.

However, while administrative agencies may be authorized by law to promulgate rules and regulations necessary to carry out their mandates under a statute, due process requires that

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[53] *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422. Citations omitted, underscoring supplied.

[54] *Rollo*, p. 339.

[55] B.P. 68, Sec. 143 provides:

Section 143. *Rule-making power of the Securities and Exchange Commission.* — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

said authority always be exercised within the bounds of the ever-elusive concept of "reasonableness."[56]

The rate prescribed was unreasonable.

Petitioner claims that the prescribed fee amounting to ₱24,000,000.00 for the mere examination of an amendment of a single paragraph in a corporation's articles of incorporation[57] is unreasonable, oppressive, confiscatory and amounts to a tax.[58] The SEC argues that the fee imposed is not merely for the processing of its application.[59] Rather, it is a license fee that is reasonably necessary to enable it to perform its regulatory functions for the next 50 years.[60] The Court finds both claims to be partially meritorious. The fee was imposed primarily for regulation and thus cannot be considered a tax.[61] Nevertheless, the Court finds the license fee imposed to be unreasonable and exorbitant.

Pursuant to the SEC's authority to prescribe fees under Section 139 in relation to Section 143 of the Corporation

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[56] See generally *Mangune v. Ermita*, G.R. No. 182604, September 27, 2016, 804 SCRA 237, 263 and *Philippine Communications Satellite Corp. v. Alcuaz*, G.R. No. 84818, December 18, 1989, 180 SCRA 218, 233.

[57] *Rollo*, p. 60.

[58] *Id.* at 65.

[59] *Supra* note 17.

[60] *Id.* at 346-347.

[61] In *Progressive Development Corp. v. Quezon City*, G.R. No. L-36081, April 24, 1989, 172 SCRA 729, 635, the Court explained: "The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although *license fee is a legal concept distinguishable from tax*: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax."

Code, the SEC, through SEC M.C. No. 9, S. 2004, imposed the following:

Company Registration and Monitoring Department	
Application	Filing Fee
x x x	x x x x x x
7. Articles of Incorporation	
a. Stock corporation with par value	1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
b. Stock corporation without par value	1/5 of 1% of authorized capital stock computed at ₱100.00 per share or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
x x x	x x x x x x
11. **Amended Articles of Incorporation where amendment consists of extending the term of corporate existence**	**1/5 of 1% of the authorized capital stock but not less than ₱2,000.00.**
x x x	x x x x x x
14. Increase of Capital Stock	
a. Corporation with par value	1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
b. Corporation without par value	1/5 of 1% of the increase in capital stock computed at ₱100.00 per share or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
x x x	x x x x x x

It is settled that "[t]o be valid, implementing rules and regulations (IRRs) must be **reasonable**. Administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down."[62]

In the instant case, the SEC, the national government regulatory agency charged with supervision over the corporate sector,[63] has been authorized to promulgate rules and regulations reasonably necessary to enable it to perform its duties and mandates. Its power to prescribe fees, and the reasonableness of the amount, must therefore be read in light of this regulatory function.

In *Securities and Exchange Commission v. GMA Network, Inc.*,[64] the Court likened the SEC's authority to prescribe rates to the rate-fixing power of administrative agencies and held that the only applicable standard to gauge the validity thereof is that the rate prescribed be reasonable, just, and proportionate to the service for which the fee is being collected.[65] Notably, the Court, in said case, found the filing fee of ₱1,212,200.00 for the extension of GMA's corporate term already unreasonable, *viz.*:

A related factor which precludes consideration of the questioned

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[62] *Quezon City PTCA Federation, Inc. v. Department of Education*, G.R. No. 188720, February 23, 2016, 784 SCRA 505, 583. Underscoring supplied.

[63] See *http://www.sec.gov.ph/about/mission-values-and-vision/* (last accessed March 30, 2020).

[64] G.R. No. 164026, December 23, 2008, 575 SCRA 113.

[65] See generally *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581 and *Philippine Communications Satellite Corp. v. Alcuaz*, *supra* note 56.

issuance as interpretative in nature merely is the fact the SEC's assessment amounting to ₱1,212,200.00 is exceedingly unreasonable and amounts to an imposition. A filing fee, by legal definition, is that charged by a public official to accept a document for processing. **The fee should be just, fair, and proportionate to the service for which the fee is being collected**, in this case, the examination and verification of the documents submitted by GMA to warrant an extension of its corporate term.

Rate-fixing is a legislative function which concededly has been delegated to the SEC by R.A. No. 3531 and other pertinent laws. The due process clause, however, permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority and to strike it down when it arbitrarily infringes on a person's right to property.[66]

It bears emphasis that the fee of ₱1,212,200.00 is a far cry from the ₱24,000,000.00 imposed on herein petitioner, even after accounting for inflation. Indeed, the amount appears exorbitant and confiscatory for the mere filing, "processing, examination, and verification" of a single paragraph of petitioner's articles of incorporation,[67] even if the same were to be done by the SEC's most competent "Certified Public Accountants, lawyers, technical staff and competent support personnel."[68]

Even if the Court were inclined to agree with the SEC that the instant fee was not a "mere" "processing fee," but rather, a "license fee" for the grant of a fresh period for a corporation to act as a juridical being for another 50 years,[69] the amount would still be unreasonable.

In *Progressive Development Corp. v. Quezon City*,[70] the Court explained the due process standards applicable to "license

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[66] *Securities and Exchange Commission v. GMA Network, Inc.*, *supra* note 64 at 123. Emphasis and underscoring supplied.

[67] *Supra* note 57.

[68] *Supra* note 17.

[69] *Id.* at 348-350.

[70] *Supra* note 61.

fees," in this wise:

> To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also **bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well.** When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.[71]

The Court, in *Morcoin Co., Ltd. v. City of Manila*,[72] likewise held:

> x x x The power to regulate and impose license fee for the operations of slot machines — which include juke box machines, pinball machines and other coin-operated contrivances — should not, however, be construed as including the power to impose license taxes for revenue purposes. Indeed, a cursory reading of the legislative powers of the Municipal Board enumerated in Section 18 of the City's Revised Charter shows that the power to tax is given where it was intended to be exercised and is not given where it was not so designed. As the authority was withheld, it must logically result that the power granted under the above-quoted provision of the City's Charter is purely regulatory for police purposes. ([*Pacific Commercial Co. v. Romualdez and Alfonso*, 49 Phil. 917; *Hercules Lumber v.*

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[71] *Id.* at 636. Emphasis and underscoring supplied.

[72] No. L-15351, January 28, 1961, 1 SCRA 310.

Municipality of Zamboanga, 55 Phil. 653.]) Such being the case, the amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances cannot be prohibitive, extortionate, confiscatory or in an unlawful restraint of trade, but **should be approximately commensurate with and sufficient to cover all the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful.** ([*Cu Unjieng v. Patstone*, 42 Phil. 818; *City of Iloilo v. Villanueva*, 105 Phil. 337]; 33 Am. Jur. 367; 53 C.J.S. 517]; See also the cases cited therein.) **Any ordinance which imposes a license fee which is substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains, is invalid.** (25 Am. Law and Proc. 611; 28 *Id.* 749, 750.)[73]

The SEC itself recognizes that its authority to prescribe fees is limited to imposing a "fee sufficient in amount to include the expense of issuing the license and the cost of necessary inspection or police surveillance connected with the business or calling licensed."[74] Nevertheless, it admitted that the fee imposed in the instant case was not based on the probable expense of issuing the license, the cost of necessary inspection and the probable expenses of regulation, but was instead made directly related to a corporation's **capacity to pay**.[75]

While R.A. 944 in relation to R.A. 3531 and previous Memorandum Circulars[76] were also based on authorized capital stock, the rate prescribed therein undeniably contained a fee cap or ceiling, which effectively prevented it from ballooning way past the probable expenses of regulation. Notably, R.A. 944 stated:

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[73] *Id.* at 313-314.

[74] *Rollo*, p. 347. See also *City of Ozamiz v. Lumapas*, 160 Phil. 33 (1975).

[75] *Id.* at 99.

[76] See SEC Memorandum Circular No. 1, Series of 1986 (SEC M.C. No. 1, S. 1986) and SEC M.C. No. 2, S. 1994.

SECTION 1. The Securities and Exchange Commission is hereby authorized to collect and receive fees for the following:

(a) *For examining and filing articles of incorporation of a corporation* — One-tenth of one *per centum* of the authorized capital stock, but in no case shall the fee be less than twenty-five pesos **or more than** one thousand pesos: *Provided*, That in case of shares without par value, each share shall be taken to be of the par value of one hundred pesos for the purpose of fixing the fee: *And provided, further*, That the fee for the examination and filing of articles of incorporation of a non-stock corporation shall be twenty-five pesos;

(b) *For examining and filing a certificate of increase of the capital stock of a corporation* — One-tenth of one *per centum* of the increase in capital stock, but in no case shall the fee be less than twenty-five pesos or more than one thousand pesos;

(c) *For examining and filing the by-laws of a corporation* — Five pesos; and the same fee shall be charged for the examination and filing of an amendment to the by-laws;

(d) *For the examination and recording of articles of partnership*:

(1) *Presentation Fee* — One peso;

(2) *Recording fee* — Ten pesos for a capital not exceeding ten thousand pesos; and two pesos for each thousand or fraction thereof in excess of the first ten thousand, but in no case shall the fee be more than six hundred pesos;

(3) *For examining and recording a document amending articles of partnership* — Ten pesos. (Underscoring supplied)

Similarly, SEC M.C. No. 1, S. 1986 prescribed the filing fee for amending articles of incorporation, where the amendment consists of extending the term of corporate existence at 1/10 of 1% of the authorized capital stock but not less than ₱300.00 **nor more than** ₱100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than ₱200.00

[77] *Securities and Exchange Commission v. GMA Network, Inc.*, *supra* note 64 at 120.

nor more than ₱100,000.00 for stock corporations without par value.[77]

While SEC M.C. No. 2, S. 1994 sought to prescribe 1) the fee for the filing of articles of incorporation at the rate of 1/10 of 1% of the authorized capital stock plus 20% thereof but not less than ₱500.00, without any maximum filing fee[78] and 2) the fee of ₱200.00 for examining and filing amended articles of incorporation,[79] said Circular was declared invalid in *Securities and Exchange Commission v. GMA Network, Inc.*,[80] for failing to comply with the publication and filing requirements pronounced in *Tanada v. Tuvera*.[81]

Thus, it was only in the instant SEC M.C. No. 9, S. 2004 that the fee cap or ceiling was altogether abandoned, giving rise to the exaction of significantly huge regulatory fees.

Even assuming *arguendo* that the SEC is correct in holding that a corporation with more authorized capital stock requires more regulation and supervision, the Court has not been shown how such additional effort on the part of the SEC can reasonably amount to ₱24,000,000.00 or 12,000 times more than the minimum amount of ₱2,000.00.[82] Likewise, no justification has been demonstrated to the Court for imposing the huge amount of ₱24,000,000.00 on herein petitioner simply because it also happens to be a public company.[83] While a public company may be subject to stringent regulations and to periodic reportorial requirements

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[78] *Id.*

[79] *Rollo*, pp. 95-96.

[80] *Supra* note 64.

[81] 220 Phil. 422 (1985).

[82] See SEC M.C. No. 9, S. 2004.

[83] *Rollo*, p. 98.

[84] Section 3.1.16 of the 2015 IMPLEMENTING RULES AND REGULATIONS OF THE SECURITIES AND REGULATIONS CODE defined public company as:

under the SRC, the instant fee is being imposed on a corporation's authorized capital stock, regardless of whether or not the corporation falls within the definition of a "public company."[84] In other words, SEC M.C. No. 9, S. 2004 would also apply to a non-public company with the same authorized capital stock as herein petitioner. Evidently therefore, any additional surveillance and regulation that may be needed for public companies and the additional costs associated therewith are **not remotely related to the instant fee**. This only further shows that the fee is not only exorbitant, it is also quite arbitrary.

To further illustrate the arbitrariness of the cap-less and therefore limitless formula prescribed under SEC M.C. No. 9, S. 2004, the Court notes that petitioner likewise paid a "filing fee" in the amount of ₱40,000,000.00 for the increase of its authorized capital stock.[85] Curiously, had the increase in its authorized capital stock from ₱12.1 billion to ₱32.1 billion been undertaken *before* petitioner sought an extension of its corporate life, petitioner would have paid ₱40,000,000.00 for the increase in its authorized capital stock and thereafter, ₱64,200,000.00 (instead of the current ₱24,000,000.00) for the extension of its term. In this scenario, what additional regulatory cost could possibly justify the outrageous ₱40,200,000.00 leap in petitioner's license fees?

It also bears emphasis that the SEC presumably examined petitioner's corporate records and its compliance with various reportorial requirements each time it increased its authorized capital stock or sought SEC approval for other corporate acts undertaken prior to the extension of its corporate term.[86] Thus,

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3.1.16. Public Company means any corporation with a class of equity securities listed on an Exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities.

[85] *Supra* note 8.

[86] See for instance requirements for Increase of Authorized Capital Stock available at http://www.sec.gov.ph/services-2/company-2/amendment/.

when petitioner filed for the extension of its corporate term in 2007, the SEC only needed to determine petitioner's compliance as regards the reportorial requirements due after the approval or monitoring of the corporate act immediately preceding the extension under examination. As the SEC already charged significant fees for previous corporate acts requiring SEC approval, especially increases in capital stock, the incremental work involved in extending petitioner's corporate life could not justifiably amount to ₱24,000,000.00.

The unreasonableness of the instant fee is bolstered by the fact that R.A. 11232 or the Revised Corporation Code of the Philippines, which took effect on February 23, 2019, now grants all corporations perpetual existence, unless its articles of incorporation otherwise provides:

> SEC. 11. *Corporate Term.* — A corporation shall have perpetual existence unless its articles of incorporation provides otherwise.
>
> Corporations with certificates of incorporation issued prior to the effectivity of this Code, and which continue to exist, shall have perpetual existence, unless the corporation, upon a vote of its stockholders representing a majority of its outstanding capital stock, notifies the Commission that it elects to retain its specific corporate term pursuant to its articles of incorporation: *Provided*, That any change in the corporate term under this section is without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code.
>
> A corporate term for a specific period may be extended or shortened by amending the articles of incorporation: *Provided*, That no extension may be made earlier than three (3) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Commission: *Provided, further*, That such extension of the corporate term shall take effect only on the day following the original or subsequent expiry date(s).
>
> A corporation whose term has expired may apply for a revival of its corporate existence, together with all the rights and privileges under its certificate of incorporation and subject to all of its duties, debts and liabilities existing prior to its revival. Upon approval by the Commission, the corporation shall be deemed revived and a certificate of revival of corporate existence shall be issued, giving it

perpetual existence, unless its application for revival provides otherwise.

No application for revival of certificate of incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, non-stock savings and loan associations (NSSLAs), pawnshops, corporations engaged in money service business, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

Evidently, there is **no more basis** to impose a "license fee" for the purported grant of a fresh period for a corporation to act as a juridical being for another 50 years.[87]

While administrative rules are presumed valid and reasonable, said presumption may be set aside when the invalidity or unreasonableness appears on the face of the administrative rule itself or is established by proper evidence.[88] Unreasonableness is repugnant to due process and the Constitution. "*To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression*."[89]

In view of the foregoing discussion, the prescribed rate for extending a corporation's term under SEC M.C. No. 9, S. 2004 is hereby declared **invalid and unreasonable**.

As regards the amount to be refunded, the Court notes that SEC M.C. No. 9, S. 2004 superseded SEC M.C. No. 2, S. 1994,[90] which, in turn, superseded SEC M.C. No. 1, S. 1986.[91]

As discussed hereunder, the rate prescribed for extending a corporation's term under SEC M.C. No. 9, S. 2004 is invalid.

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[87] *Supra* note 69.

[88] See *Morcoin Co., Ltd. v. City of Manila*, *supra* note 72.

[89] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, *supra* note 1.

[90] *Supra* note 79.

[91] *Securities and Exchange Commission v. GMA Network, Inc.*, *supra* note 64.

Remarkably, SEC M.C. No. 2, S. 1994 was likewise declared invalid in *Securities and Exchange Commission v. GMA Network, Inc.*[92]

As such, SEC M.C. No. 1, S. 1986 applies. Under said Circular, the filing fee for amending articles of incorporation, where the amendment consists of extending the term of corporate existence is 1/10 of 1% of the authorized capital stock but not less than ₱300.00 nor more than ₱100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than ₱200.00 nor more than ₱100,000.00 for stock corporations without par value.[93]

In the case at bar, it appears that petitioner paid the total amount of ₱24,200,000.00.[94] As the maximum amount payable under SEC M.C. No. 1, S. 1986 is ₱100,000.00, the SEC is hereby ordered to return the excess in the total amount of ₱24,100,000.00 to petitioner, to be credited against future fees or charges.[95]

Having resolved the foregoing matters, the Court finds no more need to resolve the other issues raised in the Petition.

WHEREFORE, the Petition is **GRANTED**. The September 28, 2012 and March 25, 2013 Resolutions of the Court of Appeals, Second Division, in CA-G.R. SP No. 121883 are hereby **SET ASIDE**. The rate prescribed for extending a corporation's term under SEC Memorandum Circular No. 9, Series of 2004 is hereby declared invalid and unreasonable. The Securities and Exchange Commission is hereby **DIRECTED** to return the amount of ₱24,100,000.00 to First Philippine Holdings Corporation, to be credited against future fees.

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[92] *Id.*

[93] *Id.* at 120.

[94] *Rollo*, p. 89.

[95] *Supra* note 58. Petitioner prayed that "the TWENTY-FOUR MILLION PESO (₱24,000,000.00) Filing Fee, paid by Petitioner under protest for examination of the amendment of Petitioner's articles of incorporation, be **computed according to the proper law** and that the amount in excess thereof be properly refunded/credited to Petitioner accordingly." Emphasis in the original; underscoring supplied.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 210318. July 28, 2020]

JANICE RESIDE *y* TAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA THROUGH MISAPPROPRIATION UNDER PARAGRAPH 1(b) OF THE REVISED PENAL CODE; ELEMENTS. — Article 315 of the RPC punishes criminal fraud resulting to damage capable of pecuniary estimation. The elements of estafa through misappropriation under pararagraph 1(b), Article 315 of the RPC are: 1. That money, goods or other personal properties are received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; 2. That there is a misappropriation or conversion of such money or property by the offender or denial on his part of the receipt thereof; 3. That the misappropriation or conversion or denial is to the prejudice of another; and 4. That there is a demand made by the offended party on the offender.

2. ID.; ID.; ID.; MERE RECEIPT OF THE MONEY, GOODS, OR PERSONAL PROPERTY DOES NOT SUFFICE, IT IS ALSO ESSENTIAL THAT THE ACCUSED ACQUIRED BOTH MATERIAL OR PHYSICAL POSSESSION AND JURIDICAL POSSESSION OF THE THING RECEIVED; JURIDICAL POSSESSION, DEFINED. — Contrary to the identical ruling of the courts *a quo*, the first element of the crime charged is absent. Verily, when the money, goods, or any other personal

property *is received* by the offender from the offended party (1) in *trust*, or (2) on *commission*, or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received. Stated plainly, mere receipt of the money, goods, or personal property does not suffice, it is also essential that the accused acquired both material or physical possession and juridical possession of the thing received. Juridical possession refers to a possession which gives the transferee a right over the thing transferred and this, he may set up even against the owner.

3. **ID.; ID.; ID.; POSSESSION BY AN EMPLOYEE WHO RECEIVES FUNDS IN BEHALF OF THE COMPANY AND POSSESSION OF AN AGENT, DISTINGUISHED; AS LONG AS THE JURIDICAL POSSESSION OF THE THING APPROPRIATED DID NOT PASS TO THE EMPLOYEE, THE OFFENSE COMMITTED IS THEFT, QUALIFIED OR OTHERWISE.—** As early as 1956, the Court, in *Guzman v. Court of Appeals*, already demarcated the line between possession by an employee who receives funds in behalf of the company and possession of an agent, thus: There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault[.] Therefore, as it now stands, a sum of money received by an employee in behalf of an employer is considered to be **only in the material possession** of the employee. Notably, such material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. As long as the juridical possession of the thing appropriated did not pass to the employee, the offense committed is theft, qualified or otherwise.

4. ID.; QUALIFIED THEFT; ELEMENTS; PROPER OFFENSE COMMITTED IN CASE AT BAR.— [T]he essential elements of qualified theft are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence. The foregoing elements are present in this case.

5. ID.; ID.; PENALTY IN CASE AT BAR. — We now discuss the penalty in light of Republic Act (R.A.) No. 10951, which took effect on September 16, 2017. As stated elsewhere in this Decision, Article 310 of the RPC prescribes penalties next higher by two degrees than those specified in Article 309 if the theft was committed with, among others, grave abuse of confidence. Article 309, as amended by R.A. No. 10951, now prescribes the penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than ₱20,000.00, but does not exceed ₱600,000.00. Applying Article 309, as amended, and Article 310, qualified theft involving the amount of ₱134,462.90 is now punishable by *prision mayor* in its medium and maximum periods. After computing the periods for this adjusted penalty per Article 65 of the RPC and since no aggravating or mitigating circumstance is present, the imposable penalty is from 9 years, 4 months and 1 day to 10 years and 8 months. As this duration exceeds one year, the Indeterminate Sentence Law becomes applicable. We, thus, set the maximum term of 9 years, 4 months and 1 day of *prision mayor*. The minimum term is, thus, set at 5 years, 5 months and 11 days of *prision correccional*, which is within the range of penalty next lower to that prescribed by the RPC for qualified theft.

APPEARANCES OF COUNSEL

Brian B. Pellazar for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

The present Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assails the June 28, 2013 Decision[2] and the November 26, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 34634, which affirmed with modification the April 8, 2011 Decision[4] of the Regional Trial Court (RTC) of Las Piñas City, Branch 201 in Criminal Case No. 06-0052 convicting petitioner Janice Reside *y* Tan (petitioner) for the crime of estafa penalized under paragraph 1(b), Article 315 of the Revised Penal Code (RPC).

The Facts

Petitioner was tried in the RTC under the following Information:

> That on various dates from 2001 to 2005, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with unfaithful and abuse of confidence did then and there willfully, unlawfully, [and] feloniously defraud complainant school TREASURY OF THE GOLDEN WORD SCHOOL, INC. herein represented by its President Carmelita C. De Dios in the amount of [₱]1,721,010.82 in the following manner, to wit: the accused then employed as a Pre-School and Grade School Principal in complainant school authorized to collect and receive tuition and other school payments of students with the express obligation to remit said collection to the school, received a total collection from tuition and other school payments of preschool and grade school students in the amount of [₱]1,721,010.82 but said accused, once in possession of the amount and far from complying with her obligation,

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[1] *Rollo*, pp. 10-34.

[2] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr., concurring; *id*. at 68-80.

[3] *Id*. at 81-82.

[4] Penned by Presiding Judge Lorna Navarro-Domingo; *id*. at 62-65.

misappropriated, misapplied and converted to her own use the amount of [₱]1,721,010.82 and despite repeated demands made by the complainant school accused failed and refused and still fails and refuses to return said amount to the damage and prejudice of said complainant school.

CONTRARY TO LAW.[5]

During her arraignment on September 1, 2006, petitioner pleaded "not guilty" to the charge.[6]

The prosecution alleged that from 2001-2005, petitioner was the pre-school and grade school principal of Treasury of the Golden Word School, Inc. (TGWSI). As such, she was entrusted by the President of TGWSI Carmelita C. De Dios (De Dios) to: *one*, collect the tuition fees from the parents and students; *two*, issue official receipts therefor; and *three*, to remit the same to the school.[7] Sometime in 2005, Marie Gil Padilla (Padilla), Treasurer of TGWSI, noticed that petitioner stopped reporting for work.[8] This prompted De Dios to review the books of TGWSI and she discovered the non-remittance of some tuition fees received by petitioner.[9] Further investigation revealed that petitioner has been issuing temporary receipts which was against the policy of TGWSI.[10] De Dios then tried to meet with petitioner to discuss the matter, but to no avail.[11] Thus, De Dios sought the assistance of the *barangay* where petitioner resided.[12] At the *barangay* hall, petitioner admitted that De Dios' allegations were true.[13] Thereafter, the parties agreed to settle and a

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[5] Dated May 8, 2006; *id*. at 69.

[6] *Id*.

[7] *Id*. at 97.

[8] *Id*.

[9] *Id*. at 98.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 99.

promissory note was signed by petitioner undertaking to pay De Dios within three months.[14] Due to petitioner's failure to pay upon maturity of the promissory note and despite demand, De Dios filed a criminal complaint for estafa.[15]

In defense, petitioner averred that, aside from Padilla, she was allowed to acknowledge payments from the students for which she issued the necessary receipts.[16] She denied the allegation that she failed to remit the tuition fees and claimed that prior to the filing of the case, De Dios examined the receipts and informed her that no discrepancy was found.[17] Lastly, petitioner posited that she signed the promissory note under duress.[18]

In its April 8, 2011 Decision, the RTC held that (1) all the statements of account, official receipts, as well as temporary receipts contained the signature of petitioner, thus, signifying that she received certain amounts of money; (2) there was misappropriation when petitioner failed to remit to the school the entire amount of tuition fees received by her as shown by the discrepancy between the official receipts issued to the students and the remittance voucher slips; and (3) as to the requirement of demand, petitioner admitted in her Counter-Affidavit that a demand letter was mailed to her on November 3, 2005.[19] The dispositive portion of which, states:

> WHEREFORE, premises considered, the Court hereby finds [petitioner] GUILTY beyond reasonable doubt of the crime of estafa defined and penalized under Article 315, paragraph 1(b) of the [RPC] and taking into consideration the Indeterminate Sentence Law, [petitioner] is sentenced to suffer an indeterminate penalty of

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[14] *Id*.

[15] *Id*.

[16] *Id*. at 182.

[17] *Id*.

[18] *Id*. at 83.

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

imprisonment of EIGHT (8) YEARS of [*prision mayor*] in its medium period as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS and ONE (1) DAY of [*reclusion temporal*] as maximum with all the accessory penalties provided for by law and to indemnify the private complainant the sum of [₱]1,721,010.82, and to pay ten percent (10%) attorney's fees x x x[.]

SO ORDERED.[20]

Upon appeal, the CA agreed with the RTC that petitioner was guilty of estafa. However, the CA found that, per the documentary evidence presented, the total sum that petitioner failed to remit to the school amounts only to ₱134,462.90.[21] Hence, the CA modified the penalty imposed, *viz*.:

WHEREFORE, the *Decision* dated 8 April 2011 of the [RTC] of Las Piñas City, Branch 201, in Criminal Case No. 06-0052 is AFFIRMED with MODIFICATIONS. [Petitioner] is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. [Petitioner] is ordered to indemnify private complainant [De Dios] the sum of [₱]134,462.90, plus ten percent (10%) thereof as attorney's fees.

SO ORDERED.[22]

Aggrieved, petitioner moved for the CA to reconsider its Decision, but the same was denied in a Resolution[23] dated November 26, 2013.

Hence, this petition.

The Court's Ruling

The Court finds that petitioner is guilty, not of estafa, but of **qualified theft**.

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[20] *Id*. at 65.

[21] *Id*. at 79-80.

[22] *Id*. at 80.

[23] *Id*. at pp. 81-82.

The RTC and the CA rulings are both predicated on their finding that all the elements of estafa under paragraph 1(b), Article 315 of the RPC have been sufficiently established by the prosecution.

We disagree.

Article 315 of the RPC punishes criminal fraud resulting to damage capable of pecuniary estimation.[24] The elements of estafa through misappropriation under pararagraph 1(b), Article 315[25] of the RPC are:

1. That money, goods or other personal properties are received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same;
2. That there is a misappropriation or conversion of such money or property by the offender or denial on his part of the receipt thereof;
3. That the misappropriation or conversion or denial is to the prejudice of another; and
4. That there is a demand made by the offended party on the offender.[26]

Contrary to the identical ruling of the courts *a quo*, the first element of the crime charged is absent. Verily, when the money,

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[24] *Legaspi v. People*, G.R. Nos. 225753 & 225799, October 15, 2018.

[25] Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any means mentioned herein below x x x:

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property[.]

[26] *Coson v. People*, 818 Phil. 271, 284 (2017).

goods, or any other personal property *is received* by the offender from the offended party (1) in *trust*, or (2) on *commission*, or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received.[27] Stated plainly, mere receipt of the money, goods, or personal property does not suffice, it is also essential that the accused acquired both material or physical possession and juridical possession of the thing received.[28] Juridical possession refers to a possession which gives the transferee a right over the thing transferred and this, he may set up even against the owner.[29]

As early as 1956, the Court, in *Guzman v. Court of Appeals*,[30] already demarcated the line between possession by an employee who receives funds in behalf of the company and possession of an agent, thus:

> There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous, right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault[.]

Therefore, as it now stands, a sum of money received by an employee in behalf of an employer is considered to be **only in the material possession** of the employee. Notably, such material possession of an employee is adjunct, by reason of his

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[27] *D'Aigle v. People*, 689 Phil. 480, 490 (2012).

[28] *Legaspi v. People*, *supra* note 24.

[29] *San Diego v. Court of Appeals*, 757 Phil. 599 (2015).

[30] 99 Phil. 703 (1956).

employment, to a recognition of the juridical possession of the employer. As long as the juridical possession of the thing appropriated did not pass to the employee, the offense committed is theft, qualified or otherwise.[31]

The foregoing principle is illustrated in *Chua-Burce v. Court of Appeals*[32] where the manager of a bank located in Calapan, Mindoro discovered a shortage in their cash-in-vault amounting to ₱150,000.00. After due investigation, a criminal complaint was filed against the person primarily responsible, *i.e.*, the bank's Cash Custodian. The RTC and the CA both found the cash custodian guilty of estafa under paragraph 1(b), Article 315 of the RPC. This Court, however, acquitted the accused ratiocinating that, being a mere cash custodian, the latter had no juridical possession over the missing funds and, thus, cannot be convicted of estafa.

Likewise, in *Roque v. People*,[33] where it involved possession of money in the capacity of a bank teller, the Court said:

> In *People v. Locson*, x x x [we] considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. Juridical possession remains with the bank. In line with x x x with *People v. De Vera*, if the teller appropriates the money for personal gain then the felony committed is theft and not *estafa*. (Citations omitted)

Similarly, in *Benabaye v. People*,[34] a loans bookkeeper of a bank authorized to collect and/or accept loan payment from the bank's clients and issue provisional receipts therefore, and remit such payments to her supervisor was found to have no

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[31] *Matrido v. People*, 610 Phil. 203, 214 (2009).

[32] 387 Phil. 15 (2000).

[33] 486 Phil. 288, 310 (2004).

[34] 755 Phil. 144 (2015).

juridical possession, but only a physical or material possession of the cash payments she receives.

In the case at bench, it cannot be gainsaid that petitioner, in addition to her duties as principal, was authorized to receive or collect matriculation fees from the parents and/or students enrolled in TGWSI. Per a verbal agreement with De Dios, petitioner shall forward all payments received together with the remittance voucher slips to the school.[35] As it happens, the money merely passes into petitioner's hands and her custody thereof is only until the same is remitted to the school. Consequently, petitioner, as principal and temporary cash custodian of TGWSI, acquires only physical or material possession over the unremitted funds. Thus, being a mere custodian of the unremitted tuition fees and not, in any manner, an agent who could have asserted a right against TGWSI over the same, petitioner had only acquired material and not juridical possession of such funds and consequently, cannot be convicted of the crime of estafa as charged.

Nevertheless, a reading of the information and an appreciation of the evidence show qualified theft. Applying the variance doctrine under Section 4[36] in relation to Section 5,[37] Rule 120 of the Revised Rules on Criminal Procedure, it is proper to hold petitioner guilty of qualified theft because the latter crime was necessarily included in the crime charged in the information.

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[35] TSN, April 18, 2007, p. 20.

[36] Sec. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[37] Sec. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former continue or form part of those constituting the latter.

In gist, the Information alleged that petitioner, as principal of TGWSI, authorized to collect and receive tuition and other school payments of students, misappropriated, misapplied and converted to her own use the amount she received and failed and refused to return the money to TGWSI despite repeated demands to the damage and prejudice of TGWSI.

Theft is defined under Article 308 of the RPC, *viz.*:

ART. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

While Article 310 of the RPC reads:

ART. 310. *Qualified Theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, **or with grave abuse of confidence**, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied)

Stated otherwise, the essential elements of qualified theft are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was

done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.[38]

The foregoing elements are present in this case. *First*, the prosecution was able to establish that petitioner, as part of her duty as principal of TGWSI, received tuition fees and other school payments from students and failed to remit the same to the school. *Second*, the money taken by petitioner belongs to TGWSI. The Court, in *Paramount Insurance Corp. v. Spouses Remondeulaz*,[39] clarified that there may be theft even if the accused has possession of the property; if he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes theft. Thus, the conversion of personal property in the case of an employee having material possession of the said property constitutes theft, whereas in the case of an agent to whom both material and juridical possession have been transferred, misappropriation of the same property constitutes estafa. *Third*, the absence of TGWSI's consent was shown in its attempts to account for the missing money through a review of its books and to recover it from petitioner. *Fourth*, intent to gain on the part of the petitioner was likewise established. Intent to gain is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation.[40] Here, petitioner admitted to the taking of the funds owing to TGWSI and even agreed to settle by signing a promissory note undertaking to pay De Dios. *Fifth*, no violence or intimidation against persons nor of force upon things was employed by petitioner in obtaining the funds. *Sixth*, the taking was clearly done with grave abuse of confidence. As principal of TGWSI, petitioner was authorized

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[38] *Matrido v. People*, *supra* note 31, at 211-212.

[39] 699 Phil. 541, 547 (2012).

[40] *Matrido v. People*, *supra* note 31, at 212.

to collect school fees. Such position or relation of trust and confidence was aptly established to have been gravely abused when she failed to remit the entrusted amount of collection to TGWSI.

The circumstances obtaining in this case are not novel.

In *Ringor v. People*,[41] the Court affirmed the CA's Decision holding Ringor guilty of qualified theft, contrary to the RTC's Decision finding her guilty of estafa, the crime charged in the information. We held that as Ringor merely had physical possession of the merchandise, she can only be held liable for qualified theft despite proof of her misappropriation of the merchandise. Similarly, in the case of *Santos v. People*,[42] the Court also found petitioner Santos' conviction for theft correct under an information naming the crime charged as estafa. And, in *People v. Euraba*,[43] the Court found the CA's affirmation of the guilty verdict for qualified theft against the accused-appellant in order since the factual allegations in the information sufficiently established all the elements of qualified theft and such elements were duly proven by the prosecution.

We now discuss the penalty in light of Republic Act (R.A.) No. 10951,[44] which took effect on September 16, 2017. As stated elsewhere in this Decision, Article 310 of the RPC prescribes penalties next higher by two degrees than those specified in Article 309 if the theft was committed with, among others, grave abuse of confidence. Article 309, as amended by

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[41] 723 Phil. 685 (2013).

[42] 260 Phil. 519 (1990).

[43] G.R. No. 220762, April 18, 2018 (Minute Resolution).

[44] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815. OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED.

R.A. No. 10951,[45] now prescribes the penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than ₱20,000.00, but does not exceed ₱600,000.00. Applying Article 309, as amended, and Article 310, qualified theft involving the amount of ₱134,462.90 is now punishable by *prision mayor* in its medium and maximum periods. After computing the periods for this adjusted penalty per Article 65[46] of the RPC and since no aggravating or mitigating circumstance is present, the imposable penalty is from 9 years, 4 months and 1 day to 10 years and 8 months. As this duration exceeds one year, the Indeterminate Sentence Law becomes applicable. We, thus, set the maximum term of 9 years, 4 months and 1 day of *prision mayor*. The minimum term is, thus, set at 5 years, 5 months and 11 days of *prision correccional*, which is within the range of penalty next lower to that prescribed by the RPC for qualified theft.[47]

Lastly, legal interest at the rate of 6% per annum is also imposed on the actual damage due to private complainant TGWSI amounting to ₱134,462.90 from the date of finality of this judgment until full payment, in line with current policy.

WHEREFORE, the petition is **DENIED**. The Decision and the Resolution dated June 28, 2013 and November 26, 2013, respectively, of the Court of Appeals in CA-G.R. CR No. 34634 are hereby **AFFIRMED** with **MODIFICATION**. Petitioner

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[45] Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:

x x x x x x x x x

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00).

[46] Art. 65. *Rule in cases in which the penalty is not composed of three periods*. — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

[47] *Supra* note 43.

Janice Reside *y* Tan is sentenced to suffer the indeterminate sentence of 5 years, 5 months and 11 days of *prision correccional* as minimum term to 9 years, 4 months and 1 day of *prision mayor* as maximum term; and is ordered to pay the private complainant the sum of ₱134,462.90 as actual damages, subject to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 217806. July 28, 2020]

ADELAIDA C. NAVARRO-BANARIA, *petitioner, vs.* **ERNESTO A. BANARIA, PANFILO A. BANARIA, GRACIA SEVERA BANARIA-ESPIRITU, REINA CLARA BANARIA-MAGTOTO, MARCELINO S. BANARIA, PAULINA BANARIA-GELIDO, MARIA LOURDES DIVINE BANARIA-DURAN, GRACIA ISABELITA BANARIA-ESPIRITU, GEOFFREY BANARIA-ESPIRITU, ANNE MARIE ESPIRITU-PAPPANIA, JUSTIN BANARIA-ESPIRITU,** *respondents.*

SYLLABUS

1. CIVIL LAW; "ABUSE OF RIGHT PRINCIPLE" UNDER ARTICLE 19 OF THE CIVIL CODE, EXPLAINED; ELEMENTS OF ABUSE OF RIGHTS, ENUMERATED. — Article 19 of the Civil Code provides that every person in the exercise of his rights and in the performance of his duties must act with justice,

give everyone his due, and observe honesty and good faith. The principle embodied in this provision is more commonly known as the "abuse of right principle." The legal consequence should anyone violate this fundamental provision is found in Articles 20 and 21 of the Civil Code. The correlation between the two provisions are showed in the case of *GF EQUITY, Inc. v. Valenzona*, to wit: x x x The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. **A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.** x x x While Article 19 of the New Civil Code may have been intended as a mere declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, *e.g.*, that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. Consequently, when Article 19 is violated, an action for damages is proper under Article 20 and 21 of the New Civil Code. Article 20 pertains to damages arising from a violation of law.

2. ID.; ID.; PETITIONER'S FAILURE TO OBSERVE GOOD FAITH IN THE EXERCISE OF HER RIGHT AS THE WIFE AND LEGAL GUARDIAN OF HER PHYSICALLY AND MENTALLY INFIRMED HUSBAND HAS CAUSED LOSS AND INJURY ON THE PART OF RESPONDENTS, FOR WHICH THEY MUST BE COMPENSATED BY WAY OF DAMAGES PURSUANT TO ARTICLE 21 OF THE CIVIL CODE. — [T]here is no question that as legal wife and guardian of Pascasio, who is physically and mentally infirm, Adelaida has the principal and overriding decision when it comes to the affairs of her husband including the celebration of the latter's 90th birthday. However, it must be noted Adelaida's right, as with any rights, cannot be exercised without limitation. The exercise of this right must conform to

the exacting standards of conduct enunciated in Article 19. Adelaida was clearly remiss in this aspect. Glaring is the fact that long before the scheduled date of Pascasio's 90th birthday celebration, Adelaida was already informed about the event. As early as February 2003 or a year before the scheduled event, Adelaida was already reminded of the event by the respondents to which she confirmed Pascasio's attendance. x x x Adelaida intentionally failed to bring Pascasio to the birthday celebration prepared by the respondents thus violating Article 19 of the Civil Code on the principle of abuse of right. Her failure to observe good faith in the exercise of her right as the wife of Pascasio caused loss and injury on the part of the respondents, for which they must be compensated by way of damages pursuant to Article 21 of the Civil Code.

3. **ID.; ID.; ID.; ACTUAL DAMAGES, DEFINED AND EXPLAINED; AWARD OF ACTUAL DAMAGES MODIFIED FOR LACK OF FACTUAL AND LEGAL BASIS. —** Actual damages are compensation for an injury that will put the injured party in the position where he/she was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. We find proper the modification made by the CA to delete the award of $3,619.00 (US Dollars) as actual damages for lack of factual and legal bases. We also agree that actual damages in the amount of ₱61,200.00 for the food and refreshments spent during the birthday of Pascasio, the amount of ₱3,000.00 for the birthday cake and the amount of ₱3,275.00 for the balloon arrangements should be paid as these expenses were incurred by respondents for Pascasio's grand birthday celebration.

4. **ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES, AFFIRMED. —** As for moral damages, the CA is correct in granting a lump sum of ₱300,000.00. Moral damages are not punitive in nature but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation,

wounded feelings, moral shock, social humiliation, and similar injury unjustly caused to a person. In the instant case, the respondents clearly suffered serious anxiety, humiliation and embarrassment in front of all guests who expected that Pascasio would be present in the event. The award of exemplary damages of ₱30,000.00 is likewise affirmed. Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered if a person acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner towards another party, as in this case. The aim of awarding exemplary damages is to deter serious wrongdoings. By the same token, the CA correctly awarded attorney's fees in the amount of ₱50,000.00 in favor of the respondents considering that they were constrained to file a case because of petitioner's acts characterized by bad faith, malice and wanton attitude which were intentional to inflict damage upon the former.

CAGUIOA, *J., concurring opinion*:

1. CIVIL LAW; "ABUSE OF RIGHT PRINCIPLE" UNDER ARTICLE 19 IN RELATION TO ARTICLES 20 AND 21 OF THE CIVIL CODE, EXPLAINED; ELEMENTS THAT MUST BE ESTABLISHED TO MAKE OUT A CASE FOR ABUSE OF RIGHT. — The invocation of the abuse of right principle under Article 19 in relation to either Article 20 or 21 is admittedly not subject to a hard and fast evaluation of mathematical precision, owing perhaps to its design as an all-inclusive provision that seeks to redress other wrongs or injurious acts not covered by legislative foresight. Article 19 is based on the maxim *suum jus summa injuria* (the abuse of a right is the greatest possible wrong), and is described as the guide to relational behavior that rise from the dictates of good conscience and govern any human society[.] x x x This provision on the basic tenets of decent human behavior, however, may not be invoked independently of Articles 20 and 21, which provide for the legal consequences of such an abuse. Article 20 is said to underpin the entire legal system, and ensures that no person who suffers damage, because of the act of another, may find himself without redress. It is further said to extend our understanding of what tortious acts may consist of, with its language indicative of the incorporation into our traditional contemplation of tort or *culpa aquiliana* – the Anglo-American concept of tort which

includes malice. Article 21, for its part, stretched the "sphere of wrongs" provided for by positive law, and filled in the gaps to ensure remedy for people who have sustained material injuries from moral wrongs, in the absence of any other express provision. The scope of this principle is expansive, and is said to have "greatly broadened the scope of the law on civil wrongs." It provides that although an act is not illegal, damages may be properly awarded should the injury be borne of an abuse of a right, as when the right is exercised without prudence or in bad faith. This abuse may, however, be properly entreated only upon establishment of the following elements: (1) there is a legal right or duty; (2) which is exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another.

2. ID.; ID.; INSTANCES OF INTRINSIC AND EXTRINSIC LIMITATIONS IN THE EXERCISE OF ONE'S RIGHT, REITERATED. — The idea that rights are capable of abuse is a far shift from the prior theory embodied in the Roman Law maxim "*qui lure suo utitur neminem laedit*" or, he who exercises his own right injures no one. This idea of abuse of right instead acknowledges the primordial boundary on one's rights, that is, the rights of others. In his Commentary on the Civil Code, noted Civilist Eduardo P. Caguioa elaborated on the inherent logic of limitations of rights, the overstepping of which constitutes the abuse: x x x In Roman Law the maxim was "*qui iure suo utitur neminem laedit [i.e.]*," he who exercises his own right injures no one. Taken absolutely and literally the maxim is false and leads to absurd consequences. The exercise of rights must be done within certain limits. These limitations can be classified into two categories: 1. The **intrinsic limitations** which emanate from the right itself, [*i.e.*] from its nature and purpose, 2. The **extrinsic limitations** which emanate from the rights of others. The Intrinsic limitations are the following: (a) those derived from the nature of the right, [*e.g.*], the depositary cannot use the things deposited without authorization otherwise the character of the contract is destroyed; (b) Limitations arising from good faith; and (c) Limitations imposed by the economic and social ends of the right which require the holder of the right to exercise the right in accordance with the end for which it was granted or created. Hence the principle of ABUSE OF RIGHT. The extrinsic limitations are: (a) Those in favor of third persons who act in good faith; and (b) Those arising from the concurrence or conflict with the rights of others.

3. ID.; ID.; ID.; CIRCUMSTANCES IN THIS CASE SHOW A CLEAR BREACH OF THE INTRINSIC AND EXTRINSIC LIMITATIONS ON PETITIONER'S RIGHT AS THE SPOUSE ARISING FROM ITS CONFLICT WITH THE RIGHTS OF RESPONDENTS AS CHILDREN; PETITIONER'S FAILURE TO BRING HER SPOUSE TO THE BIRTHDAY CELEBRATION WHICH RESPONDENTS MOUNTED FOR THEIR FATHER IS TAINTED WITH BAD FAITH. — [P]etitioner's acts of failing to actually bring Pascasio (the father of respondents) to the birthday celebration which respondents mounted for him, and her concomitant failure to inform the latter of their foreseen absence from the party, or to just let them know that they had already returned to Manila after the schedule of the same, despite her justifications – that, based on her own narrative, are easily surmountable challenges – betrays intention and bad faith on petitioner's part. This is a clear breach of the intrinsic limitation on her right as the spouse of Pascasio arising from good faith, as well as breach of the extrinsic limitation arising from its conflict with the rights of others. So that although she indeed possessed the determinate right of bringing or not bringing her spouse to the birthday celebration, her exercise of said right placed her squarely against the basic rule on observance of good faith.

4. ID.; ID.; *DAMNUM ABSQUE INJURIA* OR DAMAGE WITHOUT INJURY CANNOT BE APPRECIATED IN PETITIONER'S FAVOR SINCE HER ACTIONS EXHIBIT ABSOLUTE LACK OF CONSIDERATION FOR RESPONDENTS. — [P]etitioner argues that this was no more than a case of *damnum absque injuria*, or a damage without injury as the loss or harm suffered was not a result of a violation of a legal duty. Here, petitioner is in error. *Damnum absque injuria* or damage without injury may not be appreciated in petitioner's actions as said principle contemplates a situation wherein in the exercise of a right, "the purpose was good, the exercise normal and still damage is caused". As applied to petitioner's actions, her failure to inform respondents of their intended absence from the party or their whereabouts, in the least, to the extent that respondents found it necessary to file a Missing Person's report with the local police, exhibits the utter lack of consideration for respondents, or otherwise a deficit in good faith relations with the latter.

5. ID.; ID.; PROPRIETY OF THE AWARD OF MORAL AND EXEMPLARY DAMAGES IN ADDITION TO ACTUAL DAMAGES, DISCUSSED; PETITIONER'S UTTER DISREGARD OF EVERY OPPORTUNITY SHE COULD HAVE TAKEN TO INFORM RESPONDENTS OF THEIR FATHER'S ABSENCE IN THE BIRTHDAY CELEBRATION PREPARED BY THEM IS CHARACTERIZED AS GROSS NEGLIGENCE, WHICH ENTITLED HEREIN RESPONDENTS TO DAMAGES. — With respect to the indemnification for the damage caused, I agree that respondents herein are entitled to moral and exemplary damages in addition to actual damages, but wish to supplement the basis for finding the propriety of said awards. For moral damages, such may be properly awarded in this case, pursuant to Article 2219(10) in relation to Article 21 of the Civil Code, where the former enumerates the instances when moral damages may be appreciated. Exemplary damages was also properly found in favor of respondents, pursuant to Article 2231 in relation to Articles 19 and 21 of the Civil Code. To my mind, the lower courts and the *ponencia* aptly found gross negligence on the part of the petitioner when, despite clear opportunities to inform respondents of their foreseen absence from the event in question, petitioner nevertheless repeatedly failed to undertake the same. Given that such a simple act of phoning any of respondents at any point during the time prior to and after the party could have spared respondents from the loss and humiliation that they subsequently sustained, the fact that petitioner kept failing to do so escapes reason. I therefore agree that such repeated failure is properly characterized as gross negligence under the contemplation of Article 2231. As the Court has held in the case of *Abrogar v. Cosmos Bottling Co., et al.*, gross negligence is the thoughtless disregard of consequences without exerting any effort to avoid them. In this case, petitioner's utter disregard of each opportunity she could have taken to inform respondents of their father's absence is correctly characterized as gross negligence which correspondingly entitled herein respondents to exemplary damages.

APPEARANCES OF COUNSEL

Alarico T. Mundin for petitioner.
Abes Malong & Associates for respondents.

D E C I S I O N

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

This resolves the petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Civil Procedure seeking to review the Decision[2] dated October 15, 2014 of the Honorable Court of Appeals (Special First Division) in CA-G.R. No. 97264, denying the appeal of herein petitioner by affirming with modification the Judgment[3] dated May 23, 2011 rendered by the Regional Trial Court (RTC), Branch 216 (Quezon City) in Civil Case No. Q-0452212, and its Resolution[4] dated April 14, 2015, denying petitioner's motion for reconsideration.

The Antecedents

The instant petition arose from the Complaint filed by respondents for Damages with the RTC of Quezon City against petitioner.

As borne by the records of the case, respondents are brother (Marcelino S. Banaria), sister (Paulina Banaria-Gelido), sons (Ernesto A. Banaria and Panfilo A. Banaria), daughters (Gracia Severa Banaria-Espiritu and Reina Clara Banaria-Magtoto), granddaughters (Gracia Isabelita Banaria-Espiritu, Anne Marie Espiritu-Pappania, Maria Lourdes Divine Banaria-Duran), and grandsons (Geoffrey Banaria-Espiritu and Justin Banaria-Espiritu) of the late Pascasio S. Banaria, Sr. (Pascasio), while petitioner Adelaida C. Navarro-Banaria (Adelaida) is the legal wife of Pascasio and stepmother of the Banaria siblings.[5]

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[1] *Rollo*, pp. 17-33.

[2] Penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court), with Associate Justices Apolinario D. Bruselas, Jr., and Amy C. Lazaro-Javier (also now a Member of the Court); *id.* at 34-49.

[3] RTC Decision was not attached.

[4] Penned by Associate Justice Samuel H. Gaerlan (now a member of the Court), with Associate Justices Apolinario D. Bruselas, Jr., and Amy C. Lazaro-Javier (now a member of the Court); *rollo*, pp. 50-53.

[5] *Rollo*, p. 35.

Pascasio, the family patriarch, at the time of the filing of the complaint, was already frail and suffering from physical and mental infirmity incapacitating him to fully function on his own without any assistance.[6]

The action for damages of respondents stemmed from the alleged bad faith, malice, and deliberate failure of Adelaida to keep her word and honor her promise to bring Pascasio to his 90th birthday celebration held on February 22, 2004. Such special event was prepared by the respondents and the non-appearance of Pascasio during the event allegedly caused loss and injury to the respondents.[7]

Respondents alleged that the planning of the event started as early as February 2003 or a year before the planned 90th birthday celebration to be held on February 22, 2004. Between November 2003 and January 2004, respondents were in continuous contact with Adelaida to remind her of the upcoming event. Adelaida, for her part, confirmed Pascasio's attendance during the event although it coincides with the death anniversary of Adelaida's mother. The plan was to bring Pascasio to the venue in the early morning of February 22, 2004 before proceeding to her hometown in Tarlac. Adelaida promised respondents that she will try her best to attend the birthday celebration in the evening after going to Tarlac.[8]

On February 13, 2004, Reina and Gracia Severa, who are both residing in the United States, arrived in the country to attend the birthday celebration of their father. They were able to visit their father and Adelaida in their home on February 14 and 15, 2004. Adelaida promised them during their visit that Pascasio would be present in his scheduled 90th birthday celebration.[9]

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 36.

However, much to the dismay of the Banaria siblings as well as their guests, Pascasio was nowhere to be found in his 90th birthday celebration. Respondents continuously called Adelaida but they were not able to contact her. Almost 200 guests were at the venue waiting for Pascasio to come. The siblings deemed it proper to continue the celebration even without the birthday celebrant himself. Worried that there might be something untoward that happened to their father, respondents went to the nearest police station to report Pascasio as a missing person. However, they were advised by the police officers that before a person can be considered missing, there should be a 24-hour waiting period. Thus, respondents just entered their concern in the police blotter. The next day, the missing person report was officially made after Pascasio and Adelaida have not been seen or heard for more than 24 hours.[10]

Respondents called and went to the Securities and Exchange Commission (SEC), where Adelaida works but they failed to see her there. Afterwards, respondent Paulina was able to talk to one of Adelaida's maids named Kit. Kit told Paulina that she went to Tarlac with Pascasio and Adelaida in the morning of February 21, 2004 but went their separate ways upon reaching said province. However, when asked about the whereabouts of Pascasio and Adelaida, she said that she did not know where they were.[11]

In the evening of February 23, 2004, Marcelino, Pascasio's brother, told the other respondents that Pascasio and Adelaida were at their residence then at 7-B Sigma Drive, Alpha Village, Quezon City. Respondents went to the said place to ask Adelaida her reason why Pascasio was not able to attend the birthday celebration. Adelaida reasoned that Pascasio did not want to go to the party. When asked why Adelaida broke her commitment to bring Pascasio to the party, Adelaida uttered the words, "I am the wife."[12]

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[10] *Id.*

[11] *Id.* at 37.

[12] *Id.*

Thus, the Complaint for Damages filed by respondents against Adelaida.

In response, Adelaida rebutted the allegations of the respondents by saying that she was not privy to the respondents' planned birthday celebration for Pascasio. She also said that she deemed it wise to spare Pascasio of the embarrassment and humiliation of defecating and urinating without regard to the people around him brought about by his advanced age.[13]

Eventually, the RTC rendered its May 23, 2011 Decision, which ordered petitioner to pay the respondents' travel expenses, actual damages, moral damages, exemplary damages, and attorney's fees. The *fallo*[14] of the decision reads:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of plaintiffs and against the defendant Adelaida C. Navarro-Banaria ordering said defendant to pay unto the plaintiffs the following:
>
> 1. the total amount of $3,619.00 (US Dollars) which may be paid in Philippine Currency computed at the exchange rate at the time of payment, representing the total sum for their (plaintiffs) travel expenses;
>
> 2. the amount of ₱61,200.00, Philippine currency, for the food and refreshments spent during the birthday of Pascasio S. Banaria, Sr., which the latter was not able to attend; the amount of ₱3,000.00 for the birthday cake; and the amount of ₱3,275.00 for the balloon arrangements;
>
> 3. the amount of ₱60,000.00, Philippine Currency, for <u>each and every plaintiff</u>, as and by way of moral damages;
>
> 4. the amount of ₱50,000.00, Philippine Currency, for the herein plaintiffs, as and by way of exemplary damages;
>
> 5. the amount of ₱60,000.00, Philippine Currency, as and by way of attorney's fees; and
>
> the costs of suit.

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[13] *Id.*

[14] *Id.* at 38.

SO ORDERED.

Aggrieved, petitioner elevated the case to the Court of Appeals, which, through the assailed October 15, 2014 Decision, affirmed with modification the Decision of the RTC. The *fallo*[15] of the decision of the appellate court reads:

> **WHEREFORE**, premises considered, the appeal is hereby **DENIED**. The Judgment dated 23 May 2011 of the Regional Trial Court-Branch 216 (Quezon City) is **AFFIRMED with the following MODIFICATIONS: a)** the amount of $3,619.00 (US Dollars) awarded as actual damages in favor of the plaintiffs-appellees is DELETED for lack of factual and legal basis; b) the amount of moral damages awarded for ALL the plaintiffs-appellees is REDUCED to a fixed amount of Php300,000.00; **c)** the amount of exemplary damages awarded in favor of the plaintiffs-appellees is REDUCED to Php30,000.00; and **d)** the amount of attorney's fees awarded to plaintiffs-appellees is likewise REDUCED to Php50,000.00.
>
> The rest of the challenged Judgment stands.
>
> **SO ORDERED**.

Despite petitioner's motion for reconsideration, the CA affirmed its October 15, 2014 Decision *via* the April 14, 2015 Resolution.

Hence, this petition.

The Issues

The petitioner anchors her prayer for the reversal of the October 15, 2014 Decision and the April 14, 2015 Resolution based on the following issues:

A. Whether the Hon. Court of Appeals erred in ruling that petitioner violated Articles 19 and 21 of the Civil Code regarding Human Relations; and

B. Whether the Hon. Court of Appeals erred in granting damages to the respondents.

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

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds no merit in the petition.

Petitioner contends that she did not commit any violation under Article 19 of the Civil Code by alleging that the testimonies of the respondents were pure surmises and conjectures. Aside from that, petitioner avers that respondents failed to prove bad faith, malice and ill motive on her part. Because of this, petitioner posits that there can be no award of actual, moral and exemplary damages under the principle of *damnum absque injuria* or damage without injury since her legal right was not exercised in bad faith and with no intention to injure another.

Article 19 of the Civil Code provides that every person in the exercise of his rights and in the performance of his duties must act with justice, give everyone his due, and observe honesty and good faith. The principle embodied in this provision is more commonly known as the "abuse of right principle." The legal consequence should anyone violate this fundamental provision is found in Articles 20 and 21 of the Civil Code.The correlation between the two provisions are showed in the case of *GF EQUITY, Inc. v. Valenzona*, to wit:

> [Article 19], known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. **A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible**. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages

under either Article 20 or Article 21 would be proper.[16] (Emphasis supplied)

While Article 19 of the New Civil Code may have been intended as a mere declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, *e.g.*, that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[17]

Consequently, when Article 19 is violated, an action for damages is proper under Articles 20 and 21 of the New Civil Code. Article 20 pertains to damages arising from a violation of law.[18]

For starters, there is no question that as legal wife and guardian of Pascasio, who is physically and mentally infirm, Adelaida has the principal and overriding decision when it comes to the affairs of her husband including the celebration of the latter's 90th birthday.

However, it must be noted Adelaida's right, as with any rights, cannot be exercised without limitation. The exercise of this right must conform to the exacting standards of conduct enunciated in Article 19. Adelaida was clearly remiss in this aspect.

Glaring is the fact that long before the scheduled date of Pascasio's 90th birthday celebration, Adelaida was already informed about the event. As early as February 2003 or a year before the scheduled event, Adelaida was already reminded of the event by the respondents to which she confirmed Pascasio's

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[16] 501 Phil. 153, 166 (2005).

[17] *Metroheights Subdivision Homeowners Association, Inc. v. CMS Construction and Development Corp.*, G.R. No. 209359, October 17, 2018.

[18] *Nikko Hotel Manila Garden v. Reyes*, 492 Phil. 615, 627 (2005).

attendance. Even though Adelaida alleges that she was not privy to any birthday celebration for Pascasio, the fact remains that she was continuously informed and reminded about the scheduled event. She even contributed ₱5,000.00 for the costs.

Following Adelaida's testimony that Pascasio had already decided not to attend his birthday celebration a day before such event, she should have contacted the respondents immediately for the respondents to be able to take appropriate action. Adelaida knew fully well that the respondents already spent a considerable amount of money and earnest efforts were already made to ensure the success of the event. The least that Adelaida could have done was to inform the respondents immediately of any unforeseen circumstance that would hinder its success and to avert any further damage or injury to the respondents. Moreover, considering that numerous guests were invited and have confirmed their attendance, she placed the respondents in a very embarrassing situation.

Instead of making good on her prior commitment, Adelaida allegedly followed Pascasio's wish of going to Tarlac and arrived thereat in the afternoon of February 21, 2004. At that time, Adelaida still had the opportunity to contact the respondents and inform them that they will not be able to come, but she did not. Her excuse, that Pascasio grabbed her cellular phone and caused damage to it, is feeble and unrealistic. We find incredulous that Pascasio, who was allegedly infirm, would be able to grab the cellphone from Adelaida and throw it away, when he cannot even move on his own without any assistance. And even if true, there are certainly other means of communication aside from her cellphone if she really wanted to call the respondents.

Adelaida also neglected to contact the respondents immediately after their return to Manila on February 23, 2004. If she was sincere in bringing Pascasio to his birthday celebration, then she would have immediately called the respondents upon returning to Manila to inform them of their whereabouts and to state the reason for Pascasio non-attendance.

We find it dubious that Pascasio would refuse to attend his birthday celebration. Respondents have sufficiently established

that it was an annual tradition for the family to celebrate the birthday of their father Pascasio. Besides, the allegation that Pascasio refused to attend his birthday celebration because of an alleged misunderstanding with his two sons was not duly proven. Common sense dictates that he should have conveyed about the matter to Reina and Gracia Severa when they visited him on February 14 and 15, 2004, but he did not.

All in all, the foregoing shows that Adelaida intentionally failed to bring Pascasio to the birthday celebration prepared by the respondents thus violating Article 19 of the Civil Code on the principle of abuse of right. Her failure to observe good faith in the exercise of her right as the wife of Pascasio caused loss and injury on the part of the respondents, for which they must be compensated by way of damages pursuant to Article 21 of the Civil Code.

Actual damages are compensation for an injury that will put the injured party in the position where he/she was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[19]

We find proper the modification made by the CA to delete the award of $3,619.00 (US Dollars) as actual damages for lack of factual and legal bases. We also agree that actual damages in the amount of ₱61,200.00 for the food and refreshments spent during the birthday of Pascasio, the amount of ₱3,000.00 for the birthday cake and the amount of ₱3,275.00 for the balloon arrangements should be paid as these expenses were incurred by respondents for Pascasio's grand birthday celebration.

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[19] *International Container Terminal Services v. Chua*, 730 Phil. 475, 489 (2014).

As for moral damages, the CA is correct in granting a lump sum of ₱300,000.00. Moral damages are not punitive in nature but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused to a person.[20] In the instant case, the respondents clearly suffered serious anxiety, humiliation and embarrassment in front of all guests who expected that Pascasio would be present in the event.

The award of exemplary damages of ₱30,000.00 is likewise affirmed. Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered if a person acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner towards another party, as in this case.[21] The aim of awarding exemplary damages is to deter serious wrongdoings.[22]

By the same token, the CA correctly awarded attorney's fees in the amount of ₱50,000.00 in favor of the respondents considering that they were constrained to file a case because of petitioner's acts characterized by bad faith, malice and wanton attitude which were intentional to inflict damage upon the former.

WHEREFORE, the Petition is **DENIED**. The Decision dated October 15, 2014 of the Court of Appeals is **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Gesmundo,[*] and *Lopez, JJ.*, concur.

Caguioa, J. (Working Chairperson), see concurring opinion.

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[20] *Lee v. People*, G.R. No. 205746 (Notice), April 3, 2013.

[21] *Japan Airlines v. Simangan*, 575 Phil. 359, 377 (2008).

[22] *Air France v. Gillego*, 653 Phil. 138, 153 (2010).

[*] Designated additional member in lieu of Associate Justice Amy Lazaro-Javier per Raffle dated April 22, 2019.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in its findings of abuse of right on the part of petitioner, in clear breach of the most rudimentary principles of human relations as embodied in Article 19 in relation to Article 21 of the Civil Code.[1] I take this opportunity to recall and to emphasize the underlying propositions governing the principle of abuse of right, and echo the breadth of application that these encompassing provisions historically contemplated, both of which support a decisive finding of abuse of right in the present case.

The invocation of the abuse of right principle under Article 19 in relation to either Article 20 or 21 is admittedly not subject to a hard and fast evaluation of mathematical precision, owing perhaps to its design as an all-inclusive provision that seeks to redress other wrongs or injurious acts not covered by legislative foresight. Article 19 is based on the maxim *suum jus summa injuria* (the abuse of a right is the greatest possible wrong),[2] and is described as the guide to relational behavior that rise from the dictates of good conscience and govern any human society, to wit:

> Therein are formulated some basic principles that are to be observed for the rightful relationship between human being and for the stability of the social order. The present Civil Code merely states the effects of the law, but fails to draw out the spirit of the law. This chapter is designed to indicate certain norms that spring from the fountain of

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[1] In brief, the factual backdrop involves a legal spouse who did not bring her frail and ailing husband (Pascasio) to the latter's 90th birthday celebration prepared for him by his children from a previous marriage, and relatedly failed to advice Pascasio's family of his absence or the reason therefor whether prior to or after the same. As a consequence of such, herein petitioner's stepchildren sustained injury and loss, and prompted them to file a complaint for damages against petitioner, imputing against her malicious and injurious abuse of rights.

[2] See Desiderio P. Jurado, *CIVIL LAW REVIEWER*, 2009 ed., p. 33.

good conscience. These guides for human conduct 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.[3]

This provision on the basic tenets of decent human behavior, however, may not be invoked independently of Articles 20 and 21, which provide for the legal consequences of such an abuse. Article 20 is said to underpin the entire legal system, and ensures that no person who suffers damage, because of the act of another, may find himself without redress.[4] It is further said to extend our understanding of what tortious acts may consist of, with its language indicative of the incorporation into our traditional contemplation of tort or *culpa aquiliana* — the Anglo-American concept of tort which includes malice.[5] Article 21, for its part, stretched the "sphere of wrongs" provided for by positive law, and filled in the gaps to ensure remedy for people who have sustained material injuries from moral wrongs, in the absence of any other express provision.[6]

The scope of this principle is expansive, and is said to have "greatly broadened the scope of the law on civil wrongs."[7] It

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[3] See Francisco R. Capistrano, *CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS*, 1950 ed., Vol. I, p. 28.

[4] *Id.*

[5] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, 1959 ed., Vol. I, p. 29.

[6] *Id.*

[7] *Baksh v. Court of Appeals*, G.R. No. 97336, February 19, 1993, 219 SCRA 115, 127-128; citing Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 1985 ed., Vol. I, p. 72; the case adds*:

> In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are to be covered by Article 2176 of the Civil Code. In between these opposite spectrums are injurious acts which, in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with

provides that although an act is not illegal, damages may be properly awarded should the injury be borne of an abuse of a right, as when the right is exercised without prudence or in bad faith. This abuse may, however, be properly entreated only upon establishment of the following elements: (1) there is a legal right or duty; (2) which is exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another.[8]

The idea that rights are capable of abuse is a far shift from the prior theory embodied in the Roman Law maxim "*qui iure suo utitur neminem laedit*" or, he who exercises his own right injures no one. This idea of abuse of right instead acknowledges the primordial boundary on one's rights, that is, the rights of others. In his Commentary on the Civil Code, noted Civilist Eduardo P. Caguioa elaborated on the inherent logic of limitations of rights, the overstepping of which constitutes the abuse:

> x x x In Roman Law the maxim was "*qui iure suo utitur neminem laedit*," [*i.e.*], he who exercises his own right injures no one. Taken absolutely and literally the maxim is false and leads to absurd consequences. The exercise of rights must be done within certain limits. These limitations can be classified into two categories: 1. The **intrinsic limitations** which emanate from the right itself, [*i.e.*] from its nature and purpose, 2. The **extrinsic limitations** which emanate from the rights of others. The Intrinsic limitations are the following: (a) those derived from the nature of the right, [*e.g.*], the depositary cannot use the things deposited without authorization otherwise the character of the contract is destroyed; (b) Limitations arising from good faith; and (c) Limitations imposed by the economic and social ends of the right which require the holder of the right to exercise the right in accordance with the end for which it was granted or created. Hence the principle of ABUSE OF RIGHT. The extrinsic limitations are: (a) Those in favor of third persons who act in good faith; and (b) Those arising from the concurrence or conflict with the rights of others.

Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts.

[8] *Andrade v. Court of Appeals*, G.R. No. 127932, December 7, 2001, 371 SCRA 555, 563.

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x x x "The abusive act" says Josserand, "is simply that which, performed in accordance with a subjective right whose limits has been respected, is nevertheless contrary to right considered in general and as the sum total of all obligatory laws. It is perfectly possible to have in one's own favor such a determinate right but nevertheless have against one the whole of law and this is the situation which produces that famous maxim "*summum ius summa injuria*." The responsibility arising from the abuse of right covers both the subjective character of right and its social end and function.[9]

Under the aforementioned operative definition of abuse of right, therefore, petitioner's acts of failing to actually bring Pascasio (the father of respondents) to the birthday celebration which respondents mounted for him, and her concomitant failure to inform the latter of their foreseen absence from the party, or to just let them know that they had already returned to Manila after the schedule of the same, despite her justifications — that, based on her own narrative, are easily surmountable challenges — betrays intention and bad faith on petitioner's part. This is a clear breach of the intrinsic limitation on her right as the spouse of Pascasio arising from good faith, as well as breach of the extrinsic limitation arising from its conflict with the rights of others. So that although she indeed possessed the determinate right of bringing or not bringing her spouse to the birthday celebration, her exercise of said right placed her squarely against the basic rule on observance of good faith.

The Court of Appeals succinctly described this abuse of right through the apparent pretense in petitioner's defense, to wit:

Second, defendant-appellant testified that before going to Tarlac, she and Pascasio attended a birthday celebration at the Century Club, Quezon City on 21 February 2004. Her testimony further reveals that as early as that day, Pascasio was (allegedly) already decided on not attending the party prepared by his children. If said testimony

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[9] *Supra* note 5 at 26-27. Emphasis in the original.

is to be believed, it puzzles the Court why defendant-appellant did not attempt to contact, at that earliest time, plaintiffs-appellees to advise them of their father's sudden change of heart. Defendant-appellant knew that the celebration prepared by the Banaria children is not simple as guests were invited and a considerable sum of money is spent for the event. Indeed, had defendant-appellant informed plaintiffs-appellees of her predicament, the damage or injury that plaintiffs-appellees are now complaining of could have been prevented.

Further, petitioner argues that this was no more than a case of *damnum absque injuria*, or a damage without injury as the loss or harm suffered was not a result of a violation of a legal duty.[10] Here, petitioner is in error. *Damnum absque injuria* or damage without injury may not be appreciated in petitioner's actions as said principle contemplates a situation wherein in the exercise of a right, "the purpose was good, the exercise normal and still damage is caused."[11] As applied to petitioner's actions, her failure to inform respondents of their intended absence from the party or their whereabouts, in the least, to the extent that respondents found it necessary to file a Missing Person's report with the local police,[12] exhibits the utter lack of consideration for respondents, or otherwise a deficit in good faith relations with the latter.

With respect to the indemnification for the damage caused, I agree that respondents herein are entitled to moral and exemplary damages in addition to actual damages, but wish to supplement the basis for finding the propriety of said awards. For moral damages, such may be properly awarded in this case, pursuant to Article 2219 (10) in relation to Article 21 of the Civil Code, where the former enumerates the instances when moral damages may be appreciated. Exemplary damages was also properly found in favor of respondents, pursuant to Article 2231 in relation to Articles 19 and 21 of the Civil Code.To my mind, the lower

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[10] *Rollo*, p. 31.

[11] *Supra* note 5 at 28.

[12] *Rollo*, p. 36.

courts and the *ponencia* aptly found gross negligence on the part of the petitioner when, despite clear opportunities to inform respondents of their foreseen absence from the event in question, petitioner nevertheless repeatedly failed to undertake the same. Given that such a simple act of phoning any of respondents at any point during the time prior to and after the party could have spared respondents from the loss and humiliation that they subsequently sustained, the fact that petitioner kept failing to do so escapes reason. I therefore agree that such repeated failure is properly characterized as gross negligence under the contemplation of Article 2231. As the Court has held in the case of *Abrogar v. Cosmos Bottling Co., et al.*,[13] gross negligence is the thoughtless disregard of consequences without exerting any effort to avoid them. In this case, petitioner's utter disregard of each opportunity she could have taken to inform respondents of their father's absence is correctly characterized as gross negligence which correspondingly entitled herein respondents to exemplary damages.[14]

In fine, Articles 19, 20, and 21 have been historically planted to ensure that no wanton discounting of the rights of others may escape with impunity for the sole reason that no black letter law specifically prohibits the same. For if the case were otherwise, we would be constantly confronted with the irony wherein, as the Report of the Code Commission itself described,[15] people would be free to cause damage to others, and violate the most elementary principles of morality, so long as no positive law is broken. Such a situation could not be further from the contemplations of the law, and the abuse of right principle under Articles 19, 20, and 21 of the Civil Code ensure that it remains so.

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[13] G.R. No. 164749, March 15, 2017, 820 SCRA 301.

[14] *Id.* at 350; citing *Mendoza v. Sps. Gomez*, G.R. No. 160110, June 18, 2014, 726 SCRA 505, 526.

[15] *Supra* note 5 at 30; citing Report of Code Commission, pp. 40-41.

FIRST DIVISION

[G.R. No. 219074. July 28, 2020]

SPOUSES TEODORICO M. VIOVICENTE and DOMINGA L. VIOVICENTE, *petitioners*, *vs.* **SPOUSES DANILO L. VIOVICENTE and ALICE H. VIOVICENTE, THE REGISTER OF DEEDS OF CALAMBA, LAGUNA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; JURISDICTION IS GENERALLY LIMITED TO THE REVIEW OF ERRORS OF LAW COMMITTED BY THE APPELLATE COURT; AN EXCEPTION IS WHEN THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT ARE CONFLICTING OR CONTRADICTORY. — Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. The general rule though admits of exceptions, one of which is when the factual findings of the Court of Appeals and the trial court are conflicting or contradictory, as in this case.

2. ID.; CIVIL PROCEDURE; PLEADINGS; ALLEGATIONS THEREIN DETERMINE THE CAUSE OF ACTION; CASE AT BAR. — The elementary rule is that the allegations in the complaint determine the cause of action. Here, the complaint below clearly alleged an action for reconveyance of property based on null deed of sale.

3. CIVIL LAW; CONTRACTS; VOID AND INEXISTENT CONTRACTS; CAUSES OF ACTIONS THAT HINGED ON ALLEGED LACK OR ABSENCE OF CONSIDERATION OR THE DEED OF SALE WAS SPURIOUS, DO NOT PRESCRIBE; CASE AT BAR. — But whether petitioners hinge their complaint on the alleged lack or absence of consideration or the Deed of Sale dated December 14, 1995 being spurious, the result would

still be the same – petitioners' cause or causes of action had not prescribed. Article 1410 of the Civil Code ordains: **Article 1410.** The action or defense for the declaration of the inexistence of a contract does not prescribe. In ***Santos v. Heirs of Lustre***, the complaint alleged that the deed of sale was simulated. There, the Court ruled that the action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe. The Court of Appeals, therefore, erred in ruling that petitioners' cause of action had already prescribed, using ***D.B.T. Mar-Bay Construction, Inc. v. Panes*** where the Court decreed: When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title.

4. ID.; ID.; ID.; A FORGED OR SPURIOUS DEED CANNOT BE THE SOURCE OF OWNERSHIP; CASE AT BAR. — Surely, the x x x circumstances are [surrounding the case] sufficient to overthrow the presumption of genuineness and due execution of the supposed Deed of Sale dated December 14, 1995. As it was, the deed is marred by irregularities from execution to notarization, leading us to only one conclusion — the Deed of Sale dated December 14, 1995 is a forged or spurious document, hence, void. Consequently, TCT No. 356656 which emanated from said Deed, is also void. In ***Heirs of Arao v. Heirs of Eclipse***, the Court held that title cannot be used to validate the forgery or cure a void sale. Verily, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. Since the Deed of Absolute Sale dated September 5, 1969 was void, all TCTs which were issued by virtue of the said spurious and forged document were also null. So must it be.

5. ID.; ID.; SALES; ELEMENTS OF A VALID CONTRACT OF SALE. — The elements of a valid contract of sale are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent. Absent any of the elements, the sale is fictitious or otherwise void. Specifically, Article 1471 of the Civil Code decrees that if the price in a contract of sale is simulated, the sale is void.

APPEARANCES OF COUNSEL

Ernesto L. Viovicente for petitioners.
Phio L. Viovicente for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Petitioners Spouses Teodorico and Dominga L. Viovicente assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 95525 entitled "*Spouses Teodorico M. Viovicente and Dominga L. Viovicente v. Spouses Danilo L. Viovicente and Alice H. Viovicente, the Register of Deeds of Calamba, Laguna*":

1. Decision[1] dated May 20, 2014 reversing the trial court's decision and dismissing petitioners' complaint for reconveyance of property and nullity of sale against respondents Spouses Danilo L. Viovicente and Alice H. Viovicente; and

2. Resolution[2] dated June 18, 2015 denying reconsideration.

Antecedents

Petitioners' Version

Teodorico Viovicente testified that he was married to Dominga and respondent Danilo Viovicente was their eldest son. He was the registered owner of a property located at Pacita Complex II, Phase I, Blk. 17, Lot 12, San Pedro, Laguna covered by TCT No. T-264547. He acquired it through a GSIS

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz, all members of the Tenth Division, *rollo*, pp. 42-51.

[2] *Id.* at 71-72.

real estate loan and paid it through salary deductions for fifteen (15) years.[3]

On June 24, 1993, Danilo went to their house in Tacloban City and forced him and Dominga to sign a Deed of Absolute Sale. They initially refused because the property was intended for Danilo's siblings for their eventual study in Manila. Because of his refusal, Danilo angrily shouted and threw a briefcase at him but missed. Out of fear, he and Dominga signed the Deed even without receiving any payment as consideration. When he was able to secure a copy of the Deed in 2002, he noted that the acknowledgment portion falsely stated that he personally appeared before a notary in Makati City on July 14, 1993. This was physically impossible since he reported for work at the GSIS-Tacloban City that day.[4]

In 2002, he learned that Danilo and his wife respondent Alice Viovicente were able to transfer the property to their names and were issued TCT-356656 through a fictitious Deed of Absolute Sale dated December 14, 1995. He denied ever signing it. As with the Deed of Sale dated June 24, 1993, he too denied personally appearing before a notary public in Makati where the Deed of Sale dated December 14, 1995 was supposedly executed. The GSIS-Tacloban City certified that he reported for work that day.

Hence, he and Dominga filed the Complaint dated January 20, 2003[5] for reconveyance of property, nullity of the supposed sale of real property, and cancellation of TCT No. T-356656 issued in the names of Danilo and his wife.[6]

Dominga Viovicente corroborated Teodorico's testimony. Danilo forced them to sign the Deed of Sale dated June 24, 1993 in Tacloban City, shouting "*pirma, pirma, unsa dili mo*

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[3] *Id.* at 74.

[4] *Id.*

[5] RTC Civil Case No. SPL-0898, record, pp. 2-9.

[6] *Rollo*, p. 75.

pirma" before throwing a briefcase at Teodorico. They were not able to read the contents of the document they signed because Danilo did not allow them. She confirmed that they did not receive any consideration for the sale.[7]

Respondents' Version

Danilo Viovicente[8] denied using force and intimidation to obtain his parents' signature on the Deed of Sale dated June 24, 1993. He testified that sometime in 1983, Teodorico commented that it would be convenient to have a house in Manila where his siblings could stay. He initially dismissed the idea for lack of funds. Teodorico then suggested that he (Teodorico) could apply for a loan to cover the downpayment while he (Danilo) would be in charge of paying the amortizations; and upon full payment thereof, Teodorico would convey the property to him. He agreed to this arrangement.

Though reluctant at first, Teodorico signed the Deed of Sale dated June 24, 1993 after he (Danilo) assured him that the property could still be used by his siblings.[9] To facilitate the transfer of the property to his name, he gave the Deed of Sale dated June 24, 1993 to his brother Phio who executed an identical Deed to avoid paying surcharges and penalties.[10]

Before petitioners filed the complaint, their family had a meeting where Teodorico told him to reconvey the property, claiming he was coerced into signing the Deed on June 23, 1993.[11]

GSIS Chief of the Accounts Administrative Division **Gavino B. Gagarin** testified that Teodorico's timecards from 1993 to

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[7] *Id.*

[8] *Id.* at 75-76.

[9] *Id.* at 76.

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

[11] *Id.* at 76.

1995 and daily time records for the period covering January to August 1992 were all unsigned.[12]

NBI Senior Document Examiner **Noel Cruz** testified that Teodorico's signatures on the Deed of Sale dated December 14, 1995 and in the other documents[13] submitted for examination were written by one and the same person. He noted however the "*snopaked*" entries in the Deed of Sale dated December 14, 1995, with the figure **'5'** superimposed on **'3'** and concluded that the Deed was actually executed in 1993.

The Trial Court's Ruling

By Amended Decision[14] dated July 16, 2010, the trial court ruled in petitioners' favor, *viz.*:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendants hereby directing defendants to reconvey to plaintiffs the property originally covered by Transfer Certificate of Title T-356656; declaring the Deed of Absolute Sale dated June 24, 1993 as null and void; and directing the Register of Deeds of Calamba, Laguna to cancel Transfer Certificate of Title T-356656 issued in the name of defendant Danilo L. Viovicente and to issue a new Transfer Certificate of Title in the name of plaintiff Teodorico M. Viovicente, married to Dominga L. Viovicente.
>
> SO ORDERED.[15]

According to the trial court, the Deed of Sale dated June 24, 1993 was devoid of any consideration because petitioners were merely forced to sign it. There was simply no evidence to establish Danilo's supposed arrangement with Teodorico.

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[12] *Id.*

[13] Sample signatures in the 1994 Income Return, Sworn Statement of Assets and Liabilities, Letters addressed to Danny dated November 14, 1993, December 25, 1994, January 31, 1995, April 24, 1995, birthday card addressed to Danny dated May 31, 1995, September 1992 daily time record, and October 1992 daily time record enlarged photographs.

[14] *Rollo*, pp. 73-78.

[15] *Id.* at 78.

As for the Deed of Sale dated December 14, 1995, petitioners categorically denied having executed the same. Worse, the NBI even noted the "*snopake*" deletions and concluded that there was actually no Deed of Sale dated December 14, 1995; it was actually the same Deed of Sale dated June 24, 1993 with altered entries.

The Proceedings before the Court of Appeals

On appeal,[16] respondents faulted the trial court for holding that the sale was void for want of consideration and that petitioners were merely coerced to sign the Deed of Sale dated June 24, 1993. Respondents pointed out that the trial court's findings were based exclusively on petitioners' allegations and evidence, totally disregarding in the process their own evidence.

Too, the trial court erred when it held that the Deed of Sale dated December 14, 1995 was executed sans any consideration, the same being in clear violation of the Parole Evidence Rule.

The Deed of Sale dated December 14, 1995 bore the unequivocal acknowledgment that Teodorico appeared before Notary Public Atty. Fallar. At any rate, even granting for the sake of argument that Teodorico did not appear before the notary public, such defect did not affect the validity of the instrument.

Petitioners,[17] on the other hand, countered that the trial court could not have considered respondents' evidence because their counsel failed to make a formal offer thereof. They emphasized that there was only one (1) Deed of Sale, not two (2). The only existing Deed of Sale bore the date **June 24, 1993** which they were forced to sign without receiving any consideration from respondents. This was confirmed by respondents' own witness, NBI Document Examiner Cruz who opined that there was actually no Deed of Sale dated December 14, 1995; it

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[16] RTC Civil Case No. SPL-0898, record, pp. 46-58.

[17] RTC Civil Case No. 0898, record, pp. 78-96.

was the same Deed of Sale dated June 24, 1993 with altered entries. They presented a GSIS Certification stating that Teodorico reported for work on December 14, 1995, the date when the deed was supposedly executed and notarized.

The Court of Appeals' Ruling

By Decision[18] dated May 20, 2014, the Court of Appeals reversed. It found that the cancellation of TCT No. 264547 was not based on the Deed of Sale dated June 24, 1993 but on the Deed of Sale dated December 14, 1995. Petitioners failed to overthrow the presumption that this Deed of Sale dated December 14, 1995 was actually executed and the consequent Torrens title, issued with regularity. Petitioners' assertion that the Deed of Sale dated December 14, 1995 was forged was unsubstantiated. Lastly, the action for reconveyance had already prescribed because TCT No. 356656 was issued on January 16, 1996 while the action was only filed in 2003.

Petitioners moved for reconsideration which the Court of Appeals denied by Resolution[19] dated June 18, 2015.

The Present Petition

Petitioners now seek[20] affirmative relief from the Court and pray that the assailed dispositions of the Court of Appeals be reversed and a new one rendered upholding the trial court's Amended Decision dated July 6, 2010.

Petitioners essentially argue:

First, there was actually only one (1) document signed in 1993 for which they did not receive any consideration.

Second, the Court of Appeals erred when it ruled that the notarized Deed of Sale dated December 14, 1995 enjoyed the

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[18] Penned by Justice Eduardo B. Peralta and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz, *rollo*, pp. 42-51.

[19] *Id.* at 71-72.

[20] *Id.* at 14-38.

presumption of due execution since that instrument was not even formally offered in evidence by respondents. At any rate, the aforesaid presumption was sufficiently overturned in view of the apparent alterations on the face of the instrument itself.

Third, the presumption of validity of Torrens Title does not apply to the simulated Deed of Sale dated December 14, 1995 intended as it was to evade payment of taxes. Respondents' own witness testified that the Deed of Sale dated December 14, 1995 and the Deed of Sale dated June 24, 1993 were one and the same, except that the Deed of Sale dated December 14, 1995 now carried a superimposed number 5 (1995) over number 3 (1993). The allegation of forgery, therefore, was clearly established.

Lastly, the Court of Appeals erred in holding that the action for reconveyance here already prescribed four (4) years after petitioners discovered the fraud attendant to the execution of the Deed of Sale dated December 14, 1995.

In their Comment,[21] respondents riposte that the element of fraud was never proven because TCT No. 256656 was issued by virtue of the Deed of Sale dated December 14, 1995 and petitioners' signatures thereon were genuine. Too, it had a valid consideration of Php111,180.00. It enjoys the presumption of due execution of a public document just as their Torrens title enjoys the presumption of regularity in its issuance. Lastly, the Court of Appeals correctly held that petitioners' action for reconveyance had already prescribed.

Threshold Issues

First. Are petitioners' causes of action barred by prescription?
Second. Was there a valid conveyance of subject property in favor of respondents?

The Court's Ruling

The petition is meritorious.

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[21] *Id.* at 87-97.

Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. The general rule though admits of exceptions, one of which is when the factual findings of the Court of Appeals and the trial court are conflicting or contradictory,[22] as in this case.

Petitioners' action for nullity of a spurious deed of sale is imprescriptible

The elementary rule is that the allegations in the complaint determine the cause of action.[23] Here, the complaint below clearly alleged an action for reconveyance of property based on null deed of sale, *viz.*:

12. ***There was no consideration for the alleged sale of the PROPERTY from plaintiffs to DANILO. There was never any agreement for the price of an alleged sale.*** In the Deed of Absolute Sale that **DANILO** coerced plaintiffs to sign, it says there that plaintiffs sold the **PROPERTY** to **DANILO** for ₱111,180.00 which plaintiffs allegedly received to their entire satisfaction. ***This is absolutely untrue. This is an insult to plaintiffs whom DANILO, by this absolutely simulated contract, are treating plaintiffs like useless people with very little intelligence. What hurts plaintiffs more is that DANILO has floated the idea that plaintiffs were constant beggars to him in the past.***[24]

x x x x x x x x x

16. Thus, judgment should be rendered declaring the alleged sale of the **PROPERTY** to **DANILO** void for absence of consideration, ordering the defendant **REGISTER OF CALAMBA, LAGUNA**, to cancel Transfer Certificate of Title No. T-356656 issued in the name of defendant **DANILO** and to issue a new transfer certificate of title

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[22] See *Recio v. Heirs of Spouses Altamirano*, 715 Phil. 126, 137 (2013).

[23] See *Perpetual Savings Bank v. Fajardo*, 295 Phil. 794, 803 (1993).

[24] RTC Civil Case No. 0898, record, p. 5.

on the **PROPERTY** in the name of plaintiff **TEODORICO M. VIOVICENTE** married to **DOMING[A] L. VIOVICENTE**.

PRAYER

WHEREFORE, it is respectfully prayed that judgment be rendered declaring the alleged sale of the **PROPERTY** to **DANILO** void for absence of consideration, ordering the defendant **REGISTER OF CALAMBA, LAGUNA**, to cancel Transfer Certificate of Title No. T-356656 issued in the name of defendant **DANILO** and to issue a new transfer certificate of title on the **PROPERTY** in the name of plaintiff **TEODORICO M. VIOVICENTE** married to **DOMING[A] L. VIOVICENTE**.

Other reliefs just and equitable under the premises are likewise prayed for.[25]

Verily, petitioners invariably alleged that they did not receive any consideration from respondents relative to the sale of the property, rendering it void.

Further, during the trial, petitioners consistently denied signing the Deed of Sale dated December 14, 1995, let alone, appearing before the notary public to acknowledge it as their voluntary act. Hence, the purported deed is spurious and consequently, void. The trial court delved on this issue without so much as an objection from respondents. Pursuant to Rule 10, Section 5 of the 1997 Rules of Civil Procedure, therefore, the matter may be treated as though it had been raised in the pleadings. The rule pertinently states:

Section 5. *Amendment to conform to or authorize presentation of evidence*. — **When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings**. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; **but failure to amend does not effect the result of the trial of these issues**. If evidence is objected to at the trial on the ground that it is not within the issues

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[25] *Id.* at 8.

made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (emphases added)

But whether petitioners hinge their complaint on the alleged lack or absence of consideration or the Deed of Sale dated December 14, 1995 being spurious, the result would still be the same — petitioners' cause or causes of action had not prescribed. Article 1410 of the Civil Code ordains:

Article 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.[26]

In ***Santos v. Heirs of Lustre***,[27] the complaint alleged that the deed of sale was simulated. There, the Court ruled that the action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe.

The Court of Appeals, therefore, erred in ruling that petitioners' cause of action had already prescribed, using ***D.B.T. Mar-Bay Construction, Inc. v. Panes***[28] where the Court decreed:

When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title.

A forged or spurious Deed cannot be the source of ownership

As it was, petitioners sought the cancellation of respondents' TCT No. T-356656. It was issued based on the Deed of Absolute

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[26] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

[27] 583 Phil. 118 (2008).

[28] 612 Phil. 93 (2009).

Sale dated December 14, 1995 supposedly executed by petitioners in favor of respondents. But as records clearly show, the Deed of Absolute Sale dated December 14, 1995 was a forged or spurious document. Consider:

First. NBI Senior Document Examiner Noel Cruz testified:

CROSS EXAMINATION
BY ATTY. VIOVICENTE

Q Mr. Witness, you earlier testified that your basis for conducting the handwriting examination was an order from this Honorable Court?
A Yes, sir.

Q And as a matter of fact that order from this Court included not only an examination of the questioned signature but also an examination of some entries in the questioned document that were erased by snopake?
A Yes, sir.

Q Mr. Witness, for purposes of identification, can you show to us again that questioned document that you examined?
A Yes, sir.

Atty. Viovicente

This document that the witness presented to us is entitled Deed of Absolute Sale consisting of three pages, dated December 14, 1995, previously your Honor, we have marked this as our Exhibit F and series.

Atty. Viovicente (continuing):

Q Mr. Witness, did you also, aside from the handwriting analysis which was ordered by the Court, did you also comply with the order stated in that same document to examine the entries that were erased by snopake?
A Yes, sir.

Q Mr. Witness, isn't it a fact that particularly the entries that you were supposed to examine are the following: one, the figure "5" appearing on p. 2 on the year 1995, the figure "5" on the year 1995 appearing on the acknowledgment?
A Yes, sir.

Q And the figure "5" at the bottom of the acknowledgement, in the year 1995?
A Yes, sir.

Atty. Viovicente

For purposes of identification, may I be allowed to mark these portions as our exhibits. We move that the first figure appearing on the document be marked as Exhibit F-3, the figure 5 on December 1995 appearing on p. 2, as our Exhibit F-4, the figure "5" on the year 1995 appearing on p. 3 which is part of the acknowledgement, as our Exhibit F-5 the figure "5" on the year 1995 at the bottom of the acknowledgement which is part of the phrase "series of 1995."

Court Mark it

(court interpreter marking said doc.)

Atty. Viovicente (continuing):

Q Mr. Witness, according to the Order you were supposed to determine, considering that these entries were snopaked, you were supposed to determine the original entries of these snopaked figures, did you do that?
A Yes, sir.

Q Can you tell us what is the original entry of the figure "5" appearing on Exhibit F-3, can you tell us the original entry?
A It is deciphered as "3", sir.

Q How about the original entry for the figure "5" marked as Exhibit F-4?
A It is a figure "3", sir.

Q How about the original entry for the figure "5" on Exhibit F-5?
A Figure 3, sir.

Q Can you tell us how you were able to arrive at these findings?
A By using a series of lighting process and we photographed these portions which contain snopake, and it revealed the figure "3", sir.[29]

x x x x x x x x x

[29] TSN dated June 16, 2006, Civil Case No. SPL-0898, pp. 10-12.

Q Mr. Witness, on the basis of your findings on the one hand, the handwriting analysis, conclusion on the other hand, the original entry 1993 instead of 1995, what now is your conclusion, can you arrive at a conclusion as to when the signatures were actually written?

A Based on the result of the examination as to the figure "5", it was deciphered as figure "3", so the document was probably signed in 1993, sir.[30]

Verily, the Deed dated December 14, 1995 was actually the Deed of Sale dated June 24, 1993 but altered to appear that it was executed in 1995 through the "*snopaked*" entries with the figure "5" superimposed on "3."

Second. Respondents duly admitted in their Answer[31] that there was no actual sale on December 14, 1995 because the Deed of Sale on said date was unilaterally executed not by the owners Spouses Teodorico and Dominga Viovicente but by one **Phio** (brother of respondent Danilo) supposedly to avoid surcharges and penalties, *viz.*:

25. This can be explained more succinctly by Phio, the brother of Defendant Danny, who actually processed the transfer. After Annex "C" of the Complaint was voluntarily signed by the Plaintiffs, Defendant Danny, who knew nothing about legal documentation and processes, gave said deed to his brother Phio for the eventual transfer of the title, together with the funds for the expenses, consisting mainly of taxes and fees to be paid the government.

26. However, since Phio was not able to process the transfer within the reglementary period, and processing it thereafter would mean paying surcharges and penalties on the taxes, Phio printed an identical deed, except the date, caused this second deed to be signed by Plaintiffs, had it notarized, and eventually processed the transfer.[32]

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[30] *Id.* at 16.

[31] RTC Civil Case No. SPL-0898, record, pp. 41-52.

[32] *Id.* at 47-48.

Since the Deed of Sale dated December 14, 1995 was Phio's own making, there was, therefore, no actual sale of subject property made on said date by the real owners herein petitioners Spouses Teodorico and Dominga Viovicente.

Third. Teodorico categorically denied having signed the said deed and was able to prove that it was physically impossible for him to personally appear before the Notary Public in Makati City for its notarization on December 14, 1995:

CONTINUATION OF DIRECT
EXAMINATION BY
ATTY. VIOVICENTE

Q Mr. Witness, during the last hearing, you testified that you first learned about the transfer of the property from your name to the name of Danilo in the year 2002?
A Yes, sir.

Q What was the document used as basis, if you know, by the Register of Deeds to transfer the title over the property from your name to the name of defendant Danilo?
A Deed of Sale, deed of absolute sale, sir.

Q Can you recall the year or date when that deed of absolute sale was supposedly executed?
A December 14, 1995, sir.[33]

x x x x x x x x x

Q **Did you execute this document?**
A **No, sir, I only signed once when I was forced and intimidated to sign.**[34]

x x x x x x x x x

Q Going back to the deed of sale which was supposedly executed on December 14, 1995, and on the portion of the acknowledgement by the notary public, it says here "before me a notary public for and in Manila on the 14th day of

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[33] TSN dated December 5, 2003, Civil Case No. SPL-0898, p. 2.

[34] *Id.* at 4.

December, 1995, personally appeared Teodorico Viovicente," do you confirm that?

A No, sir.

Q Where were you on December 14, 1995?

A On December 14, 1995 I was in Tacloban working at the GSIS being an employee thereat, sir.

Q Do you have a certification to prove that?

A Yes, sir.

Q If that certification is shown to you, can you identify it?

A Yes, sir.

Q I am showing to you a certification dated August 15, 2003, previously marked as Exhibit I for the plaintiffs, appearing on the letterhead of the Republic of the Philippines, Government Service Insurance System, Tacloban City Branch, are you referring to this certification?

A Yes, sir.

Q Your Honor, may I read into the records a portion of this certification which states: "This is to certify that as per records, Mr. Teodorico Viovicente, a retired employee of this branch office was present on December 14, 1995." Going back to Exhibit H which was previously identified by the witness, may I request that the portion on the upper right corner which shows that stamp receipt April 25, 1995 be bracketed and submarked as Exhibit H-2.

Court Mark it.[35]

Surely, the above circumstances are sufficient to overthrow the presumption of genuineness and due execution of the supposed Deed of Sale dated December 14, 1995. As it was, the deed is marred by irregularities from execution to notarization, leading us to only one conclusion — the Deed of Sale dated December 14, 1995 is a forged or spurious document, hence, void. Consequently, TCT No. 356656 which emanated from said Deed, is also void.[36]

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

[36] See *Heirs of Arao v. Heirs of Eclipse*, G.R. No. 211425, November 19, 2018.

In ***Heirs of Arao v. Heirs of Eclipse***,[37] the Court held that title cannot be used to validate the forgery or cure a void sale. Verily, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. Since the Deed of Absolute Sale dated September 5, 1969 was void, all TCTs which were issued by virtue of the said spurious and forged document were also null.

So must it be.

There was no valid conveyance of the property in favor of respondents

At any rate, there was never any valid conveyance of the property in favor of respondents. Whether respondents base their claim of ownership on the Deed of Absolute Sale dated December 14, 1995 or Deed of Sale dated June 24, 1993 is immaterial. Both were void. The first was spurious or forged; the second did not have any consideration in exchange for the supposed sale of the lot.

Article 1458 of the Civil Code defines contract of sale, thus:

> **Art. 1458.** By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other *to pay therefor a price certain* in money or its equivalent. (Emphasis supplied)

The elements of a valid contract of sale are: (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[38] Absent any of the elements, the sale is fictitious or otherwise void. Specifically, Article 1471 of the Civil Code decrees that if the price in a contract of sale is simulated, the sale is void.[39]

Here, petitioners denied ever receiving a single centavo from respondents:

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[37] G.R. No. 211425, November 19, 2018.

[38] See *Province of Cebu v. Heirs of Morales*, 569 Phil. 641, 648 (2008).

[39] See *Spouses Joaquin v. Court of Appeals*, 461 Phil. 761, 772 (2003).

Q Mr. Witness, how was this property transferred to Danilo?
A It was transferred to him on the basis of the document which I signed, sir.

Q When did you sign that document?
A On June 24, 1993, sir.

Q Can you tell us the circumstances as to how you signed this document?
A On June 24, 1993, Danilo went to Tacloban, and right then and there, upon his arrival in our house, he asked us to sign the document by saying "Here is the document, sign it."

Q What was the tone of his voice when he told you to sign the document?
A His voice was in a forceful and intimidating manner, sir.

Q Who were present at that time?
A My wife, I and our youngest son, Teodorico, Jr., sir.

Q What did you tell him after he told you to sign that document?
A I said "I will not sign this because this will be used by your siblings when they study in Manila."

Q When you said that, what was his reaction?
A He was very angry, he ran approaching me, raising the briefcase he was carrying, and threw it at me, but fortunately I was not hit by the briefcase, sir.

Q When you said the brief case was thrown to you, towards what direction or part of your body was it thrown?
A To my head, sir.

Q How did you feel at that point?
A I was afraid, I seemed to have a mental black out, sir.

Q And then what did Danilo do after that?
A He shouted at my face point blank . . . (witness answering in the vernacular)

Q May I ask your Honor that the answer of the witness be quoted in the vernacular?
A He said "nganong dili ka man mo pirma, ako man kaha nang ba'ay sa Pacita."

Q Will you give us the English translation of that statement?
A "Why will you not sign the document when the house is mine."

Q Then, what did you do?
A Fearing for his body language indicating intimidating action against me, I acceded to the signing of the document, sir.

Q How old were you then?
A I was 58 years old.

Q And your wife?
A She was 57, sir.

Q And Danilo?
A 34 years old, sir.[40]

x x x x x x x x x

Q How much, if any, was paid by Danilo to you for the sale of this property?

A ***I did not receive any amount, sir.***[41] (Emphasis supplied)

Dominga Viovicente corroborated Teodorico's testimony:

Q There is a signature on top of the name Dominga L. Viovicente, whose signature is that?
A This is my signature, Sir.

Q And there is a signature on top of the name of Teodorico M. Viovicente, whose signature is that?
A This is the signature of my husband, Sir.

Q Still, on this document, who asked you, if any, to sign that document?
A Danilo is the one who forced us to sign this document, Sir.

Q Where did this happen?
A In Tacloban City, Sir.

Q What exactly did he tell you when he asked you to sign this document?
A He said, pirma, pirma, unsa dili mo magpirma?

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[40] TSN, dated November 21, 2003, pp. 10-11.

[41] *Id.* at 12.

ATTY. VIOVICENTE

Your Honor please, I move that the vernacular be quoted, your Honor. Your Honor, may I be allowed to make a translation? The translation to that your Honor, you sign, you sign, if you will not sign . . . I manifest your Honor that the witness has reenacted the tone of the voice of Danilo, Your Honor. The witness is now crying, your Honor.

Q How far was he Madam Witness from you when he said this pirma, pirma?

ATTY. VIOVICENTE

Your Honor, the witness is illustrating that Danilo was an arms length from her, your Honor.

Q What was the tone of the voice of Danilo?
A Loud voice, he was angry with us, Sir.

Q You said loud voice?
A Yes, Sir.

Q To whom was he directing this loud voice and his anger when he said pirma, pirma?
A To me and my husband, Sir.

Q Where was your husband then?
A Beside me, Sir.[42]

x x x x x x x x x

Q What agreement, if any, did you have with Danilo with respect to any sale of this property to him?
A Nothing, Sir.

Q On this document page 2, there is a statement to the effect that for and in consideration of the premises more specifically of the sum of ₱111,180.00 Philippine currency, the receipt hereof is hereby acknowledge[d] from the vendee to the entire satisfaction of the vendor[,] the said vendor does hereby sell, transfer and convey in a manner absolute and irrevocable in favor of the vendee, his heirs and assigns[,] the land above-

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[42] TSN dated May 14, 2004, pp. 6-7.

described, together with the house and improvements existing thereon, how much, if any, did you receive from Danilo with respect to an alleged sale of this property to him?

A ***Nothing, Sir.***[43] (Emphasis supplied)

The trial court found these testimonies credible and held:

On its face, the Deed of Absolute Sale purports to be supported by a consideration in the form of a price certain in money. However, based on the evidence presented by plaintiffs, they were merely forced by Danilo Viovicente to sign the Deed of Absolute Sale and that they did not receive any consideration in the amount of ₱111,180.00 from Danilo Viovicente. There was indisputably a total absence of consideration contrary to what is stated in the Deed of Absolute Sale. Where, as in this case, the deed of absolute sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.[44]

Danilo did not present any evidence to prove his supposed amortization payments, much less, his agreement with Teodorico that the latter will obtain a GSIS loan to purchase the property while he (Danilo) will pay the amortizations thereof. Meanwhile, Teodorico presented GSIS Certification dated May 12, 1986[45] certifying that Teodorico was granted a housing unit at Pacita Complex II, Laguna on June 1, 1983 costing ₱111,180.00 and had been paying monthly amortization of ₱1,317.07. GSIS Certification dated February 12, 2002[46] certified that Teodorico's housing loan was already fully paid on December 8, 1992 under OR No. 507693421.

Spouses Lequin v. Spouses Vizconde[47] decreed that where the deed of sale states that the purchase price has been paid

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[43] *Id.* at 9.

[44] *Rollo*, p. 77.

[45] RTC Case No. SPL-0898, record, p. 171.

[46] *Id.* at 170.

[47] 618 Phil. 409 (2009).

but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.[48]

Similarly, in ***Labagala v. Santiago***,[49] the Court declared void for want of consideration the sale of the property. Admittedly, Labagala did not pay any centavo for the property, which makes the sale void pursuant to Article 1471 of the Civil Code.

In sum, TCT No. 356656 is void because, for one, it was issued based on a spurious Deed of Sale unilaterally executed on December 14, 1995. For another, the Deed absolutely lacked consideration from respondents.

All told, the Court of Appeals erred when it reversed the trial court's decision and dismissed the complaint.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated May 20, 2014 and Resolution dated June 18, 2015 of the Court of Appeals in CA-G.R. CV No. 95525 are **REVERSED** and the Regional Trial Court's Amended Decision dated July 16, 2010 in Civil Case No. SPL-0898, **REINSTATED**.

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

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[48] *Id.*

[49] 422 Phil. 699 (2001).

FIRST DIVISION

[G.R. No. 220935. July 28, 2020]

ARIEL ESPINA, ANALY DOLOJAN, DARIA DONOR, ROEL DONOR, *ET AL.*, *petitioners, vs.* **HIGHLANDS CAMP/RAWLINGS FOUNDATION, INC. and JAYVELYN PASCAL,** *respondents*.

[G.R. No. 219868. July 28, 2020]

EDWIN ADONA, DARYLE MONTEVIRGEN, EDERLINA ESTEBAN, *ET AL.*, *petitioners, vs.* **HIGHLANDS CAMP/RAWLINGS FOUNDATION, INC. and JAYVELYN PASCAL,** *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; KINDS OF EMPLOYMENT; REGULAR EMPLOYEES AND SEASONAL EMPLOYEES, DISTINGUISHED. —** Under the law, regular employees are those engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer. x x x On the other hand, seasonal employees are those whose work or engagement is seasonal in nature and their employment is only for the duration of the season[.]

2. **ID.; ID.; ID.; SEASONAL EMPLOYEE; REQUISITES. —** To be classified as seasonal employees, two (2) elements therefore, must concur: (1) they must be performing work or services that are seasonal in nature; and (2) they have been employed for the duration of the season.

3. **ID.; ID.; ID.; EMPLOYMENT STATUS IS DETERMINED NOT BY THE INTENT OR MOTIVATIONS OF THE PARTIES BUT BY THE NATURE OF THE EMPLOYER'S BUSINESS AND THE DURATION OF THE TASKS PERFORMED BY THE EMPLOYEES. —** Employment status is determined not by the intent or motivations of the parties but by the nature of the employer's business and the duration of the tasks performed by the employees. It does not depend on the will of the employer

or the procedure for hiring and the manner of designating the employee. Rather, employment status depends on the activities performed by the employee and in some cases, the length of time of the performance and its continued existence.

4. ID.; ID.; ID.; ID.; EMPLOYEES' SERVICES ARE NECESSARY AND DIRECTLY RELATED TO THE EMPLOYER'S BUSINESS; THEY WERE IN FACT REGULAR EMPLOYEES. — It is undisputed that respondents repeatedly hired petitioners as cooks, cook helpers, utility workers, and service crew, among others, from 2000 to 2010. Even when petitioners were not rehired in 2011, Highlands still engaged other workers to perform the same tasks that petitioners have been performing for the past ten (10) years. Highlands' continuing need for the same services originally performed by petitioners is testament to their necessity and desirability in its business. Without cooks, cook helpers, utility workers, and service crew, *etc*., it would be difficult, nay impossible, for Highlands to maintain its camping facilities and cater to its campers' needs. It would not have been able to provide a suitable venue for religious training, spiritual growth, and evangelization. Petitioners' services, therefore, are necessary and directly related to Highlands' camping site business. Verily, they were in fact regular employees.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AS REGULAR EMPLOYEES, PETITIONERS CANNOT BE TERMINATED FROM EMPLOYMENT WITHOUT ANY JUST AND/OR AUTHORIZED CAUSE. — As regular employees, petitioners cannot be terminated from employment without any just and/or authorized cause. Surely, Highlands' unilateral refusal to "rehire" them, *sans* any valid reason amounted to illegal dismissal. Petitioners are thus entitled to the rights and benefits due to illegally dismissed employees under Article 294 of the Labor Code[.]

APPEARANCES OF COUNSEL

Edano & Pangan Law Office for petitioners in G.R. No. 220935.

Donato Zarate & Rodriguez for respondents in both cases.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This is a consolidated petition assailing the following dispositions of the Court of Appeals in CA-G.R. SP No. 133460 entitled "*Highlands Camp/Rawlings Foundation, Inc., Jayvelyn Pascal v. National Labor Relations Commission (First Division), et al.*":

1. Decision[1] dated May 15, 2015 finding that petitioners were seasonal employees and their termination did not amount to illegal dismissal; and
2. Resolution[2] dated July 29, 2015 denying petitioners' motion for reconsideration.

Antecedents

On March 24, 2011, two (2) groups of employees filed separate complaints for illegal dismissal, non-payment of overtime pay, holiday pay, and 13th month pay, with claims for moral and exemplary damages against respondents Highlands Camp/ Rawlings Foundation, Inc. and Jayvelyn Pascal. In NLRC LAC No. 03-001071-13, petitioner Randy Dolojan headed the first group of employees.[3] On the other hand, in NLRC NCR Case No. RAB-III-03-17502-11, petitioner Edwin Adona headed the second group of employees.[4] The complaints were consolidated[5]

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[1] Penned by Associate Justice Stephen Cruz and concurred in by Associate Justice Fernanda Lampas-Peralta and Associate Justice Ramon Paul Hernando (now a member of this Court), G.R. No. 220935, *rollo*, pp. 22-36.

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

[3] Represented by Atty. Wilfredo Pangan.

[4] Represented by the Public Attorney's Office (PAO).

[5] G.R. No. 219868, Vol. II, *rollo*, p. 922.

and raffled to the National Labor Relations Commission (NLRC)-Branch III, San Fernando City, Pampanga.

Petitioners essentially averred that in 2000, Highlands hired them as cooks, cook helpers, utility workers, and service crew in its camping site in Iba, Zambales.[6] For ten (10) years, they regularly reported for work from January to June. They were on call from July to September. For the entire month of October, they were required to report daily as it was the peak season for campers. In November or December, they were also on call depending on the number of campers.[7] But Highlands' business was open to the public the whole year round.[8]

Every start of the year, Highlands required them to submit their biodata, medical clearances, medical health card, and Social Security number. In 2011, after submitting the requirements for rehiring, Highlands informed them they will be called once the campers arrive. But Highlands never did. Later, they discovered that new employees got hired instead of them.[9]

Their annual rehiring since 2001 and the services they rendered, which were necessary and desirable to Highlands' business, conferred them the status of regular employees. Thus, Highlands' failure to rehire them in 2011 without valid cause constituted illegal dismissal.[10] Too, Highlands failed to pay them holiday pay, overtime pay, and other benefits due them as regular employees.[11] Having been illegally dismissed, they prayed for separation pay in lieu of reinstatement.[12]

On the other hand, respondent Highlands Camp countered it is under the management of Rawlings Foundation, Inc., a

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[6] *Id.* at 744.

[7] G.R. No. 220935, *rollo*, pp. 5-6.

[8] *Id.* at 270.

[9] G.R. No. 219868, Vol. II, *rollo*, p. 750.

[10] *Id.* at 749.

[11] *Id.* at 754-757.

[12] *Id.* at 760.

non-profit religious organization established to provide a camping site in Lobotluta, Bangantalinga, Iba, Zambales for various religious and civic events. The primary purpose of Highlands' business was to provide a venue for religious training, spiritual growth, and evangelization.[13] Respondent Jayvelyn Pascal was Highlands' Administrator.[14]

Highlands' camp operations were not a whole year-round business as there were peak seasons only. Petitioners were seasonal employees whose work was only for a specific season.[15] None of them had rendered at least six (6) months of service in a year.[16] As proof, Highlands presented a summary table for years 2000-2010 showing that petitioners worked on the average of less than three (3) months per year.[17]

Petitioners cannot be considered regular seasonal employees because their employment was terminated after every seasonal year. To be reemployed, they had to apply anew.[18] Their reemployment was based on their qualification for the position they applied for. More, petitioners' services as cooks, cook helpers, utility workers, service crew, *etc*., were not necessary and desirable in Highlands' business and were not, in any way, directly related to its main purpose of evangelization.[19] It can continue to operate even without kitchen workers, service crew, and utility workers.[20]

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[13] *Id.* at 131.

[14] G.R. No. 220935, *rollo*, p. 269.

[15] G.R. No. 219868, Vol. I, pp. 138-139.

[16] *Id.* at 193.

[17] *Id.* at 137.

[18] *Id.* at 368.

[19] *Id.* at 132.

[20] *Id.* at 130.

The Labor Arbiter's Ruling

By Decision[21] dated January 16, 2013, Labor Arbiter Reynaldo Abdon ruled that petitioners were regular employees, not mere seasonal workers. He found that while Highlands may have low clientele in some months, it did not totally stop its operations. Even during off-season, petitioners were still on call and were not separated from the service.[22] Their termination without valid cause, therefore, amounted to illegal dismissal.

Respondents Highlands Camp/Rawlings Foundation, Inc. and Jayvelyn Pascal were held jointly and severally liable for petitioners' separation pay, backwages, 13th month pay, and attorney's fees,[23] except holiday pay and overtime pay for petitioners' failure to prove they were entitled thereto.[24] Petitioners' claim for moral and exemplary damages were denied because respondents were not found to have acted in bad faith in terminating petitioners' employment.[25] The dispositive portion of the Labor Arbiter's Decision reads:[26]

> WHEREFORE, premises considered, judgment is hereby rendered DECLARING that complainants were illegally dismissed by respondents. Accordingly, respondents are jointly and severally ORDERED to pay complainants their separation pay at the rate of one month for every year of service in lieu of reinstatement and backwages from the time they were dismissed until the finality of this decision. Additionally, respondents are jointly and severally DIRECTED to pay complainants their 13th month pay.
>
> Last but not the least, a ten percent 10% attorney's fees is also awarded to the complainants.

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[21] Penned by Labor Arbiter Reynaldo Abdon, G.R. No. 220935, *rollo*, pp. 159-182.

[22] *Id.* at 169.

[23] *Id.* at 172.

[24] *Id.* at 171.

[25] *Id.* at 172.

[26] *Id.*

SO ORDERED.

The Ruling of the NLRC

By Decision[27] dated July 31, 2013, the NLRC affirmed with modification, awarding petitioners holiday pay and directing the labor arbiter to recompute the total award due petitioners.[28]

The NLRC ruled that Highlands failed to present petitioners' employment contracts which raised a serious question whether they were properly informed of their employment status and the duration of their employment.[29] It emphasized that per Highlands' summary of reservation/bookings from 2000-2011, its business operated not for a particular season but for the whole year.[30] Petitioners' repeated and continuous hiring for the same kind of work as utility workers and service crew established their regular employment status.[31] Thus, they cannot be terminated without just or authorize cause. The *fallo* reads:

> **WHEREFORE**, the appeals filed by respondents and the complainants are **PARTLY GRANTED** and the assailed Decision dated January 16, 2013 is hereby **MODIFIED** in that the computation of the award is **SET ASIDE and the** Labor Arbiter shall during execution proceedings recompute the same based on the guidelines aforementioned and with the 13th month pay, as well as holiday pay for three (3) years accordingly included.
>
> **SO ORDERED**.[32]

Under Resolution dated October 30, 2013, the NLRC denied respondents' Motion for Reconsideration.[33]

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[27] Penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo Nograles and Romeo Go, *id.* at 147-158.

[28] *Id.* at 157.

[29] *Id.* at 153.

[30] *Id.* at 154.

[31] *Id.* at 153.

[32] G.R. No. 220935, *rollo*, pp. 157-158.

[33] G.R. No. 219868, Vol. I, *rollo*, pp. 218-219.

The Court of Appeals' Ruling

By Decision[34] dated May 15, 2015, the Court of Appeals reversed. It ruled that petitioners were seasonal employees whose tenure of work was for a specific season only. The Table[35] presented by Highlands summarizing the days worked by petitioners showed they only worked for an average of less than three (3) months in a given year.[36] Petitioners' employment also did not pertain to the same position every year. An employee may be a utility worker for a particular year but may be rehired as cook or cook helper the following year. Hence, their termination at the end of each year did not constitute illegal dismissal, *viz.*:[37]

WHEREFORE, in view of the foregoing premises, the instant petition is hereby **GRANTED**. The Decision dated July 31, 2013 of the National Labor Relations Commission (First Division), is **ANNULLED and SET ASIDE**. The Complaint is hereby **DISMISSED** for lack of merit.

SO ORDERED.[38]

Petitioners' Motion for Reconsideration was denied under Resolution dated July 29, 2015.[39]

The Present Petition

Petitioners now seek the Court's discretionary appellate jurisdiction to reverse and set aside the assailed dispositions of the Court of Appeals. In support hereof, petitioners essentially repeat the arguments they raised before the three (3) tribunals below.

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[34] *Supra* note 1.

[35] *Id.* at 124-126.

[36] *Id.* at 33.

[37] *Id.* at 30.

[38] *Id.* at 35.

[39] *Id.* at 5.

For their part, respondents Highlands Camp/Rawlings Foundation, Inc. and Jayvelyn Pascal similarly reiterate their submissions below against petitioners' plea for affirmative relief.

The Core Issues

1. Were petitioners seasonal or regular employees?
2. Was their dismissal valid?

Ruling

Article 295 of the Labor Code enumerates the different kinds of employment status, *viz.*:

> 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. x x x** (emphasis supplied)

Under the law, regular employees are those engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer.[40] In ***Abasolo v. National Labor Relations Commission***,[41] the Court decreed the standard to determine regular employment status, thus:

> **The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer.** The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.

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[40] As cited in *Universal Robina Sugar Milling Corp. v. Nagkahiusang Mamumuo sa URSUMCO-National Federation of Labor*, G.R. No. 224558, November 28, 2018.

[41] 400 Phil. 86 (2000).

The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. **Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business**. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists. (emphasis supplied)

On the other hand, seasonal employees are those whose work or engagement is seasonal in nature and their employment is only for the duration of the season.[42] In ***Universal Robina Sugar Milling Corporation v. Acibo***,[43] the Court expounded on the concept of seasonal employment, thus:

Seasonal employment operates much in the same way as project employment, albeit it **involves work or service that is seasonal in nature or lasting for the duration of the season**. As with project employment, although the **seasonal employment arrangement involves work that is seasonal or periodic in nature**, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To exclude the asserted "seasonal" employee from those classified as regular employees, **the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) he had been employed for the duration of the season.** Hence, when the "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities *for several seasons or even after the cessation of the season*, this length of time may likewise serve as badge of regular employment. (Emphasis and underscoring supplied)

To be classified as seasonal employees, two (2) elements therefore, must concur: (1) they must be performing work or services that are seasonal in nature; and (2) they have been employed for the duration of the season.[44]

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[42] *Supra* note 40.

[43] See 724 Phil. 489 (2014).

[44] *Id*.

Here, respondents claim that Highlands' business is seasonal in nature and petitioners were seasonal workers whose employment was limited to a specific season only.

We are not convinced.

Petitioners were not seasonal employees

Respondents failed to show that the elements of seasonal employment are present here.

One. Records show that Highlands' business is not seasonal. Highlands may have high or low market encounters within a year, or by its own terms, "peak and lean seasons"[45] but its camping site does not close at any given time or season. In fact, Highlands operate and regularly offers its camping facilities to interested clients *throughout the year*. As the labor tribunals aptly found:

The Labor Arbiter:

Actually, we have carefully evaluated the condition of respondents' business. **The fact is, it is a camping business; it was not built for one season in a given year. The camp has been there to serve the customers or clients of the respondents, anytime or any period within the given year.** x x x[46]

The NLRC:

Likewise, **respondents' summary of reservation/bookings from 2000-2011 shows that respondents had been operating their business not only for a particular season but for a whole year**. These documents, rather than sustaining respondents' argument only serve to support complainants' contention that they are regular employees serving respondents for more than a year prior to their dismissal.[47] (Emphases supplied)

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[45] G.R. No. 219868, Vol. I, *rollo*, p. 429.

[46] *Id.*

[47] *Id.* at 351.

In ***Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission***,[48] the Court emphasized that an employer's continuous operation throughout the year negates the claim that its business is seasonal in nature, *viz.*:

> It should be noted that complainants' employment has not been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of their appointment or hiring. Neither is their employment seasonal in nature. While it may be true that some phases of petitioner company's processing operations is dependent on the supply of fruits for a particular season, **the other equally important aspects of its business, such as manufacturing and marketing are not seasonal. The fact is that large-scale food processing companies such as petitioner company continue to operate and do business throughout the year** even if the availability of fruits and vegetables is seasonal. (Emphasis supplied)

As stated, Highlands' camping site is operational throughout the year. The influx of campers may peak during the month of October, but as for eleven (11) other months, it still remains open and ready to accommodate campers. It does not suspend or cease its operations at all. In fact, Highlands' own summary of bookings from 2001-2011 shows it operates not just for a particular season but all throughout the year.[49] Highlands' business, therefore, is not seasonal but continuous.

Two. Petitioners did not perform work or services that are seasonal in nature; nor for just a specific period.

They served as cooks, cook helpers, utility workers, and service crew in Highlands' camping site regardless if it was the peak or lean season for campers. From 2000 to 2010, they regularly reported for work from January to June. They were on call from July to September. For the entire month of October, they reported for work on a daily basis. In November or December, they were again on call depending on the number of campers.[50]

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[48] See 369 Phil. 929 (1999).

[49] G.R. No. 219868, Vol. I, *rollo*, p. 351.

[50] G.R. No. 220935, *rollo*, pp. 5-6.

As it was, petitioners' services as cooks, cook helpers, utility workers, service crew, *etc*. could hardly be considered "seasonal." The very nature of Highlands' business operations demonstrate that petitioners' employment was not limited to a specific season only.[51]

Three. Records are bereft of any evidence showing that petitioners freely entered into an agreement with Highlands to perform services for a specific period or season only. Highlands failed to present petitioners' employment contracts, employee files, payrolls, and other similar documents to prove they hired petitioners as seasonal employees[52] and they rendered services for a specific season only.[53] Highlands' failure to submit these documents for scrutiny gives rise to the presumption that their presentation is prejudicial to its cause.[54]

In ***Omni Hauling Services, Inc., et al. v. Bon, et al.***,[55] the Court held that the absence of employment contracts raises a serious question whether the employees were properly informed of their employment status at the time of engagement, thus:

While the absence of a written contract does not automatically confer regular status, it has been construed by this Court as a red flag in cases involving the question of whether the workers concerned are regular or project employees. In *Grandspan Development Corporation v. Bernardo and Audion Electric Co., Inc. v. National Labor Relations Commission*, **this Court took note of the fact that the employer was unable to present employment contracts signed by the workers** x x x. In another case, *Raycor v. Aircontrol Systems, Inc. v. National Labor Relations Commission*, this Court refused to give any weight to the employment contracts offered by the employers

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[51] See *Rowell Industrial Corp. v. Court of Appeals*, 546 Phil. 516, 524 (2007).

[52] See *Guinnux Interiors, Inc. v. NLRC*, 339 Phil. 75, 78 (1997).

[53] See *Poseidon Fishing v. NLRC*, 518 Phil. 146-165 (2006).

[54] See *Basan, et al. v. Coca-Cola Bottlers Philippines*, 753 Phil. 74, 91 (2015).

[55] See 742 Phil. 335 (2014).

as evidence, which contained the signature of the president and general manager, but not the signatures of the employees. In cases where this Court ruled that construction workers who were repeatedly rehired that retained their status as project employees, the employers were able to produce employment contracts **clearly stipulating** that the workers' employment was coterminous with the project to support their claims that the employees were notified of the scope and duration of the project. (Emphasis supplied)

To repeat, there is ample evidence on record that Highlands' business operates not for a particular season but for the whole year.[56] Too, petitioners rendered services regardless of the camping site's occupancy in any given month within the year. Simply put, there is no "season" here to speak of. For whether "peak" or "lean" season, Highlands required petitioners to report for work. Petitioners, therefore, are not seasonal employees.

The next question: were petitioners regular employees?

Respondents claim they were not. They argue that petitioners' employment was terminated at the end of each year. To be reemployed, petitioners had to apply anew and meet the qualification for the specific position they are applying for.[57] Too, petitioners rendered services for an average of less than three (3) months only per year. Their services as cooks, cook helpers, utility workers, service crew, *etc*. were not necessary in Highlands' business and were not, in any way, directly related to its main purpose of evangelization.[58]

Respondents are mistaken.

Petitioners were regular employees

Employment status is determined not by the intent or motivations of the parties but by the nature of the employer's business and the duration of the tasks performed by the employees.[59] It does

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[56] G.R. No. 219868, Vol. I, *rollo*, p. 351.

[57] *Id.* at 368.

[58] *Id.* at 132.

[59] *Supra* note 39.

not depend on the will of the employer or the procedure for hiring and the manner of designating the employee. Rather, employment status depends on the activities performed by the employee and in some cases, the length of time of the performance and its continued existence.[60]

The fact that Highlands required petitioners to apply for reemployment every year does not bar them from being regularized. Further, even if it were true that petitioners worked for three (3) months only in a given year, their repeated hiring for the same services for the past ten (10) years confers upon them the status of regular employment.[61]

In ***Claret School of Quezon City v. Sinday***,[62] petitioner therein averred that respondent's repeated application every time her temporary employment expired meant she was employed for a specific period only. The Court, however, ruled otherwise. It found that respondent's yearly application and subsequent reemployment did not negate her status as a regular employee.

In ***Samonte v. La Salle Greenhills, Inc.***,[63] the Court elucidated that the repeated renewal of therein petitioner's employment contract for fifteen (15) years despite interruptions during the close of the school year did not bar petitioner from attaining regular employment.

Meanwhile, in ***Poseidon Fishing v. National Labor Relations Commission***,[64] the Court ordained that the employer's unscrupulous act of hiring and rehiring an employee in various capacities without an exact period of employment is a mere gambit to thwart the lowly workingman's tenurial protection.[65]

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[60] See *Universal Robina Sugar Milling Corp. v. Acibo*, *supra* note 43.

[61] See *Claret School of Quezon City v. Sinday*, G.R. No. 226358, October 9, 2019.

[62] *Id.*

[63] See 780 Phil. 778 (2016).

[64] See *Poseidon Fishing v. NLRC*, *supra* note 53.

[65] LABOR CODE, ART. 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an

Thus, in ***Claret***,[66] the Court held that the repeated hiring of employees under a contract less than the six-month probationary period to circumvent regular employment is contrary to law, *viz.*:[67]

> x x x where from the circumstances it is apparent that the period has been imposed **to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy**. The pernicious practice of having employees, workers and laborers, engaged x x x **short of the normal six-month probationary period of employment, and, thereafter, to be hired on a day-to-day basis, mocks the law**. (Emphasis supplied, citation omitted)

Indeed, Highlands' cyclical scheme of hiring and rehiring petitioners year after year manifests its intent to prevent them from attaining regular employment. Highlands failed to prove that petitioners freely entered into agreements with it to perform services for a specified period or season. In fact, there is nothing on record to show there was any agreement at all between Highlands and each of herein petitioners. Respondents never presented petitioners' supposed contracts of employment.[68] In the absence of proof showing that petitioners knowingly agreed on a fixed or seasonal term of employment, we uphold the findings of the labor tribunals that petitioners are regular employees.[69]

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employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[66] See *supra* note 61, citing *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 262 (2003).

[67] See *Basan, et al. v. Coca-Cola Bottlers Philippines*, *supra* note 54 at 86.

[68] *Id.*

[69] *Id.*

As for respondents' argument that petitioners' services were not necessary and related to Highlands' main business purpose of providing a venue for evangelization, ***Millennium Erectors Corporation v. Magallanes***[70] is *apropos*. In that case, Millennium argued that Magallanes who worked as a utility man for sixteen (16) years was not a regular employee. His work was not necessary or directly related to petitioner's business as a construction company. The Court, however, ruled that petitioner's repeated and continuing need for respondent's services proved the necessity, if not indispensability, of his services to petitioner's business thereby making him a regular employee.

Vicmar Development Corp. v. Elarcosa[71] is also in point, thus:

> The test to determine whether an employee is regular is the reasonable connection between the activity he performs and its relation to the employer's business or trade x x x. **Nonetheless**, the **continuous re-engagement of all respondents to perform the same kind of tasks proved the necessity and desirability of their services in the business** of Vicmar. (Emphasis and underscoring supplied)

It is undisputed that respondents repeatedly hired petitioners as cooks, cook helpers, utility workers, and service crew, among others, from 2000 to 2010.[72] Even when petitioners were not rehired in 2011, Highlands still engaged other workers to perform the same tasks that petitioners have been performing for the past ten (10) years. Highlands' continuing need for the same services originally performed by petitioners is testament to their necessity and desirability in its business.[73] Without cooks, cook helpers, utility workers, and service crew, *etc.*, it would be

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[70] See 649 Phil. 199 (2010).

[71] See 775 Phil. 218 (2015).

[72] See *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*, 444 Phil. 587, 596 (2003).

[73] See *Paz v. Northern Tobacco Redrying Co., Inc., et al.*, 754 Phil. 251, 264 (2015).

difficult, nay impossible, for Highlands to maintain its camping facilities and cater to its campers' needs. It would not have been able to provide a suitable venue for religious training, spiritual growth, and evangelization. Petitioners' services, therefore, are necessary and directly related to Highlands' camping site business. Verily, they were in fact regular employees.[74]

Petitioners were illegally dismissed

As regular employees, petitioners cannot be terminated from employment without any just and/or authorized cause.[75] Surely, Highlands' unilateral refusal to "rehire" them, *sans* any valid reason amounted to illegal dismissal.[76] Petitioners are thus entitled to the rights and benefits due to illegally dismissed employees under Article 294 of the Labor Code, *viz.*:

> Art. 294. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to **reinstatement** without loss of seniority rights and other privileges and to his **full backwages**, inclusive of **allowances**, and to his **other benefits** or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

We, therefore, uphold the labor tribunals' award of full backwages to petitioners. We likewise affirm the award of 13th month pay due to them for respondents' failure to show that the same had been paid. As for overtime pay and holiday pay, however, we agree with the labor arbiter's finding[77] that petitioners failed to prove they had actually rendered service

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[74] *Id.*

[75] *Id.*

[76] See *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*, *supra*, note 72.

[77] G.R. No. 220935, *rollo*, p. 171.

in excess of the regular eight (8) working hours a day and that they worked on holidays.[78] Further, the labor arbiter properly denied petitioners' claim for damages for failure to prove that respondents acted in bad faith in terminating their employment.

We also affirm the labor tribunals' award of separation pay in lieu of reinstatement. 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.[79] Petitioners filed their complaint in 2011 and prayed for separation pay in lieu of reinstatement. A prayer for separation pay is an indication of the strained relations between the parties.[80] Too, nine (9) years is a substantial period rendering reinstatement impracticable.[81]

Since separation pay is awarded here, petitioners' backwages should be reckoned from the time of illegal dismissal **up to the finality of this Decision**.[82]

Finally, since petitioners were compelled to litigate to protect their interests,[83] the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is proper.[84]

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[78] See *Minsola v. New City Builders, Inc.*, G.R. No. 207613, January 31, 2018, 853 SCRA 466, 484.

[79] See *Doctor and Lao, Jr. v. Nii Enterprise and/or Ignacio*, 821 Phil. 251, 269 (2017).

[80] *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018.

[81] See *A. Nate Casket Maker, and/or Armando and Anely Nate v. Arango*, 796 Phil. 597, 613 (2016).

[82] See *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019.

[83] See *Tangga-an v. Philippine Transmarine Carriers, Inc., et al.*, 706 Phil. 339 (2013).

[84] See *Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677-692 (2017).

As for Jayvelyn Pascal, it is settled that a corporation has a personality distinct and separate from the persons composing it.[85] 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.[86]

There is no showing here that as Highlands' Administrator, Pascal acted with malice, ill will, or bad faith when petitioners got terminated. She was merely identified as Highlands' Administrator, nothing more. She, therefore, cannot be made personally liable for petitioners' illegal dismissal.

A final word. Ordinary workers, as petitioners here, face each day the unevenness between labor and capital.[87] The reality is that they are trapped in a "one scratch, one peck" life or in the vernacular "*isang kahig, isang tuka*" just so they can provide *immediate* food for their family, *at the expense* of job security. This kind of reality needs to change. An essential step towards this change is by putting an end to an employer's obvious circumvention of labor laws.[88] The contract of labor is imbued with public interest.[89] This interest remains protected.

ACCORDINGLY, the **PETITIONS are GRANTED**. The assailed Decision dated May 15, 2015 of the Court of Appeals in CA-G.R. SP No. 133460 is **REVERSED and SET ASIDE**. Respondent Highlands Camp/Rawlings Foundation, Inc. is **ORDERED** to pay petitioners the following:

(1) Backwages computed at the time petitioners were illegally dismissed until the finality of this Decision;

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[85] See *Bank of Commerce v. Nite*, 764 Phil. 655, 663 (2015).

[86] See *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, 639 Phil. 1, 14 (2010).

[87] See *Basan, et al. v. Coca-Cola Bottlers Philippines*, *supra* note 53.

[88] *Id.*

[89] *Id.*

(2) Separation pay at the rate of one (1) month pay per year of service until the finality of this Decision;
(3) Unpaid 13th month pay; and
(4) 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. The Labor Arbiter is **ORDERED** to prepare a comprehensive computation of the monetary award and cause its implementation, with utmost dispatch.

SO ORDERED.

Caguioa (*Working Chairperson*), *Reyes, J. Jr., Lopez,* and *Gaerlan,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 224076. July 28, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner*, *vs.* **SUSAN DATUIN, EVELYN DAYOT, SKYLON REALTY CORPORATION, SYSTEMATIC REALTY INCORPORATED, BAGUIO PINES TOWER CORPORATION, GOLD LAND REALTY CORPORATION, GOOD HARVEST REALTY CORPORATION, PARKLAND REALTY AND DEVELOPMENT CORPORATION and THE REGISTER OF DEEDS OF NASUGBU, BATANGAS,** *respondents*.

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[*] Designated additional Member per Raffle dated June 29, 2020.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* IS THE PROPER REMEDY WHERE IT WAS SHOWN THAT THE AGGRIEVED PARTY'S RIGHT TO DUE PROCESS WAS VIOLATED AND THE TRIAL COURT WAS DEEMED TO HAVE BEEN OUSTED OF JURISDICTION OVER THE CASE. —** To justify its availment of Rule 65, the Republic cited the trial court's violation of its right to due process amounting to grave abuse of discretion or excess of jurisdiction. In several cases, the Court sustained as proper remedy a petition for *certiorari* where it was shown that the aggrieved party's right to due process was violated and the trial court was deemed to have been ousted of jurisdiction over the case.

2. **ID.; CIVIL PROCEDURE; ADMISSION BY ADVERSE PARTY; PURPOSE. —** A request for admission seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters to enable a party to discover the evidence of the adverse side and facilitate an amicable settlement of the case to expedite the trial of the same. The key word is to **expedite proceedings** hence, it should seek to clarify vague allegations of the opposing party and should not be a mere reiteration of allegations in the pleadings.

3. **ID.; ID.; SUMMARY JUDGMENT; REQUISITES. —** Summary judgment may be validly rendered when these twin elements are present: (a) there must be no *genuine issue* as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.

4. **ID.; ID.; ID.; DEFINITION OF GENUINE ISSUE. —** A ***genuine issue*** means an issue of fact which calls for presentation of evidence as distinguished from an issue which is sham, fictitious, contrived, set up a bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Alex B. Carpela, Jr. for respondents Skylon Realty Corp., *et al*.

Jonas Cesar C. Mangrobang III for respondent Datuin.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

The petition assails the dispositions of the Court of Appeals in CA-G.R. SP No. 134394 entitled "*Republic of the Philippines v. Hon. Judge Rolando E. Silang, et al.*,"[1] *viz.*:

1) Resolution[2] dated September 24, 2015, dismissing the petition for *certiorari* for supposedly being the improper remedy; and

2) Resolution[3] dated April 11, 2016, denying the Republic's motion for reconsideration.

Antecedents

On May 13, 2010, petitioner Republic of the Philippines, represented by the Regional Executive Director of the Department of Environment and Natural Resources (DENR) Region IV-A, Calabarzon and the Office of the Solicitor General (OSG) filed a Complaint for cancellation and reversion against respondents Susan Datuin, Evelyn Dayot, Skylon Realty Corporation, Systemic Realty, Incorporated, Parkland Realty & Development Corporation, Baguio Pines Tower Corporation,

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr. with the concurrences of Associate Justices Francisco P. Acosta and Florito S. Macalino.

[2] *Rollo*, pp. 34-37.

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

Goldland Realty Corporation, and Good Harvest Realty Corporation.[4] Petitioner specifically prayed for cancellation of Original Certificates of Title Nos. (OCTs) 921 to 926, Transfer of Certificates of Title Nos. (TCTs) TP 1937, TP 1938, TP 1939, TP 1950, TP 1951, and TP 1952, and reversion of the same to the government on ground that these lots are inalienable based on a final judgment in ***Republic of the Philippines v. Ayala y Cia and/or Hacienda Calatagan, et al.***[5]

In its Complaint[6] dated May 4, 2010, petitioner essentially alleged that the lots are inalienable and cannot be acquired by private persons. Fraud and irregularities attended their transfer to respondents as illustrated below:

On July 27, 1987, then Secretary of Agriculture Carlos G. Dominguez issued Fishpond Lease Agreement (FLA) No. 4718 to Prudencia V. Conlu. The FLA authorized Conlu to operate for twenty-five (25) years a 298,688 square meter-public land situated in Barrio Calumbayan, Municipality of Calatagan, Batangas.[7]

On August 19, 1987, the land was subdivided into six (6) lots in favor of six (6) individuals excluding Conlu: Lucia Dizon, Amorando Dizon, Susan Datuin, Consolacion Dizon, Ruben Dizon and Consolacion Degollacion, pursuant to DENR Special Work Order (SWO) 04-001510-D.[8]

Consequently, Constante Q. Asuncion, Acting District Land Officer of the Land Management Bureau and Alexander Bonuan, Register of Deeds of Batangas issued the following OCTs:[9]

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[4] *Id.* at 16; See also Complaint dated May 4, 2010, *id.* at 103-116.

[5] 121 Phil. 1052-1057 (1965).

[6] *Rollo*, pp. 103-116.

[7] *Id.* at 106.

[8] *Id.* at 107.

[9] *Id.* at 107-108.

OCT P-921	Lucia Dizon
OCT P-922	Amorando Dizon
OCT P-923	Susan Datuin
OCT P-924	Consolacion Dizon
OCT P-925	Ruben Dizon
OCT P-926	Consolacion Degollacion

On March 12, 1992, for unknown reasons, the Register of Deeds of Nasugbu, Batangas issued Transfer Certificates of Title for the six (6) lots in the names of Susan Datuin and Evelyn Dayot only. TCT Nos. TP 834, TP 835, TP 836, TP 837, and TP 838 in the name of Susan Datuin, and TCT No. TP 833 in the name of Evelyn Dayot.[10]

In August 1996, Datuin, acting alone, sold the six (6) lots to the following six (6) corporations which were then issued their corresponding TCTs:[11]

TP 1937	Skylon Realty Corporation
TP 1938	Systemic Realty Incorporated
TP 1939	Parkland Realty & Development Corporation
TP 1950	Baguio Pines Tower Corporation
TP 1951	Goldland Realty Corporation
TP 1952	Good Harvest Realty Corporation

On September 18, 2003, the DENR verified that the land covered by SWO 04-001510-D on which OCTs 921 to 926 were issued, was not reflected in the projection map. The area covered by OCTs 921 to 926 overlapped with Lot 360, Psd-40891 covered

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[10] *Id.* at 108; See also Annexes "F" to "F-5" of the Petition for Review, *id.* at 73-91.

[11] *Id.* at 108.

by FLA No. 4718. Nathaniel Abad, Chief of the DENR-Projection Section formalized these findings in his Memorandum[12] addressed to Conlu, *viz.*:

> Evaluation and observation of the technical description transcribed in the title covering S[WO] 04-001510[-D] is exactly identical to Lot 0360, Psd 40891 and the total area of the six (6) lots covering the said plan S[WO] 04-001510-D are TWO HUNDRED NINETY EIGHT THOUSAND AND SIX HUNDRED EIGHTY SIX (298,686) SQUARE METERS while Lot 360, Psd-10890 is TWO HUNDRED NINETY EIGHT [THOUSAND AND SIX HUNDRED EIGHTY EIGHT] (298,688) SQUARE METERS and resulting to similar polygon as appeared.
>
> Plotting also of plan S[WO] 04-001510-D, Lots 1 to 6 overlapped (with) Lot 360, Psd-40891 when plotted using their respective lines.
>
> Therefore, findings show that the area covered by Fishpond Lease Agreement (FLA) No. 4718, Lot 360, Psd-40891 in the name of Prudencia V. Conlu is the same area covered by plan SWO 04-001510-D.

On September 25, 2003, the DENR issued a certification to Conlu that SWO 04-001510-D was not on its official file.[13] On September 12, 2006, the DENR made second verification which yielded the same results.[14]

These fraudulent transfers allegedly caused Conlu's dispossession of the property she obtained by virtue of FLA No. 4718 dated July 27, 1987.[15]

Also, the Supreme Court already declared in ***Republic of the Philippines v. Ayala y Cia and/or Hacienda Calatagan, et al.***[16] that Lot 360 of Psd 40891, the same land covered by

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[12] *Id.* at 109.

[13] *Id.* at 110.

[14] *Id.* at 111.

[15] *Id.*

[16] *Supra* note 5.

FLA No. 4718, was inalienable and incapable of private appropriation.[17] Thus, all free patents, OCTs and subsequent TCTs issued in respondents' names should be cancelled and reverted back to the government.[18]

The case was raffled to the Regional Trial Court (RTC), Branch 11, Balayan, Batangas and docketed as Civil Case No. 4929.[19]

Corresponding notices and summonses were sent to respondents. But only Datuin and Dayot, Baguio Pines Tower Corporation and Systemic Realty, Inc. filed their answers to the complaint.[20]

Datuin and Dayot denied the allegations in the complaint, claiming that the OCTs and derivative TCTs were legally issued to them.[21]

Respondents Baguio Pines Tower Corporation and Systemic Realty, Inc.'s Answer

In their Answer[22] dated March 30, 2011, Baguio Pines and Systemic countered that as of May 14, 1969, the lots were already classified as alienable and disposable pursuant to Commonwealth Act No. 141 (CA 141) or the Public Land Act way before they brought the same from Datuin in 1996. Thus, these lots could not have been the subject of FLA No. 4718 in 1987 following their classification as alienable and disposable as of May 14,

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[17] In *Republic v. Ayala y Cia (Id.)*, the Court affirmed the CFI Decision declaring Lot 360 as part of navigable waters, or parts of the sea, beach and foreshores of the beach, thus, not capable of registration.

[18] *Rollo*, p. 112.

[19] *Id.* at 196.

[20] *Id.* at 198.

[21] *Id.*

[22] *Id.* at 122-135.

1969. No fraud attended the issuance of the titles and they purchased the lots for value.[23]

Baguio Pines and Systemic also traced back the history of the lots beginning from their first alleged awardee Consolacion D. Degollacion, *viz.*:

On January 25, 1968, Degollacion filed an Agricultural Sales Application No. (III-1) 502 involving a parcel of land with an area of 29.8688 hectares at Barrio Calumbayan, Municipality of Calatagan, Batangas.[24]

On May 14, 1969, the Bureau of Forestry declared that the area was within the unclassified public forest of Calatagan. Since the area was no longer needed for forest purposes, it was certified as such and released as alienable or disposable.[25]

The Chief of the Land Management Division of the Bureau of Lands directed the District Land Officer to convert Degollacion's Sales Application (III-1) 502 to Sales (Fishpond) Application.[26]

In a Memorandum dated December 5, 1972, then Secretary of Agriculture and Natural Resources ordered the Director of Lands to continue the processing of pending sales (fishpond) applications prior to the effectivity of Presidential Decree No. 43 dated November 9, 1972.[27]

In 1987, OCTs P-921 to P-926 were issued to Lucia Dizon, Amorando Dizon, Susan Datuin, Consolacion Dizon, Ruben Dizon and Consolacion Degollacion.[28]

Subsequently, Datuin sold these six (6) lots to Skylon Realty Corporation, Systemic Realty Incorporated, Parkland Realty & Development Corporation, Baguio Pines Tower Corporation, Goldland

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[23] *Id.* at 131.

[24] *Id.* at 126-127.

[25] *Id.* at 127.

[26] *Id.*

[27] *Id.* at 128-129.

[28] *Id.* at 129.

Realty Corporation and Good Harvest Realty Corporation.[29] Thereafter, TCTs were issued to respondents.[30]

On March 5, 2012, Baguio Pines and Systemic personally served petitioner a Request for Admission of facts including the genuineness and authenticity of the attached documents thereto. Petitioner, however, failed to respond to the Request for Admission.[31]

Consequently, Baguio Pines and Systemic filed a Motion for Summary Judgment[32] dated February 26, 2013. They claimed that pursuant to Section 2 of Rule 26, the facts as well as the genuineness and authenticity of the documents attached to their Request for Admission were deemed admitted for petitioner's failure to oppose the same.[33] Petitioner should also be deemed to have admitted DENR Certificate of Verification[34] dated February 20, 2013 issued by OIC Chief, Forest Resources Development Division Annalisa J. Junsay, declaring that the lots were verified to be agricultural (alienable and disposable) as of June 29, 1987.[35]

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[29] *Id.*

[30] *Id.*

[31] *Id.* at 201.

[32] *Id.* at 137-145.

[33] SECTION 2. *Implied Admission.* — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. *(Rules of Court, 1997 Rules of Civil Procedure as Amended, April 8, 1997).*

[34] *Rollo*, p. 198.

[35] *Id.* at 202.

In their Comment[36] dated March 25, 2013, Datuin and Dayot adopted Baguio Pines and Systemic's motion for summary judgment.

For its part, petitioner opposed,[37] asserting there were genuine issues of fact requiring presentation of evidence in a full-blown trial.

Baguio Pines and Systemic replied[38] reiterating the arguments in their motion for summary judgment.

The Trial Court's Resolution

By Order[39] dated June 6, 2013, the trial court denied the motion for summary judgment, citing the parties' conflicting claims pertaining to whether fraud or irregularities attended the issuance of the titles in question and whether the lots were inalienable or otherwise. The trial court opined that these conflicting claims involving the very issues at hand required presentation of evidence. It cannot resolve these issues solely on the basis of the February 20, 2013 DENR Certificate of Verification.

Respondents sought a reconsideration.[40] This time, referring back to petitioner's failure to respond to their request for admission and its consequence under Section 2, Rule 26 of the Revised Rules of Court. Pursuant thereto, petitioner was deemed to have admitted all the allegations in the request for admission as well as the authenticity of relevant documents, *i.e.*, February 20, 2013 DENR Certificate of Verification.

To this, petitioner filed its Opposition and Supplemental Comment,[41] claiming once again that there were clear genuine

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[36] *Id.* at 147-149.

[37] See Opposition dated April 24, 2013; *id.* at 150-155.

[38] *Id.* at 156-159.

[39] Penned by Judge Rolando F. Silang, *id.* at 161-164.

[40] *Id.* at 165-173.

[41] *Id.* at 178-195.

issues for resolution, including the validity of the February 20, 2013 DENR Certificate of Verification which needed to be presented as evidence in the trial proper.

During the hearing on respondent's motion for reconsideration and opposition, the trial court, by single Order[42] dated September 3, 2013 granted the motion for reconsideration and simultaneously rendered therein a summary judgment dismissing the complaint. It sustained respondents' submission that petitioner was deemed to have admitted the material facts subject of the Request for Admission and the genuineness and due execution of the documents attached thereto.[43]

The trial court, thus, concluded that no controversy or genuine issue existed as to any material fact, and by virtue of petitioner's implied admissions, the requirements for issuance of title had also been complied.[44]

Petitioner's subsequent motion for reconsideration was denied under Order dated December 18, 2013.

The Court of Appeals' Ruling

On March 14, 2014,[45] petitioner went to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Revised Rules of Court. Petitioner charged the trial court with grave abuse of discretion amounting to excess or lack of jurisdiction when in one and the same Order dated September 3, 2013, it both reconsidered the previous denial of the motion for summary judgment and rendered summary judgment in favor of respondents. In so doing, the trial court allegedly violated its right to due process.

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[42] *Id.* at 196-203.

[43] *Id.*

[44] *Id.*

[45] CA *rollo*, pp. 2-17.

On March 28, 2014, respondents filed a motion to dismiss the petition for *certiorari* for being purportedly an erroneous remedy. Citing Section 2 (c), Rule 41 of the Revised Rules of Court, they argued that petitioner should have instead filed with the Supreme Court a petition for review on *certiorari* under Rule 45.[46]

In its Resolution[47] dated September 24, 2015, the Court of Appeals dismissed the petition. It emphasized that a summary judgment may be corrected only by appeal or direct review, not by petition for *certiorari* under Rule 65.

Under Resolution[48] dated April 11, 2016, the Court of Appeals denied petitioner's motion for reconsideration.

The Present Petition

Petitioner now seeks the Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. Petitioner basically avers: (1) the Court of Appeals committed an error of law in dismissing the petition for *certiorari* based on mere technicality; (2) the trial court was ousted of its jurisdiction when it simultaneously and in a single Order reconsidered respondents' motion for summary judgment and rendered summary judgment dismissing the complaint, thus, violating petitioner's right to due process; and (3) the trial court's earlier Order denying the motion for summary judgment should not have been reconsidered as there were indeed genuine issues to be resolved.[49]

Respondents riposte in the main that: (1) a summary judgment may be challenged only through a petition for review on *certiorari* with the Supreme Court and not by petition for *certiorari* to the Court of Appeals; and (2) having failed to

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[46] See Motion to Dismiss dated March 24, 2014; *id.* at 286-296.

[47] *Rollo*, pp. 34-37.

[48] *Id.* at 38.

[49] See Petition for Review dated May 17, 2016; *id.* at 11-24.

appeal the Order dated December 18, 2013 within the prescribed period, the same had become final.[50]

Core Issues

I

Did the Court of Appeals correctly dismiss the petition for *certiorari* for being allegedly an improper remedy against the trial court's summary judgment in respondents' favor?

II

Did the trial court correctly deem the Republic to have admitted the matters raised in respondents' request for admission and based thereon, render a summary judgement against it?

Ruling

We will discuss and resolve these twin inseparable issues together. For to be able to determine whether the Republic correctly availed of the remedy of *certiorari* under Rule 65, we need to first determine whether the trial court did commit grave abuse of discretion when it issued its Orders[51] dated September 3, 2013 and December 18, 2013.

As a rule, the remedy of an adverse party in assailing the Regional Trial Court's summary judgment involving both questions of fact and law is ordinary appeal to the Court of Appeals under Rule 41 of the Revised Rules of Court,[52] *viz.*:

RULE 41 - *Section 2. Modes of appeal.* —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original

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[50] See Respondents' Comment dated November 22, 2016; *id.* at 253-269.

[51] *Id.* at 196-203.

[52] *Spouses Navarro v. Rural Bank of Tarlac, Inc.*, 790 Phil. 1-15 (2016).

jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where law on these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Here, the Republic did not avail of the remedy of ordinary appeal but resorted to Rule 65 *via* a special civil action for *certiorari*, thus:

RULE 65 — Section 1. *Petition for Certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts 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.[53]

To justify its availment of Rule 65, the Republic cited the trial court's violation of its right to due process amounting to grave abuse of discretion or excess of jurisdiction.

In several cases, the Court sustained as proper remedy a petition for *certiorari* where it was shown that the aggrieved party's right to due process was violated and the trial court was deemed to have been ousted of jurisdiction over the case.

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[53] Rules of Court, 1997 Rules of Civil Procedure as amended, April 8, 1997.

The Court in ***Paz v. Court of Appeals***,[54] ruled that Paz correctly elevated the case to the Court of Appeals through a petition for *certiorari* and not an ordinary appeal because his due process right was violated. The trial court in the case failed to conduct a mandatory pre-trial hearing before rendering summary judgment under the old Rules of Court. The affidavits of witnesses and pleadings in the records also showed there were genuine factual issues which called for a full-blown trial.

In ***Department of Education (DepEd) v. Cuanan***,[55] Cuanan's recourse to a petition for *certiorari* was allowed instead of an appeal under Rule 43. Cuanan's right to due process was violated when he was not given copies of the DepEd's Petition for Review/ Reconsideration to the Civil Service Commission.

In ***Spouses Leynes v. Court of Appeals***,[56] the Court of Appeals was found to have gravely abused its discretion when it erroneously dismissed Spouses Leynes' petition for *certiorari* under Rule 65 allegedly as a wrong remedy instead of an appeal under Rule 42. In that case, the MCTC unjustly declared Spouses Leynes in default for their failure to file an answer within the reglementary period, thus, depriving them of the opportunity to counter the complaint against them.

Here, the trial court deemed the Republic to have admitted all the affirmative defenses pleaded by respondents in their answer, including the genuineness and due execution of the very documents subject of the parties' conflicting claims, granted respondents' motion for summary judgment based thereon, and rendered the summary judgment itself altogether in its Order dated September 3, 2013 which it subsequently affirmed under Order dated December 18, 2013. As will be shown in the succeeding discussion, the trial court committed grave abuse of discretion, amounting to excess or lack of jurisdiction when it rendered its assailed dispositions.

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[54] 260 Phil. 31-37 (1990).

[55] 594 Phil. 451, 458 (2008).

[56] 655 Phil. 25, 36 (2011).

First. Rule 26 of the Revised Rules of Court governs requests for admission, thus:

> SECTION 1. *Request for Admission*. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.
>
> SECTION 2. *Implied Admission*. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters. x x x

A request for admission seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters to enable a party to discover the evidence of the adverse side and facilitate an amicable settlement of the case to expedite the trial of the same.[57] The key word is to **expedite proceedings**, hence, it should seek to clarify vague allegations of the opposing party and should not be a mere reiteration of allegations in the pleadings.

Here, respondents' Request for Admission refers to material facts already pleaded as defenses in their Answer. In fact, the allegations in the Request for Admission and the Answer, except for a few innocuous words are identical, *viz.*:

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[57] See *Duque v. Court of Appeals, et al.*, 433 Phil. 33, 44 (2002).

Respondents' Answer dated March 30, 2011	**Request for Admission dated March 5, 2012**
Affirmative Allegations and Defenses x x x x x x x x x 17. On January 25, 1968, Consolacion D. Degollacion, the predecessor-in-interest of defendants Baguio Pines and Systemic, filed Agricultural Sales Application No. (III-1) 502 involving a parcel of land with an area of 29.8688 hectares located at Barrio Calumbayan, Municipality of Calatagan, Province of Batangas.[58] x x x	a) That, Ms. Consolacion D. Degollacion is among the predecessors-in- interest of defendants Baguio Pines and Systemic.[59] b) That, by date of January 25, 1968, Ms. Consolacion D. Degollacion, filed Agricultural Sales Application No. (III-1) 502 involving a parcel of land with an area of 29.8688 hectares located at Barrio Calumbayan, Municipality of Calatagan, Province of Batangas.[60]
18. Pursuant to the provisions of the Public Land Act, Agricultural Sales Application No. (III-1) 502 was addressed to the Director of the Bureau of Lands, an attached agency of the then Department of Agriculture and Natural Resources.[61] x x x	c) That, pursuant to the provisions of the Public Land Act, Agricultural Sales Application No. (III-1) 502 was addressed to the Director of the Bureau of Lands, an attached agency of the then Department of Agriculture and Natural Resources.[62]
19. In a letter dated June 4, 1968, Mrs. Degollacion wrote the then Bureau of Forestry specifically requesting for the classification and release of the subject parcels of land as alienable and disposable.[63] x x x	d) That, by ( ) date of June 4, 1968, Ms. Degollacion wrote the Bureau of Forestry specifically requesting for the classification and release of the subject parcels of land as alienable and disposable.[64]

[58] *Rollo*, p. 126.

[59] *Id.* at 198.

[60] *Id.*

[61] *Id.* at 127.

[62] *Id.* at 198.

[63] *Id.* at 127.

[64] *Id.* at 198.

20. In a letter dated May 14, 1969, the Bureau of Forestry, through its Assistant Director J.L. Utleg replied to the letter-request of Mrs. Degollacion, pertinently stating in categorical terms that "the tracts of land, containing an aggregate area of 79.360 hectares, situated in Barrio Calabuyan, Calatagan, Batangas . . . desired to be released for agricultural purposes by Dr. Consolacion D. Degollacion, et al. of Malabon, Rizal are within the unclassified public forest of Calatagan, Batangas per B.F. control Map for Batangas. However, since the areas (the 79.360 hectares shown on Batangas PMD No. 104) are found no longer needed for forest purposes, the same are thus hereby certified as such and released as Alienable and Disposable for disposition under the Public Land Act.[65] x x x	e) That, by letter dated May 14, 1969, the Bureau of Forestry, through its Assistant Director J.L. Utleg decreed that the subject parcels of land "are found no longer needed for forest purposes, [and that] the same are thus [thereby] certified as such and released as (alienable or disposable) for disposition under the Public Land Act, as amended.[66]
21. On February 3, 1970, the Chief of the Land Management Division of the Bureau of Lands directed the District Land Officer to convert Sales Application No. (III-1) 502 to Sales (Fishpond) Application.[67] x x x	f) That, on February 3, 1970, the Chief of the Land Management Division of the Bureau of Lands directed the District Land Officer to convert Sales Application No. (III-1) 502 to Sales (Fishpond) Application.[68]

[65] *Id.* at 127.

[66] *Id.* at 198.

[67] *Id.* at 127.

[68] *Id.* at 198.

22. Thereafter, the Director of Lands duly endorsed the said application to all the concerned agencies for their respective comments and recommendations.[69] x x x	g) That, thereafter, the Director of Lands duly endorsed the said application to all the concerned agencies for their respective comments and recommendations.[70]
x x x x x x 24. In a reply to a similar request for advice, the then Department of Public Works and Communications stated that "[t]he lands subject of this case is suitable for the purpose to which it will be devoted," and recommended that "that the land be disposed of through sale or lease."[71] x x x	h) That, the then Department of Public Works and Communications stated that the lands subject of this case was "suitable for the purpose to which it will be devoted," and that "[i]t is recommended that the land be disposed of through sale or lease."[72]
25. In a Certification dated May 20, 1970, the Mayor of the Municipality of Calatagan, Batangas likewise certified that "the lands applied for by MRS. ZENAIDA D. SIOSON, MRS. ADELAIDA D. REYES, MRS. CONSOLACION D. DEGOLLACION and MR. ANTONINO DIZON will not be needed by the Municipal Government of Calatagan now or in the future."[73] x x x	i) That, in a Certification dated May 20, 1970, the municipality of Calatagan likewise certified that the parcels of land subject of Ms. Degollacion's application was "not needed by the Municipal Government of Calatagan now or in the future."[74]

[69] *Id.* at 128.

[70] *Id.* at 198.

[71] *Id.* at 128.

[72] *Id.* at 198.

[73] *Id.* at 128.

[74] *Id.* at 198.

26. In a Memorandum dated December 5, 1972, the then Secretary of Agriculture and Natural Resources directed the Director of Lands to continue the processing of all pending sales (fishpond) applications filed prior to the effectivity of Presidential Decree No. 43 dated November 9, 1972.[75] x x x	j) That, on December 5, 1972, the then Secretary of Agriculture and Natural Resources categorically directed the Director of Lands to continue the processing of all pending sales (fishpond) applications filed prior to the effectivity of Presidential Decree No. 43 dated November 9, 1972.[76]
x x x x x x 32. Plaintiff admits that OCT Nos. P-925 and P-21 were issued as early as 1987.[77] x x x	k) That, the patents were thereafter issued in 1987.[78]
x x x x x x 34. The predecessors in interest of defendants Baguio Pines and Systemic occupied and possessed the subject lands as of 1968.[79] x x x	l) That, at the latest, the predecessors in interest of defendants Baguio Pines and Systemic occupied and possessed the subject lands as of 1968.[80]

[75] *Id.* at 128-129.

[76] *Id.* at 200.

[77] *Id.* at 130.

[78] *Id.* at 200.

[79] *Id.* at 131.

[80] *Id.* at 200.

35. Herein defendants purchased the subject parcels of land from defendant Susan Datuin. At the time of purchase, the said parcels of land were registered in the name of defendant Datuin as shown by TCT Nos. TP-834 and TP-835 and there was no encumbrance, annotation or notice of any kind appearing on said titles that would indicate that said titles were flawed in any way. Relying on the integrity of said titles and the pertinent provisions of the Property Registration Decree, herein defendants paid value for the subject lands and caused their registration in their names.	m) That, defendants Baguio Pines and Systemic have themselves possessed the subject land as early as August 1996.[81] n) That, plaintiff has accepted since August 1996 and it continues to accept realty tax payments for the subject parcels of land from both defendants Baguio Pines and Systemic.[82] o) That, defendants Baguio Pines and Systemic purchased the subject parcels of land from defendant Datuin.[83] p) That, at the time of purchase, the said parcels of land were registered in the name of defendant Datuin as shown by TCT Nos. TP-834 and TP-835.[84] q) That, defendants Baguio Pines and Systemic rightfully relied on the titles registered under the name of defendant Datuin.[85]
x x x x x x <u>Cross-claim</u> 40. Defendant Baguio Pines purchased the land now registered in its name under TCT No. TP 1950 from defendant Susan Datuin on August 15, 1996 and paid the latter the amount of Seven Million Four Hundred Sixty-Seven Thousand and One Hundred Fifty Pesos (₱7,467,150.00).[86] x x x	s) That, defendants Baguio Pines paid the amount of ₱7,467,150.00 to defendant Datuin as and by way of consideration for the purchase of land covered by TCT No. TP-835.[87]

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.* at 132.

[87] *Id.* at 200.

41. Defendant Systematic also purchased the land now registered in its name under TCT No. TP 1938 from defendant Susan Datuin on August 2, 1996 and paid the latter the amount of Five Million Pesos (₱5,000,000.00).[88] x x x	s) Defendant Baguio Pines paid the amount of ₱5,000,000.00 to defendant Datuin as and by way of consideration for the purchase of land covered by TCT No. TP-834.[89] **x x x x x x**

Clearly, what respondents sought for admission referred to the very subject matter of the complaint, hence, beyond the context of Rule 26. As held in ***Concrete Aggregates Corporation v. Court of Appeals***,[90] it is a delaying tactic and unjustified maneuvering, nay illogical if not preposterous, thus:

The Request for Admission of petitioner does not fall under Rule 26 of the Rules of Court. As we held in *Po v. Court of Appeals* and *Briboneria v. Court of Appeals*, Rule 26 as a mode of discovery contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in a pleading. That is its primary function. It does not refer to a mere reiteration of what has already been alleged in the pleadings. x x x

As we held in *Po v. CA*, ***petitioner's request constitutes an utter redundancy and a useless, pointless process which the respondent should not be subjected to***. In the first place, what the petitioner seeks to be admitted by private respondent is the very subject matter of the complaint. In effect, petitioner would want private respondent to deny her allegations in her verified *Complaint* and admit the allegations in the *Answer* of petitioner *(Manifestation and Reply to Request for Admission)*. ***Plainly, this is illogical if not preposterous***.

x x x x x x x x x

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[88] *Id.* at 132.

[89] *Id.* at 200.

[90] 334 Phil. 77, 80 (1997); citing *Po v. Court of Appeals*, 247 Phil. 637-640 (1988), *Briboneria v. Court of Appeals*, 290-A Phil. 396-409 (1992), and *Uy Chao v. De la Rama Steamship Co., Inc.*, 116 Phil. 392-397 (1962).

Clearly, therefore, private respondent need not reply to the Request for Admission because her Complaint itself controverts the matters set forth in the Answer of petitioner which were merely reproduced in the request. In *Uy Chao v. De la Rama Steamship* we observed that the purpose of the rule governing requests for admission of facts and genuineness of documents is to expedite trial and to relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[91]

Verily, petitioner need not reply to respondents' request for admission because as stated, the facts requested to be admitted are already the subject of the parties' respective pleadings by which the issues had already been joined.

As ***Duque v. Spouses Yu***[92] ruled, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, "**the latter cannot be compelled to admit or deny them anew**." In turn, the requesting party cannot reasonably expect a response to the request and, thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26.

Second. Summary judgment is embraced under Rule 35 of the 1997 Rules of Civil Procedure, *viz.*:

SECTION 1. *Summary Judgment for claimant*. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

SECTION 2. *Summary judgment for defending party*. — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.

SECTION 3. *Motion and proceedings thereon*. — The motion shall be served at least ten (10) days before the time specified for the hearing.

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[91] Italics and emphasis supplied.

[92] G.R. No. 226130, February 19, 2018, 856 SCRA 97, 103.

The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Summary judgment may be validly rendered when these twin elements are present: (a) there must be no *genuine issue* as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.[93]

A ***genuine issue*** means an issue of fact which calls for presentation of evidence as distinguished from an issue which is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial.[94]

In the complaint, the Republic claimed that the subject lots are "inalienable" and OCTs P-921 to P-926 and derivative titles were fraudulently issued thereon.[95] Respondents, on the other hand, countered that the lots had already been classified as "alienable" as early as May 14, 1969, thus, OCTs P-921 to P-926 and its subsequent TCTs were validly issued.[96]

Undoubtedly, these are genuine issues pertaining to the actual classification of the lots in question and the consequent validity or invalidity of the titles issued thereon.

These genuine issues subsist and have not ceased to be. Hence, the trial court gravely abused its discretion amounting to excess or lack of jurisdiction when it deemed the same to be no longer existing based on its erroneous conclusion that the Republic had impliedly admitted the material facts to which they related.

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[93] *Puyat v. Zabarte*, 405 Phil. 413, 426-427 (2001).

[94] *Supra* note 54.

[95] See Complaint dated May 4, 2010; *rollo*, pp. 103-116.

[96] See Answer dated March 30, 2011; *id.* at 122-135.

The Court has time and again pronounced that where the facts pleaded by the parties are disputed or contested, the proceedings for a summary judgment cannot take the place of a trial.[97]

Third. Under its Order dated September 3, 2013[98] the trial court altogether, in one sweeping stroke, granted respondents' motion for reconsideration dated July 16, 2013,[99] granted their motion for summary judgment dated February 26, 2013,[100] and rendered the summary judgment itself in respondents' favor. In so doing, the trial court deprived petitioner of the opportunity before judgment was rendered, to first seek a reconsideration of the grant of respondent's motion for reconsideration and the grant of respondent's motion for summary judgment. This is grave abuse of discretion, amounting to excess or lack of jurisdiction.

Narciso v. Garcia[101] is analogously applicable to this case. There, the Court decreed that the trial court committed serious error when it simultaneously denied Narciso's motion to dismiss and at the same time declared her in default in one order. It deprived Narciso of the opportunity to seek reconsideration of the order denying her motion to dismiss, thus:

> But apart from opposing defendant's motion to dismiss, plaintiff Garcia asked the trial court to declare Narciso in default for not filing an answer, altogether disregarding the suspension of the running of the period for filing such an answer during the pendency of the motion to dismiss that she filed in the case. **Consequently, when the trial court granted Garcia's prayer and simultaneously denied Narciso's motion to dismiss and declared her in default, it committed serious error. Narciso was not yet in default when the trial court denied her motion to dismiss.** She still had at least five days within which to file her answer to the complaint.

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[97] *Loreno v. Estenzo*, 165 Phil. 610, 615 (1976), citing *Singleton v. Phil. Trust*, 99 Phil. 91-99 (1956).

[98] CA *rollo*, pp. 190-197.

[99] *Id.* at 169-177.

[100] CA *rollo*, pp. 142-150.

[101] 699 Phil. 236-241 (2012).

What is more, Narciso **had the right to file a motion for reconsideration of the trial court's order denying her motion to dismiss. No rule prohibits the filing of such a motion for reconsideration.** Only after the trial court shall have denied it does Narciso become bound to file her answer to Garcia's complaint. And only if she did not do so was Garcia entitled to have her declared in default. Unfortunately, the CA failed to see this point.[102] (emphasis supplied)

To repeat, the trial court, thus, gravely abused its discretion when it issued its: (a) Order dated September 3, 2013 in Civil Case No. 4929, ordaining that as a result of the Republic's failure to respond to the Request for Admission, it was deemed to have impliedly admitted the material facts as well as the genuineness and due execution of several documents subject of the Request for Admission, granting respondents' motion for summary judgment based on these alleged admissions, and rendering summary judgment against the Republic; and (b) denying the Republic's subsequent motion for reconsideration. Consequently, the aforesaid orders are nullified.

On the other hand, the Court of Appeals committed reversible error when it dismissed the Republic's petition for *certiorari* in CA-G.R. SP No. 134394, hence, its assailed dispositions are reversed and set aside.

ACCORDINGLY, the petition is **GRANTED**. The Resolutions dated September 24, 2015 and April 11, 2016 of the Court of Appeals in CA-G.R. SP No. 134394 are **REVERSED AND SET ASIDE**.

The Orders dated September 3, 2013 and December 18, 2013 in Civil Case No. 4929 being tainted with grave abuse of discretion amounting to excess or lack of jurisdiction are nullified. The Regional Trial Court, Branch 11, Balayan, Batangas is directed to reopen the case, conduct the pre-trial and trial proper, and resolve the case on the merits, with utmost dispatch.

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[102] *Id.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 224587. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **SAMMY YUSOP *y* MUHAMMAD,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST BASED ON PROBABLE CAUSE BY REASON OF PERSONAL KNOWLEDGE; REQUISITES THAT MUST CONCUR TO BE VALID. — Jurisprudence tells us that the following must be present for a valid warrantless arrest under paragraph (b): *i*) an offense has just been committed; and *ii*) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. In *Pestilos v. Generoso*, we said that in connection with Section 5, paragraph (b), Rule 113 of the Rules of Court, the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge and that the requirement of the existence of probable cause objectifies the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests. Moreover, we enunciated in *Vaporoso v. People* that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible.

2. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF

CUSTODY RULE; PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF R.A. NO. 9165. — [Section 21, Article II of R.A. No. 9165] requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of **(a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ,** all of whom shall be required to sign the copies of the inventory and be given a copy of the same.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Osop B. Omar for accused-appellant.

D E C I S I O N

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

On ordinary Appeal[1] are the March 27, 2015 Decision[2] and the February 11, 2016 Resolution[3] of the Court of Appeals (CA), Cagayan De Oro City (CDO) in CA-G.R. CR-HC No. 01002-MIN affirming *in toto* the February 9, 2012 Judgment[4] of the Regional Trial Court (RTC) of CDO, Branch 25 in Criminal Case No. 2011-1109 convicting accused-appellant Sammy Yusop *y* Muhammad (Yusop) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] See Notice of Appeal dated March 8, 2016; CA *rollo*, pp. 186-187.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Rafael Antonio M. Santos, concurring; *id.* at 149-162.

[3] *Id.* at 181-182.

[4] Penned by Judge Arthur L. Abundiente; records, pp. 160-183.

The Facts

The accusatory portion of the Information[5] dated November 23, 2011, charging Yusop with the offense of illegal transport of dangerous drugs, reads:

> That on or about the **21st day of November 2011**, at around **8:30 o'clock in the evening**, more or less, at **Upper Carmen, [CDO]**, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ***in conspiracy with a certain alyas [sic] LEA LEDESMA***, without any legal authority nor corresponding license or prescription to pass, transport, deliver or distribute any dangerous drug, then and there willfully, unlawfully and feloniously pass, deliver, transport or distribute *thru the LBC courier service* **two (2) pieces** of sealed ziplocked big transparent plastic cellophane containing crystalline substance with markings "**RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature**" with a net weight of **736.98 grams**, and "**RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature**" with a net weight of **744.48 or a total weight of 1,481.46 grams**, more or less, wherein after a ***physical***, ***qualitative***, *and* ***confirmatory tests conducted by an authorized and expert forensic*** chemist, the same yielded positive for the presence of ***methamphetamine hydrochloride (shabu)***, a dangerous drug, accused well-knowing that the substance recovered from him was a dangerous drug.
>
> Contrary to law.

Upon arraignment, Yusop pleaded not guilty,[6] thence, trial ensued.

Version of the Prosecution

On November 20, 2011, at around 2:30 a.m., the Philippine Drug Enforcement Agency (PDEA) received reliable information from a trusted source that a large quantity of *shabu* was about to be transported, through the LBC Express, Inc. (LBC), from Las Piñas City to CDO.[7] According to the informant, a certain

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[5] *Id.* at 3.

[6] *See* Certificate of Arraignment dated December 13, 2011; *id.* at 55.

[7] *Id.* at 105.

Lea Ledesma will be shipping a Pensonic Television (subject package) to a consignee later identified as Yusop.[8] Upon verification with the area manager of LBC, PDEA agents planned the drug bust and proceeded to the LBC branch in SM City CDO where the subject package will be picked up.[9] However, no one came to get the subject package.[10] The PDEA team contemplated on securing a search warrant but decided to dispense with obtaining one considering that they did not know when the subject package will be claimed and their lack of personnel.[11] The next day, at around 8:30 p.m., Yusop finally arrived at the LBC branch and retrieved the subject package.[12] Once apprehended, the PDEA agents asked Yusop regarding the contents of the subject package and made him open the same.[13] The *shabu* was found at the back portion of the television.[14] Yusop was then arrested and the seized items were marked[15] and photographed in the presence of City Councilor Roger Abaday (Abaday) and ABS-CBN reporter Rod Bolivar (Bolivar).[16] After securing the necessary request for laboratory examination, the confiscated drugs were brought to the PDEA Crime Laboratory where it was received by PDEA Forensic Chemist III Dina Mae S. Unito (PDEA/FC Unito). The laboratory

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[8] *Id.* at 106.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 107.

[13] *Id.*

[14] *Id.*

[15] The two pieces of sealed transparent plastic cellophane each containing crystalline substance were marked "RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature" with a net weight of 736.98 grams, and "RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature" with a net weight of 744.48 grams; See also Inventory and Pictures, *id.* at 15-24.

[16] *Id.*

tests confirmed that the seized plastic bags contained methamphetamine hydrochloride or *shabu*.[17]

Version of the Defense

Yusop, on the other hand, averred that he claimed the subject package for a certain Nasser Datu Mama who promised to pay him ₱15,000.00 and vehemently denied any knowledge that the subject package contained *shabu*.

The Ruling of the RTC

In its Judgment dated February 9, 2012, the RTC found Yusop guilty as charged and sentenced him 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. The RTC opined that on account of the urgency of the operation, the PDEA agents were justified in not procuring a search warrant beforehand and that there was probable cause to confront Yusop. Moreover, for the RTC, the prosecution was able to establish that, indeed, Yusop was caught transporting *shabu* deliberately placed in the picture tube of a television set consigned to the latter through the LBC, and that the identity, integrity, and probative value of the sequestered drugs were preserved and kept intact from the time of confiscation up to its presentation in court pursuant to the chain of custody rule laid down in Section 21 of R.A. No. 9165.

The Ruling of the CA

In the herein assailed Decision, the CA denied the appeal and affirmed the judgment of the RTC, thus:

> WHEREFORE, [w]e **DISMISS** the appeal. We **AFFIRM** *in toto* the [Judgment] of the [RTC] of [CDO], Branch 25, promulgated on February 09, 2012.
>
> SO ORDERED.[18]

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[17] See Chemistry Report No. PDEA-DD-2011-019; *id.* at 13.

[18] CA *rollo*, p. 161.

The CA held that on the basis of the definite information regarding the subject package and the identity of its consignee, Yusop was lawfully arrested. The CA likewise found Yusop's defense of denial as incredible given the fact that upon confrontation with the PDEA agents, instead of standing his ground like an innocent person, Yusop threw away the subject package and attempted to escape.

Yusop filed a Motion for Reconsideration but the same was denied in a Resolution dated February 11, 2016.

On July 7, 2016, this Court required[19] the parties to submit their respective supplemental briefs; however, they manifested that they would merely adopt their briefs before the CA.

In his Brief, Yusop essentially argues that the dangerous drugs allegedly seized were inadmissible in evidence for being the fruit of a poisonous tree, and that the crime charged was not proven beyond reasonable doubt.

The Ruling of the Court

The appeal is partly meritorious.

The Court finds that while the warrantless arrest was valid, Yusop must nevertheless be acquitted for non-compliance with the three-witness rule laid down in Section 21 of R.A. No. 9165.

The warrantless arrest was valid as the PDEA agents had probable cause to believe based on personal knowledge that the person to be arrested has committed an offense i.e. illegal transport of dangerous drugs

Generally, and as guaranteed by our Constitution,[20] an arrest, search or seizure without a warrant issued by a competent judicial

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[19] See Resolution dated July 7, 2016, *rollo*, pp. 21-22.

[20] Article III, Section 2.

authority is invalid. However, there are certain recognized exceptions listed under Section 5, Rule 113 of the Revised Rules of Criminal Procedure,[21] *viz.*:

> SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In the case at bench, both the RTC and the CA concluded that, based on the established facts, the present case falls within paragraph (b) of the above-quoted provision. We agree.

Jurisprudence[22] tells us that the following must be present for a valid warrantless arrest under paragraph (b): *i*) an offense has just been committed; and *ii*) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. In *Pestilos v. Generoso*,[23] we said that in connection with Section 5, paragraph (b), Rule 113 of the Rules of Court, the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge and that the requirement of the existence of probable cause objectifies the

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[21] A.M. No. 00-5-03-SC, October 3, 2000.

[22] *People v. Comprado*, G.R. No. 213225, April 4, 2018; *People v. Gardon-Mentoy*, G.R. No. 223140, September 4, 2019.

[23] 746 Phil. 301 (2014).

reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests. Moreover, we enunciated in *Vaporoso v. People*[24] that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible.

The evidence on record clearly shows that the police officers had personal knowledge of facts or circumstances upon which they had properly determined probable cause in effecting a warrantless arrest against Yusop. Here, the PDEA agents immediately acted on a tip received from a confidential informant that a substantial amount of *shabu* will be shipped from Las Piñas to CDO. The details regarding the shipment such as the names of the shipper and consignee, contents of the subject package, and the courier service were all accurate upon verification. The PDEA agents then conducted surveillance operations at the LBC branch where the package will be claimed. The subject package was without a doubt retrieved a day later by Yusop — who acted like a guilty person and attempted to run when confronted by the authorities. The foregoing pieces of information qualify as the PDEA agents' personal observation, perception and evaluation, which are necessarily within their personal knowledge, prompting them to make the warrantless arrest. The Court is, thus, convinced that the PDEA agents had personal knowledge of facts or circumstances justifying Yusop's warrantless arrest.

Besides, on the procurement of a search warrant, Intelligence Officer 2 Vincent Cecil M. Orcales (IO2 Orcales) testified that:

> Q: Now, before conducting the operation, did it not occur to your mind to secure a search warrant?
>
> x x x x x x x x x
>
> A: We had a plan to apply for a Search Warrant, [b]ut, because of the exigency and emergency circumstances, we cannot

[24] G.R. No. 238659, June 3, 2019.

also afford the safety of our agents. We don't have the luxury of time; [w]e have very few and limited personnel x x x. We cannot actually sacrifice our agents and the subject consignee may pick up the package anytime x x x.

Q: Do you mean to tell us that you did not know the exact time as to when the accused will pick up the package?

A: Yes, Sir.

x x x x x x x x x

Q: Could you not have divided the number of your personnel into two (2) groups? One group will be applying for a Search Warrant and the other group will conduct the operation?

A: We cannot sacrifice our agents and as we know, it involves large quantity of shabu and huge amount. And, we believed that he was not alone. We believed he was armed and with armed men. We considered that one.[25]

Intelligence Agent 1 Rodolfo S. Dela Cerna, Jr. (IA1 Dela Cerna) likewise testified in this wise:

Q: x x x Who talked about securing a Search Warrant?

A: We talked about it.

Q: And, did you agree to secure and apply for a Search Warrant?

A: We did not.

Q: Why?

A: Because of the urgency of the matter and also because of our limited personnel.

Q: When you speak of because of the urgency of the matter, can you elaborate that to us?

A: We do not exactly know as to when the consignee will pick up the package.

Q: You mean to tell us that on that following day, you do not know the specific time as to when the accused will pick up the package?

A: Yes, Sir.

x x x x x x x x x

[25] TSN, January 16, 2012, pp. 22-23.

Q: Now, when you said because of the limited number of your operatives; What does it mean and can you elaborate it?
A: We consider the consignee to arrive not alone and probably armed. So, we could not sacrifice the safety of our men by pulling out from our already depleted personnel.[26]

It is thus clear that the PDEA agents intended to obtain a search warrant but, in the end, decided not to because time was evidently of the essence. In the past, the Court said that we should not expect too much of an ordinary policeman considering that oftentimes, he has no opportunity to make proper investigation but must act in haste on his own belief to prevent the escape of the criminal.[27] Hence, the Court concurs with the common findings of the courts *a quo* that the PDEA agents were justified in dispensing with the procurement of a warrant due to the exigency, the risks, and the quantity of the dangerous drugs involved in the operation.

The search and seizure which followed the warrantless arrest was likewise valid

No less than Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.[28]

Nevertheless, warrantless search or seizure is allowed if it is incidental to a lawful arrest and such instance is governed by Section 13, Rule 126 of the Revised Rules on Criminal Procedure, which provides:

SEC. 13. *Search incident to a lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which

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[26] TSN, January 17, 2012, pp. 5-6.

[27] *Pestilos v. Generoso*, *supra* note 23.

[28] *Cruz v. People*, G.R. No. 238141, July 1, 2019.

may have been used or constitute proof in the commission of an offense without a search warrant.

Here, as previously discussed, the warrantless arrest of Yusop was valid. It follows, therefore, that the search and seizure that followed Yusop's arrest which yielded more than one kilogram of *shabu* was likewise valid and admissible as evidence.

Nevertheless, non-compliance with the requirements of Section 21 of R.A. No. 9165 casts doubt on the integrity of the seized items and suffices as a ground for acquittal based on reasonable doubt.[29]

Yusop was caught illegally transporting dangerous drugs in 2011. The law applicable then was Section 21, Article II of R.A. No. 9165 before its amendment by RA 10164, and it 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:

(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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled

[29] *People v. Binasing*, G.R. No. 221439, July 4, 2018.

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.

In simpler terms, the prevailing law then requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of **(a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same.[30] In the case of *Lescano v. People*,[31] the Court held that non-compliance with the chain of custody rule is tantamount to failure in establishing identity of the *corpus delicti* which is an essential element of the offense and engenders the acquittal of an accused.

Seemingly, in the present case, the PDEA agents failed to secure the attendance of a DOJ representative during the inventory and photography of the seized drugs as testified by IO2 Orcales:

x x x x x x x x x

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[30] *People v. Manansala*, G.R. No. 229509, July 3, 2019.

[31] 778 Phil. 460 (2016).

Q: Alright. What happened after you have subdued [Yusop]?
A: IA1 Dela Cerna asked him what was inside the package. At first, he was reluctant. But, later on, he cooperated.

x x x x x x x x x

Q: Can you tell us what [Yusop] said?
A: That there is shabu inside.

Q: Do you mean to tell us that [Yusop] told IA1 Dela Cerna that what was contained inside the package [was] shabu?
A: Yes, Sir.

Q: After that, what happened next?
A: After that, we called Councilor [Abaday] to witness the opening of the package and the Media was already there.

Q: What Media are you referring to?
A: ABS-CBN.

Q: Why was the ABS-CBN already there?
A: On the first day of operation, the Camera Man was with us and the Anchorman was within the vicinity of SM.

x x x x x x x x x

Q: You said you made an inventory; Where did you actually make the inventory?
A: At the crime scene.

x x x x x x x x x

Q: Okay. So, after you made the inventory, what happened next?
A: After the inventory, we let Councilor [Abaday] and [Bolivar] of the ABS-CBN signed [sic] the inventory. x x x[32]

The presence of only two out of the three required insulating witnesses was corroborated by IO2 Liezel Baldovino (IO2 Baldovino):

x x x x x x x x x

Q: For emphasis purposes, Madam Witness, do you mean to tell us that these pictures were taken by you during the confiscation of evidence and inventory of the evidence?
A: Yes, Sir.

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[32] TSN, January 16, 2012, pp. 11 and 15.

Q: You said that you were taking photographs of the evidence confiscated during the inventory. Can you tell us who were present during the inventory?
A: The representative of the media from ABS-CBN and Councilor [Abaday] of the City Council.[33]

x x x x x x x x x

Q: You said you made an inventory; Where did you actually make the inventory?
A: At the crime scene.

It was also apparent in the testimony of IA1 Dela Cerna:

Q: And, upon hearing that there was [*shabu*] inside, what did you do if any?
A: I called up ABS-CBN and Councilor [Abaday].

Q: Why did you call up ABS-CBN and Councilor Abaday?
A: I wanted them to witness the opening of the package and to witness the inventory.

x x x x x x x x x

Q: Now, Mr. Witness, you said that you inventoried the items confiscated; Kindly tell us if that inventory was reduced into writing?
A: Yes, Sir. It was.

Q: If that Inventory of that confiscated items is shown to you; Will you be able to recognize it?
A: Yes, Sir.

x x x x x x x x x

Q: By the way, Mr. Witness, I forgot to ask you if the representative of the ABS-CBN [Bolivar] and Councilor [Abaday] have affixed their signatures on your written inventory; [Did] they [sign] your written inventory?
A: Yes, Sir.[34]

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[33] TSN (IO1 Liezel Baldovino), January 17, 2012, p. 15.

[34] TSN (IA1 Rodolfo S. Dela Cerna, Jr.), January 17, 2012, pp. 10, 15, and 16.

Equally telling is the Inventory[35] sheet which contains the signatures of Councilor Abaday and media representative Bolivar only.

Realistically speaking, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 is not always possible. But, while the law excuses non-compliance under justifiable grounds the same must be proven as a fact for the Court cannot presume what they are or that they even exist;[36] and the integrity and evidentiary value of the seized items were properly preserved.[37]

Disappointingly, here, there was no effort at all on the part of the prosecution to explain or justify why a representative from the DOJ was not present during the inventory and photography of the confiscated drugs nor was it shown that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat.

The oft-repeated rule is that the presence of the required insulating witnesses at the time of the inventory is mandatory since it serves both a crucial and a critical purpose. Indeed, under the law, the presence of the so-called insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself — the very prohibited substance itself — and for that reason imperils and jeopardizes the prosecution's case.

WHEREFORE, the appeal is **GRANTED**. The March 27, 2015 Decision and February 11, 2016 Resolution of the Court of Appeals, Cagayan De Oro City in CA-G.R. CR-HC No. 01002-MIN are **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **SAMMY YUSOP *y* MUHAMMAD** is hereby **ACQUITTED** and ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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[35] Records, p. 15.

[36] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[37] *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

The Director of the Bureau of Corrections is **DIRECTED** to **INFORM** the Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 225750-51. July 28, 2020]

KEPCO PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (R.A. 8424); COMMISSIONER OF INTERNAL REVENUE (CIR); THE CIR MAY COMPROMISE AN ASSESSMENT WHEN A REASONABLE DOUBT AS TO THE VALIDITY OF THE CLAIM AGAINST THE TAXPAYER EXISTS OR THE FINANCIAL POSITION OF THE TAXPAYER DEMONSTRATES A CLEAR INABILITY TO PAY THE TAX. — The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204(A) of the 1997 National Internal Revenue Code, as amended (1997 NIRC). The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

2. ID.; COURT OF TAX APPEALS; FOR PURPOSES OF DETERMINING WHETHER TAXPAYERS MAY ALREADY APPEAL TO THE CTA, THE INACTION OF THE CIR WITHIN 180 DAYS SHALL BE DEEMED A DENIAL OR AN ADVERSE DECISION OF THE CIR. — Section 7(a)(2) of RA No. 9282 provides that the "inaction" of the CIR or his failure to decide a disputed assessment within the 180-day period is "deemed a denial" of the protest. Section 3(a)(2), Rule 4 of the Revised Rules of the CTA further clarifies that "that in case of disputed assessments, the inaction of the [CIR] within the [180]-period under [Section] 228 of the [1997 NIRC] shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the [CTA]." Clearly, the *inaction* is deemed an *adverse decision* of the CIR on the administrative protest. Thus, for purposes of determining whether taxpayers may already appeal to the CTA, the *inaction* of the CIR within 180 days shall be *deemed denial* or an *adverse decision* of the CIR. Since Kepco failed to appeal the *inaction* or *deemed denial* or *adverse decision* of the CIR on June 24, 2010, the assessment for deficiency VAT and FWT for TY 2006 became final, executor and demandable.

APPEARANCES OF COUNSEL

Guillermo P. Dabay, Jr., Maria Angelica A. Paglicawan & Ma. Veronica S. Guangco for petitioner.

The Solicitor General for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

This resolves the *(1)* Petition for Review[1] filed under Rule 45 of the Rules of Court which seeks to reverse the Decision[2]

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[1] *Rollo*, pp. 3-55.

[2] *Id.* at 59-70; penned by Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban.

dated November 26, 2015 and Resolution[3] dated July 11, 2016 of the Court of Tax Appeals (CTA) *En Banc* dismissing Kepco Philippines Corporation's (Kepco) appeal for being filed out of time; and *(2)* Manifestation and Motion to Render Judgment on the Case Based on the Parties' Compromise Settlement under Section 204 (A) of the National Internal Revenue Code (NIRC)[4] (Manifestation) filed by Kepco which prays to declare the case closed and terminated.

Facts

On September 8, 2009, Kepco received Preliminary Assessment Notice for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax, and final withholding tax (FWT) for taxable year (TY) 2006.[5] On October 30, 2009, Kepco received Final Letter of Demand (FLD) for deficiency VAT in the amount of ₱159,640,750.79 and for deficiency FWT in the amount of ₱124,286,821.11.[6] Kepco filed its protest to the FLD on November 26, 2009.[7]

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[3] *Id.* at 71-81; penned by Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban; with the dissenting opinion of Associate Justice Lovell R. Bautista; and Associate Justices Caesar A. Casanova, Cielito N. Mindaro-Grulla (on leave).

[4] *Id.* at 422-427.

[5] *Id.* at 87.

[6] *Id.* at 62, 87-88. The deficiency taxes are computed as follows:

Deficiency VAT	
Basic tax due	₱102,409,676.58
Interest and compromise penalty	₱ 57,231,074.21
Total deficiency VAT	₱159,640,750.79
Deficiency FWT	
Basic tax due	₱ 79,459,643.84
Interest and compromise penalty	₱ 44,827,177.27
Total deficiency FWT	₱124,286,821.11

[7] *Id.* at 63.

Subsequently, on June 25, 2010, Kepco filed its petition before the CTA Division (docketed as CTA Case No. 8112).[8] The Commissioner of Internal Revenue (CIR) filed his Answer on September 29, 2010.[9] In due course, after trial, both parties submitted their respective memorandum and the case was submitted for Decision.[10]

On December 6, 2013, the CTA Division partly granted Kepco's petition and cancelled the deficiency FWT assessment and the compromise penalties.[11] Kepco was ordered to pay deficiency VAT plus interest and surcharges. Kepco and the CIR filed motions for reconsideration but were denied for lack of merit.[12]

Not satisfied, on May 5, 2014, Kepco elevated the case to the CTA *En Banc*;[13] while the CIR filed his Petition for Review on May 22, 2014.[14] After consolidation and the filing by the parties of their comments and memorandum,[15] the CTA *En Banc* rendered its Decision on November 26, 2015, dismissing Kepco's petition in CTA Case No. 8112 for being filed out of time, and granting the CIR's petition. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered:

1) The Petition for Review filed by Kepco Philippines Corporation, docketed as CTA EB No. 1161, is hereby **DENIED** for lack of merit; and,

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[8] *Id.* at 63, 88.

[9] *Id.* at 63.

[10] *Id.* at 64.

[11] *Id.* at 84-128.

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

[13] *Id.* at 64; docketed as CTA EB No. 1161.

[14] *Id.* at 64; docketed as CTA EB No. 1166.

[15] The CIR filed a Manifestation seeking to adopt its Petition for Review filed on May 22, 2014 and Comment filed on May 22, 2014 as its Memorandum; *id.* at 65.

2) The Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 1166, is hereby **GRANTED**. Accordingly, the Decision dated December 6, 2013 rendered by the Special First Division is hereby **REVERSED** and **SET ASIDE**. A new one is hereby entered dismissing the Petition for Review filed by Kepco Philippines Corporation in CTA Case No. 8112. Accordingly, Assessment Notice No. LTAID II/WF-06-00032 and LTAID II/VT-06-00028 issued by the BIR are hereby **UPHELD**.

SO ORDERED.[16] (Emphasis in the original.)

Kepco sought reconsideration but the CTA *En Banc* denied the motion on July 11, 2016, *viz.*:

WHEREFORE, premises considered, Kepco Philippines Corporation's **"MOTION FOR RECONSIDERATION"** filed on December 21, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.[17] (Emphasis in the original.)

Thus, Kepco filed the instant petition[18] on August 3, 2016. The CIR, through the Office of the Solicitor General (OSG), filed his Comment[19] on May 29, 2017, and Kepco, its Reply[20] on June 14, 2017.

Meantime, on December 28, 2017, Kepco filed a Manifestation[21] that it entered into a compromise agreement with the CIR on its tax assessments for the years 2006, 2007 and 2009. For TY 2006, which is the subject of the instant petition, Kepco paid a total of ₱134,193,534.12.[22] As proof,

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

[17] *Id.* at 76.

[18] *Id.* at 3-55.

[19] *Id.* at 380-400.

[20] *Id.* at 408-414.

[21] *Id.* at 422-427.

[22] ₱102,409,676.58 (100% of basic deficiency VAT) plus ₱31,783,857.54 (40% of basic deficiency FWT of ₱79,459,643.84).

Kepco attached the Certificate of Availment[23] issued by the CIR on December 11, 2017 certifying that the National Evaluation Board (NEB) approved Kepco's application for compromise settlement for deficiency taxes for TYs 2006, 2007 and 2009. Thus, Kepco moved that the case be declared closed and terminated.

In compliance with this Court's Resolution[24] dated February 14, 2018, the OSG filed its Comment[25] on July 20, 2018 opposing Kepco's manifestation and motion.

The OSG avers that the compromise agreement is not valid because *first*, it failed to allege and prove any of the grounds for a valid compromise under Section 3[26] of Revenue Regulations

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[23] *Rollo*, p. 469.

[24] *Id.* at 470-471.

[25] *Id.* at 478-488.

[26] SECTION 3. *Basis for Acceptance of Compromise Settlement*. — x x x

1. *Doubtful validity of the assessment*. — x x x

(a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment (For this purpose, "*jeopardy assessment*" shall refer to a tax assessment which was assessed without the benefit of complete or partial audit by an authorized revenue officer, who has reason to believe that the assessment and collection of a deficiency tax will be jeopardized by delay because of the taxpayer's failure to comply with the audit and investigation requirements to present his books of accounts and/or pertinent records, or to substantiate all or any of the deductions, exemptions, or credits claimed in his return); or

(b) The assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is looking in legal and/or factual basis; or

(c) The taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(d) The taxpayer failed to file a request for reinvestigation/reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(e) The taxpayer failed to elevate to the Court of Tax Appeals (CTA) an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(RR) No. 30-2002;[27] *second*, the CTA did not yet issue any adverse Decision against Kepco, hence, there is no "doubtful

(f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997; or

(g) Assessments made based on the "Best Evidence Obtainable Rule" and there is reason to believe that the same can be disputed by sufficient and competent evidence; or

(h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic.

2. *Financial Incapacity*. — x x x

(a) The corporation ceased operation or is already dissolved. Provided, that tax liabilities corresponding to the Subscription Receivable or Assets distributed/distributable to the stockholders representing return of capital at the time of cessation of operation or dissolution of business shall not be considered for compromise; or

(b) The taxpayer, as reflected in its latest Balance Sheet supposed to be filed with the Bureau of Internal Revenue, is suffering from surplus or earnings deficit resulting to impairment in the original capital by at least 50%, provided that amounts payable or due to stockholders other than business-related transactions which are properly includible in the regular "accounts payable" are by fiction of law considered as part of capital and not liability, and provided further that the taxpayer has no sufficient liquid asset to satisfy the tax liability; or

(c) The taxpayer is suffering from a networth deficit (total liabilities exceed total assets) computed by deducting total liabilities (net of deferred credits and amounts payable to stockholders/owners reflected as liabilities, except business-related transactions) from total assets (net of prepaid expenses, deferred charges, pre-operating expenses, as well as appraisal increases in fixed assets), taken from the latest audited financial statements, provided that in the case of an individual taxpayer, he has no other leviable properties under the law other than his family home; or

(d) The taxpayer is a compensation income earner with no other source of income and the family's gross monthly compensation income does not exceed the levels of compensation income provided for under Sec. 4.1.1 of these Regulations, and it appears that the taxpayer possesses no other leviable or distrainable assets, other than his family home; or

(e) The taxpayer has been declared by any competent tribunal/authority/body/government agency as bankrupt or insolvent.

x x x x x x x x x

[27] Revenue Regulations Implementing Sections 7 (c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement

validity" to speak of as a ground for a valid compromise pursuant to Section 2[28] of RR No. 8-2004;[29] and *third*, Kepco did not pay in full the compromise amount upon filing of the application in violation of Section 2[30] of RR No.

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of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 6-2000 and 7-2001, December 16, 2002.

[28] SECTION 2. *Basis for Acceptance of Compromise Settlement*. — Sec. 3 of Revenue Regulations No. 30-2002 is hereby amended to read as follows:

"SEC. 3. BASIS FOR ACCEPTANCE OF COMPROMISE SETTLEMENT. — The Commissioner may compromise the payment of any internal revenue tax on the following grounds:

1. Doubtful validity of the assessment. — x x x

(a) X X X

(b) X X X

(c) X X X

(d) X X X

(e) X X X

(f) X X X

(g) X X X

(h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic; or

(i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality.

2. X X X"

[29] Revenue Regulations Implementing Sections 7 (c), 204 (A) and 290 of the National Internal Revenue Code of 1997 on Compromise Settlement of Internal Revenue Tax Liabilities Superseding Revenue Regulations Nos. 7-2001 and 30-2002, May 19, 2004.

[30] SECTION 2. *Amendment*. — Section 6 of Revenue Regulations No. 30-2002 shall now read as follows:

"SEC. 6. Approval of Offer of Compromise. — x x x

x x x x x x x x x

The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount.

9-2013.[31] The OSG posits that the CIR improperly arrogated unto himself the power of the NEB to decide on the offer of compromise when the CIR accepted Kepco's additional payment of ₱16,661,759.20 before the NEB could approve or reject Kepco's original application.

Further, the OSG manifests that it is entitled to collect 5% success fee in case of government approved compromise agreements, pursuant to Section 11 (i)[32] of Republic Act (RA) No. 9417, otherwise known as "*An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*." Accordingly, the OSG prays that Kepco be ordered to pay the balance of ₱343,248,516.65 plus additional interest, fees, or surcharges as a consequence of its void tax compromise settlement with the CIR, and that the OSG be awarded the sum of ₱17,162,425.83 or 5% of the ₱343,248,516.65 balance.[33]

In its Reply,[34] Kepco insists that there exists doubtful validity on the assessment for TY 2006 which prompted the CIR to consider and accept Kepco's compromise offer. Contrary to

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In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities.

x x x x x x x x x"

[31] Amending Certain Provisions of Revenue Regulations No. 30-2002, May 10, 2013.

[32] SECTION 11. *Funding*. — The funds required for the implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, the other benefits above, shall be taken from:

(i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements;

x x x x x x x x x

[33] *Rollo*, p. 485.

[34] *Id.* at 496-508.

the OSG's claim, Kepco paid 40% of the basic tax assessed for TYs 2006, 2007 and 2009 in the amount of ₱143,891,831.90. In compliance with the recommendation of the Technical Working Group (TWG) of the Bureau of Internal Revenue (BIR) to increase the compromise offer, Kepco paid additional amounts and finalized the compromise offer to ₱260,848,425.80. This amount was approved by the NEB on December 11, 2017.

Meanwhile, the CIR filed his own Reply[35] to the OSG's Comment. The CIR asserts that Kepco paid the full 40% of the basic tax assessed for TYs 2006, 2007 and 2009 when it applied for compromise. In consonance with Revenue Memorandum Order (RMO) No. 20-2007,[36] the application was evaluated and processed, the LT Enforcement Collection Division recommended the approval of Kepco's application and thereafter, forwarded the favorable recommendation to Large Taxpayers Service (LTS)-Evaluation Board. After various proposals from the LTS-Evaluation Board to increase the compromise amount and the immediate compliance of Kepco by paying the proposed increase, the LTS-Evaluation Board recommended the approval of the application to the NEB based on doubtful validity. Eventually, the NEB approved Kepco's application and the CIR issued Certificate of Availment in its favor.

Ruling

There is no dispute that Kepco entered into a compromise agreement with the CIR on its deficiency taxes for TY 2006, and the CIR issued Certificate of Availment on December 11, 2017. On this basis, the deficiency tax assessment subject of the Petition can now be considered closed and terminated. However, the OSG opposed the motion and questioned the validity of the compromise alleging irregularity in the procedure that led to its approval.

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[35] *Id.* at 571-575.

[36] Simplified Processing of Application to Avail Taxpayer's Remedies under Section 204 (A), Compromise Settlement, and Section 204 (B), Abatement, Both of the National Internal Revenue Code of 1997, August 13, 2007.

We grant the motion and rule in favor of the compromise.

The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204 (A)[37] of the 1997 National Internal Revenue Code,[38] as amended (1997 NIRC). The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

In this regard, the BIR issued RR No. 30-2002, as amended by RR No. 08-2004, which enumerates the bases for acceptance of the compromise settlement on the ground of doubtful validity, *viz.*:

SEC. 3. *Basis for Acceptance of Compromise Settlement.* — x x x

1. *Doubtful validity of the assessment*. — The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:

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[37] SECTION 204. *Authority of the Commissioner to Compromise x x x Taxes*. — The Commissioner may —

(A) Compromise the payment of any internal revenue tax, when:

(1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or

(2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

The compromise settlement of any tax liability shall be subject to the following minimum amounts:

For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and

For other cases, a minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

Where the basic tax involved exceeds One million pesos (₱1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and four (4) Deputy Commissioners.

[38] Republic Act No. 8424, January 1, 1998.

(a) The delinquent account or disputed assessment is one resulting from a jeopardy assessment x x x; or

(b) The assessment seems to be arbitrary in nature, appearing to be based on presumptions and there is reason to believe that it is looking in legal and/or factual basis; or

(c) The taxpayer failed to file an administrative protest on account of the alleged failure to receive notice of assessment and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(d) The taxpayer failed to file a request for reinvestigation/ reconsideration within 30 days from receipt of final assessment notice and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(e) The taxpayer failed to elevate to the Court of Tax Appeals (CTA) an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof and there is reason to believe that the assessment is lacking in legal and/or factual basis; or

(f) The assessments were issued on or after January 1, 1998, where the demand notice allegedly failed to comply with the formalities prescribed under Sec. 228 of the National Internal Revenue Code of 1997; or

(g) Assessments made based on the "Best Evidence Obtainable Rule" and there is reason to believe that the same can be disputed by sufficient and competent evidence; or

(h) The assessment was issued within the prescriptive period for assessment as extended by the taxpayer's execution of Waiver of the Statute of Limitations the validity or authenticity of which is being questioned or at issue and there is strong reason to believe and evidence to prove that it is not authentic; or

(i) The assessment is based on an issue where a court of competent jurisdiction made an adverse decision against the Bureau, but for which the Supreme Court has not decided upon with finality.

Kepco's case falls under paragraph e — the assessment became final because Kepco failed to appeal the inaction or "deemed denial" of the CIR to the CTA within 30 days after

the expiration of the 180-day period and there is reason to believe that the assessment is lacking in legal and/or factual basis.

It must be noted that when Kepco filed its protest to the FLD on November 26, 2009, the CIR had 180 days or until May 25, 2010 to act on the protest.[39] Thereafter, Kepco may elevate its protest to the CTA within 30 days from the lapse of the 180-day period,[40] or until June 24, 2010. Section 7 (a) (2)[41] of RA No. 9282[42] provides that the "inaction" of the CIR or

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[39] See *Armigos v. Court of Appeals*, 258-A Phil. 561 (1989).

[40] See Section 3 (a) (2), Rule 4 of the Revised Rules of the CTA.

SEC. 3. *Cases within the Jurisdiction of the Court in Divisions*. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputes assessments, x x x where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; x x x.

[41] Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case **the inaction shall be deemed a denial**; x x x (Emphasis supplied.)

[42] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.

his failure to decide a disputed assessment within the 180-day period is "deemed a denial" of the protest.[43] Section 3 (a) (2),[44] Rule 4 of the Revised Rules of the CTA further clarifies that "that in case of disputed assessments, the inaction of the [CIR] within the [180]-period under [Section] 228 of the [1997 NIRC] shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the [CTA]." Clearly, the *inaction* is deemed an *adverse decision* of the CIR on the administrative protest. Thus, for purposes of determining whether taxpayers may already appeal to the CTA, the *inaction* of the CIR within 180 days shall be *deemed denial* or an *adverse decision* of the CIR. Since

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[43] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, October 3, 2018, 881 SCRA 451, 509.

[44] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further*, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3 (a), Rule 8 of these Rules; and *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

Kepco failed to appeal the *inaction* or *deemed denial* or *adverse decision* of the CIR on June 24, 2010, the assessment for deficiency VAT and FWT for TY 2006 became final, executory and demandable.

As to whether the CIR properly accepted Kepco's offer for a compromise because "the assessment is lacking in legal and/or factual basis," the general rule is that the authority of the CIR to compromise is purely discretionary and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion.[45] Here, no grave abuse of discretion exists. Kepco complied with the procedures prescribed under the BIR rules on the application and approval of compromise settlement on the ground of doubtful validity.

Contrary to the OSG's claim that Kepco did not pay the full amount offered for compromise upon filing of its application, records show that Kepco paid ₱143,891,831.90[46] representing 40% of the basic tax assessed for TYs 2006, 2007 and 2009 when it applied for compromise on January 19, 2017.[47] For TY 2006, which is the subject of the instant case, Kepco paid ₱40,963,870.63[48] (40% of basic deficiency VAT of ₱102,409,676.58) and ₱31,783,857.54[49] (40% of basic deficiency FWT of ₱79,459,643.84) on January 19, 2017. Notably, the minimum compromise amount under Section 204 (A)[50] of the 1997 NIRC and Section 4[51] of RR No. 30-2002 is 40% of the

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[45] See *PNOC v. Court of Appeals*, 496 Phil. 506, 572 (2005).

[46] *Rollo*, p. 517.

[47] *Id.* at 510-522.

[48] *Id.* at 433.

[49] *Id.* at 441.

[50] *Supra* note 37.

[51] Sec. 4. *Prescribed Minimum Percentages of Compromise Settlement.* — x x x

x x x x x x x x x

2. *For cases of "doubtful validity"* — A minimum compromise rate equivalent to forty percent (40%) of the basic assessed tax.

basic tax assessed. Kepco complied with the requirement of payment of the compromise offer as a pre-condition for the processing of the application.

Further, the TWG evaluated Kepco's application and on October 19, 2017, recommended to the NEB its approval on the basis of doubtful validity.[52] The application was approved by a majority[53] of all the members of the NEB composed of Deputy Commissioners Jesus Clint O. Aranas (Legal Group), Lanee Cui-David (Information Systems Group), and Celia C. King (Resource Management Group), and Commissioner Caesar R. Dulay in compliance with Section 2[54] of RR No. 9-2013. Thereafter, the CIR issued Certificate of Availment in favor of Kepco on December 11, 2017.[55]

A compromise agreement has the effect of *res judicata* on the parties.[56] Compromises are generally to be favored and those entered into in good faith cannot be set aside,[57] except when there is mistake, fraud, violence, intimidation, undue influence,

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[52] *Rollo*, pp. 584-587.

[53] *Id.* at 582.

[54] SECTION 2. AMENDMENT. — Section 6 of Revenue Regulations No. 30-2002 shall now read as follows:

"SEC. 6. APPROVAL OF OFFER OF COMPROMISE. — Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by a majority of all the members of the NEB composed of the Commissioner and the four (4) Deputy Commissioners. All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.

x x x x x x x x x"

[55] *Rollo*, p. 583. Signed by Mr. Alfredo V. Misajon, OIC-ACIR, Collection Service, Head, TWG on Compromise.

[56] See Article 2037, Civil Code. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

[57] See *PNOC v. Court of Appeals, supra* note 45.

or falsity of documents.[58] None of these exceptions obtain in the present case.

To be sure, Kepco already paid 100% of the basic deficiency VAT and 40% of the basic deficiency FWT for TY 2006 in the aggregate amount of ₱134,193,534.12, as evidenced by BIR payment forms.[59] The CIR approved the compromise settlement as early as December 11, 2017. Kepco now only seeks to have the instant case closed and terminated. Thus, to allow the OSG to question the validity of the compromise settlement alleging anomalies in its approval is not only unfair to Kepco and taxpayers alike that entered into compromise agreements in good faith but there will also be no final and definitive settlement of tax compromises. The dissenting opinion of Justice Carpio in *PNOC v. Court of Appeals*[60] is enlightening:

> A compromise agreement constitutes a final and definite settlement of the controversy between the parties. A compromise agreement, even if not judicially approved, has the effect of *res judicata* on the parties. Article 2037 of the Civil Code provides:
>
> > A compromise has upon *the parties the effect and authority of res judicata*; but there shall be no execution except in compliance with a judicial compromise. (Emphasis supplied.)
>
> The compromise agreement has the force of law between the parties and no party may discard unilaterally the compromise agreement. Under Section 8.1 of RMO No. 39-86, upon payment of the compromise amount, the tax "*case is already closed*." The Solicitor General, who withdrew as counsel for the BIR, maintains that the compromise agreement is valid.

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[58] See Art. 2038, Civil Code. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of Article 1330 of this Code.

[59] *Rollo*, pp. 430-441.

VAT	₱	40,963,870.63
VAT	₱	61,445,805.95
FWT	₱	31,783,857.54
Total	₱	134,193,534.12

[60] *Supra* note 45 at 619-622.

Where a party has received the consideration for the compromise agreement, such party is estopped from questioning its terms and asking for the reopening of the case on the ground of mistake. As explained in *McCarthy v. Barber Steamship Lines*:[61]

> *Hence it is general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised*, and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice . . . Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon. x x x
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> x x x x x x x x x
>
> And whether one or the other party understood the law of the case more correctly than the other, cannot be material to the validity of the bargain. For if it were, then it would follow that contracts by the parties settling their own disputes, would at last be made to stand or fall, according to the opinion of the appellate court how the law would have determined it. (Emphasis supplied)

In *People v. Magdaluyo*,[62] the BIR Commissioner approved the agreement which compromised the taxpayer's violation of the Tax Code. The taxpayer paid the compromise amount before the filing of

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[61] G.R. No. L-20410, December 10, 1923.

[62] 122 Phil. 801 (1965).

the criminal information in court. The Court ruled that the government could no longer prosecute the taxpayer for violation of the Tax Code.

The same principle holds true in the present case. **The parties to the compromise agreement have voluntarily settled the tax liability arising from PNB's failure to withhold the final tax on PNOC's interest income. The parties have fully implemented in good faith the compromise agreement. The new BIR Commissioner cannot just annul the legitimate compromise agreements made by his predecessors in the performance of their regular duties where the parties entered into the compromise agreements in good faith and had already fully implemented the compromise agreements.**

To rule otherwise would subject the validity and finality of a tax compromise agreement to depend on the different interpretations of succeeding BIR Commissioners. Such lack of finality of tax compromises would discourage taxpayers from entering into tax compromises with the BIR, considering that compromises entail admissions by taxpayers of violations of tax laws. A tax compromise cannot be invalidated except in case of mistake, fraud, violence, undue influence, or falsity of documents. Article 2038 of the Civil Code provides:

> Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of Article 1330 of this Code.
>
> x x x x x x x x x
>
> (Emphasis supplied)

Article 1330 of the Civil Code makes compromises tainted with such circumstances voidable. In the present case, there is no mistake because PNOC's delinquent account clearly falls within the coverage of EO No. 44. Also, PNOC clearly filed its application for tax compromise before the deadline. Thus, none of the circumstances that make a compromise voidable is present in this case.[63] (Emphasis and underscoring supplied.)

Indeed, while taxes are the lifeblood of the government, the power of taxation should be "exercised with caution to minimize the proprietary rights of a taxpayer. It must be exercised fairly,

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[63] *Supra* note 45 at 622.

equally and uniformly, lest the tax collector kill the "hen that lays the golden egg." x x x [T]o maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."[64] After all, "in balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill of Rights under the Constitution."[65]

Accordingly, we rule that the compromise settlement between Kepco and the CIR is valid. As such, there is nothing left for us to do but to declare the case closed and terminated.

The OSG is entitled to 5% of total deficiency taxes paid by Kepco.

Finally, records show that the OSG acted as counsel for the BIR in the case proceedings before the CTA Division in CTA Case No. 8112. Consistent with R.A. No. 9417,[66] the OSG is entitled to 5% of the total deficiency tax liabilities of Kepco but only for TY 2006.[67] The deficiency tax liabilities of Kepco for TYs 2007 and 2009 are not the subject matter of the present petition.

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[64] *Philex Mining Corp. v. Commissioner of Internal Revenue*, 356 Phil. 189, 202 (1998), citing *Roxas v. Court of Tax Appeals*, 131 Phil. 773 (1968).

[65] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 356 (2014), quoting *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172 (2010).

[66] Otherwise known as "*An Act to Strengthen the Office of the Solicitor General by Expanding and Streamlining its Bureaucracy, Upgrading Employee Skills and Augmenting Benefits, and Appropriating Funds Therefor and for Other Purposes*."

[67] See *Commissioner of Internal Revenue v. Sec. of Justice, et al.*, 799 Phil. 13 (2016).

FOR THESE REASONS, the petition for review is **DISMISSED**; the Manifestation and Motion to Render Judgment on the Case Based on the Parties' Compromise Settlement under Section 204 (A) of the National Internal Revenue Code filed by Kepco Philippines Corporation is **GRANTED**. The case is considered **CLOSED and TERMINATED**.

The Bureau of Internal Revenue is **DIRECTED TO REMIT** 5% of the total compromise amount paid by Kepco Philippines Corporation for taxable year 2006 to the Office of the Solicitor General.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226449. July 28, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FEDERATION OF GOLF CLUBS OF THE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; A PURELY LEGAL ISSUE ALLOWS THE RELAXATION THEREOF; CASE AT BAR. — Giving due course to the petition, the Court held that while the issuance of RMC No. 35-2012, being an interpretative rule, is subject to the review of the Secretary of Finance following Section 4 of the NIRC,

a purely legal issue allows the relaxation of the doctrine of exhaustion of administrative remedies.

2. TAXATION; BUREAU OF INTERNAL REVENUE; REVENUE MEMORANDUM CIRCULAR (RMC) NO. 35-2012; INTERPRETATION CONTAINED THEREIN WAS ERRONEOUS INASMUCH AS IT EFFECTIVELY ERADICATED THE DISTINCTION BETWEEN INCOME AND CAPITAL WHEN IT CLASSIFIED MEMBERSHIP DUES, ASSESSMENT FEES, AND THE LIKE AS INCOME AND THEREFORE SUBJECT TO INCOME TAX; INCOME, DEFINED; MEMBERSHIP FEES, ASSESSMENT DUES, AND OTHER FEES OF SIMILAR NATURE ARE NOT SUBJECT TO INCOME TAX. — As to income tax, the Court declared that the interpretation contained in RMC No. 35-2012 was erroneous inasmuch as it effectively eradicated the distinction between "income" and "capital" when it classified membership dues, assessment fees, and the like as "income" and therefore subject to income tax. Income is defined as "an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment" while capital is the "fund" or "wealth". Based on the foregoing, the Court considered membership fees and the like as "capital", as they are intended for the upkeep of the facilities and operations of the recreational clubs, and not to generate revenue. Thus, it is only the recreational club's *income* which should be subject to taxation, as "the State cannot impose tax on capital as it constitutes an unconstitutional confiscation of property." Thus, membership fees, assessment dues, and other fees of similar nature are not subject to income tax.

3. ID.; ID.; ERRONEOUSLY INCLUDED THE GROSS RECEIPTS OF RECREATIONAL CLUBS ON MEMBERSHIP FEES, ASSESSMENT DUES, AND THE LIKE AS SUBJECT TO VALUE-ADDED TAX (VAT); SECTION 105 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) SPECIFIED THE TAXABILITY OF ONLY THOSE WHICH DEAL WITH THE SALE, BARTER OR EXCHANGE OF GOODS OR PROPERTIES, OR SALE OF SERVICE. — As to VAT, the Court interpreted that RMC No. 35-2012 erroneously included the gross receipts of recreational clubs on membership fees, assessment dues, and the like as subject to VAT because Section 105 of the 1997

NIRC specified the taxability of only those which deal with the "sale, barter or exchange of goods or properties, or sale of service." In collecting such fees from their members, recreational clubs are not selling any kind of service, in the same way that the members are not procuring service from them. Thus, "there could be no sale, barter or exchange of goods or properties, or sale of a service to speak of, which would then be subject to VAT under the 1997 NIRC."

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; INSTANCES WHEN A PETITION THEREFOR MAY BE TREATED AS A PETITION FOR PROHIBITION; CASE AT BAR. — Preliminarily, we recognize our ruling in *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corporation,* citing *Department of Transportation v. Philippine Petroleum Sea Transport Association* and *Diaz v. Secretary of Finance* which declared that although a petition for declaratory relief was improper when assailing government issuances, yet when the issues have "far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority," then a petition for declaratory relief may be treated as a petition for prohibition. In this case, the validity or invalidity of RMC No. 35-2012 would affect all recreational clubs in the Philippines in their liability to pay both income tax and VAT. Moreover, the BIR, in issuing the same, usurped the power of the legislature. In fact, the *ANPC* case discussed that the "sweeping" inclusion of membership dues, assessment fees and the like in the category of "income" and "sale, barter, exchange of goods or properties or sale of service" in income tax and VAT respectively, the BIR exceeded its rule-making authority.

5. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PRINCIPLE OF *STARE DECISIS*; A BAR TO ANY ATTEMPT TO RELITIGATE THE SAME ISSUE WHERE THE SAME QUESTIONS RELATING TO THE SAME EVENT HAVE BEEN PUT FORWARD BY PARTIES SIMILARLY SITUATED AS IN A PREVIOUS CASE LITIGATED AND DECIDED BY A COMPETENT COURT; CASE AT BAR. — The principle of *stare decisis et non quieta movera* ("to adhere to precedents and not to unsettle things which

are established") is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court. In other words, it denies the examination and relitigation of issues where the same had already been decided upon, as judicial decisions form part of our legal system. As such doctrine is grounded upon the stability of judicial decisions, any attempt to abandon any judicial pronouncement requires strong and compelling reasons therefor. Clearly, the issues in this case mirror that of the issues in *ANPC*. In the absence of a compelling reason warranting the disturbance of the Court's ruling, the decision stands. While the provisions of the 1997 NIRC was amended by Republic Act (RA) No. 10963 (The TRAIN Law), the latter neither changed the definition of "income" insofar as income taxation is concerned nor the coverage of VAT. The *rationale* of the Court in *ANPC* is thus *ad rem*. On this note, the resolution of the Court as to the proper interpretation of the RMC No. 35-2012 and its validity must be upheld. Corollary, the RTC, in declaring the invalidity of the RMC No. 35-2012 in its entirety, is improper.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Abejo Tayag & Juarez Law Offices for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated April 29, 2016 and Resolution[3] dated August 10, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 66, which declared invalid Revenue Memorandum Circular (RMC) No. 35-2012 (Clarifying the Taxability of Clubs

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[1] *Rollo*, pp. 10-41.

[2] Penned by Judge Joselito C. Villarosa, *id.* at 48-54.

[3] *Id.* at 55.

Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes) issued by the Commissioner of the Bureau of Internal Revenue (CIR).

The Relevant Antecedents

A petition for declaratory relief, questioning the validity of RMC No. 35-2012 issued by the CIR, was filed by Federation of Golf Clubs of the Philippines, Inc. (FEDGOLF).[4]

RMC No. 35-2012 was issued to clarify the taxability of clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes (recreational clubs). Said RMC subjects the income of recreational clubs from whatever source, including but not limited to *membership fees*, *assessment dues*, rental income, and service fees, to income tax; and the gross receipts of such clubs including but not limited to *membership fees*, *assessment dues*, rental income, and service fees to value-added tax (VAT).

In its Petition,[5] FEDGOLF, among others, alleged that the implementation of the RMC has adverse consequences to it and its members considering that prior to the issuance of the same, membership fees, dues, and assessments received by it and its member golf clubs had not been subjected to income tax and VAT.[6]

Thus, on October 22, 2012, FEDGOLF filed a motion for review and clarification of RMC No. 35-2012, praying for the review of said interpretation to exempt organizations under Section 30 of the 1997 National Internal Revenue Code (NIRC); and to exempt the funds they receive, such as monthly dues, membership dues, and special and necessary assessments from income tax and VAT.[7]

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[4] *Id.* at 48.

[5] *Id.* at 149-175.

[6] *Id.* at 152.

[7] *Id.* at 152.

However, such motion remained unacted upon.[8]

Despite the filing of its petition, FEDGOLF alleged that it has been paying taxes under the assailed RMC under protest.[9]

In its Answer,[10] the CIR asserted that the RTC was bereft of jurisdiction over the case as it was the Court of Tax Appeals which has jurisdiction over the decisions of the CIR or other matters arising under the NIRC or other laws; and that assuming the RTC has jurisdiction over the case, a recreational club is not among the tax-exempt organizations under Section 30 of the 1997 NIRC.

In its Reply,[11] FEDGOLF insisted on the jurisdiction of the RTC as the allegations in the petition clearly established that the case was one for declaratory relief. FEDGOLF likewise stood by its interpretation of the 1997 NIRC as to its exemption from paying income tax and VAT on membership dues and assessments as the latter were considered as contributions to capital, and not income.

In the assailed Decision[12] dated April 29, 2016, the RTC granted the petition. On the issue of jurisdiction, the RTC maintained that all the requisites for a petition for declaratory relief were present in the case; hence being an action incapable of pecuniary estimation, it properly took cognizance of it.

On the propriety of the issuance of RMC No. 35-2012, the RTC declared the same invalid as the CIR exceeded its authority when it effectively imposed tax upon petitioner — a matter within the sole prerogative of the Legislature.

Assuming the validity of CIR's exercise of power to enact said RMC, the RTC nevertheless declared that due process should

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[8] *Id.* at 153.

[9] *Id.*

[10] *Id.* at 199-210.

[11] *Id.* at 211-223.

[12] *Supra* note 2.

have been afforded to recreational clubs before its effectivity, considering that said RMC is a legislative rule, creating additional burden upon recreational clubs.

Assuming further that said RMC is valid, the RTC held that petitioner cannot be held liable for income tax as Section 30[13] of NIRC provides income tax-exemption for non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes. Likewise, VAT on membership dues, assessment fees, and the like of recreational clubs shall not be imposed as Section 105 of NIRC delineates the imposition of VAT only on sale, barter, exchange, lease, rendering of service or importation of goods. In such context, membership dues and the like cannot be considered as payment for the purchase of goods and services. Instead, they are "capital contributions" to defray administrative costs and maintenance expenses of the recreational clubs.

The dispositive portion reads:

WHEREFORE, premises considered, the instant *Petition for Declaratory Relief* is hereby **GRANTED**. Accordingly, RMC No. 35-2012 is hereby declared **NULL and VOID**.

SO ORDERED.[14]

In the Resolution[15] dated August 10, 2016, the RTC denied CIR's motion for reconsideration.

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[13] **SEC. 30.** *Exemptions from Tax on Corporation.* — The following organizations shall not be taxed under this Title in respect to income received by them as such:

x x x x x x x x x

E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person;

x x x x x x x x x

[14] *Id.* at 54.

[15] *Supra* note 3.

Challenging the ruling of the RTC, CIR filed this instant petition.

The Issues

Procedurally, the CIR asserts that FEDGOLF failed to exhaust administrative remedies in filing the petition before the RTC instead of filing the same before the Secretary of Department of Finance; and that the RTC erroneously took cognizance of the petition for declaratory relief, considering FEDGOLF's failure to show that no breach of violation of RMC No. 35-2012 was committed.

Substantively, the CIR insists on the validity of RMC No. 35-2012 as it stemmed from the CIR's exercise of delegated rule-making power.

The Court's Ruling

Notably, the issues in this case were dealt with in the 2019 case of *Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue*.[16]

Preliminarily, the CIR issued RMC No. 35-2012 as a result of the apparent inconsistency among BIR rulings, exempting recreational clubs from income tax and VAT, despite the express and clear mandate of the 1997 NIRC on their taxability.

Thus, to establish uniform interpretation of the 1997 NIRC, RMC No. 35-2012 clarified the taxability of recreational clubs and categorically subjected their income and gross receipts, including but not limited to membership fees, assessment dues, rental income, service fees to both income tax and VAT, respectively, thus:

a. Income tax

Clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are subject to income tax

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[16] G.R. No. 228539, June 26, 2019.

under the National Internal Revenue Code of 1997, as amended. According to the doctrine of *casus omissus pro omisso habendus est*, a person object or thing omitted from an enumeration must be held to have been omitted intentionally. The provision in the National Internal Revenue Code of 1977 which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under National Internal Revenue Code of 1997, as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax.**

b. Value-Added Tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

x x x x x x x x x

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. (Emphasis omitted)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services.

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Clearly, **the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT**.[17] (Emphases supplied)

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[17] RMC No. 35-2012 issued on August 3, 2012.

The CIR, in issuing RMC No. 35-2012, maintained the taxability of the recreational clubs' income because unlike the *1977* NIRC which expressly included recreational clubs,[18] the 1997 NIRC deleted these organizations in the lists of clubs exempted from income taxation:

SEC. 30. Exemptions from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:

(A) Labor, agricultural or horticultural organization not organized principally for profit;

(B) Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;

(D) Cemetery company owned and operated exclusively for the benefit of its members;

(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;

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[18] SEC. 16. Exemptions from tax on corporations. —

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(e) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans, no part of the net income of which inures to the benefit of any private stockholder or individual;

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(F) Business league chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stock-holder, or individual;

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(H) A nonstock and nonprofit educational institution;

(I) Government educational institution;

(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and

(K) Farmers', fruit growers', or like association organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them;

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

With the deletion of recreational clubs from the exemption, the CIR interpreted that their income of *whatever source*, including, but not limited to membership fees, assessment dues, rental income and service fees are subject to tax.

In the imposition of VAT, the CIR maintained that gross receipts of recreational clubs, including, but not limited to membership fees, assessment dues, rental income and service fees are subject to VAT considering that Section 105[19] of the

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[19] SEC. 105. *Persons Liable*. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

1997 NIRC provides for the liability of non-stock, non-profit organization or government entity to VAT on the sale of goods and services.

In *ANPC*, petitioner likewise questioned the validity of RMC No. 35-2012 in a petition for declaratory relief before the RTC. In subjecting membership fees, assessment fees and the like to income tax and VAT, RMC No. 35-2012 was alleged to be invalid, confiscatory, oppressive, and in violation of its right to due process.

Respondent, on the other hand, asserted that petitioner failed to exhaust administrative remedies in filing such petition before the RTC; and stood firm on the validity of the issuance of RMC No. 35-2012.

The trial court denied the petition for declaratory relief and upheld the validity of RMC No. 35-2012 as the issuance thereof is in line with the power of the CIR to interpret laws.

The disposition of the trial court was assailed in a petition for review on *certiorari* filed before the Court.

Giving due course to the petition, the Court held that while the issuance of RMC No. 35-2012, being an interpretative rule, is subject to the review of the Secretary of Finance following

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The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.

This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.

Section 4[20] of the NIRC, a purely legal issue allows the relaxation of the doctrine of exhaustion of administrative remedies.

In a precise disposition, the Court in the *ANPC* case resolved that membership fees, assessment dues, and the like are neither income nor part of gross receipts of recreational clubs; hence, they are not taxable insofar as income tax and VAT are concerned.

As to income tax, the Court declared that the interpretation contained in RMC No. 35-2012 was erroneous inasmuch as it effectively eradicated the distinction between "income" and "capital" when it classified membership dues, assessment fees, and the like as "income" and therefore subject to income tax.

Income is defined as "an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment"[21] while capital is the "fund" or "wealth."[22] Based on the foregoing, the Court considered membership fees and the like as "capital," as they are intended for the upkeep of the facilities and operations of the recreational clubs, and not to generate revenue.

Thus, it is only the recreational club's *income* which should be subject to taxation, as "the State cannot impose tax on capital as it constitutes an unconstitutional confiscation of property."[23] Thus, membership fees, assessment dues, and other fees of similar nature are not subject to income tax.

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[20] SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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[21] *Supra* note 16, citing *Conwi v. Court of Tax Appeals*, G.R. No. L-48532, August 31, 1992, 213 SCRA 83.

[22] *Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue*, *supra* note 16, citing *Madrigal v. Rafferty*, 38 Phil. 414 (1918).

[23] *Supra* note 16.

The Court categorically determined:

> **In fine, *for as long as* these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax." Instead, they only form part of capital from which no income tax may be collected or imposed.** (Citation omitted).

As to VAT, the Court interpreted that RMC No. 35-2012 erroneously included the gross receipts of recreational clubs on membership fees, assessment dues, and the like as subject to VAT because Section 105 of the 1997 NIRC specified the taxability of only those which deal with the "sale, barter or exchange of goods or properties, or sale of service." In collecting such fees from their members, recreational clubs are not selling any kind of service, in the same way that the members are not procuring service from them. Thus, "there could be no sale, barter or exchange of goods or properties, or sale of a service to speak of, which would then be subject to VAT under the 1997 NIRC."

The Court thus declared that the interpretation of the CIR as embodied in RMC No. 35-2012 was invalid only insofar as the inclusion of fees, which by nature are devoted to the maintenance and upkeep of recreational clubs, within the coverage of income tax and VAT for the CIR exceeded its rule-making authority in such respect. In its *fallo*, the Court pronounced:

> **WHEREFORE**, the petition is **GRANTED**. The Decision dated July 1, 2016 and Order dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134 in Special Civil Case No. 14-985, are hereby **SET ASIDE**. The Court **DECLARES** that membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofit purposes do not constitute as: ***(a)*** "the income of recreational clubs of whatever source" that are "subject to

income tax" and ***(b)*** part of the "gross receipts of recreational clubs" that are "subject to [Value-Added Tax]." Accordingly, Revenue Memorandum Circular No. 35-2012 should be interpreted in accordance with this Decision.

SO ORDERED.

Preliminarily, we recognize our ruling in *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corporation*,[24] citing *Department of Transportation v. Philippine Petroleum Sea Transport Association*[25] and *Diaz v. Secretary of Finance*,[26] which declared that although a petition for declaratory relief was improper when assailing government issuances, yet when the issues have "far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority," then a petition for declaratory relief may be treated as a petition for prohibition.

In this case, the validity or invalidity of RMC No. 35-2012 would affect all recreational clubs in the Philippines in their liability to pay both income tax and VAT. Moreover, the BIR, in issuing the same, usurped the power of the legislature. In fact, the *ANPC* case discussed that the "sweeping" inclusion of membership dues, assessment fees and the like in the category of "income" and "sale, barter, exchange of goods or properties or sale of service" in income tax and VAT respectively, the BIR exceeded its rule-making authority.

Considering the ruling of the Court in *ANPC*, which resolved the validity of RMC No. 35-2012, the doctrine of *stare decisis* finds application.

The principle of *stare decisis et non quieta movera* ("to adhere to precedents and not to unsettle things which are established")

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[24] G.R. No. 215801, January 15, 2020.

[25] G.R. No. 230107, July 24, 2018.

[26] 669 Phil. 371 (2011).

is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court.[27] In other words, it denies the examination and relitigation of issues where the same had already been decided upon, as judicial decisions form part of our legal system.[28]

As such doctrine is grounded upon the stability of judicial decisions, any attempt to abandon any judicial pronouncement requires strong and compelling reasons therefor.[29]

Clearly, the issues in this case mirror that of the issues in *ANPC*. In the absence of a compelling reason warranting the disturbance of the Court's ruling, the decision stands. While the provisions of the 1997 NIRC was amended by Republic Act (RA) No. 10963 (The TRAIN Law), the latter neither changed the definition of "income" insofar as income taxation is concerned nor the coverage of VAT. The *rationale* of the Court in *ANPC* is thus *ad rem*. On this note, the resolution of the Court as to the proper interpretation of the RMC No. 35-2012 and its validity must be upheld. Corollary, the RTC, in declaring the invalidity of the RMC No. 35-2012 in its entirety, is improper.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated April 29, 2016 and Resolution dated August 10, 2016 of the Regional Trial Court of Makati City, Branch 66 are **REVERSED and SET ASIDE** insofar as it declared Revenue Memorandum Circular No. 35-2012 invalid in its entirety.

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[27] See *Tala Realty Services Corp., Inc. v. Banco Filipino Savings & Mortgage Bank*, 488 Phil. 19, 28-30 (2016).

[28] ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[29] See *Lazatin v. Desierto*, 606 Phil. 271, 282-283 (2009).

Accordingly, the interpretation of the Bureau of Internal Revenue in Revenue Memorandum Circular No. 35-2012 **REMAINS INVALID** insofar as it subjected membership dues, assessment fees, and those of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes to income tax and Value-Added Tax.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226761. July 28, 2020]

FIL-AGRO RURAL BANK, INC., through the PHILIPPINE DEPOSIT INSURANCE CORP. (PDIC), as Liquidator, *petitioner*, *vs.* **ANTONIO J. VILLASEÑOR, JR.,** *respondent*.

[G.R. No. 226889. July 28, 2020]

ANTONIO J. VILLASEÑOR, JR., *petitioner*, *vs.* **FIL-AGRO RURAL BANK, INC., through the PHILIPPINE DEPOSIT INSURANCE CORP. (PDIC), as Liquidator and WILFREDA V. VILLASEÑOR,** *respondents*.

SYLLABUS

1. MERCANTILE LAW; BANKS AND BANKING; LIQUIDATION OF A CLOSED BANK; IF THERE IS A JUDICIAL LIQUIDATION OF AN INSOLVENT BANK

ALL CLAIMS AGAINST THE BANK SHOULD BE FILED IN THE LIQUIDATION PROCEEDING. — [Section 30 of Republic Act No. 7653 (R.A. 7653)] recognizes the exclusive jurisdiction of the liquidation court to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by the PDIC for general application to all closed banks. Simply put, if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in the liquidation proceeding. This holds true regardless of whether or not the claim is initially disputed in a court or agency before it is filed with the liquidation court.

2. ID.; ID.; ID.; ID.; "DISPUTED CLAIMS" COVER ALL CLAIMS WHETHER THEY BE AGAINST THE ASSET OF THE INSOLVENT BANK FOR SPECIFIC PERFORMANCE, BREACH OF CONTRACT, DAMAGES OR WHATEVER. — Jurisprudentially, it has long been resolved that "disputed claims" covers **all claims** whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages or whatever. The term is defined in an all-encompassing and broad manner so as to include any cause of action against the insolvent bank, regardless of its nature or character, irrespective of whether the relief sought would directly affect the property of the bank under liquidation. In fact, Section 30(2) of R.A. 7653 authorizes the receiver to defend ***any action*** against the insolvent bank.

3. REMEDIAL LAW; CIVIL PROCEDURE; CONSOLIDATION; PROPRIETY OF CONSOLIDATION OF CASES IS A MATTER ADDRESSED TO THE SOUND DISCRETION OF THE COURT. — The propriety of consolidation of cases is a matter addressed to the sound discretion of the court taking into account its purpose or object, to wit: (1) avoid multiplicity of suits; (2) guard against oppression or abuse; (3) prevent delay; (4) clear congested dockets; (5) simplify the work of the trial court; and (6) save unnecessary costs and expense. The framers of the law contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate its operations. It is precisely for these reasons that the appellate court ordered the

consolidation of the civil case with the liquidation proceedings. Thus, the CA did not err in allowing the consolidation if only to "prevent confusion, avoid multiplicity of suites and to save unnecessary cost and expenses."

4. ID.; ID.; JUDGMENTS; JUDGMENT RENDERED BY A COURT WITHOUT JURISDICTION IS NULL AND VOID, CREATES NO RIGHTS, AND PRODUCES NO EFFECT. — Time and again, the Court has held that a judgment rendered by a court without jurisdiction is null and void, creates no rights, and produces no effect. It may be attacked anytime since a void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.

APPEARANCES OF COUNSEL

Angeles & Angeles Law Offices for Fil-Agro Rural Bank, Inc.

Divino and Gavino for Antonio J. Villaseñor, Jr.

Salvador M. Solis for Wilfreda Villaseñor.

D E C I S I O N

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

Before the Court are consolidated Petitions for Review on *Certiorari*[1] assailing the Decision[2] dated May 23, 2016 and the Resolution[3] dated August 31, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143330, which affirmed the Orders

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[1] *Rollo* (G.R. No. 226761), pp. 13-31; *rollo* (G.R. No. 226889), pp. 38-59.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla (now a Member of the Court) and Socorro B. Inting, concurring; *rollo* (G.R. No. 226761), pp. 58-69.

[3] *Rollo* (G.R. No. 226761), pp. 71-73.

dated June 29, 2015[4] and September 28, 2015[5] of the Regional Trial Court (RTC), Branch 155, Pasig City in Civil Case No. 74399 entitled, "*Antonio Villaseñor, Jr. vs. Wilfreda V. Villaseñor, Fil-Agro Rural Bank, Inc. and the Register of Deeds [of] Pasig City*."

The Antecedents

On June 23, 2014, Antonio J. Villaseñor, Jr. (Antonio) filed a complaint for Declaration of Nullity of Real Estate Mortgages and Quieting of Title with Damages before the RTC of Pasig City, seeking to nullify the real estate mortgages dated May 10, 2012 and June 20, 2012 executed by his wife Wilfreda V. Villaseñor (Wilfreda) in favor of Fil-Agro Rural Bank, Inc. (Fil-Agro). Antonio alleged that Wilfreda mortgaged their conjugal properties covered by Transfer Certificate of Title (TCT) No. PT-90776 and TCT No. PT-127965 to Fil-Agro, without his knowledge and consent while he was working abroad.

Sometime in September 2014, the Bangko Sentral ng Pilipinas (BSP) placed Fil-Agro under the receivership of the Philippine Deposit Insurance Corporation (PDIC).

On September 30, 2014, Fil-Agro's counsel filed a withdrawal of appearance and requested that future notices/processes of the court, as well as pleadings, motions, and/or correspondence pertaining to the case be sent directly to the PDIC or to the bank's new counsel.[6]

On March 17, 2015, the RTC set the case for a pre-trial conference on June 29, 2015. The notices of the court were sent to Fil-Agro's address as there was no entry of appearance or motion for substitution of new counsel for and on behalf of Fil-Agro.[7]

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[4] *Id.* at 115.

[5] *Id.* at 117.

[6] *Rollo* (G.R. No. 226761), p. 201.

[7] *Rollo* (G.R. No. 226889), p. 42.

On June 23, 2015, the Office of the General Counsel of the PDIC filed an Entry of Appearance with Motion to Suspend Proceedings. The motion was set for hearing on June 29, 2015.[8]

On June 26, 2015, the PDIC filed an urgent motion to cancel the June 29, 2015 hearing because its counsel was already set to appear in another hearing in Makati RTC.[9]

On June 29, 2015, the pre-trial conference proceeded. Antonio's counsel, armed with a Special Power of Attorney, appeared on behalf of his client who was then working abroad. Antonio, through his counsel, filed his pre-trial brief, the judicial affidavit of his witnesses and his documentary evidence in compliance with the order of the RTC.[10] Wilfreda and Fil-Agro, on the other hand, failed to appear at the pre-trial conference and submit the judicial affidavits of their witnesses. Thus, Antonio's counsel moved in open court that they be declared in default and that Antonio be allowed to present his evidence *ex parte*, which was granted by the RTC. Further, Antonio moved that the PDIC's urgent motion to cancel hearing be denied, but the RTC did not act on the motion.[11]

On August 20, 2015, Atty. Ricardo C. Angeles filed his Entry of Appearance for Fil-Agro.[12]

On September 7, 2015, the RTC informed Fil-Agro's counsel that Antonio was already allowed to present his evidence *ex parte* on September 18, 2015.[13]

Fil-Agro filed a Motion for Reconsideration dated September 16, 2015 and set it for hearing on September 18, 2015. Antonio

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[8] *Id.* at 42-43.

[9] *Id.* at 43.

[10] *Id.*

[11] *Id.* at 44.

[12] *Id.* at 45.

[13] *Id.*

claims that he received Fil-Agro's motion only on September 22, 2015, in violation of the three-day notice rule.[14]

On September 28, 2015, the RTC denied Fil-Agro's motion for reconsideration for being *pro forma*.[15]

On November 16, 2015, Antonio filed an *Ex Parte* Manifestation with Motion to Admit Formal Offer of Evidence. Acting on the motion, the RTC admitted all the documentary exhibits formally offered and considered the case submitted for decision.[16]

Fil-Agro then filed a Petition for *Certiorari* dated December 11, 2015 seeking to annul the RTC Orders dated June 29, 2015 and September 28, 2015. It contended that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it considered Fil-Agro's motion as *pro forma* and when it failed to consolidate the case with the liquidation proceedings.

In its Decision dated May 23, 2016, the CA partly granted Fil-Agro's petition. It ordered the consolidation of the case with the liquidation proceedings before the RTC, Branch 15, Malolos City (the liquidation court) on the ground that Antonio's action for quieting of title and damages against Fil-Agro is a disputed claim falling within its jurisdiction pursuant to Section 30 of Republic Act (R.A.) No. 7653 or the New Central Bank Act.

The appellate court, on the other hand, sustained the Orders dated June 29, 2015 and September 28, 2015 of the RTC. It held that the RTC did not commit grave abuse of discretion when it declared Fil-Agro and Wilfreda in default for failure to: (1) appear at the scheduled pre-trial conference; (2) submit their pre-trial briefs at least three days before the scheduled pre-trial; and (3) provide valid reason therefor, and allowed

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[14] *Id.*

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

[16] *Id.* at 46.

Antonio to present his evidence *ex parte* citing as basis Sections 4 and 5, Rule 18 of the Rules of Court. It likewise stated that the RTC correctly considered Fil-Agro's motion as *pro forma* for failure to conform to the mandatory requirements for the court to validly take cognizance of the motion and act on it under Sections 4 and 5, Rule 15 of the Rules of Court.

Hence, the instant petitions.

Antonio asserts that his complaint for declaration of nullity of real estate mortgage and quieting of title with damages is one incapable of pecuniary estimation and is within the jurisdiction of the RTC under Section 19 (1) of *Batas Pambansa Bilang* 129. He finds the consolidation of the cases improper and argues that the CA failed to consider that a claim falls under the jurisdiction of the liquidation court when it involves a property that forms part of the assets of the institution under liquidation. He asseverates that the subject properties in this case had not yet qualified as assets of the bank since they have not been foreclosed by Fil-Agro. Further, he insists that the CA erred when it applied the case of *Vda. de Ballesteros v. Rural Bank of Canaman, Inc.*,[17] where the Court ordered the consolidation of a case arising from a complaint for annulment of deed of mortgage and damages with prayer for preliminary injunction with the liquidation proceedings. He points out that in *Vda. de Ballesteros*, foreclosure was already made and the property involved was already owned by the insolvent bank.[18]

Fil-Agro, on the other hand, contends that the CA's ruling that the case must be consolidated with the liquidation court renders the June 29, 2015 and September 28, 2015 RTC Orders void.[19]

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[17] 650 Phil. 476 (2010).

[18] *Rollo* (G.R. No. 226889), pp. 50-57.

[19] *Id.* at 27.

Issues

The issues raised by Antonio and Fil-Agro may be summarized as follows:

(1) Whether or not consolidation of the instant civil case for annulment of real estate mortgage, quieting of title, and damages with the liquidation case is proper; and

(2) Whether or not the June 29, 2015 and September 28, 2015 Orders of the RTC are valid.

The Court's Ruling

We grant Fil-Agro's petition.

During the pendency of the civil case with the RTC of Pasig City, Fil-Agro was placed under the receivership of the PDIC pursuant to Resolution No. 1486 of the Monetary Board of the BSP.[20] Thereafter, the RTC of Malolos City was constituted as the liquidation court tasked to adjudicate disputed claims against Fil-Agro and assist the PDIC in undertaking its liquidation.

Section 30 of R.A. No. 7653 reads:

SEC. 30. *Proceedings in Receivership and Liquidation*. — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

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[20] See Memorandum No. M-2014-03 of the Bangko Sentral ng Pilipinas<http:/www.bsp.gov.ph/downloads/regulations/attachments/2014/m037.pdf>(visited on June 5, 2020).

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution, in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designated as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: *Provided*, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors and creditors and the general public: *Provided*, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file [*ex parte*] with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, **adjudicate disputed claims** against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) convert the assets of the institutions to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in [*custodia legis*] in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. (Emphasis and underscoring supplied)

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The above legal provision recognizes the exclusive jurisdiction of the liquidation court to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by the PDIC for general application to all closed banks.[21] Simply put, if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in the liquidation proceeding.[22] This holds true regardless of whether or not the claim is initially disputed in a court or agency before it is filed with the liquidation court.[23]

Antonio, however, insists that his claim against Fil-Agro is not a disputed claim within the purview of Section 30 of R.A. No. 7653 because ownership of the mortgaged property has not yet vested on Fil-Agro. He maintains that the Court's ruling in *Vda. de Ballesteros* cannot be applied here where foreclosure of the subject properties was not made by the insolvent bank.

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[21] *Cu v. Small Business Guarantee and Finance Corp.*, 815 Phil. 617 (2017).

[22] *Cudiamat v. Batangas Savings and Loan Bank, Inc.*, 628 Phil. 641 (2010).

[23] *Ong v. Court of Appeals*, 323 Phil. 126, 131 (1996).

The argument is bereft of substance.

Jurisprudentially, it has long been resolved that "disputed claims" covers **all claims** whether they be against the assets of the insolvent bank, for specific performance, breach of contract, damages or whatever.[24] The term is defined in an all-encompassing and broad manner so as to include any cause of action against the insolvent bank, regardless of its nature or character, irrespective of whether the relief sought would directly affect the property of the bank under liquidation. In fact, Section 30 (2) of R.A. 7653 authorizes the receiver to defend ***any action*** against the insolvent bank. Moreover, in *Provident Savings Bank v. Court of Appeals*,[25] we have held:

> When a bank is prohibited from continuing to do business by the Central Bank and a receiver is appointed for such bank, that bank would not be able to do new business, i.e., to grant new loans or to accept new deposits. However, the receiver of the bank is in fact obliged to collect debts owing to the bank, which debts form part of the assets of the bank. The receiver must assemble the assets and pay the obligation of the bank under receivership, and take steps to prevent dissipation of such assets. Accordingly, the receiver of the bank is obliged to collect pre-existing debts due to the bank, and in connection therewith, to foreclose mortgages securing such debts. (Underscoring supplied)

Here, when Antonio filed the complaint for annulment of the mortgages, he is essentially assailing Fil-Agro's right to foreclose the mortgages constituted to secure the principal obligation, including the closed bank's right to sell the property and apply the proceeds of the sale to the satisfaction of the unpaid loan.[26] Indubitably, the claim lodged by Antonio is a disputed claim over which the RTC of Malolos City sitting as liquidation court has jurisdiction.

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[24] *Miranda v. Philippine Deposit Insurance Corp.*, 532 Phil. 723 (2006); *Ong v. Court of Appeals, id.*

[25] G.R. No. 97218, March 17, 1993.

[26] *Lotto Restaurant Corp. v. BPI Family Savings Bank, Inc.*, 662 Phil. 267 (2011).

The propriety of consolidation of cases is a matter addressed to the sound discretion of the court taking into account its purpose or object, to wit: (1) avoid multiplicity of suits; (2) guard against oppression or abuse; (3) prevent delay; (4) clear congested dockets; (5) simplify the work of the trial court; and (5) save unnecessary costs and expense.[27] The framers of the law contemplated that for convenience, only one court, if possible, should pass upon the claims against the insolvent bank and that the liquidation court should assist the Superintendents of Banks and regulate its operations.[28] It is precisely for these reasons that the appellate court ordered the consolidation of the civil case with the liquidation proceedings. Thus, the CA did not err in allowing the consolidation if only to "prevent confusion, avoid multiplicity of suits and to save unnecessary cost and expenses."[29]

Anent the second issue, the June 29, 2015 and September 28, 2015 assailed Orders are void and without any legal effect.

Time and again, the Court has held that a judgment rendered by a court without jurisdiction is null and void, creates no rights, and produces no effect. It may be attacked anytime since a void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[30]

In this case, it is settled that the RTC of Pasig City sitting as a court of general jurisdiction has no jurisdiction over Antonio's complaint. It is the RTC of Malolos City which has jurisdiction over all claims against Fil-Agro. Consequently, any decision, judgment, or resolution rendered or order issued by the RTC of Pasig City is null and void and of no force and binding effect.

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[27] *Republic v. Mangrobang*, 422 Phil. 178 (2001).

[28] *Manalo v. Court of Appeals*, 419 Phil. 215 (2001).

[29] *Rollo* (G.R. No. 226761), p. 68.

[30] *Tan v. Cinco*, 787 Phil. 441 (2016).

WHEREFORE, the petition in **G.R. No. 226889** is **DENIED**, while the petition in **G.R. No. 226761** is **GRANTED**. The Decision dated May 23, 2016 and the Resolution dated August 31, 2016 of the Court of Appeals in CA-G.R. SP No. 143330 are hereby **AFFIRMED** with **MODIFICATION** in that the Orders dated June 29, 2015 and September 28, 2015 rendered by the Regional Trial Court of Pasig City Branch 155 in Civil Case No. 74399 are hereby declared **NULL** and **VOID** for lack of jurisdiction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 228825. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO MANANSALA *y* PABALAN *a.k.a.* "EDDIE",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — To be able to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty: (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.

2. ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF R.A. 9165. — The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of R.A. No. 9165. It provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. x x x Summarily, the law commands that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused or his representative or counsel, and three other witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official. Compliance with the requirements prevents opportunities for planting, contaminating, or tampering of evidence in any manner and thereby assures the integrity of the seized illegal drugs.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE CHAIN OF CUSTODY; EFFECT. — Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused. x x x Non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not in itself render the confiscated drugs inadmissible, as the desire for a perfect and unbroken chain of custody rarely occurs, but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165.

4. ID.; ID.; ID.; DEVIATION FROM THE MANDATORY PROCEDURAL REQUIREMENTS; WHEN ALLOWED; REQUISITES. — [B]efore a deviation from the mandatory procedural requirements under Section 21, Article II of R.A. No. 9165 may be allowed, the following requisites must be satisfied: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved. However, in order for such saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses. Also, 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.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; THE PRESUMPTION THAT THE POLICE OFFICERS HAVE REGULARLY PERFORMED THEIR DUTY IS INAPPLICABLE WHERE THE RECORD IS REPLETE WITH EVIDENCE SHOWING THE ARRESTING OFFICERS' FAILURE TO STRICTLY COMPLY WITH THE MANDATORY LANGUAGE OF SECTION 21 OF R.A. 9165. — It is important to note that while the police officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law. This presumption is inapplicable to the present case because the record is replete with evidence showing the arresting officers' failure to strictly comply with the mandatory language of Section 21, Article II of R.A. No. 9165. x x x Simply put, this presumption – gratuitously invoked in instances such as this – does not serve to cure the lapses and deficiencies on the part of the arresting officers. It cannot likewise overcome the constitutional presumption of innocence accorded the accused. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21, Article II of R.A. No. 9165 were strictly observed. It should be emphasized that Section 21 is a matter of substantive law, which should not be disregarded as a procedural technicality.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

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

This resolves the appeal filed by accused-appellant Eduardo Manansala *y* Pabalan also known as "Eddie" (accused-appellant) from the Decision[1] dated June 14, 2016 of the Court of Appeals

[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla (now a Member of the Court), concurring; *rollo*, pp. 2-13.

(CA) in CA-G.R. CR-HC No. 07304 affirming the Decision[2] of the Regional Trial Court (RTC), Branch 57, Angeles City, in Criminal Case No. DC-08-1321 finding him guilty beyond reasonable doubt of selling dangerous drugs, defined and penalized under Section 5 of Republic Act (R.A.) No. 9165[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

Accused-appellant was charged before the RTC for violating Section 5, Article II of R.A. No. 9165, *viz.*:

> That on or about the 21st day of July 2008, in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously, sell and/or deliver to poseur buyer Two (2) pcs of paper each containing small cubes of Marijuana Fruiting Tops (Tetahydro Cannabinol) TWO GRAMS AND EIGHT THOUSAND TEN THOUSANDTHS (2.8010) OF A GRAM and THREE GRAMS and SIX THOUSAND THREE HUNDRED SEVENTY TEN THOUSANDTHS (3.6370) OF A GRAM with a total weight of SIX GRAMS and FOUR THOUSAND THREE HUNDRED EIGHTY TEN THOUSANDTHS (6.4380) OF A GRAM, which is a dangerous drug, without authority whatsoever.
>
> CONTRARY TO LAW.[4]

On arraignment on August 5, 2008, accused-appellant pleaded "not guilty." Trial ensued.

The facts, as found by the appellate court, are as follows:

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[2] CA *rollo*, pp. 44-53.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[4] *Rollo*, p. 3.

Around 2:45 p.m. on July 21, 2008, a confidential informant (CI) appeared before the Angeles City Police Office and reported to Police Senior Inspector Melencio Santos (PSI Santos) the illegal drug activities of accused-appellant in Sitio Balibago, Malabañas, Angeles City. PSI Santos gathered his team and conducted a briefing for the conduct of a buy-bust operation.

The CI was assigned to act as *poseur*-buyer and he/she shall be accompanied by Senior Police Officer 1 Tomas Nachor, Jr. (SPO1 Nachor) while Police Officer 2 Raymond Dayrit (PO2 Dayrit) and the rest of the team shall act as perimeter backup. The team prepared two hundred-peso bills as buy-bust money.

At around 3:00 p.m., the team proceeded to Sitio Balibago. Upon arrival at the target area, SPO1 Nachor and the CI walked towards a *sari-sari* store while the rest of the team positioned themselves around five meters away. Shortly thereafter, accused-appellant arrived and approached the CI. SPO1 Nachor, who was just arm's length from the CI and accused-appellant, saw the latter delivering to the CI a paper wrapper containing two plastic sachets of dried *marijuana* fruiting tops in exchange for the buy-bust money. SPO1 Nachor immediately gestured the pre-arranged signal by removing his ball cap and the backup members rushed to the scene and assisted in arresting accused-appellant. The CI turned over the two plastic sachets to SPO1 Nachor.

The team brought accused-appellant and the seized plastic sachets to the police station. There, the seized items were inventoried in the presence of accused-appellant. SPO1 Nachor submitted the seized items to the Philippine National Police Regional Crime Laboratory for examination. Upon examination of Forensic Chemist Ma. Luisa Gundran-David, the items tested positive for *marijuana*.

Accused-appellant maintained, however, that at around 2:00 p.m. on July 21, 2008, he was at home fixing his tri-bike and manning his store when a man suddenly grabbed him. He resisted and asked why he was being grabbed. But the latter did not answer him. Another man came and the two boarded accused-

appellant to a van where he was bodily searched. After a while, the men showed him something that was allegedly seized from him and asked why he was selling drugs. He denied the accusations. Still, he was brought to the Philippine Drug Enforcement Agency office and was told that if he can pinpoint somebody, they will release him. Because he did not know anything about the case, he did not point to anyone.[5]

The Ruling of the RTC

On December 16, 2014, the RTC rendered a Decision[6] finding the accused-appellant guilty in Criminal Case No. DC-08-1321 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing him to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.

In convicting the accused-appellant for violation of Section 5, Article II of R.A. No. 9165, the RTC was convinced that the prosecution was able to prove the elements of the crime beyond reasonable doubt. It brushed aside accused-appellant's defense of denial and frame-up, and further mentioned accused-appellant's failure to present any evidence of ill motive on the part of the prosecution witnesses to falsely impute the commission of the said crime upon him. The RTC expounded that without proof of ill motive, the testimonies of the police officers deserve full faith and credit and they are presumed to have performed their duties in a regular manner.

While the RTC recognized that the police officers failed to comply with the procedure under Section 21 of R.A. No. 9165 in that no representative of the Department of Justice (DOJ), media, nor a *barangay* official witnessed the inventory of seized items, it nevertheless held that the integrity and evidentiary value of the seized drugs had been duly preserved by the unbroken chain of custody of the *corpus delicti*.

Thus, the trial court disposed in this wise:

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[5] *Id.* at 5-6.

[6] Penned by Judge Omar T. Viola, *supra* note 2.

WHEREFORE, the prosecution having presented convincing evidence that the accused is liable for the offense charged and having proven his guilt beyond reasonable doubt, the Court hereby finds accused EDUARDO MANANSALA y PABALAN, GUILTY of the offense as charged for Violation of Section 5 of R.A. 9165 and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, for Violation of Section 5, R.A. 9165 and a fine of Php500,000.00.

SO ORDERED.[7]

Aggrieved, accused-appellant elevated the case to the CA *via* a Notice of Appeal.

The Ruling of the CA

In its assailed Decision,[8] the CA affirmed the findings of the RTC that the elements for the prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 were met. It also agreed with the lower court that non-compliance by the police officers with the procedure laid down in Section 21, Article II of R.A. No. 9165 was not fatal to the prosecution's cause considering that it was able to sufficiently prove the unbroken chain of custody of the two plastic sachets containing *marijuana*, from the moment it came into the possession of SPO1 Nachor, until the same was brought to the crime laboratory for testing, and its subsequent presentation in court. The CA brushed aside accused-appellant's defenses of denial and frame-up for being unmeritorious in light of his failure to present strong and concrete evidence that would support his claim, as well as any ill motive on the part of the police officers to concoct the false charge against him. Such defenses cannot prevail over the positive assertions of the police officers who were deemed to have performed their official duties in a regular manner. The dispositive portion of the CA Decision reads:

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[7] *Rollo*, p. 6.

[8] *Supra* note 1.

WHEREFORE, premises considered, the Decision dated 16 December 2014 of the Regional Trial Court (RTC), Branch 57, Angeles City, in Criminal Case No. DC-08-1321 is hereby AFFIRMED [*IN TOTO*]. Costs against accused-appellant.

SO ORDERED.[9]

Hence, this petition. Accused-appellant centers his defense on the failure of the police officers to comply with the mandatory procedure in Section 21, Article II of R.A. No. 9165 relative to the handling of the seized *marijuana*. In particular, they contend that the police officers conducted the inventory without the presence of a representative from the DOJ and the media, and any elected public official. Accused-appellant likewise questions the non-presentation of the CI and argues that the same is fatal to the prosecution's case because it is only he who could testify on what transpired during the sale transaction.[10]

The Issue

The primordial issue for determination is whether accused-appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

The Court's Ruling

To be able to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty: (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.[11] It is likewise absolutely necessary for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this,

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[9] *Rollo*, p. 12.

[10] CA *rollo*, pp. 26-42.

[11] *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

it is incumbent that the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[12]

The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of R.A. No. 9165.[13] It provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[14] It provides:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

The Implementing Rules and Regulations (IRR) of R.A. No. 9165, on the other hand, filled in the void of the law by providing the specific details such as the place where the physical inventory and photographing of seized items should be accomplished and added a *proviso* on acceptable deviation from

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[12] *People v. Año*, G.R. No. 230070, March 14, 2018.

[13] *People v. Luna*, G.R. No. 219164, March 21, 2018.

[14] *Belmonte v. People*, 811 Phil. 844, 856 (2017).

strict compliance of the law based on justifiable grounds. It 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:
>
> > (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 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: *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[.]

Summarily, the law commands that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused or his representative or counsel, and three other witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official.[15] Compliance with the requirements prevents opportunities for planting,

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[15] *People v. Malabanan,* G.R. No. 241950, April 10, 2019.

contaminating, or tampering of evidence in any manner and thereby assures the integrity of the seized illegal drugs. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.[16] Such stringent requirement was placed as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[17] In *People v. Malabanan*,[18] the Court enunciated the two-fold purpose Section 21, Article II of R.A. No. 9165 seeks to achieve, *viz.*:

> The procedure set forth under Section 21 of R.A. No. 9165 serves a two-fold purpose. *First*, it protects individuals from unscrupulous members of the police force who are out to brandish the law on the innocent for personal gain or otherwise. *Second*, a faithful compliance of Section 21 of R.A. No. 9165 benefits the police and the entire justice system as it assures the public that the accused was convicted on the strength of uncompromised and unquestionable evidence. It dispels any thought that the case against the accused was merely fabricated by the authorities.

In the present case, it is undisputed that the police officers failed to comply with the three-witness rule under Section 21 mentioned above. The prosecution never hid this fact nor made any attempt to deny the absence of the insulating witnesses during the inventory of the confiscated items. However, the prosecution takes exception to the three-witness rule on the ground that it had been able to sufficiently prove the integrity of the drugs seized from the accused-appellant, as well as the unbroken chain of custody of the same. In other words, they

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[16] *People v. Adobar*, G.R. No. 222559, June 6, 2018.

[17] *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 246.

[18] *Supra* note 15.

claimed that since the prosecution had been able to show that the drugs sold by the accused-appellant were the very same drugs seized by the police officers, marked, inventoried and subjected to laboratory examination which tested positive for *marijuana* and ultimately presented before the court as evidence against them, the proper chain of custody of the drugs was sufficiently established.

Such assertion has no merit. In *People v. Mendoza*[19] the Court stressed that:

> The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 [a] *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 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 [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.

To be sure, non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not in itself render the confiscated drugs inadmissible,[20] as the desire for a perfect and unbroken chain of custody rarely occurs,[21] but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165.[22] However, for the above-saving clause to apply, the prosecution must be able to reasonably explain the procedural lapses. More importantly,

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[19] 736 Phil. 749, 764 (2014).

[20] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

[21] *People v. Abdula*, G.R. No. 212192, November 21, 2018.

[22] *People v. Luna*, *supra* note 13.

the integrity and value of the seized evidence should have been preserved.[23] Stated otherwise, before a deviation from the mandatory procedural requirements under Section 21, Article II of R.A. No. 9165 may be allowed, the following requisites must be satisfied: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved.[24] However, in order for such saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.[25] Also, 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.[26]

In this case, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of R.A. No. 9165 must be adduced. Unfortunately, the prosecution failed to do so. In fact, it offered no explanation as to why no representative from the media and the DOJ, and an elected public official were present during the inventory of the seized items. Considering that the saving clause was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial.[27] Even the identification of the seized evidence in court during the trial became ambiguous *and* unreliable, rendering the proof of the links in the chain of custody of the *corpus delicti* unworthy of belief.[28]

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[23] *People v. Ching*, 819 Phil. 565, 578 (2017), citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[24] See *People v. Luna, supra* note 13.

[25] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[26] *People v. Belmonte*, G.R. No. 224588, July 4, 2018.

[27] *People v. Luna, supra* note 13.

[28] *People v. Alagarme, supra* note 25.

It is important to note that while the police officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law.[29] This presumption is inapplicable to the present case because the record is replete with evidence showing the arresting officers' failure to strictly comply with the mandatory language of Section 21, Article II of R.A. No. 9165. As the Court judiciously held in *Mallillin v. People*:[30]

> Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the [CA] on the presumption of regularity in the conduct of police duty is manifestly misplaced. The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

Simply put, this presumption — gratuitously invoked in instances such as this — does not serve to cure the lapses and deficiencies on the part of the arresting officers. It cannot likewise overcome the constitutional presumption of innocence accorded the accused. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21, Article II of R.A. No. 9165 were strictly observed. It should be emphasized that Section 21 is a matter of substantive law, which should not be disregarded as a procedural technicality.[31]

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[29] *People v. Dela Cruz*, 744 Phil. 816, 832 (2014), citing *People v. Nandi*, 639 Phil. 134, 146 (2010).

[30] *Mallillin v. People*, 576 Phil. 576, 593 (2008).

[31] *People v. Geronimo*, 817 Phil. 1163 (2017).

In view of the foregoing premises and conclusions, it is no longer necessary to discuss the other issues raised in the instant petition.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 14, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07304 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Eduardo Manansala *y* Pabalan also known as "Eddie" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 229514. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ESMERALDO "JAY" AMURAO *y* TEJERO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — Factual findings of the trial court, including its assessment of the credibility of witnesses, probative weight of their testimonies, as well as of the documentary evidence, are accorded great weight and respect, especially when the same are affirmed by the CA, as in this case.

2. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); TRAFFICKING IN PERSONS AND PROSTITUTION, DEFINED. — Trafficking in Persons and Prostitution are defined under Section 3 of RA 9208: SEC. 3. *Definition of Terms*. – As used in this Act: (a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph. x x x (c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

3. ID.; ID.; SIMPLE TRAFFICKING IN PERSONS AND QUALIFIED TRAFFICKING IN PERSONS, CONSTRUED. — Amurao was convicted for violation of both simple Trafficking in Persons under Section 4(a) and Qualified Trafficking in Persons under Section 4(a) in relation to Section 6(a) of the law: SEC. 4. *Acts of Trafficking in Persons*. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To **recruit**, transport, transfer, harbor, **provide**, or receive **a person** by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, **for the purpose of prostitution**, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.] Under Section 6(a) of RA 9208, the crime is qualified when the trafficked person is a child, which is defined as a person below the age of 18 years old or above 18 years old but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

4. ID.; ID.; TRAFFICKING IN PERSONS; ELEMENTS. — In *People v. Casio*, the Court defined the elements of Trafficking in Persons, as follows: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

5. ID.; ID.; PENALTIES AND DAMAGES. — The penalties imposed by the RTC and affirmed by the CA are likewise upheld [in compliance with] Section 10 of RA 9208 x x x Hence, the penalty imposed on Amurao in Criminal Case No. 13-9736 of imprisonment of twenty (20) years and a fine of One million pesos (₱1,000,000.00); and life imprisonment and a fine of Two million pesos (₱2,000,000.00) in Criminal Cases Nos. 13-9737 and 13-9738, respectively, are correct. Anent the award of damages, the CA correctly modified the nature and amount of the damages in accordance with prevailing jurisprudence. In *People v. Lalli*, the Court held that the award moral and exemplary damages was warranted in cases of Trafficking in Persons as a prostitute under the Civil Code, as the offense is analogous to the crimes of seduction, abduction, rape or other lascivious acts. Following *Lalli*, the CA correctly awarded moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00 each to AAA, BBB and CCC. The CA's imposition of six percent (6%) interest *per annum* on the award from finality of judgment until full payment was likewise appropriate in line with the Court's ruling in *Nacar v. Gallery Frames*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

Subject of this appeal[1] is the Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06499 promulgated on December 21, 2015 which affirmed the Decision[3] of the Regional Trial Court (RTC), Angeles City, Branch 59, convicting accused-appellant Esmeraldo "Jay" Amurao *y* Tejero (Amurao) and his co-accused Marlyn "Lyn" Dizon Valencia (Valencia), of violation of Republic Act No. (RA) 9208 or the Anti-Trafficking in Persons Act of 2003.[4]

Facts

On February 22, 2013, Amurao and Valencia were charged with Trafficking in Persons under five (5) separate sets of Information[5] quoted below:

[CRIMINAL CASE NO. 13-9736]

That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, by means of fraud, deception, abuse of power and for the purpose of promoting trafficking

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

[2] *Id.* at 2-23. Penned by Associate Justice Elihu A. Ybañez with the concurrence of Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes.

[3] CA *rollo*, pp. 41-90. Penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

[4] AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES (2003).

[5] Records, pp. 1, 53, 106, 157, 208.

in persons and taking advantage of the vulnerability of AAA,[6] was (*sic*) recruit, hired, harbored said AAA for the purpose of exploitation, such as prostitution and other forms of sexual exploitations and forced labor services, slavery and servitude and engaged said AAA into prostitution and other forms of sexual exploitation.

CONTRARY TO LAW.[7]

[CRIMINAL CASE NO. 13-9737]

That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, by means of fraud, deception, abuse of power and for the purpose of promoting trafficking in persons and taking advantage of vulnerability of BBB, 17 years old, for the purpose of exploitation, slavery, under the pretext of employment, did then and there willfully, unlawfully and feloniously recruit said complainant/victim to work as a prostitute, and subjecting the above-mentioned victim to sexual exploitation, to her damage and prejudice.

CONTRARY TO LAW.

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[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.

[7] Records, p. 1.

[CRIMINAL CASE NO. 13-9738]

That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, by means of fraud, deception, abuse of power and for the purpose of promoting trafficking in persons and taking advantage of vulnerability of CCC, 15 years old, for the purpose of exploitation, slavery, under the pretext of employment, did then and there willfully, unlawfully and feloniously recruit said complainant/victim to work as prostitute, and subjecting the above-mentioned victim to sexual exploitation, to her damage and prejudice.

CONTRARY TO LAW.[8]

[CRIMINAL CASE NO. 13-9739]

That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, by means of fraud, deception, abuse of power and taking advantage of vulnerability of DDD, 15 years old, for the purpose of exploitation, slavery, under the pretext of employment, did then and there willfully, unlawfully and feloniously recruit said complainant/victim to work as prostitute, and subjecting the above-mentioned victim to sexual exploitation, to her damage and prejudice.

CONTRARY TO LAW.[9]

[CRIMINAL CASE NO. 13-9740]

That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, by means of fraud, deception, abuse of power and taking advantage of vulnerability of EEE, 15 years old, for the purpose of exploitation, slavery, under the

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[8] *Id.* at 106.

[9] *Id.* at 157.

pretext of employment, did then and there willfully, unlawfully and feloniously recruit said complainant/victim to work as prostitute, and subjecting the above-mentioned victim to sexual exploitation, to her damage and prejudice.

CONTRARY TO LAW.[10]

Both accused were also charged with violation of RA 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act under four (4) sets of Information[11] quoted as follows:

[CRIMINAL CASE NO. 13-9741]

"That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of CCC, a fifteen (15) year old minor, did then and there willfully, unlawfully and feloniously coerce and the said minor complainant into sexual abuse, treating her as a prostitute and giving her money in exchange for sexual services, thereby debasing and degrading the girl's intrinsic worth and dignity as a human being and endangering her normal development, which is contrary to the provisions of Section 5, Article III of Republic Act 7610.

CONTRARY TO LAW." x x x

[CRIMINAL CASE NO. 13-9742]

"That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of EEE, a fifteen (15) year old minor, did then and there willfully, unlawfully and feloniously coerce and the said minor complainant into sexual abuse, treating her as a prostitute and giving her money in exchange for

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[10] *Id.* at 208.

[11] CA *rollo*, pp. 43-44.

sexual services, thereby debasing and degrading the girl's intrinsic worth and dignity as a human being and endangering her normal development, which is contrary to the provisions of Section 5, Article III of Republic Act 7610.

CONTRARY TO LAW." x x x

[CRIMINAL CASE NO. 13-9743]

"That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of DDD, a fifteen (15) year old minor, did then and there willfully, unlawfully and feloniously coerce and the said minor complainant into sexual abuse, treating her as a prostitute and giving her money in exchange for sexual services, thereby debasing and degrading the girl's intrinsic worth and dignity as a human being and endangering her normal development, which is contrary to the provisions of Section 5, Article III of Republic Act 7610.

CONTRARY TO LAW." x x x

[CRIMINAL CASE NO. 13-9744]

"That on or about the 20th day of February, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with lewd design and taking advantage of the innocence and tender age of BBB, a seventeen (17) year old minor, did then and there willfully, unlawfully and feloniously coerce and the said minor complainant into sexual abuse, treating her as a prostitute and giving her money in exchange for sexual services, thereby debasing and degrading the girl's intrinsic worth and dignity as a human being and endangering her normal development, which is contrary to the provisions of Section 5, Article III of Republic Act 7610.

CONTRARY TO LAW." x x x[12]

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[12] *Id.*

Amurao and Valencia pleaded "not guilty" to all charges.

The prosecution and defense's contrasting versions of the events, as summarized by the CA, are as follows:

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of facts as follows:

Sometime in February 2013, the National Bureau of Investigation-Central Luzon Regional Office (NBI CELRO) received a report from the International Justice Mission (IJM), a non-governmental organization involved in anti-trafficking in person project, that appellant Esmeraldo T. Amurao was involved in prostituting women in Balibago, Angeles City, Pampanga, some of whom are minors.

On February 19, 2013 at around 8:30 in the evening, two NBI agents went to Fields Avenue in Angeles City to verify the report. As poseur customers, they went to Natalia Hotel where they met hotel security guard Jeffrey Papauran, who called on appellant Esmeraldo Amurao, who was selling cigarette and Viagra in the area. The NBI agents talked to appellant and inquired from him regarding the minor girls he was selling to customers. Appellant told the NBI agents that he could provide them with girls at ₱1,500.00 each. The agents then asked appellant to provide them with six (6) girls the following night.

Thereafter, the NBI agents returned to their office and informed their superior about the result of their operation. Special Investigator (SI) III Henry C. Roxas, Jr. organized a team for a possible rescue and entrapment operations. The team also coordinated with the Department of Social Welfare and Development (DSWD) Region III and requested them to form part of the support group. Since the NBI failed to secure an arrest warrant for appellant, they decided to proceed with the entrapment operation and prepared the entrapment money worth ₱9,000.00 which were all in ₱1,000.00 denomination.

In the evening of February 20, 2013, SI Henry Roxas and another NBI agent returned to Natalia Hotel in Fields Avenue, Angeles City. When they arrived at the area, appellant offered them some girls but they insisted that they be given minor girls.

Minutes later, appellant, together with co-accused Marlyn D. Valencia, arrived with six minor girls in tow. Realizing that the girls

brought by appellant and accused Marlyn D. Valencia were indeed minors, the undercover NBI agents requested the girls to go inside their van. Accused Valencia also boarded the van as she was acting as their "*mamasan*" as she was chaperoning the girls.

SI Henry Roxas then handed to appellant the marked money worth ₱9,000.00, and the latter deducted ₱1,000.00 from the amount as his commission. Appellant gave the rest of the money to BBB, who was acting as the leader of the girls.

Once the girls were all inside the van, SI Henry Roxas signaled the rest of the team through a missed call and proceeded with the rescue operation. Appellant was subsequently arrested and the marked money was recovered from him and BBB.

After the operation, the team brought the six (6) girls to the DSWD Region III Office, while appellant and accused Marlyn D. Valencia were brought to NBI-CELRO for fingerprinting and photograph taking. At the DSWD, the girls executed sworn statements narrating the circumstances that transpired prior to their rescue, particularly the fact that appellant and accused Marlyn D. Valencia recruited and promised them ₱1,500.00 in exchange for sex with a customer. They likewise declared that they were still minors at the time of their rescue.

Appellant and accused Marlyn D. Valencia were subjected to Inquest Proceedings on February 22, 2013. In its Resolution of even date, Prosecutor Modesto A. Cendana found probable cause and recommended the filing of several Information for Violation of RA 9208 and RA 7610, respectively.

Version of the defense

On 19 February 2013, accused-appellant was in front of Natalia Hotel vending cigarettes and viagra. The security guard of Natalia Hotel introduced the NBI agents to him. Accused-appellant claims that the agents gave him ₱500.00 to look for girls, but, when he failed to provide the girls, the agents still gave him a tip of ₱500.00 since the said agents won in the casino.

On 20 February 2013, accused-appellant passed by Natalia Hotel and saw the agents again. The said agents asked him to look for girls and even told him "huwag mo naman kami ipahiya." Since the agents promised to give him a tip, he took his chance to look for six girls. Accused-appellant then contacted his co-accused Marlyn to look for girls. Later on, they were able to bring only four girls to the agents.

While in front of Natalia Hotel, two other girls passed by and w[ere] invited by one of the girls they brought to the agents. When they introduced the girls to the agents, the girls and Marlyn boarded the van of the agents. The agents handed ₱9,000.00 to accused-appellant who took ₱1,000.00 as his tip and handed the remaining ₱8,000.00 to the girls. Thereafter, the agents declared that they were NBI agents and immediately arrested accused-appellant.[13]

Ruling of the RTC

In its Decision[14] dated November 8, 2013, the RTC convicted accused-appellant Amurao in Criminal Cases Nos. 13-9736, 13-9737, and 13-9738. The RTC held that the prosecution was able to prove beyond reasonable doubt that accused-appellant committed the acts of recruitment upon the persons of AAA, and minors BBB and CCC, for prostitution.

The RTC convicted Valencia in Criminal Cases Nos. 13-9737 and 13-9740. Meanwhile, in Criminal Cases Nos. 13-9736 and 13-9738, Valencia was acquitted. Criminal Cases Nos. 13-9741 to 13-9744 charging both accused of violation of Section 5 of RA 7610[15] punishing Child Prostitution and other Sexual Abuse, were dismissed on the ground of double jeopardy.

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[13] *Rollo*, pp. 9-12.

[14] CA *rollo*, p. 90.

[15] **Section 5. Child Prostitution and Other Sexual Abuse.** — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered:

1. In **Criminal Case no. 13-9736**, the court finds accused Esmeraldo "Jay" Tejero Amurao GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section 4(a) of Republic Act No. 9208 or Trafficking in Person penalized in Section 10 (a) thereof embodied in the Information dated February 22, 2013. Accordingly, accused Esmeraldo "Jay" Tejero Amurao is hereby sentenced TO SUFFER the penalty of imprisonment of twenty (20) years and TO PAY a fine in the amount of One million pesos (₱1,000,000.00).

   Accused Esmeraldo "Jay" Tejero Amurao is hereby ordered TO INDEMNIFY victim AAA nominal damages in the amount of Twenty-five thousand pesos (₱25,000.00).

   On the other hand, the court finds accused Marlyn "Lyn" Dizon Valencia NOT GUILTY of the offense of Violation of Section 4(a) of Republic Act No. 9208 or Trafficking in Person embodied in the Information dated February 22, 2013 for failure of the prosecution to prove her guilt beyond reasonable doubt. She is hereby ACQUITTED of said charge.

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(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

2. In **Criminal Case no. 13-9737**, the court finds accused Esmeraldo "Jay" Tejero Amurao and Marlyn "Lyn" Dizon Valencia GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act no. 9208 or Qualified Trafficking x x x in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013. Accordingly, accused Esmeraldo "Jay" Tejero Amurao and Marlyn "Lyn" Dizon Valencia are hereby sentenced TO SUFFER the penalty of life imprisonment and TO PAY a fine in the amount of Two million pesos (₱2,000,000.00).

   Both accused Esmeraldo "Jay" Tejero Amurao and Marlyn "Lyn" Dizon Valencia are hereby ordered TO INDEMNIFY private complainant BBB with nominal damages in the amount of Twenty-five thousand pesos (₱25,000.00).

3. In **Criminal Case no. 13-9738**, the court finds accused Esmeraldo "Jay" Tejero Amurao GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act No. 9208 or Trafficking in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013. Accordingly, accused Esmeraldo "Jay" Tejero Amurao is hereby sentenced TO SUFFER the penalty of life imprisonment and TO PAY a fine in the amount of Two million pesos (₱2,000,000.00).

   Accused Esmeraldo "Jay" Tejero Amurao is hereby ordered TO INDEMNIFY victim CCC nominal damages in the amount of Twenty-five thousand pesos (₱25,000.00).

   On the other hand, the court finds accused Marlyn "Lyn" Dizon Valencia NOT GUILTY of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act no. 9208 or Qualified Trafficking in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013 for failure of the prosecution to prove her guilt beyond reasonable doubt. She is hereby ACQUITTED of said charge.

4. In **Criminal Case No. 13-9739**, the court finds accused Esmeraldo "Jay" Tejero Amurao and Marlyn "Lyn" Dizon

Valencia NOT GUILTY of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act no. 9208 or Qualified Trafficking in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013 for failure of the prosecution to prove their guilt beyond reasonable doubt. They are hereby ACQUITTED of said charge.

5. In **Criminal Case no. 13-9740**, the court finds accused Marlyn "Lyn" Dizon Valencia GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section 4(a) of Republic Act no. 9208 or Trafficking in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013. Accordingly, accused Marlyn "Lyn" Dizon Valencia is hereby sentenced TO SUFFER the penalty of imprisonment [for] twenty (20) years and TO PAY a fine in the amount of One million pesos (₱1,000,000.00).

   Accused Marlyn "Lyn" Dizon Valencia is hereby ordered TO INDEMNIFY victim EEE nominal damages in the amount of Twenty-five thousand pesos (₱25,000.00).

   On the other hand, the court finds accused Esmeraldo "Jay" Tejero NOT GUILTY of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act No. 9208 or Qualified Trafficking in Person penalized in Section 10 (c) thereof embodied in the Information dated February 22, 2013 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is hereby ACQUITTED of said charge.

6. In **Criminal Case nos. 13-9741 to 13-9744**, the four (4) Informations against accused Esmeraldo "Jay" Tejero Amurao and Marlyn "Lyn" Dizon Valencia for the offense of Violation of Section 5(a) of Republic Act No. 7610 are hereby DISMISSED pursuant to said accused's right against double jeopardy.

No costs.

SO ORDERED.[16]

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[16] CA *rollo*, pp. 88-90.

A summary of the RTC's ruling for each case and accused is summarized in the table below:

Case	Private complainant	Offense	Amurao	Valencia
Criminal Case No. 13-9736	AAA	Trafficking in Persons	Convicted	Acquitted
Criminal Case No. 13-9737	BBB	Qualified Trafficking in Persons	Convicted	Convicted
Criminal Case No. 13-9738	CCC	Qualified Trafficking in Persons	Convicted	Acquitted
Criminal Case No. 13-9739	DDD	Qualified Trafficking in Persons	Acquitted	Acquitted
Criminal Case No. 13-9740	EEE	Trafficking in Persons	Acquitted	Convicted
Criminal Case No. 13-9741	CCC	Violation of Section 5 (a) of RA 7610	Dismissed on the ground of double jeopardy	Dismissed on the ground of double jeopardy
Criminal Case No. 13-9742	EEE			
Criminal Case No. 13-9743	DDD			
Criminal Case No. 13-9744	BBB			

Thus, herein Amurao was convicted of Trafficking in Persons in Criminal Case No. 13-9736 in connection with the trafficking of AAA who was already of majority age at the time of the commission of the offense. Amurao was held guilty of Qualified Trafficking in Persons in Criminal Cases Nos. 13-9737 and 13-9738 in connection with the trafficking of minors BBB and CCC.

Amurao was acquitted in Criminal Cases Nos. 13-9739 and 13-9740 involving private complainants DDD and EEE. Criminal

Cases Nos. 13-9741, 13-9742, 13-9743, and 13-9744 (involving private complainants CCC, EEE, DDD, and BBB, respectively) were dismissed on the ground of double-jeopardy.

Hence, Amurao appealed his conviction in Criminal Cases Nos. 13-9736, 13-9737, and 13-9738 on November 29, 2013.[17] In his Memorandum of Appeal to the CA, Amurao interposed the defense of instigation. He also argued that he should have been convicted only of White Slave Trade under Article 341 of the Revised Penal Code (RPC).[18] Co-accused Valencia did not appeal her conviction.

The CA Decision

In its Decision dated December 21, 2015, the CA affirmed the RTC Decision, with modification only as to the award of damages. The CA did not give any credence to Amurao's defenses. On the defense of instigation, the CA held that there was no indication that Amurao was merely induced to commit the crime. On the contrary, the testimonies of the witnesses proved that Amurao was already engaged in the illicit business of recruiting women into prostitution. The NBI agents merely devised a scheme to facilitate Amurao's apprehension through the entrapment operation.

With regard to the classification of the offense, the CA affirmed Amurao's conviction and held that all the elements of Trafficking in Persons and Qualified Trafficking in Persons were present as it was proven beyond reasonable doubt that Amurao recruited women, some of whom were minors, to be trafficked into prostitution.

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[17] Notice of Appeal, records, p. 528.

[18] ART. 341. *White Slave Trade*. — The penalty of *prisión mayor* in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution.

The CA added the award of moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00, each for AAA, BBB, and CCC and deleted the award of nominal damages. The CA also imposed interest at 6% *per annum* on the award from finality of judgment until full payment. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, the Decision of the Regional Trial Court of Angeles City, Branch 59, in Criminal Case Nos. 13-9736, 13-9737 and 13-9738 are hereby **AFFIRMED with MODIFICATION** in that accused-appellant is **ORDERED** to pay the respective victims moral damages in the amount of ₱500,000.00 and exemplary damages in the amount of ₱100,000.00. The award of nominal damages are hereby **DELETED**. Also, interests at the rate of 6% *per annum* shall be imposed on all the damages awarded from the time judgment had become final until fully paid. The appealed decision is hereby **AFFIRMED** in all respects.
>
> **SO ORDERED**.[19]

Thus, this appeal.

Issue

Whether the guilt of Amurao was proven beyond reasonable doubt.

The Court's Ruling

The appeal has no merit.

Upon judicious review of the records of the case, the Court affirms the factual findings of the RTC, as affirmed by the CA. The Court upholds the findings of the courts *a quo* that Amurao's guilt for the offense of Trafficking in Persons against AAA and Qualified Trafficking in Persons against minors BBB and CCC for the purpose of prostitution was proven beyond reasonable doubt.

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[19] *Rollo*, p. 22.

Factual findings of the trial court, including its assessment of the credibility of witnesses, probative weight of their testimonies, as well as of the documentary evidence, are accorded great weight and respect, especially when the same are affirmed by the CA, as in this case.[20]

Trafficking in Persons and Prostitution are defined under Section 3 of RA 9208:

> SEC. 3. *Definition of Terms*. — As used in this Act:
>
> (a) *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.
>
> The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.
>
> x x x x x x x x x
>
> (c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

Amurao was convicted for violation of both simple Trafficking in Persons under Section 4 (a) and Qualified Trafficking in Persons under Section 4 (a) in relation to Section 6 (a) of the law:

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[20] *People v. Aguirre*, G.R. No. 219952, November 20, 2017, 845 SCRA 227, 238.

SEC. 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To **recruit**, transport, transfer, harbor, **provide**, or receive **a person** by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, **for the purpose of prostitution**, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.] (Emphasis supplied)

Under Section 6 (a) of RA 9208, the crime is qualified when the trafficked person is a child, which is defined as a person below the age of 18 years old or above 18 years old but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.[21]

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[21] SEC. 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the " Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS).

In *People v. Casio*,[22] the Court defined the elements of Trafficking in Persons, as follows:

(1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders";

(2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and

(3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[23]

In the instant case, the prosecution was able to establish all the elements of the offense of simple Trafficking in Persons and Qualified Trafficking in Persons. The testimonies of AAA, BBB, and CCC were direct, straightforward, and consistent. They all similarly testified that Amurao recruited them for the purpose of prostitution on the night of February 20, 2013.[24] The minority of BBB and CCC were duly proven by their Birth Certificates.[25]

The testimonies of AAA, BBB, and CCC also corroborated the testimony of the arresting officer from the National Bureau of Investigation (NBI), Special Investigator III (SI) Henry Roxas, who detailed the conduct of the entrapment operation which led to the arrest of Amurao and Valencia.

Amurao himself corroborated the testimony of the prosecution witnesses. He admitted that on February 19, 2013, he was at

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[22] G.R. No. 211465, December 3, 2014, 744 SCRA 113.

[23] *Id.* at 128-129.

[24] RTC Decision, CA *rollo*, pp. 67-75.

[25] Prosecution Evidence, pp. 19-20 [Exhibit "I" - BBB; Exhibit "K" - CCC].

the Natalia Hotel where he met two NBI agents acting as poseur-buyers who inquired about minor girls. Amurao likewise did not deny that he brought the female victims to Natalia Hotel on February 20, 2013 for the purpose of prostituting them. Amurao merely interposed the defense of instigation, alleging that he was forced by the NBI agents to commit the crime.

Such defense deserves scant consideration. The use of entrapment by law enforcement officers as a means to arrest wrongdoers is an accepted practice. In *People v. Hirang*,[26] the accused similarly interposed the defense of instigation in the offense of Trafficking against Persons. The Court rejected his defense and held:

> Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent" while entrapment is a "trap for the unwary criminal."[27]

As correctly held by the CA, it was established that Amurao is a known pimp who recruits women into prostitution, as testified to by AAA:

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[26] G.R. No. 223528, January 11, 2017, 814 SCRA 315.

[27] *Id.* at 330-331, citing *People v. Bartolome*, G.R. No. 191726, February 6, 2013, 690 SCRA 159, 171-172.

[*Direct Examination of AAA — Atty. Chris Lawrence Isidro*]

Q What happened when you saw CCC?

A She said we will be going with a foreigner.

Q What were you gonna *(sic)* do with the foreigner?

A To have sex.

Q Who among the suspects called you?

A Jay.

Q How did Jay call you?

A I was standing in front of Natalia Hotel he told me, "you come with us[.]"

Q You mentioned that the transaction was for sex, do you know if Jay knows about this?

A Yes, sir.

Q How can you say that Jay knows that the transaction was for sex, do you know if Jay knows about this himself?

A Because he is like that before.

Q Have you seen Jay previously?

A Yes, sir.

Q When did you see Jay?

A Also in Fields.

Q What is Jay doing, if any?

A He was selling Viagra.

Q How did you know that Jay is selling Viagra?

A Because I saw his products and I heard him selling that Viagra.[28] (Emphasis and italics supplied)

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[28] TSN, July 16, 2013, pp. 29-30.

CCC also testified that she had been previously approached by Amurao about a sexual transaction:

[*Direct Examination of CCC — Atty. Chris Lawrence Isidro*]

Q When Jay called you, what happened next?

A I approached him and they told us we will go to a foreigner.

Q Did Jay tell you what you would do to these foreigners?

A Yes, sir.

Q What did he tell you?

A That we will have sex with the foreigners.

Q How did he say this to you?

A Because the women told me we will go to a foreigner. They told me they will give us to the foreigner. They will do something to us (*gagalawin kami*).

Q Has Jay offered you for sexual favors before?

A Yes, sir, before.

Q Can you tell us when that incident happened?

A He was not able to pimp me then. He just asked me if I want to go with a Korean friend of his when he arrives.

Q Did he tell you what you will do with his Korean friend?

A He said that when my Korean friend arrives, I will give you to him.[29] (Emphasis and italics supplied)

Thus, the testimony of AAA and CCC confirmed that Amurao had already been involved in the illegal trafficking of women even prior to the entrapment operation and arrest on February 20, 2013.

Moreover, there is no indication that Amurao was merely forced or induced to commit the crime. His defense is belied by his own actions in readily agreeing to procure girls for the

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[29] TSN, June 11, 2013, p. 6.

NBI agents/poseur-buyers and in his active recruitment of the victims. Thus, Amurao's defense of instigation has no merit. Acting on the report from the International Justice Mission, the NBI agents conducted a valid entrapment. They merely devised a scheme to facilitate Amurao's illegal activities in order to arrest him.

Given the foregoing, the Court affirms Amurao's conviction for one count of simple Trafficking in Persons as defined under Section 4 (a) of RA 9208 in Criminal Case No. 13-9736 in connection with the trafficking of AAA. Amurao's convictions for two separate counts of Qualified Trafficking in Persons under Section 4 (a) in relation to Section 6 (a) of RA 9208, in Criminal Cases Nos. 13-9737 and 13-9738 involving minor victims BBB and CCC are also affirmed.

The penalties imposed by the RTC and affirmed by the CA are likewise upheld. Section 10 of RA 9208 provides:

> SEC. 10. *Penalties and Sanctions*. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:
>
> (a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (₱1,000,000.00) but not more than Two million pesos (₱2,000,000.00);
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> x x x x x x x x x
>
> (c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)[.]

Hence, the penalty imposed on Amurao in Criminal Case No. 13-9736 of imprisonment of twenty (20) years and a fine of One million pesos (₱1,000,000.00); and life imprisonment and a fine of Two million pesos (₱2,000,000.00) in Criminal Cases Nos. 13-9737 and 13-9738, respectively, are correct.

Anent the award of damages, the CA correctly modified the nature and amount of the damages in accordance with prevailing

jurisprudence. In *People v. Lalli*,[30] the Court held that the award moral and exemplary damages was warranted in cases of Trafficking in Persons as a prostitute under the Civil Code,[31] as the offense is analogous to the crimes of seduction, abduction, rape or other lascivious acts. Following *Lalli*, the CA correctly awarded moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00 each to AAA, BBB and CCC. The

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[30] G.R. No. 195419, October 12, 2011, 659 SCRA 105, 128.

[31] 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.

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ART. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

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ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

CA's imposition of six percent (6%) interest *per annum* on the award from finality of judgment until full payment was likewise appropriate in line with the Court's ruling in *Nacar v. Gallery Frames*.[32]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated December 21, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06499 is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 232500. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZZZ,**[1] *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT, WHETHER THEY ARE ASSIGNED OR UNASSIGNED.—

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[32] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[1] The real name of the accused-appellant is withheld pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017.

It is settled that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite and appreciate errors in the appealed judgment, whether they are assigned or unassigned. Guided by the foregoing, the Court deems it proper to modify accused-appellant's conviction of Rape, three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610, to Qualified Rape, and three (3) counts of Lascivious Conduct under Section 5 (b) of R.A. No. 7610.

2. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS. —** The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) or is an ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or is the common-law spouse of the parent of the victim. The gravamen of the crime of rape is carnal knowledge of a woman against her will.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY, AND THAT ITS FINDINGS ARE BINDING AND CONCLUSIVE ON THE APPELLATE COURT, UNLESS THERE IS A CLEAR SHOWING THAT THEY WERE REACHED ARBITRARILY OR IT APPEARS FROM THE RECORDS THAT CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT, SUBSTANCE OR VALUE WERE OVERLOOKED, MISAPPREHENDED OR MISAPPRECIATED BY THE LOWER COURT AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE. —** In testifying before the trial court, BBB narrated in detail the crime committed x x x. After a judicious review of the records of this case, the Court finds no cogent reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Settled is the rule that the

trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial courts stand in a much better position to decide the question of credibility. Indeed, trial court judges are in the best position to assess whether the witness is telling a truth or a lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.

4. ID.; ID.; ID.; FAMILY RESENTMENT, REVENGE OR FEUDS HAVE NEVER SWAYED THE COURT FROM GIVING FULL CREDENCE TO THE TESTIMONY OF A COMPLAINANT FOR RAPE, ESPECIALLY A MINOR WHO REMAINED STEADFAST AND UNYIELDING THROUGHOUT THE DIRECT AND CROSS-EXAMINATION THAT SHE WAS SEXUALLY ABUSED.— The Court disagrees with accused-appellant's claim that the testimonies of the witnesses should be discarded because of harbored ill feelings. Family resentment, revenge or feuds have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast and unyielding throughout the direct and cross-examination that she was sexually abused. No daughter, especially a minor like BBB in this case, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue. An incestuous sexual assault is a psycho-social deviance that inflicts a stigma, not only on the victim but also on the whole family.

5. CRIMINAL LAW; RAPE; ACCUSED-APPELLANT CANNOT BE CONVICTED OF STATUTORY RAPE WHERE THE VICTIM'S CORRECT AGE WAS NOT PROPERLY ALLEGED IN THE INFORMATION;

OTHERWISE, ACCUSED-APPELLANT WOULD BE DEPRIVED OF HIS RIGHT TO BE INFORMED OF THE CHARGE LODGED AGAINST HIM; ACCUSED-APPELLANT SHOULD BE CONVICTED OF QUALIFIED RAPE, AS IT WAS NOT ONLY ALLEGED IN THE INFORMATION BUT ALSO PROVEN DURING THE TRIAL THAT THE VICTIM WAS UNDER EIGHTEEN YEARS OLD AT THE COMMISSION OF THE CRIME, AND THE DAUGHTER OF ACCUSED-APPELLANT. — We note that based on her testimony and her birth certificate presented, BBB was only ten (10) years old when the rape was committed against her in May 2003, since she was born on x x x. However, it appears that the allegation in the Information and the decision of the trial court mentioned that she was sixteen (16) years old at that time. Accused-appellant cannot be convicted of statutory rape since BBB's correct age was not properly alleged in the Information. Otherwise, he would be deprived of his right to be informed of the charge lodged against him. Nevertheless, the prosecution still established beyond doubt that she was under eighteen (18) years old at the commission of the crime. From the foregoing, as well as the fact that BBB's minority and her relationship with accused-appellant were not only alleged in the Information but also proven during the trial, this Court finds it proper to upgrade his conviction in Criminal Case No. CR-08-9180 to Qualified Rape.

6. ID.; QUALIFIED RAPE; PROPER IMPOSABLE PENALTY; CIVIL LIABILITY OF ACCUSED-APPELLANT. — Anent the penalty imposed, the RTC is correct in imposing the penalty of *reclusion perpetua* without eligibility for parole. The penalty for qualified rape, if at all, the qualification of "without eligibility for parole," may be applied to qualify *reclusion perpetua* in order to *emphasize* that accused-appellant should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346. In view of prevailing jurisprudence, the civil indemnity, moral damages and exemplary damages awarded to BBB should be increased to ₱100,000.00 each, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.

7. ID.; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION

AND DISCRIMINATION ACT); LASCIVIOUS CONDUCT UNDER SECTION 5 (b) OF R.A. NO. 7610; PROPER DESIGNATION OF THE OFFENSE AND IMPOSABLE PENALTY, GUIDELINES. — The case of *People v. Caoili* is instructive on the proper designation of the offense in case lascivious conduct is committed, thus: Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty: 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty. 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period. 3. If the **victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "**Lascivious Conduct under Section 5(b) of R.A. No. 7610**," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

8. ID.; ID.; ID.; THE ACT OF TOUCHING AND FONDLING OF THE VICTIM'S BREASTS AND GENITALIA AMOUNTED TO "LASCIVIOUS CONDUCT"; WHERE ACCUSED-APPELLANT IS THE VICTIM'S FATHER, AND SUCH ALTERNATIVE CIRCUMSTANCE OF RELATIONSHIP WAS ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL, THE SAME SHOULD BE CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE FOR THE PURPOSE OF INCREASING THE PERIOD OF THE IMPOSABLE PENALTY. — [I]n Criminal Case Nos. CR-08-9183, CR-08-9184 and CR-08-9185, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA.

As the trial court observed, CCC was able to narrate in detail the lascivious acts done to her by her father x x x. The evidence confirms that CCC was fourteen (14) years old at the commission of the offense. The acts of touching and fondling of CCC's breasts and touching of her vagina undeniably amounted to "lascivious conducts." Thus, there is a need to modify the nomenclature of the crime charged to "Lascivious Conduct under Section 5 (b) of R.A. No. 7610." Since the perpetrator is CCC's father, and such alternative circumstance of relationship was alleged in the Information, and proven and even admitted by accused-appellant during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e.*, *reclusion perpetua*. This is in consonance with Section 31 (c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.

9. ID.; ID.; ID.; THE PENALTY OF *RECLUSION PERPETUA* FOR EACH COUNT OF LASCIVIOUS CONDUCT UNDER SECTION 5 (b) OF R.A. NO. 7610, IMPOSED; CIVIL LIABILITY OF ACCUSED-APPELLANT. — There is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the RTC and affirmed by the CA. This is pursuant to A.M. No. 15-08-02-SC in cases where the death penalty is not warranted, such as in the instant case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Thus, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of Lascivious Conduct under Section 5 (b) of R.A. No. 7610. The award of civil indemnity, moral damages and exemplary damages when the penalty of *reclusion perpetua* is imposed is ₱75,000.00 each. Therefore, the amount of damages awarded in Criminal Case Nos. CR-08-9183 and CR-08-9184 should be increased to ₱75,000.00 each, and the exemplary damages in Criminal Case No. CR-08-9185 to ₱75,000.00. Accused-appellant is ordered to pay a fine in the amount of ₱15,000.00, pursuant to Section 31 (f), Article XII of R.A. No. 7610. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until said amounts are fully paid.

10. ID.; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); ACCUSED-APPELLANT'S REPEATED PHYSICAL, VERBAL AND EMOTIONAL ABUSE ON THE VICTIM, WHICH STARTED WHEN HE WAS YOUNG, CONSTITUTE VIOLATIONS OF SECTION 5 (a) AND (i) OF R.A. NO. 9262. — [T]his Court, likewise, sustains the ruling in Criminal Case Nos. CR-08-9135 and CR-08-9136 finding accused-appellant guilty of violations of Section 5 (a) and (i) of R.A. No. 9262. The trial court observed that the berating and mauling incident not only caused physical injury to AAA but also mental anguish and humiliation. By his own account, he was distressed and hurt by accused-appellant's acts, which started when he was young. Contrary to accused-appellant's claim, the prosecution presented AAA's medical certificate showing that he suffered hematoma on his right upper lip. This corroborated with the testimonies of the witnesses that AAA sustained physical injury from the incident. It has long been established that this Court is not a trier of facts. [F]actual findings of the RTC are conclusive and binding on this Court when affirmed by the CA.

11. ID.; ID.; VIOLATIONS OF SECTION 5 (a) AND (i) OF R.A. NO. 9262, APPROPRIATE PENALTIES. — The Court affirms the penalty imposed in Criminal Case No. CR-08-9136. However, the Court deems it proper to modify the penalty imposed in Criminal Case No. CR-08-9135. As aforementioned, R.A. No. 9262 imposes the penalty of *prision mayor* for violation of Section 5 (i) thereof. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, or anywhere from six (6) months and one (1) day to six (6) years. There being no aggravating or mitigating circumstances attending the commission of the crime, the maximum term shall be the medium period of the penalty provided by the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*. Therefore, accused-appellant should suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. This Court also notes that both the RTC and the CA failed to require accused-

appellant to undergo psychological counseling or treatment. This is a penalty set by Section 6 of R.A. No. 9262 *in addition* to imprisonment and fine. Thus, accused-appellant is required to submit himself to a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin.

CAGUIOA, *J., concurring and dissenting opinion:*

1. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); FOR AN ACT TO BE CONSIDERED UNDER THE PURVIEW OF SECTION 5(b) OF RA 7610, SO AS TO TRIGGER THE HIGHER PENALTY PROVIDED THEREIN, IT MUST BE ALLEGED AND PROVED THAT THE ACCUSED COMMITS THE ACT OF SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT; THAT THE SAID ACT IS PERFORMED WITH A CHILD 'EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE'; AND THAT THE CHILD WHETHER MALE OR FEMALE, IS BELOW 18 YEARS OF AGE. — I reiterate and maintain my position in *People v. Tulagan* that Republic Act No. (RA) 7610 and the Revised Penal Code (RPC), as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minor." Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is "exploited in prostitution or subjected to other sexual abuse." (EPSOSA). In other words, for an act to be considered under the purview of Section 5(b), RA 7610, so as to trigger the higher penalty provided therein, "the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child 'exploited in prostitution or subjected to other sexual abuse'; and (3) the child whether male or female, is below 18 years of age." Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA – *a separate and distinct element* – must first be both alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

2. ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 266-A(2), IN RELATION TO ARTICLE 336 OF THE REVISED PENAL CODE; ACCUSED-APPELLANT CAN ONLY BE CONVICTED FOR ACTS OF LASCIVIOUSNESS UNDER ARTICLE 266-A(2), IN RELATION TO ARTICLE 336 OF THE REVISED PENAL CODE, NOT LASCIVIOUS CONDUCT UNDER SECTION 5(b), RA 7610, AS IT WAS NOT ALLEGED AND PROVED THAT THE CHILD-VICTIM WAS EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE (EPSOSA), AND INDULGED IN SEXUAL INTERCOURSE OR LASCIVIOUS CONDUCT FOR MONEY, PROFIT OR ANY OTHER CONSIDERATION, OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP. — [I]n order to impose the higher penalty provided in Section 5(b) as compared to Article 266-B of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child – (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group – indulges in sexual intercourse or lascivious conduct. In this case, the Informations only alleged that the victim was his 14-year-old daughter, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in lascivious conduct either for a consideration, or due to the coercion or influence of any adult. Thus, while I agree that accused-appellant's guilt was proven beyond reasonable doubt, it is my view that his conviction in the aforementioned cases should only be for Acts of Lasciviousness, defined and punished under Article 266-A(2), in relation to Article 336 of the RPC — not Lascivious Conduct under Section 5(b), RA 7610. Accordingly, the penalty that ought to be imposed on him should be within the range of *arresto mayor* to *prision correccional* instead of the one imposed by the *ponencia* which is *reclusion perpetua*.

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

PERALTA, *C.J.*:

Before this Court is an appeal from the November 28, 2016 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 06755 which affirmed the October 29, 2013 Joint Decision[3] of the Regional Trial Court (*RTC*) of Calapan, Oriental Mindoro, Branch 39, finding accused-appellant ZZZ guilty beyond reasonable doubt of violations of Section 5 (a) and (i), in relation to Section 6 (a) and (f), of Republic Act (*R.A.*) No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004"; of Rape; and of three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610.[4]

The antecedent facts are as follows.

In six (6) separate Informations, accused-appellant was charged with violations of Section 5 (i), in relation to Section 6 (f), and Section 5 (a), in relation to Section 6 (a), of R.A. No. 9262; with Rape; and with three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610, the accusatory portions of which read:

Criminal Case No. CR-08-9135

That sometime prior thereto and continuously up to April 19, 2008, in the City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the legitimate father of complainant [AAA],[5] 12-year-old minor, in utter disregard

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[2] *Rollo*, pp. 2-20; penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Noel G. Tijam (now a retired Associate Justice of the Supreme Court) and Francisco P. Acosta.

[3] CA *rollo*, pp. 43-61; penned by Judge Manuel C. Luna, Jr.

[4] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes.

[5] 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

of the respect owing to his said son, did then and there, willfully, unlawfully and feloniously inflict emotional, mental, and psychological violence upon the said [AAA] by causing him psychological, mental and emotional sufferings and anguish, public ridicule and humiliation, specially through repeated verbal and emotional abuse, threatening complainant of physical harm and other forms of intimidation and harassment, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] as a human being, to his damage and prejudice.

Contrary to law.[6]

Criminal Case No. CR-08-9136

That on or about April 19, 2008, at around 8:00 o'clock (*sic*) in the evening, more or less, at [redacted], City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the legitimate father of complainant [AAA], 12 years old, in utter disregard of the respect owing to his said son, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of [AAA], inflicting upon the latter hematoma, 1 cm, right upper lip, which injury necessitates medical attendance for less than nine days, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] as a human being, to his damage and prejudice.

Contrary to law.[7]

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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.

[6] Records (Crim. Case No. CR-08-9135), p. 1.

[7] Records (Crim. Case No. CR-08-9136), p. 1.

Criminal Case No. CR-08-9180

That sometime in the month of May 2003, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously [have] carnal knowledge of [BBB], his sixteen (16) year old daughter and therefore a relative within 1st civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade and demean the intrinsic worth and dignity of the said [BBB], as a human being, to her damage and prejudice.

Contrary to law.[8]

Criminal Case No. CR-08-9183

That on or about the 18th day of March, 2008, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, mashing her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.[9]

Criminal Case No. CR-08-9184

That on or about the 19th day of March, 2008, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully,

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[8] Records (Crim. Case No. CR-08-9180), p. 1.

[9] Records (Crim. Case No. CR-08-9183), p. 1.

unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, mashing her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.[10]

Criminal Case No. CR-08-9185

That on or about the 20th day of March, 2008, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, taking advantage of his moral ascendancy over [CCC], by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of [CCC], his fourteen (14) year old daughter, and therefore a relative within the 1st civil degree by consanguinity, and living with him in the same house, by embracing her, mashing her breast and touching her sexual organ, against complainant's will and without her consent, acts which debase, degrade and demean the intrinsic worth [and] dignity of the said complainant as a child, to the damage and prejudice of the said [CCC].

Contrary to law.[11]

When arraigned, accused-appellant pleaded not guilty to all the charges. After termination of the pre-trial, trial on the merits ensued.

Around 8:00 p.m. on April 19, 2008, accused-appellant's twelve (12)-year-old son AAA was at home with his mother DDD and his four (4) siblings. AAA and his sister EEE were playing a game of "*dama*" when the heavily drunk accused-appellant arrived from a wedding celebration. He hurled words at EEE, such as "*Putang-ina mo, putang-ina n'yo isama n'yo*

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[10] Records (Crim. Case No. CR-08-9184), p. 1.

[11] Records (Crim. Case No. CR-08-9185), p. 1.

na ang inyong ina sa Maynila at gawin n'yo ng pagerper."[12] To avoid scolding, EEE and AAA ignored their father's rants. However, accused-appellant approached AAA, berated him, and boxed him which caused his mouth to bleed and loosened his teeth.[13] DDD, who was doing laundry at that time, heard the commotion and rushed to the scene to pacify accused-appellant. EEE then instructed AAA to go to their other brother and report the incident to the police.[14]

Prior to the incident, or around lunchtime in May 2003, accused-appellant asked his then ten (10)-year-old daughter BBB to accompany him to get firewood near the irrigation canal. On their way home, he ordered BBB to lie down on the banana leaf. Terrified, BBB obeyed him. He then took off his pants and removed BBB's lower garments. He went on top of her, told her to remain silent, and forcibly inserted his penis into her vagina. Afterwards, he instructed her to dress, and warned her not to tell anybody about the incident.[15]

In the evening of March 18, 2008, fourteen (14)-year-old CCC was sleeping with her three (3)-year-old nephew when her drunk father entered the room. He lay beside her and touched her vagina. Overcame with fear, she was unable to shout for help from her brothers who were sleeping in another room. The following night, March 19, 2008, she asked her brother FFF to sleep with her and their nephew. However, accused-appellant was undeterred and repeated his reprehensible acts, and was even smiling. FFF witnessed the incident but was also helpless. The following morning, or on March 20, 2008, CCC went to the house of a barangay councilor to report her father. Unfortunately, the said councilor failed to help her. She also called her mother DDD, urging her to return home, but the latter was unable to return since her brother was still under

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[12] TSN, March 24, 2009, p. 21.

[13] *Rollo*, p. 4.

[14] CA *rollo*, p. 49.

[15] *Id.* at 50.

treatment at a mental hospital. That night, accused-appellant lay beside her and fondled her breasts and vagina. He also embraced her and placed his legs between her legs. He only left when she started to cry.[16]

On the other hand, accused-appellant admitted that he and DDD have fourteen (14) children, including AAA, BBB, CCC, EEE and FFF. However, he fervently denied the accusations of his children. Unlike the portrayal of the prosecution, he was close to AAA, and took care of BBB and CCC when they were studying. It was only when CCC returned after five (5) years in Manila with her sister that she started the allegations against him. He claimed that it was EEE who filed the cases against him.[17]

On October 29, 2013, the RTC found accused-appellant guilty on all the charges against him, the *fallo* of the Joint Decision reads:

> **ACCORDINGLY**, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. CR-08-9135, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer an indeterminate sentence of imprisonment ranging from ***SIX (6) MONTHS AND ONE (1) DAY OF PRISION CORRECCIONAL AS MINIMUM TO SIX (6) YEARS AND ONE (1) DAY OF PRISION MAYOR AS MAXIMUM*** **and to pay the FINE of ONE HUNDRED THOUSAND PESOS ([₱]100,000.00);**
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> 2. In Criminal Case No. CR-08-9136, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer the straight penalty of imprisonment for ***THREE (3) MONTHS OF***

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

[17] *Rollo*, p. 6.

ARRESTO MAYOR IN ITS MEDIUM PERIOD **and to pay the FINE of ONE HUNDRED THOUSAND PESOS ([₱]100,000.00)[;]**

3. In Criminal Case No. C[R]-08-9180, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [₱]20,000.00 as civil indemnity, [₱]15,000.00 as moral damages, [₱]15,000.00 as exemplary damages, [₱]15,000.00 as fine, and to pay the costs;

4. In Criminal Case No. C[R]-08-9183, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [₱]20,000.00 as civil indemnity, [₱]15,000.00 as moral damages, [₱]15,000.00 as exemplary damages, [₱]15,000.00 as fine, and to pay the costs;

5. In Criminal Case No. C[R]-08-9184, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [₱]20,000.00 as civil indemnity, [₱]15,000.00 as moral damages, [₱]15,000.00 as exemplary damages, [₱]15,000.00 as fine, and to pay the costs;

6. In Criminal Case No. CR-08-9185, this Court finds the accused [ZZZ] ***GUILTY*** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and appreciating his relationship with the private complainant

> as an aggravating circumstance and in default of any mitigating circumstances, hereby sentences him to suffer the penalty of ***RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE***, and to **PAY** the private complainant the amount of [₱]75,000.00 as civil indemnity, [₱]75,000.00 as moral damages, [₱]25,000.00 as exemplary damages, and to pay the costs;

The aforementioned penalties shall be served by the accused **SUCCESSIVELY**.

SO ORDERED.[18] (Emphases, italics and underscores in the original)

The RTC held in Criminal Case Nos. CR-08-9135 and CR-08-9136 that AAA positively identified accused-appellant as the one who berated and boxed him on the face. His mother and his sister corroborated the same. The incident caused physical injury, as well as mental or emotional anguish, public ridicule or humiliation, on AAA's person.[19] In Criminal Case No. CR-08-9180, BBB's categorical identification of the perpetrator and straightforward narration established that accused-appellant, through force, threat or intimidation, had carnal knowledge of his minor daughter. It is unthinkable for a daughter to accuse her own father, submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not been aggrieved.[20] It did not fault BBB for her failure to recall the exact date of the commission of the crime since the precise time is not an essential element of the crime. The relationship and the victim's minority were considered in the imposition of the penalty.[21] As to Criminal Case Nos. CR-08-9183, CR-08-9184 and CR-08-9185, the prosecution

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[18] CA *rollo*, pp. 59-61.

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

[20] *Id.* at 56.

[21] *Id.* at 57.

proved all the elements of the offense. *First*, the touching of the breasts and vagina, and embracing while placing his legs between CCC's legs to sexually arouse himself are lascivious conducts which accused-appellant committed against his daughter. *Second*, he coerced his daughter to engage in the lascivious conduct. *Third*, the Certificate of Live Birth clearly established that CCC was only fourteen (14) years old[22] at the time of the offense. There was no proof that she was motivated to fabricate a story of sexual abuse against her own father. The RTC considered their relationship in imposing the maximum penalty provided. For his part, accused-appellant only offered denial without presenting any other evidence.

On appeal, the CA affirmed with modification the Joint Decision of the RTC. The decretal portion of the Decision reads:

> **WHEREFORE**, premises considered, the Joint Decision of the RTC in Criminal [Case Nos.] CR-08-9135, CR-08-9136, CR-08-9180, CR-08-9183, CR-08-9184 and CR-08-9185 are hereby **AFFIRMED** with **MODIFICATION**. Consistent with *People v. J[u]gueta*, where the penalty imposed is *reclusion perpetua*, civil indemnity, moral damages and exemplary damages should be [₱]75,000.00 for each item and all monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this judgment.
>
> **SO ORDERED.**[23] (Emphases in the original; citation omitted)

The CA agreed with the RTC that BBB's narration of her ordeal in the hands of accused-appellant was straightforward and unequivocal. All the elements of rape under Article 266-A of the Revised Penal Code (*RPC*) were established. Actual force or intimidation need not be employed in incestuous rape of a minor, as in this case, because the moral and physical dominion of the father is sufficient to cow the victim to submit to his nefarious desires.[24] The CA also agreed with the RTC

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[22] The RTC Joint Decision indicated that CCC was sixteen (16) years old.

[23] *Rollo*, pp. 19-20.

[24] *Id.* at 11.

that all the elements of sexual abuse were present. On three occasions, accused-appellant touched CCC's breasts and vagina. As her father, he exercised moral ascendancy over CCC to engage in his lewdness. CCC's testimony and her Birth Certificate established that she was below eighteen (18) years old at that time. The prosecution also proved, through the clear and convincing testimonies of AAA, his mother and his sister, that AAA suffered since childhood repeated verbal and physical abuse from accused-appellant, and that he dreaded being near his father. AAA suffered injury in the April 19, 2008 incident, as supported by their testimonies and a medical certificate.

The Court gave due course to accused-appellant's appeal from the November 28, 2016 Decision of the CA. It required the parties to submit their respective supplemental briefs, if they so desired. In its Manifestation and Motion[25] dated November 6, 2017, the Office of the Solicitor General informed the Court that it adopts its Brief for the Plaintiff-Appellee dated April 6, 2015 for purpose of the appeal. Similarly, accused-appellant indicated that he adopts his Brief[26] dated November 28, 2014 for the same adequately discussed all matters pertinent to his defense.[27]

Accused-appellant claims that the absence of physical proof that he actually mauled AAA casts serious doubt to the prosecution's version of events. He insists that the testimonies of the prosecution witnesses should not be considered due to their ill will against him. The Court should consider that BBB did not deny that she never repelled his supposed nefarious advances. The trial court relied heavily on the weakness of his defense and not on the strength of the prosecution's evidence.

The appeal is devoid of merit.

It is settled that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to

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

[26] CA *rollo*, pp. 25-41.

[27] *Rollo*, pp. 32-34.

correct, cite and appreciate errors in the appealed judgment, whether they are assigned or unassigned.[28]

Guided by the foregoing, the Court deems it proper to modify accused-appellant's conviction of Rape, three (3) counts of Acts of Lasciviousness, in relation to R.A. No. 7610, to Qualified Rape, and three (3) counts of Lascivious Conduct under Section 5 (b) of R.A. No. 7610, as will be explained hereunder.

Article 266-A (1) (a), in relation to Article 266-B (1), of the RPC provides:

> 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;
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> x x x x x x x x x
>
> Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the **victim is under eighteen (18) years of age** and the **offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.] (Emphasis supplied)

The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted)[29] or is an ascendant, step-parent,

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[28] *People v. Dahil, et al.*, 750 Phil. 212, 225 (2015).

[29] *People v. Colentava*, 753 Phil. 361, 372-373 (2015).

guardian, relative by consanguinity or affinity within the third civil degree, or is the common-law spouse of the parent of the victim. The gravamen of the crime of rape is carnal knowledge of a woman against her will.[30]

In testifying before the trial court, BBB narrated in detail the crime committed, thus:

Q: What happened when you were there at the irrigation?
A: My father instructed me to lie down on the irrigation and he just laid a banana leaf for me to lie down on.

Q: Did you follow his instruction?
A: Yes[,] Ma'am.

Q: Why did you follow his order to lie on the irrigation?
A: Because he is my father.

Q: After you laid down on that banana leaf in the grassy portion of the irrigation what did you do?
A: He took off my pants.

Q: When you said, "hinubuan niya po ako" what clothes are you referring to, upper or the lower garment?
A: The lower garment.

Q: Did he completely undress you including your underwear?
A: Yes[,] Ma'am.

Q: So what was your reaction when your father was undressing you[,] considering that he is your father?
A: I was a (*sic*) starting to feel a bit afraid at that time.

Q: Did you resist?
A: Not anymore[,] Ma'am.

Q: At that time again Miss Witness[,] how old were you?
A: Ten (10) years old[,] Ma'am.

Q: **Why did you follow your father considering that you were ten (10) years old and you knew that that was bad?**
A: **Because he is my father and he is cruel.**

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[30] *People v. Orilla*, 467 Phil. 253, 274 (2004); citation omitted.

x x x x x x x x x

Q: So you said that after your father removed your lower garments and your father likewise removed his pants and briefs and after that what happened?
A: He already went on top of me.

Q: And when he went on top of you what did he do to you?
A: He told me to be quiet.

Q: And did you follow him?
A: Yes[,] Ma'am.

Q: Why did you follow him?
A: Because he is my father.

Q: Miss Witness when he was on top of you what did he do to you?
A: He inserted his penis in my vagina.

Q: What did you feel when your father was inserting his penis in your vagina?
A: At first it was really very painful.

Q: Did you tell your father to stop what he was doing because you were feeling pain?
A: No[,] Ma'am.

Q: Why did you not tell that to your father?
A: Because I was afraid of him.

Q: **Why are you afraid of your very own father?**
A: **Because I was afraid that he would hit me or hurt me.**

PROS. JOYA:

Witness is crying while giving the answer.

Q: For how long[,] if you could estimate[,] was your father on top of you?
A: It was quite long[,] Ma'am.

Q: **Was your father by the way successful in inserting his penis in your vagina?**
A: **Yes[,] Ma'am.**

Q: While he was inside you what were you doing?
A: I was just lying down[,] Ma'am.

Q: Why did you not resist?
A: Because I was afraid that he might beat or hurt me.

Q: You said that you felt pain because of what your father did, that is physical pain, inside you Miss Witness what did you feel considering that it was your very own father who was deflowering you?
A: Anger[,] Ma'am.

Q: Now how did that incident stop Miss Witness?
A: After he was successful in what he did[,] he voluntarily stopped and ordered me to dress up.

x x x x x x x x x

Q: So what did your father tell you as regards that incident when he had sexual intercourse with you[,] if any?
A: **He told me not to tell this to anybody**.[31] (Emphases supplied)

After a judicious review of the records of this case, the Court finds no cogent reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. Settled is the rule that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial courts stand in a much better position to decide the question of credibility. Indeed, trial court judges are in the best position to assess whether the witness is telling a truth or a lie as they have the direct and singular

[31] TSN, October 25, 2011, pp. 5-8.

opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[32]

The Court disagrees with accused-appellant's claim that the testimonies of the witnesses should be discarded because of harbored ill feelings. Family resentment, revenge or feuds have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast and unyielding throughout the direct and cross-examination that she was sexually abused.[33] No daughter, especially a minor like BBB in this case, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue.[34] An incestuous sexual assault is a psycho-social deviance that inflicts a stigma, not only on the victim but also on the whole family.[35]

We note that based on her testimony and her birth certificate[36] presented, BBB was only ten (10) years old when the rape was committed against her in May 2003, since she was born on [redacted]. However, it appears that the allegation in the Information and the decision of the trial court mentioned that she was sixteen (16) years old at that time. Accused-appellant cannot be convicted of statutory rape since BBB's correct age was not properly alleged in the Information. Otherwise, he would be deprived of his right to be informed of the charge lodged against him.[37] Nevertheless, the prosecution still established beyond doubt that she was under eighteen (18) years old at the

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[32] *People of the Philippines v. Jelmer Matutina y Maylas, et al.*, G.R. No. 227311, September 26, 2018.

[33] *People v. Santos*, 532 Phil. 752, 767 (2006).

[34] *People v. Mendoza*, 441 Phil. 193, 206 (2002).

[35] *People v. Orilla*, 467 Phil. 253, 272 (2004); citation omitted.

[36] Records (Crim. Case No. CR-08-9180), p. 13.

[37] *People v. Arcillas*, 692 Phil. 40, 153 (2012); citation omitted.

commission of the crime. From the foregoing, as well as the fact that BBB's minority and her relationship with accused-appellant were not only alleged in the Information but also proven during the trial, this Court finds it proper to upgrade his conviction in Criminal Case No. CR-08-9180 to Qualified Rape.

Anent the penalty imposed, the RTC is correct in imposing the penalty of *reclusion perpetua* without eligibility for parole. The penalty for qualified rape, if at all, the qualification of "without eligibility for parole," may be applied to qualify *reclusion perpetua* in order to *emphasize* that accused-appellant should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.[38] In view of prevailing jurisprudence, the civil indemnity, moral damages and exemplary damages awarded to BBB should be increased to ₱100,000.00 each, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.[39]

Similarly, in Criminal Case Nos. CR-08-9183, CR-08-9184 and CR-08-9185, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. As the trial court observed, CCC was able to narrate in detail the lascivious acts done to her by her father, to wit:

Q: Miss Witness how old were you in March 2008?
A: Fourteen (14), Ma'am.

x x x x x x x x x

Q: Now during that evening of **March 18, 2008** you said you were sleeping. Was your nephew with you during that time?
A: Yes[,] Ma'am.

Q: What happened while you were sleeping?
A: My father [lay] beside me.

x x x x x x x x x

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[38] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, A.M. No. 15-08-02-SC, August 4, 2015.

[39] *People v. Jugueta*, 783 Phil. 806, 848 and 854 (2016).

Q: So you were sleeping in the evening of March 18, 2008 with your nephew when you felt that your father [was lying] beside you. So after he [lay] beside you[,] what happened?
A: **He touched my vagina.**

Q: Now what was your initial reaction when your father touched your vagina?
A: **I cried, Ma'am.**

Q: Your brothers were just in the other room. Why did you not shout for help?
A: **I was afraid, Ma'am.**

Q: Afraid of whom?
A: **Of my father.**

x x x x x x x x x

Q: After you felt that your father touched your vagina, what did your father do after?
A: Nothing more. He was just lying there.

Q: For how long did your father touch your vagina?
A: Only a few moments.

Q: When he touched your vagina[,] was it under your clothes or was it over your clothes?
A: When I was still wearing clothes.

Q: While your father's hand was on your vagina[,] what was his other hand doing?
A: Nothing, Ma'am[.]

Q: So you said that you cried. How did your father react to your crying?
A: He just left after that.

x x x x x x x x x

Q: Why were you afraid of your father?
A: **Matapang po siya.**

Q: **What kind of father is [ZZZ]?**

A: **[Every time] that he would have no money he would get angry, Ma'am.**

x x x x x x x x x

Q: What happened that evening of **March 19, 2008**?
A: **I was then lying down on the bed and my father suddenly [lay] beside me and touched my breasts.**

x x x x x x x x x

Q: Your brother [FFF] was on your right side. What did you do Miss Witness when your father [lay] beside you?
A: **I cried, Ma'am and I could not sleep that night.**

Q: And was your brother awakened with your crying?
A: Yes[,] Ma'am.

Q: What happened when he was awakened?
A: Nothing. He was just staring at me.

x x x x x x x x x

Q: For how long did your father touch your breasts?
A: Only for a few moments, Ma'am.

Q: **Which part of your breast did your father touch?**
A: **The right part, Ma'am.**

Q: What did you notice of him when he was touching your breasts?
A: **He was smiling.**

x x x x x x x x x

Q: Where did you spend the night in the evening of **March 20, 2008**?
A: Also in our house, Ma'am.

Q: What happened when you and [FFF] were sleeping in the evening of March 20, 2008?

x x x x x x x x x

A: On that evening again my father [lay] beside me.

Q: By the way, were you sleeping side by side with [FFF] during that time?
A: Yes[,] Ma'am.

Q: When your father [lay] beside you[,] what happened?
A: **He touched my breasts and vagina, Ma'am.**

x x x x x x x x x

Q: **Which of your breasts was mashed or fondled by the accused?**
A: **The left breast.**

x x x x x x x x x

Q: Miss Witness you said that both breasts were fondled by the hands of the accused. **What did you feel while your father was fondling or mashing your breasts?**

A: **I became more afraid, Ma'am**.

x x x x x x x x x

Q: What did your father do when you turned your back against him?
A: Again he [lay] beside me.

Q: And what did he do to you?
A: **He embraced me and placed my legs between his two (2) legs.**[40]

The case of *People v. Caoili*[41] is instructive on the proper designation of the offense in case lascivious conduct is committed, thus:

Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

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[40] TSN, September 15, 2009, pp. 4-13.

[41] 815 Phil. 839 (2017).

3. If the **victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "**Lascivious Conduct under Section 5(b) of R.A. No. 7610**," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[42] (Emphases supplied)

The evidence confirms that CCC was fourteen (14) years old at the commission of the offense. The acts of touching and fondling of CCC's breasts and touching of her vagina undeniably amounted to "lascivious conducts." Thus, there is a need to modify the nomenclature of the crime charged to "Lascivious Conduct under Section 5 (b) of R.A. No. 7610."

Since the perpetrator is CCC's father, and such alternative circumstance of relationship was alleged in the Information, and proven and even admitted by accused-appellant during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e.*, *reclusion perpetua*.[43] This is in consonance with Section 31 (c) of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.[44]

There is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the RTC and affirmed by the CA. This is pursuant to A.M. No. 15-

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[42] *Id.* at 893-894.

[43] *Manuel Barallas Ramilo v. People of the Philippines*, G.R. No. 234841, June 3, 2019.

[44] *People v. Caoili*, 815 Phil. 839 (2017).

08-02-SC[45] in cases where the death penalty is not warranted, such as in the instant case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Thus, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of Lascivious Conduct under Section 5 (b) of R.A. No. 7610. The award of civil indemnity, moral damages and exemplary damages when the penalty of *reclusion perpetua* is imposed is ₱75,000.00 each.[46] Therefore, the amount of damages awarded in Criminal Case Nos. CR-08-9183 and CR-08-9184 should be increased to ₱75,000.00 each, and the exemplary damages in Criminal Case No. CR-08-9185 to ₱75,000.00. Accused-appellant is ordered to pay a fine in the amount of ₱15,000.00, pursuant to Section 31 (f), Article XII of R.A. No. 7610. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until said amounts are fully paid.

Lastly, this Court, likewise, sustains the ruling in Criminal Case Nos. CR-08-9135 and CR-08-9136 finding accused-appellant guilty of violations of Section 5 (a) and (i) of R.A. No. 9262. The trial court observed that the berating and mauling incident not only caused physical injury to AAA but also mental anguish and humiliation. By his own account, he was distressed and hurt by accused-appellant's acts, which started when he was young. Contrary to accused-appellant's claim, the prosecution presented AAA's medical certificate showing that he suffered hematoma on his right upper lip. This corroborated with the testimonies of the witnesses that AAA sustained physical injury from the incident. It has long been established that this Court is not a trier of facts.[47] As discussed, factual findings of

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[45] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

[46] *People of the Philippines v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

[47] *Co v. Vargas*, 676 Phil. 463, 470 (2011).

the RTC are conclusive and binding on this Court when affirmed by the CA.

As to the appropriate penalties, Section 6 of R.A. No. 9262 provides:

> SECTION 6. *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:
>
> (a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.
>
> If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prision mayor; those constituting less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.
>
> x x x x x x x x x
>
> (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.
>
> x x x x x x x x x
>
> **In addition to imprisonment**, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than [T]hree hundred thousand pesos ([₱]300,000.00); (b) undergo **mandatory psychological counseling or psychiatric treatment** and shall **report compliance to the court**. (Emphases supplied)

The Court affirms the penalty imposed in Criminal Case No. CR-08-9136. However, the Court deems it proper to modify the penalty imposed in Criminal Case No. CR-08-9135. As aforementioned, R.A. No. 9262 imposes the penalty of *prision mayor* for violation of Section 5 (i) thereof. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, or anywhere from six (6) months and one (1) day to six (6) years. There being no

aggravating or mitigating circumstances attending the commission of the crime, the maximum term shall be the medium period of the penalty provided by the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*.[48] Therefore, accused-appellant should suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

This Court also notes that both the RTC and the CA failed to require accused-appellant to undergo psychological counseling or treatment. This is a penalty set by Section 6 of R.A. No. 9262 *in addition* to imprisonment and fine. Thus, accused-appellant is required to submit himself to a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin.

WHEREFORE, premises considered, the appeal is **DENIED**. The November 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06755 is hereby **AFFIRMED** with **MODIFICATIONS**. The Court finds accused-appellant ZZZ guilty beyond reasonable doubt:

1. In Criminal Case No. CR-08-9135, of **Violation of Section 5 (i)**, in relation to **Section 6 (f), of Republic Act No. 9262**, and is sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is also ordered to (a) pay a fine in the amount of One Hundred Thousand

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[48] Article 64 of the RPC provides:

ARTICLE 64. Rules for the Application of Penalties Which Contain Three Periods. — In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are [no] mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

Pesos (₱100,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment; and (c) report to the Court his compliance with counseling or treatment;

2. In Criminal Case No. CR-08-9136, of **Violation of Section 5 (a)**, in relation to **Section 6 (a), of Republic Act No. 9262**, and is sentenced to suffer a straight penalty of imprisonment for three (3) months of *arresto mayor* in its medium period. He is also ordered to (a) pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment; and (c) report to the Court his compliance with counseling or treatment;

3. In Criminal Case No. CR-08-9180, of **Qualified Rape**, and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay BBB civil indemnity, moral damages and exemplary damages in the amount of One Hundred Thousand Pesos (₱100,000.00) each;

4. In Criminal Case No. CR-08-9183, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages, and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00);

5. In Criminal Case No. CR-08-9184, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00); and

6. In Criminal Case No. CR-08-9185, of **Lascivious Conduct under Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the penalty of *reclusion perpetua* and to **PAY** a fine of Fifteen Thousand Pesos (₱15,000.00). He is further ordered to pay CCC civil indemnity, moral damages and exemplary damages, each in the amount of Seventy-Five Thousand Pesos (₱75,000.00).

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Reyes, J. Jr., *Lazaro-Javier*, and *Lopez, JJ.*, concur.

Caguioa, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant ZZZ[1] (accused-appellant) for the crimes he was charged with.

I disagree, however, that the nomenclature of the crimes for Criminal Cases Nos. CR-08-9183, CR-08-9184, and CR-08-9185 should be modified to "lascivious conduct under Section 5(b), Republic Act No. 7610," and the penalty increased to *reclusion perpetua* as a result of the modification.

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[1] 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 initials 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.

I reiterate and maintain my position in *People v. Tulagan*[2] that Republic Act No. (RA) 7610 and the Revised Penal Code (RPC), as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors."[3] Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is "exploited in prostitution or subjected to other sexual abuse" (EPSOSA).

In other words, for an act to be considered under the purview of Section 5(b), RA 7610, so as to trigger the higher penalty provided therein, "the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child 'exploited in prostitution or subjected to other sexual abuse'; and (3) the child whether male or female, is below 18 years of age."[4] Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — *a separate and distinct element* — must first be both alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

Specifically, in order to impose the higher penalty provided in Section 5(b) as compared to Article 266-B of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.[5]

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[2] G.R. No. 227363, March 12, 2019, accessed at<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>.

[3] Dissenting Opinion of Justice Caguioa in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, accessed at<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>.

[4] Dissenting Opinion of Justice Caguioa in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, *id*., citing *People v. Abello*, 601 Phil. 373, 392 (2009).

[5] *Id*.

In this case, the Informations only alleged that the victim was his 14-year-old daughter, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, while I agree that accused-appellant's guilt was proven beyond reasonable doubt, it is my view that his conviction in the aforementioned cases should only be for Acts of Lasciviousness, defined and punished under Article 266-A(2), in relation to Article 336 of the RPC — not Lascivious Conduct under Section 5(b), RA 7610. Accordingly, the penalty that ought to be imposed on him should be within the range of *arresto mayor* to *prision correccional* instead of the one imposed by the *ponencia* which is *reclusion perpetua*.

Meanwhile, I fully concur with the *ponencia* as regards its affirmance of his conviction in Criminal Cases Nos. CR-08-9135, CR-08-9136, and CR-08-9180 for violations of Section 5(i) in relation to Section 6(f) of RA 9262, Section 5(a) in relation to Section 6(a) of RA 9262, and qualified rape, respectively.

FIRST DIVISION

[G.R. Nos. 233061-62. July 28, 2020]

THE PEOPLE OF THE PHILIPPINES, *petitioner*, *vs.* **THE HONORABLE FOURTH DIVISION, SANDIGANBAYAN and RAUL Y. DESEMBRANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; AS THEY DISPOSE OF THE SUBJECT

MATTER IN ITS ENTIRETY OR TERMINATE A PARTICULAR PROCEEDING OR ACTION, ORDERS GRANTING MOTIONS TO DISMISS ARE SUBJECT TO APPEAL OR PETITION FOR REVIEW, AS A RULE. — The general rule is that orders granting motions to dismiss are subject to appeal or petition for review for they belong to the category of "*judgment, final order or resolution*" as they dispose of the subject matter in its entirety or terminate a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. It has been held that an order dismissing a case is a final order if no motion for reconsideration or appeal therefrom is timely filed.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY AGAINST THE SANDIGANBAYAN'S ORDER OF DISMISSAL OF A CRIMINAL COMPLAINT BY REASON OF UNDUE DELAY. — [I]n ***People v. The Honorable Sandiganbayan (First Division)***, it was declared that a special civil action for *certiorari* is the proper remedy against the Sandiganbayan's order of dismissal of a criminal complaint by reason of undue delay, thus: It must be noted at the outset that a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process. x x x **With this, the Court shall now proceed to determine whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal case filed against Diaz due to the Ombudsman's violation of his right to the speedy disposition of his case**. So must it be.

3. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; OMBUDSMAN RULES OF PROCEDURE, AS AMENDED; ONCE THE INFORMATION HAS BEEN FILED WITH THE SANDIGANBAYAN, ACTION BY THE OFFICE OF THE SPECIAL PROSECUTOR (OSP) ON THE MOTION FOR RECONSIDERATION OR REINVESTIGATION IS

NO LONGER A MATTER OF RIGHT BUT A PRIVILEGE; THE SANDIGANBAYAN HAS TO GRANT LEAVE OF COURT TO THE OSP IN ORDER FOR IT TO ACT ON THE MOTION; CASE AT BAR.— The Sandiganbayan gravely abused its discretion in citing *Sales* to interpret full and complete preliminary investigation, and thereafter, to do away with leave of court as required in the Ombudsman's Rules of Procedure. Elementary circumspection would have instructed the Sandiganbayan that this Court had already restricted the *Sales* ruling only to the preliminary investigation of Ombudsman cases under the **then** Section 7 of the Ombudsman Rules of Procedure. x x x Clearly, unlike in the old Section 7 upon which *Sales* was based, the governing Section 7 no longer bars the Office of the Ombudsman or more properly the OSP from filing the Information with the Sandiganbayan. As a result, it stands to reason that preliminary investigation as a matter of right is full and complete *immediately after* the opportunity to hear the parties and the finding of probable cause, since at that stage the Information may already be filed with the Sandiganbayan, without awaiting either the filing or the lapse of the period for filing any motion for reconsideration or reinvestigation, or if one has been filed, the resolution thereof. Further, once the Information has been filed with the Sandiganbayan, action by the OSP on the motion for reconsideration or reinvestigation is no longer a matter of right but a privilege, as the Sandiganbayan has to grant leave to the OSP in order for it to act on the motion for reconsideration or reinvestigation. There is no legal right to move for reconsideration beyond what the rule allows. A motion for reconsideration is not inherent to due process but is merely granted subject to the conditions for its exercise or availability. It is a privilege and must be invoked only in the manner so provided. The Sandiganbayan thus gravely abused its discretion in faulting the OSP for seeking leave of court before it could have acted on private respondent's motion for reconsideration. The OSP had already conducted full and complete preliminary investigation when it filed with the Sandiganbayan on November 10, 2015 its "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the OSP's Resolution dated September 29, 2015 as approved by the Office of the Ombudsman on October 21, 2015. Private respondent's motion for reconsideration did not reduce the

fullness or completeness of the preliminary investigation conducted by the OSP. For the OSP was within its right to file the Informations with or without private respondent's motion.

4. ID.; ID.; ID.; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES OR SPEEDY TRIAL; GUIDELINES IN THE DETERMINATION OF INORDINATE DELAY IN THE DISPOSITION OF CASES; CASE AT BAR. — The case of ***People v. Hon. Sandiganbayan (First Division)*** summarizes the principles and guidelines in determining inordinate delay in the disposition of cases: x x x On July 31, 2018, a **definitive ruling on the concept of inordinate delay** was laid down by the Court *en banc* in ***Cagang v. Sandiganbayan*** as follows: (1) The right to speedy disposition of cases is different from the right to speedy trial. x x x (2) For purposes of determining **inordinate delay**, a **case** is **deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation**. x x x (3) Courts must determine which party carries the burden of proof. x x x (4) Determination of the **length of delay** is **never mechanical.** x x x(5) The **right** to speedy disposition of cases (or the right to speedy trial) must be **timely raised**. x x x The guidelines to be observed in resolving the instant case are: "*If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay.*" This is because the Sandiganbayan has set the time-limit of 60 days from its directive to conduct a preliminary investigation. Additionally, it must be stressed that the "*[d]etermination of the length of delay is never mechanical.*"

5. ID.; ID.; ID.; ID.; ID.; ELEMENT OF PREJUDICE THAT AN ACCUSED SUFFERS IN CASE OF INORDINATE DELAY, OBJECTIFIED; IF OUT ON BAIL, THERE IS NO PREJUDICE TO THE ACCUSED; CASE AT BAR. — ***Corpuz v. Sandiganbayan*** objectifies the element of prejudice that an accused suffers: x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to **prevent oppressive pre-**

trial incarceration; to **minimize anxiety and concerns of the accused to trial**; and to **limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the **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. Here, private respondent is **out on bail**. As observed by his active participation in the proceedings below, it can be said that steps had been taken to mitigate any anxiety and concerns that he may have about the preliminary investigation and his trial. As importantly, there is definitely no possibility that his defense will be impaired because he had taken advantage of every opportunity to be heard available to him. We see **no prejudice** to private respondent as objectified above.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; SANDIGANBAYAN; ONCE THE INFORMATION HAS BEEN FILED, ANY DISPOSITION OF THE CASE RESTS ON THE SOUND DISCRETION OF THE SANDIGANBAYAN; CASE AT BAR. — [T]he Sandiganbayan gravely abused its discretion not only in imputing blame to the OSP for the delay on the basis of an inapplicable case law, but also in failing to move the case forward upon the lapse of the period to conduct preliminary investigation. ***Garcia v. Sandiganbayan*** requires this action from the Sandiganbayan: From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it. Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances. x x x The Sandiganbayan was obliged to move the cases forward. It should have thus set a date for private respondent's arraignment and directed the OSP to resolve private respondent's motion for reconsideration within a period not

exceeding sixty (60) days. If the OSP had failed to do within the prescribed period, the Sandiganbayan should have proceeded with the arraignment and thereafter the trial. Indubitably, neither the OSP nor the Office of the Ombudsman is guilty of inordinate delay in the disposition of the cases against private respondent. The ball was already in the Sandiganbayan's court, so to speak. Instead of proceeding with the arraignment of private respondent and the rest of the rigmarole, the Sandiganbayan procrastinated, and worse, on the basis of a case law that has been overtaken by time and legal developments.

CAGUIOA*, J., concurring and dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; OMBUDSMAN RULES OF PROCEDURE, AS AMENDED; SECTION 7, RULE II THEREOF; FILING OF MOTION FOR RECONSIDERATION SHALL NOT BAR THE FILING OF THE CORRESPONDING INFORMATION IN COURT; OFFICE OF THE SOLICITOR GENERAL, NOT GUILTY OF INORDINATE DELAY IN CASE AT BAR.— I agree that no inordinate delay can be attributed to the OSP. x x x While it is undisputed that Desembrana's Motion for Reconsideration was pending with the OSP at the time it filed its Compliance with Omnibus Motion, the OSP cannot be faulted for proceeding in accordance with Section 7, Rule II of the Ombudsman Rules, as amended. x x x The pendency of Desembrana's Motion for Reconsideration did not operate as a bar to the filing of the Compliance with Omnibus Motion. In any event, it must be stressed that in its Reply dated January 8, 2016, the OSP already raised that Desembrana was required to obtain leave of court before it could act on his Motion for Reconsideration. Clearly, the OSP cannot be faulted for not resolving Desembrana's Motion for Reconsideration prior to the issuance of the assailed Resolution. Ultimately, the attendant circumstances show that while the OSP failed to comply with the Sandiganbayan's 60-day deadline, the delay it incurred cannot be characterized as inordinate or unreasonable. Hence, I agree with the OSP's contention that the Sandiganbayan acted with grave abuse of discretion amounting to lack of jurisdiction when it whimsically and capriciously ascribed inordinate delay on

the part of the OSP. **Thus, there is sufficient basis to grant the Petition.**

2. ID.; ID.; ID.; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; AN ACCUSED'S FAILURE TO ASSERT HIS OR HER RIGHT TO SPEEDY DISPOSITION SHOULD NOT BE CONSTRUED AS AN IMPLIED WAIVER OF SUCH RIGHT; IT IS THE STATE WHICH HAS THE DUTY TO ENSURE THAT THE CRIMINAL CASES IT FILES ARE RESOLVED WITH DISPATCH; CASE AT BAR. — In my Dissenting Opinion in *Cagang*, I expressed my reservations against the treatment of the accused's failure to assert his or her right to speedy disposition as an implied waiver. Thus, I urged the Court in *Cagang* to revisit the case *of Dela Peña v. Sandiganbayan* (*Dela Peña*) where the Court held that silence on the part of the accused operates as an implied waiver of one's right to speedy disposition. x x x In my view, Desembrana's alleged failure to assert his right to speedy disposition should not be construed as an implied waiver of such right. Doing so unduly places upon him the burden to expedite the criminal cases filed against him. Time and again, this Court has ruled that such burden falls on the State, thus: x x x [T]here is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld. x x x [a] respondent in a criminal case has no compulsory obligation to follow up on his case. It was held therein 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." x x x Here, the *ponencia* faults Desembrana for failing to assert his right to speedy disposition during the 14-month impasse at the Sandiganbayan even as it concedes that Desembrana actively participated in the Sandiganbayan proceedings. In fact, as set forth in the narration of facts, Desembrana timely filed his responsive pleadings to the Compliance with Omnibus Motion. In my view, it is unreasonable to require Desembrana to do more in order to move his criminal cases forward. To repeat, it is the State which has the duty to

ensure that the criminal cases it files are resolved with dispatch. To my mind, it is unjust to state that Desembrana should have done more to signify his non-waiver of his right to speedy disposition and at the same time admonish him for allegedly contributing to the delay of his own case merely because he filed his share of motions and pleadings.

3. ID.; ID.; ID.; ID.; ID.; ATTACHES THE MOMENT THE ACCUSED IS EXPOSED TO PREJUDICE; PREJUDICE DOES NOT ARISE SOLELY FROM THE RESTRAINT ON ONE'S LIBERTY BUT ALSO FROM THE IMPAIRMENT ON THE INTERESTS WHICH THE RIGHT TO SPEEDY DISPOSITION HAD BEEN CRAFTED TO PROTECT.— With due respect, I also take exception to the statement that Desembrana could not have suffered any prejudice as a result of Sandiganbayan's delay because he is out on bail. The prejudice suffered by the accused as a result of a criminal action is not limited to pre-trial incarceration. In *Corpuz v. Sandiganbayan* the Court held: x x x **Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the 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**. In *Cagang*, I stated that the right to speedy disposition attaches the moment the respondent or accused is exposed to prejudice. In this connection, I stressed that prejudice does not arise solely from the restraint on one's liberty but also from the impairment of the interests which the right to speedy disposition had been crafted to protect, thus: The right to speedy disposition covers the periods "before, during, and after trial." Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, covers not only preliminary investigation, but extends further, to cover the fact-finding process. As explained by the Court in *People v. Sandiganbayan*: x x x **Prejudice is**

not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority, I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction. The scope of right to speedy disposition corresponds not to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for petitioner.
Rodolfo John Robert Palattao for private respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This special civil action for *certiorari* assails the following issuances of the Sandiganbayan – Fourth Division in Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428 both entitled "*People of the Philippines v. Raul Y. Desembrana, Assistant City Prosecutor, Department of Justice, Quezon City:*"

1) Resolution[1] dated April 12, 2017, granting private respondent Raul Y. Desembrana's motion to dismiss the charges against him for violation of his right to speedy disposition of cases, releasing his cash bond, and lifting the hold departure order against him; and

[1] *Rollo,* pp. 39-46.

2) Resolution[2] dated May 22, 2017, denying petitioner's motion for reconsideration.

The Facts

In two Informations dated November 15, 2014, private respondent Raul Desembrana was charged with two (2) counts of violation of Section 7(d) in relation to Section 11 of Republic Act No. 6713[3] (RA 6713), docketed Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428:

Criminal Case No. SB-14-CRM-0427:

That on November 14, 2014, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused RAUL DESEMBRANA y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally solicit from Dr. Alexis Montes Eighty Thousand Pesos (Php80,000.00), and actually accept Four Thousand Pesos (Php4,000.00) which were placed on top of the "boodle money" from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes in consideration for the dismissal of the case entitled "Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes" docketed at the Quezon City Prosecutor's Office as NPS Docket No. XV03INV14F-05695, which was pending before him to the damage and prejudice of the public interest and the complainants herein.

Contrary to law.[4]

Criminal Case No. SB-14-CRM-0428:

That on November 14, 2014, or sometime prior or subsequent thereto in Quezon City, Philippines and within the jurisdiction of this Honorable

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

[3] Code of Conduct and Ethical Standards for Public Officials and Employees.

[4] *Rollo,* p. 10.

Court, accused RAUL DESEMBRANO y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, a preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, DOJ, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally demand from Dr. Alexis S. Montes, Eighty Thousand Pesos (Php80,000.00) and actually receive Four Thousand Pesos (Php4,000.00) which were placed on top of the "boodle money" from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes, in consideration for the dismissal of the case entitled "Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes" docketed at the Quezon City Prosecutor's Office as NPSW Docket No. XV03INV14F-05695, which was assigned to him for preliminary investigation, an action he was not inclined to do without the amount demanded and delivered to him, which action is unjust as it is contrary to his mandated duty to resolve the case based on the evidence on record and applicable law, to the damage and prejudice of the public interest and complainants herein.

Contrary to law.[5]

On November 21, 2014, after posting bail, private respondent filed a Motion to Suspend Arraignment (Motion) with the Sandiganbayan to accommodate the Motion to Conduct Preliminary Investigation he had filed with the Office of the Special Prosecutor (OSP) on November 20, 2014.

The Sandiganbayan heard private respondent's Motion on November 28, 2014 and directed the OSP to file its Comment/ Opposition to accused's Motion. The OSP filed its Comment/ Opposition on December 4, 2014. Thereafter, on January 12, 2015, private respondent filed his Motion to Admit Reply (to Prosecution's Comment/Opposition dated December 4, 2014).[6]

After hearing private respondent's Motion to Admit Reply on January 23, 2015, the Sandiganbayan granted the Motion

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[5] *Id*. at 11.

[6] *Id*. at 139.

and noted the OSP's Manifestation that it would no longer file any rejoinder.

In its Resolution[7] dated July 8, 2015, the Sandiganbayan granted private respondent's Motion and directed the OSP to conduct a "full and complete preliminary investigation" within sixty (60) days from notice or until September 11, 2015.

According to the Sandiganbayan, "[a] full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan."

In compliance therewith, the OSP directed private respondent to submit his counter-affidavit and other countervailing evidence. On September 3, 2015, private respondent submitted his Rejoinder-Affidavit, the last pleading received by the OSP.[8]

On two (2) separate occasions, on September 9, 2015 and October 12, 2015, the OSP filed a Motion for Extension of Time to Terminate a Complete and Full Preliminary Investigation of these Cases.

On October 19, 2015, private respondent manifested that on September 3, 2015, he filed a Rejoinder-Affidavit with the OSP.

On September 29, 2015, the OSP issued a recommendation finding probable cause against private respondent for violation of Article 210[9] of *The Revised Penal Code* and requesting for

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[7] *Id*. at 165.

[8] *Id*. at 139.

[9] Article 210. Direct bribery. – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of not less than the value of the gift and not less than three times

the withdrawal of the information in Criminal Case No. SB-14-CRM-0427 and the substitution of the relevant Information in place thereof. The Ombudsman approved the recommendation in its Resolution dated October 21, 2015:

> WHEREFORE, premises considered, the undersigned maintain that respondent Raul Desembrano y Yazon be held liable for the crime of Direct Bribery defined and penalized under Article 210 of the Revised Penal Code.
>
> Further, it is hereby recommended that an information for violation of Section 3(e) of Republic Act No. 3019 is hereto attached be filed in lieu of the Information docketed as SB-14-CRM-0427, for violation of Section 7 (d) in relation to Section 11 of Republic Act No. 6713. Consequently, the Information docketed as SB-14-CRM-0427 is hereby recommended withdrawn.[10]

Private respondent filed his Motion for Reconsideration dated November 9, 2015 with the OSP.[11]

On November 10, 2015, the OSP submitted the foregoing Resolution with the Sandiganbayan.

As narrated by the Sandiganbayan, the following series of events transpired:

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the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed. If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift. If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period and a fine of not less than the value of the gift and not less than three times the value of such gift. In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification. The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

[10] *Rollo*, pp. 12-13.

[11] *Id.* at 13.

On **November 10, 2015**, in compliance with the July 8, 2015 Resolution of the Court, the prosecution filed it's a "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the Resolution of the Office of the Ombudsman dated September 29, 2015 as approved by the Honorable Ombudsman on October 21, 2015.

On **November 24, 2015**, the Court directed accused Desembrana to file his comment on the prosecution's motion. Accordingly, on December 3, 2015, the accused filed a "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)," praying for the Court to hold in abeyance any action on the prosecution's motion pending final resolution of the motion for reconsideration he filed on November 9, 2015 with respect to the September 29, 2015 Resolution of the [Office of the Special Prosecutor]. Subsequent to this, the prosecution filed its "Reply (to Comment, dated December 2, 2015)" on **January 12, 2016**, while the accused filed a "Rejoinder (To Reply, dated January 8, 2016 filed by the Office of the Special Prosecutor)" on **January 27, 2016**.

On **December 5, 2016**, in the interest of justice, the Court resolved to admit the prosecution's Reply as well as the accused's Rejoinder and submitted the prosecution's Compliance with Omnibus Motion for resolution.

On **January 20, 2017**, the Court issued a Resolution sustaining the position taken by the accused and holding in abeyance the resolution of the prosecution's "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427 and for the Lifting of the Resolution, dated July 8, 2015)" until after the final resolution of accused Desembrana's motion for reconsideration before the Office of the Ombudsman. It then directed the prosecution to inform the Court once the reconsideration sought by the accused has been resolved.[12]

In its Resolution dated January 20, 2017, the Sandiganbayan also directed the OSP to give an update on any incident pending with the Office of the Ombudsman relevant to the case.[13]

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[12] *Id*. at 140.

[13] *Id*.

Consequently, the OSP issued a Resolution dated January 27, 2017 denying private respondent's motion for reconsideration, which the Office of the Ombudsman approved in its Resolution dated February 8, 2017.[14]

Meantime, private respondent filed his Motion to Dismiss dated February 6, 2017. He pointed out that one (1) year and two (2) months had lapsed from the time of the filing of his motion for reconsideration before the Office of the Ombudsman. Further, two (2) years and two (2) months had lapsed from the Sandiganbayan's directive on November 20, 2014 for the OSP to terminate the preliminary investigation within sixty (60) days from notice. By reason of these twin delays, his right to speedy disposition of cases was allegedly violated.[15]

The OSP, through a Comment and/or Opposition (Motion to Dismiss dated February 6, 2017) filed on March 1, 2017 and a Reply (to Comment/Manifestation dated February 27, 2017) filed on March 7, 2017, countered that the constitutional violation asserted by private respondent was another dilatory tactic. Private respondent contributed to the delay in the termination of the preliminary investigation. Equally important, Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman requires leave of court before a motion for reconsideration may be allowed in cases where the criminal information has already been filed in court. Thus, there was no delay attributable to the OSP since it was only on January 20, 2017 when the Sandiganbayan directed it to give an update on what action had been taken by the Office of the Ombudsman on private respondent's motion for reconsideration.[16]

Previously, the OSP once again sought to have its Omnibus Motion dated November 10, 2015 resolved by the Sandiganbayan through another Omnibus Motion dated February 15, 2017. The Sandiganbayan treated this rather simple Omnibus Motion with

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[14] *Id*. at 14.

[15] *Id*. at 42.

[16] *Id*. at 44.

another set of lengthy hearings from February 15, 2017 to March 7, 2017:

On **February 15, 2017**, the prosecution filed its "Compliance with Omnibus Motion (for Resolution of the Omnibus Motion, dated November 10, 2015 and for the Arraignment of the Accused)." The Court heard the Omnibus Motion on February 23, 2017 and gave the accused until March 2, 2017 to file its comment/opposition thereto. The Court likewise directed the prosecution to file its Reply within five (5) days from receipt of the accused's comment/opposition. Accordingly, on **March 2, 2017**, the accused filed his "Comment/ Manifestation" to the prosecution's Compliance with Omnibus Motion. The prosecution filed its "Reply (on Comment/Manifestation, dated February 27, 2017)," on March 7, 2017.[17]

Ruling of the Sandiganbayan

In its first assailed Resolution[18] dated April 12, 2017, the Sandiganbayan granted private respondent's motion to dismiss by reason of the unreasonable length of time in the conduct of preliminary investigation by the OSP. It held:

The attendant circumstances herein show that the Court directed the Office of the Ombudsman on July 8, 2015 to conduct a full and complete preliminary investigation. The Court, in its Resolution, clarified that a ***"full and complete preliminary investigation"*** includes the opportunity for the respondent to file a motion for reconsideration, to wit:

> A full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan.

The preliminary investigation in this case was deemed terminated on October 21, 2015 when the Honorable Ombudsman approved the Resolution dated September 29, 2015. Contrary to the directive of

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[17] *Id.* at 140.

[18] *Id.* at 39-49.

this Court, however, accused Desembrana has not yet been afforded the opportunity to file a motion for reconsideration when the prosecution filed its "*Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM0427 and for the Lifting of the Resolution, dated July 8, 2015)*" on November 10, 2015 before this Court. Thus, in his "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)" filed on December 3, 2015, the accused prayed for this Court to hold in abeyance any action on the prosecution's Compliance with Omnibus Motion in view of the motion for reconsideration he filed on November 9, 2015 before the Office of the Ombudsman. Since then, and until the Court issued its January 20, 2017 Resolution directing the prosecution to notify the Court once the motion for reconsideration of the accused has been resolved, there has been no action from the Office of the Ombudsman as to the motion of the accused. As correctly pointed out by Desembrana, it has been I year and 2 months since he filed said motion.

The prosecution claims that the delay is caused by lack of compliance on the part of Desembrana to the procedural rule of the Office of the Ombudsman, specifically Section 7(a), Rule II thereof which states that the filing of a motion for reconsideration requires leave of court in cases where an information has already been filed in court, as in the instant case. It further averred that the said requirement was deemed met only when the Court issued its January 20, 2017 Resolution.

The Court will not stand for such ratiocination, which, if not flawed, is misleading. The Court has granted leave of court when it issued its Resolution on July 8, 2015 directing the prosecution to conduct a **full and complete** preliminary investigation and defining the same in clear and unequivocal terms, consistent with the pronouncement of the Supreme Court in *Sales vs. Sandiganbayan* that under the existing rules of the Office of the Ombudsman, the grant of a motion for reconsideration is an integral part of the preliminary investigation proper. Thus, the Supreme Court made the following pronouncement —

> The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed *without* first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary

> investigation conducted in this case *incomplete*. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him....

The Court reiterates that the accused was no longer required to obtain leave of court because it has already been granted. But even assuming that there was no such leave, the lack of action by the prosecution on the motion for reconsideration of the accused cannot be justified because it could have directed the respondent to obtain leave of court. It could have denied the motion, as well, if that were the case. In this situation, the prosecution chose to do nothing and left herein preliminary investigation vulnerable to being challenged for being constitutionally infirm.

The accused could not be faulted for the delay. As held in the case of Coscolluela vs. Sandiganbayan, congruent with the mandate of the Office of the Ombudsman to promptly act on complaints, it was its duty to expedite the prosecution of cases. Thus —

> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was 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. As pronounced in the case of Barker v. Wingo:
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> **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**.

Delay is prohibited by the Constitution when it is oppressive, unreasonable and arbitrary. Such kind of delay trifles with rights and renders them worthless, as in the instant case where the preliminary investigation took more than 2 years to complete because accused's motion for reconsideration was not acted upon for more than a year and would have remained to be so were it not promptly attended to by the Court, to the detriment of the accused.

As the Supreme Court has reminded in *Coscolluela*, the right to speedy disposition of cases does not merely concern itself with speedy

dispatch, but also seeks to afford the accused freedom from anxiety and expense of litigation. It thus held as follows:

> Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. (citation omitted)

All told, the Court finds the long delay in the termination of the preliminary investigation in the instant case to be violative of constitutional right of the accused to speedy disposition of cases.[19] (Emphasis supplied)

Hence, the Sandiganbayan decreed:

WHEREFORE, finding the "Motion to Dismiss" filed by accused **RAUL Y. DESEMBRANA** to be meritorious, the same is hereby **GRANTED**. The cases against him are ordered **DISMISSED**. Let the cash bond posted by the accused be **RELEASED** and **RETURNED**, subject to the usual accounting and auditing rules and procedures.

The Hold Departure Order issued by this Court against herein accused is **LIFTED** and **SET ASIDE**. The Commissioner of the Bureau of Immigration and Deportation is directed to cancel the name of accused Raul Y. Desembrana from the Bureau's Hold Departure List.

SO ORDERED.[20]

Petitioner moved for reconsideration, which the Sandiganbayan denied through its second assailed Resolution dated May 22, 2017.

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

[20] *Id.* at 46.

The Present Petition

The OSP, on behalf of the People of the Philippines, now faults the Sandiganbayan with grave abuse of discretion amounting to lack or excess of jurisdiction for dismissing the criminal cases against private respondent by reason of the alleged unreasonable length of time in the conduct of preliminary investigation.

In its Petition for *Certiorari*[21] dated August 11, 2017 under Rule 65, Rules of Court, the OSP argues that after the two Informations had been filed, the Sandiganbayan assumed full control over the proceedings. The OSP complied with the Sandiganbayan's directive to conduct a preliminary investigation and resolve private respondent's motion for reconsideration thereof.

The Sandiganbayan whimsically and capriciously blamed it for the alleged delay in resolving private respondent's motion for reconsideration of his indictment for bribery under Section 210 of the RPC and violation of Section 3(e) of RA 3019. The Sandiganbayan already assumed jurisdiction over the case since the twin Informations had already been filed. After it terminated the preliminary investigation, it submitted a Compliance with Omnibus Motion for Withdrawal of Information on November 10, 2015 and it was only a little more than a year later, that is on December 12, 2016, that the Sandiganbayan declared that the same was submitted for resolution. Through a Reply dated January 8, 2016, it apprised the Sandiganbayan that it could not resolve private respondent's motion for reconsideration without leave of court. However, it was only on January 20, 2017 that the Sandiganbayan directed it to resolve said motion for reconsideration.[22]

There were also no vexatious, capricious, and oppressive delays that attended the conduct of the preliminary investigation.

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[21] *Id*. at 7-29.

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

Records show that its compliance with the Sandiganbayan's directives was not protracted. It should not be blamed for not resolving private respondent's motion for reconsideration because it had to await for leave from the Sandiganbayan to do so. The Sandiganbayan merely relied on its own mathematical computation and ignored the balancing test in determining whether there was indeed delay in the disposition of private respondent's case.[23]

In his Comment[24] dated December 26, 2018, private respondent basically argued that **it was perfectly within the Sandiganbayan's discretion to ascertain whether the OSP truly violated** private respondent's right to speedy disposition of his case. There was no grave abuse of discretion on the Sandiganbayan's part. The fact that it took the OSP more than one (1) year and six (6) months to resolve his motion for reconsideration is the most glaring evidence that it violated the constitutional mandate to act promptly on complaints filed against public officials. Besides, the filing of a motion for reconsideration is an integral part of the preliminary investigation proper and the denial of such opportunity is tantamount to a violation of the right to a preliminary investigation. "*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.*" Indeed, the long delay in the termination of the preliminary investigation in the instant case is violative of his constitutional right to speedy disposition of his case.

In its Reply[25] dated July 1, 2019, the OSP reiterated its arguments.

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[23] *Id.* at 26.

[24] *Id.* at 242-248.

[25] *Id.* at 256-274.

Ruling

The remedy of special civil action for certiorari was properly availed in assailing the Sandiganbayan's issuances

Sections 1 and 2, Rule 45 of the Rules of Court read:

Section 1. Filing of petition with Supreme Court. **A party desiring to appeal by certiorari from a judgment, final order or resolution** of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Section 2. Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (Emphasis supplied)

The general rule is that orders granting motions to dismiss are subject to appeal or petition for review for they belong to the category of "*judgment, final order or resolution*" as they dispose of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. It has been held that an order dismissing a case is a final order if no motion for reconsideration or appeal therefrom is timely filed.[26]

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[26] *Bañares II v. Balising*, 384 Phil. 567 (2000).

Yet, in ***People v. The Honorable Sandiganbayan (First Division)***,[27] it was declared that a special civil action for *certiorari* is the proper remedy against the Sandiganbayan's order of dismissal of a criminal complaint by reason of undue delay, thus:

> It must be noted at the outset that a judgment of acquittal may be assailed by the People in a petition for certiorari under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*. In this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process. This doctrine was expounded in *People v. Sandiganbayan,* Fifth Division, et al., where the Court, citing the case of *People v. Hon. Asis, et al.*, further explained that:
>
> > A petition for certiorari under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for certiorari questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x.
>
> Likewise, in *Javier v. Gonzales*, the Court stressed that "[d]ouble jeopardy is not triggered when the order of acquittal is void." "An acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment." Simply stated, a decision rendered with grave abuse of discretion amounts to lack of jurisdiction. In turn, this lack of jurisdiction prevents double jeopardy from attaching.
>
> **Applying the foregoing pronouncements to the case at bar, the instant petition for certiorari is the correct remedy in seeking to annul the Resolutions of the Sandiganbayan.**
>
> **With this, the Court shall now proceed to determine whether the Sandiganbayan committed grave abuse of discretion amounting**

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[27] G.R. Nos. 233557-67, June 19, 2019.

to lack or excess of jurisdiction in dismissing the criminal case filed against Diaz due to the Ombudsman's violation of his right to the speedy disposition of his case. (Citations omitted. Emphasis supplied)

So must it be.

The Sandiganbayan gravely abused its discretion in dismissing the complaints below by reason of an alleged inordinate delay.

First. In its Resolution dated July 8, 2015, the Sandiganbayan directed the OSP to conduct a full and complete preliminary investigation within sixty (60) days from notice or until September 11, 2015. Thereafter, in its Resolution[28] dated April 12, 2017, the Sandiganbayan cited ***Sales v. Sandiganbayan***[29] to interpret full and complete preliminary investigation as inclusive of resolving a motion for reconsideration filed with the OSP prior to the filing of the Information with the Sandiganbayan. As a result, in the same Resolution, the Sandiganbayan found as superfluous the OSP's requirement that private respondent had to seek and the Sandiganbayan to grant leave of court first before the OSP could resolve his motion for reconsideration.

The Sandiganbayan gravely abused its discretion in citing *Sales* to interpret full and complete preliminary investigation, and thereafter, to do away with leave of court as required in the Ombudsman's Rules of Procedure.

Elementary circumspection would have instructed the Sandiganbayan that this Court had already restricted the *Sales* ruling[30] only to the preliminary investigation of Ombudsman

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[28] *Rollo*, pp. 39-49.

[29] 421 Phil. 176 (2001).

[30] *Aguinaldo v. Ventus*, 755 Phil. 536-553 (2015); *Enriquez v. Caminade*, 519 Phil. 781-790 (2006).

cases under the **then** Section 7 of the Ombudsman Rules of Procedure. As *Sales* relevantly stated:

> Third, a person under preliminary investigation by the Ombudsman is entitled to file a motion for reconsideration of the adverse resolution. This right is provided for in the very Rules of Procedure of the Ombudsman, which states:
>
> SEC. 7. Motion for Reconsideration.
>
> a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman or the Deputy Ombudsman as the case may be.
>
> b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed....
>
> The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed without first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case incomplete. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him.

Elementary diligence would also have dictated to the Sandiganbayan that the Section 7 referenced in *Sales* has long been amended to read now as follows:

> Section 7. Motion for reconsideration –
>
> a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filled within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

b) The filing of a motion for reconsideration/reinvestigation **shall not bar the filing** of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000)

Clearly, unlike in the old Section 7 upon which *Sales* was based, the governing Section 7 no longer bars the Office of the Ombudsman or more properly the OSP from filing the Information with the Sandiganbayan. As a result, it stands to reason that preliminary investigation as a matter of right is full and complete *immediately after* the opportunity to hear the parties and the finding of probable cause, since at that stage the Information may already be filed with the Sandiganbayan, without awaiting either the filing or the lapse of the period for filing any motion for reconsideration or reinvestigation, or if one has been filed, the resolution thereof. Further, once the Information has been filed with the Sandiganbayan, action by the OSP on the motion for reconsideration or reinvestigation is no longer a matter of right but a privilege, as the Sandiganbayan has to grant leave to the OSP in order for it to act on the motion for reconsideration or reinvestigation.

There is no legal right to move for reconsideration beyond what the rule allows. A motion for reconsideration is not inherent to due process but is merely granted subject to the conditions for its exercise or availability. It is a privilege and must be invoked only in the manner so provided.

The Sandiganbayan thus gravely abused its discretion in faulting the OSP for seeking leave of court before it could have acted on private respondent's motion for reconsideration. The OSP had already conducted full and complete preliminary investigation when it filed with the Sandiganbayan on November 10, 2015 its "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the OSP's Resolution dated September 29, 2015 as approved by the Office of the Ombudsman on October 21, 2015. Private respondent's motion for reconsideration did not reduce the

fullness or completeness of the preliminary investigation conducted by the OSP. For the OSP was within its right to file the Informations with or without private respondent's motion.

Second. The case of ***People v. Hon. Sandiganbayan (First Division)***[31] summarizes the principles and guidelines in determining inordinate delay in the disposition of cases:

> The speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies is a right Constitutionally-guaranteed to all persons. Juxtaposed with the right to speedy trial, **the right to a speedy disposition of cases** is a **right commonly invoked in fact-finding investigations and preliminary investigations conducted by the Ombudsman because** while these proceedings do not form part of the criminal prosecution proper **the respondent may already be prejudiced by such proceedings**, and **equally because** the Ombudsman itself is **constitutionally committed to act promptly** on complaints filed before it.
>
> As tritely held in *Tatad v. Sandiganbayan*, an "undue delay in the conduct of a preliminary investigation cannot be corrected, for until now, man has not yet invented a device for setting back time." **Invariably, the underlying principle** of the **right to speedy disposition of cases** remains to be the **prevention not only of delay in the administration of justice but also of oppression of the citizen** by indefinitely suspending criminal prosecution. A violation of this right results to the grant of the "radical relief" of immediate dismissal of the case.
>
> To determine whether a respondent's right to a speedy disposition of cases, the 1983 case of *Martin v. Ver* adopted the balancing test laid down in the U.S. case of *Barker v. Wingo*. The **balancing test** compels the courts to approach cases on an ad hoc basis, with the **conduct of both the prosecution and defendant weighed** using the **four-fold factors: (1) the length of the delay; (2) reason for the delay; (3) defendant's assertion or non-assertion of his right;** and **(4) prejudice to defendant resulting from the delay.** These factors are to be considered together.
>
> Due to the fact that **neither the Constitution nor the Ombudsman Act of 1989, provide for a specific period** within which the

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[31] G.R. No. 229656, August 19, 2019.

Ombudsman is mandated to conduct its fact-finding investigations or to act on complaints, other than "promptly," what was considered "prompt" or "inordinate delay" was instead given judicial interpretation, the leading case being Tatad. Tatad held that: the finding of inordinate delay applies in a case-to-case basis; political motivation is one of the circumstances to consider in determining inordinate delay; and that because of the attendant political color, the delay of three years in the termination of the preliminary investigation was inordinate. Thus, **to determine whether or not there was inordinate delay**, cases were consistently approached by the Court on an ad hoc basis using the **combination of Tatad and the Barker four-fold test**.

As to **when a case is deemed to have been commenced for purposes of determining inordinate delay**, *Dansal v. Fernandez* instructs that **the right to a speedy disposition of cases is available as early as the preliminary investigation or inquest**. *People v. Sandiganbayan* even went further in time as to **include the conduct of fact-finding investigation prior to the filing of a formal complaint**.

On July 31, 2018, a **definitive ruling on the concept of inordinate delay** was laid down by the Court en banc in ***Cagang v. Sandiganbayan*** as follows:

(1) The right to speedy disposition of cases is different from the right to speedy trial.

The [latter] may only be invoked in criminal prosecutions against courts of law while the [former] may be invoked before any tribunal as long as the respondent may already be prejudiced by the proceeding.

(2) For purposes of determining **inordinate delay**, a **case** is **deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation**.

Cagang, thus, abandoned *People v. Sandiganbayan* [which ruled to include the conduct of fact-finding investigation prior to the filing of a formal complaint]. The **Ombudsman should set reasonable periods for preliminary investigation** and **delays beyond this period will be taken against the prosecution**.

(3) Courts must determine which party carries the burden of proof.

If it has been alleged that there was **delay within the time periods** (i.e., according to the **time periods that will be issued** by the Ombudsman), the **burden** is **on the defense to show that there has**

been violation of their rights to speedy disposition of case or to speedy trial. The **defense must prove: (a)** that **the case took much longer than was reasonably necessary to resolve; and (b)** that **efforts were exerted to protect their constitutional rights.**

If the **delay occurs beyond the given time period** and **the right is invoked**, the **prosecution** has the **burden of justifying the delay**. The **prosecution must prove: (a)** that **it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b)** the **delay was inevitable due to the complexity of the issues and volume of evidence**; and **(c) accused was not prejudiced by the delay.**

(4) Determination of the **length of delay** is **never mechanical.**

Courts **must consider** the **entire context of the case**, the **amount of evidence** and the **complexity of issues involved**. An **examination of the delay** is **no longer necessary to justify the dismissal** of the case if **the prosecution** of the case was **solely motivated by malice.**

(5) 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. (Emphasis supplied)

The guidelines to be observed in resolving the instant case are: "*If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay. The prosecution must prove: (a) that it followed the prescribed procedure in the conduct of preliminary investigation and case prosecution; (b) the delay was inevitable due to the complexity of the issues and volume of evidence; and (c) accused was not prejudiced by the delay*." This is because the Sandiganbayan has set the time-limit of 60 days from its directive to conduct a preliminary investigation. Additionally, it must be stressed that the "*[d]etermination of the length of delay is never mechanical.*"

In the case at bar, the timeline started on July 8, 2015 and the deadline for the completion of the preliminary investigation was pegged initially on September 11, 2015. While the OSP

exceeded the time limit of 60 days, the OSP in two occasions sought additional time to complete the preliminary investigation. These motions were neither opposed by private respondent nor rebuffed by the Sandiganbayan. They were therefore deemed granted. Moreover, private respondent was himself a party to this delay because up until September 3, 2015, he was still filing a Rejoinder-Affidavit with the OSP.

The next events and the periods these were accomplished are uneventful. On September 29, 2015, the OSP completed the preliminary investigation by finding probable cause against private respondent for violation of Article 210[32] of *The Revised Penal Code*, and requesting for the withdrawal of the information in Criminal Case No. SB-14-CRM-0427 and the admission of the relevant Information in lieu thereof. The Office of the Ombudsman approved the recommendation in its Resolution dated October 21, 2015. On November 10, 2015, the OSP filed with the Sandiganbayan its "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the OSP's Resolution dated September 29, 2015 as approved by the Office of the Ombudsman on October 21, 2015.

All in all, from July 8, 2015 to November 10, 2015, in less than 120 days, the OSP was able to complete the preliminary investigation. On its face, and especially with the circumstances driving this preliminary investigation, we cannot say that the timeline of 120 days constituted inordinate delay. It is a very reasonable period to complete a preliminary investigation.

The trajectory of the succeeding timelines is regrettable. After the OSP filed its "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015" on November 10, 2015, the Sandiganbayan procrastinated for over a year to resolve this "Compliance with Omnibus Motion."

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[32] *Supra* note 9.

On **November 24, 2015**,[33] the Sandiganbayan directed private respondent to comment on the "Compliance with Omnibus Motion." On **December 3, 2015**,[34] private respondent filed his "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)." He argued that the Sandiganbayan should hold in abeyance any action on the "Compliance with Omnibus Motion" until the OSP resolved his motion for reconsideration of its September 29, 2015 Resolution. On **January 12, 2016**, the OSP filed its "Reply (to Comment, dated December 2, 2015)." On **January 27, 2016**, private respondent filed a "Rejoinder (To Reply, dated January 8, 2016 filed by the Office of the Special Prosecutor)."

The Sandiganbayan left the matter hanging for almost a year. Neither the OSP nor private respondent called the Sandiganbayan's attention to this freeze.

Finally, on **December 15, 2016**,[35] the Sandiganbayan resolved to admit the OSP's Reply as well as private respondent's Rejoinder, and alas, submitted the "Compliance with Omnibus Motion" for resolution.

On **January 20, 2017**,[36] somewhat anti-climactically, the Sandiganbayan issued a Resolution sustaining the position taken by private respondent and holding in abeyance the resolution of the OSP's "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427 and for the Lifting of the Resolution, dated July 8, 2015)" until after the OSP's resolution of private respondent's motion for reconsideration. The Sandiganbayan also directed the OSP to inform it of the OSP's action on the motion for reconsideration.

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[33] *Rollo*, p. 18.

[34] *Id*.

[35] *Id*. 19.

[36] *Id*.

Three things stand out from the foregoing trajectory of timelines.

For one, the Sandiganbayan is responsible for the delay. It could have easily said what it ruled on January 20, 2017 on November 10, 2015 or at the latest November 24, 2015. **There was nothing complex about the issues presented** in the "Compliance with Omnibus Motion" to justify a timeline of more than a year to resolve it. By exercising ordinary diligence, the Sandiganbayan could have decided the motion within just a week, as in fact it was able to issue its Resolution just two weeks from the end of our famous long and festive holiday break in December. In any event, as explained above, the Sandiganbayan gravely abused its discretion in blindly relying upon *Sales* to justify its ruling or stance that "*we did not have to tell you so*," as regards the leave of court for the OSP to resolve private respondent's motion for reconsideration.

For another, private respondent **did not assert his right to the speedy disposition of his cases** during the impasse at the Sandiganbayan. From November 2015 to January 2017, he sat idly by, which to us in hindsight smacks of traces of bad faith, because he waited in ambush. Moreover, though the proceedings were sluggish, he was given every opportunity to be heard. He vigorously participated in the proceedings before the Sandiganbayan and filed his share of pleadings. His motions and pleadings likewise contributed to the delay in this case. It is reasonable to infer from these circumstances that private respondent suffered no damage as a result of the delay.

Corpuz v. Sandiganbayan[37] objectifies the element of prejudice that an accused suffers:

> x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to **prevent oppressive pre-trial incarceration**; to **minimize anxiety and concerns of the accused to trial**; and to **limit the possibility that his defense will be impaired**. Of these, the most serious is the

[37] 484 Phil. 899 (2004).

last, because the **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.

Here, private respondent is **out on bail**. As observed by his active participation in the proceedings below, it can be said that steps had been taken to mitigate any anxiety and concerns that he may have about the preliminary investigation and his trial. As importantly, there is definitely no possibility that his defense will be impaired because he had taken advantage of every opportunity to be heard available to him. We see **no prejudice** to private respondent as objectified above.

Lastly, the Sandiganbayan gravely abused its discretion not only in imputing blame to the OSP for the delay on the basis of an inapplicable case law, but also in failing to move the case forward upon the lapse of the period to conduct preliminary investigation. ***Garcia v. Sandiganbayan***[38] requires this action from the Sandiganbayan:

> From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it. Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances.

In this case, **the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner**. That the **petitioner may seek reconsideration of the finding of probable cause against her** by the OMB **does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan**. There was also no denial

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[38] G.R. Nos. 205904-06, October 17, 2018.

of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, **the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently**.

Aguinaldo v. Ventus[39] similarly instructs:

> Finally, in order to avoid delay in the proceedings, judges are reminded that the pendency of a motion for reconsideration, motion for reinvestigation, or petition for review is not a cause for the quashal of a warrant of arrest previously issued because the quashal of a warrant of arrest may only take place upon the finding that no probable cause exists. Moreover, judges should take note of the following:
>
> 1. If there is a **pending motion for reconsideration** or motion for reinvestigation **of the resolution of the public prosecutor, the court may suspend** the proceedings upon motion by the parties. **However, the court should set the arraignment of the accused and direct the public prosecutor to submit the resolution** disposing of the motion on or before the period fixed by the court, which in no instance could be more than the period fixed by the court counted from the granting of the motion to suspend arraignment, **otherwise the court will proceed with the arraignment as scheduled and without further delay.**
> 2. If there is a pending petition for review before the DOJ, the court may suspend the proceedings upon motion by the parties. However, the court should set the arraignment of the accused and direct the DOJ to submit the resolution disposing of the petition on or before the period fixed by the Rules which, in no instance, could be more than sixty (60) days from the filing of the Petition for Review before the DOJ, otherwise, the court will proceed with the arraignment as scheduled and without further delay.

The Sandiganbayan was obliged to move the cases forward. It should have thus set a date for private respondent's arraignment and directed the OSP to resolve private respondent's motion

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[39] 755 Phil. 536 (2015).

for reconsideration within a period not exceeding sixty (60) days. If the OSP had failed to do within the prescribed period, the Sandiganbayan should have proceeded with the arraignment and thereafter the trial.

Indubitably, neither the OSP nor the Office of the Ombudsman is guilty of inordinate delay in the disposition of the cases against private respondent. The ball was already in the Sandiganbayan's court, so to speak. Instead of proceeding with the arraignment of private respondent and the rest of the rigmarole, the Sandiganbayan procrastinated, and worse, on the basis of a case law that has been overtaken by time and legal developments.

ACCORDINGLY, the petition is **GRANTED**. The assailed Resolutions dated April 12, 2017 and May 22, 2017 are **REVERSED** and **SET ASIDE**. The Sandiganbayan is **DIRECTED** to **IMMEDIATELY RESOLVE** the Office of the Special Prosecutor's "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," and to **PROCEED** with hearing the criminal cases with reasonable dispatch.

SO ORDERED.

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

Caguioa, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* finds that the Fourth Division of the Sandiganbayan (Sandiganbayan) acted with grave abuse of discretion when it dismissed the criminal cases filed against respondent Raul Y. Desembrana (Desembrana) on the ground that his right to speedy disposition had been violated due to inordinate delay attributable to the Office of the Special Prosecutor (OSP).

On this basis, the *ponencia* grants the present Petition for *Certiorari* (Petition) and orders the Sandiganbayan to: (i) resolve the pending *Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution dated July 8, 2015* filed by the OSP; and (ii) proceed with the hearing of the criminal cases filed against Desembrana.

I concur in the result.

I agree with the *ponencia* insofar as it holds that the OSP is not guilty of inordinate delay in the conduct of preliminary investigation. I find that such imputation is both arbitrary and baseless. Hence, I find that the Sandiganbayan acted with grave abuse of discretion when it issued its Resolution[1] dated April 12, 2017 (assailed Resolution). On this basis, the Petition should be granted.

However, I write this opinion to reiterate my position in *Cagang v. Sandiganbayan, Fifth Division*[2] (*Cagang*) and address the *ponencia*'s statements regarding the implied waiver of the right to speedy disposition and the nature of prejudice which results from inordinate delay.

For context, a brief summary of the facts is in order.

The OSP filed with the Sandiganbayan two Informations dated November 15, 2014 charging Desembrana with two (2) counts of violation of Section 7(d) in relation to Section 11 of Republic Act No. 6713. These Informations were docketed as Criminal Case Nos. SB-14-CRM-0427 and SB-14-CRM-0428.[3] Under these Informations, Desembrana was accused of taking advantage of his position as Assistant City Prosecutor of the Department of Justice (DOJ) by soliciting money from a certain

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[1] *Rollo*, pp. 39-46.

[2] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

[3] *Ponencia*, p. 2.

Dr. Alexis S. Montes in exchange for the dismissal of complaints assigned to him for preliminary investigation.[4]

On November 21, 2014, Desembrana filed a Motion to Suspend Arraignment with the Sandiganbayan in view of his pending Motion to Conduct Preliminary Investigation with the OSP.[5]

After an exchange of pleadings and hearing on the motions, the Sandiganbayan issued a Resolution dated July 8, 2015 directing the OSP to "conduct a full and complete preliminary investigation" within sixty (60) days from notice. This gave the OSP until September 11, 2015 to complete said investigation.[6]

The OSP proceeded as directed. On September 3, 2015, Desembrana filed his last pleading in connection with the OSP's preliminary investigation.[7]

On September 9, 2015, the OSP filed a Motion for Extension of Time to Terminate a Complete and Full Preliminary Investigation (First Motion for Extension).[8] This motion was not acted upon by the Sandiganbayan.

Subsequently, the OSP issued its first recommendation on September 29, 2015 finding probable cause to charge Desembrana with Direct Bribery under Article 210 of the Revised Penal Code. Accordingly, the OSP recommended the withdrawal of the Information filed in Criminal Case No. SB-14-CRM-0427 for substitution with the proper Information.[9]

In the meantime, the OSP filed its second Motion for Extension of Time which was also not acted upon by the Sandiganbayan.

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[4] *Id.*

[5] *Id.* at 3.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 4.

[9] *Id.*

The Ombudsman approved the OSP's recommendation through its Resolution dated October 21, 2015.[10] Desembrana filed a Motion for Reconsideration of said Resolution on November 9, 2015.[11]

On November 10, 2015, the OSP filed with the Sandiganbayan a "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution dated July 8, 2015" (Compliance with Omnibus Motion).[12]

On November 24, 2015, the Sandiganbayan required Desembrana to file his comment on the Compliance with Omnibus Motion. Thus, on December 3, 2015, Desembrana filed a "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)" (Comment on Compliance). There, Desembrana prayed that the Sandiganbayan "hold in abeyance any action on the [OSP's Compliance with Omnibus Motion] pending final resolution of his [Motion for Reconsideration filed with the OSP]."[13] The OSP filed its Reply on January 12, 2016, while Desembrana filed his Rejoinder on January 27, 2016. However, it was only on December 5, 2016 when the Sandiganbayan deemed the Compliance with Omnibus Motion submitted for resolution.[14]

Finally, on January 20, 2017, the Sandiganbayan issued a Resolution deferring the resolution of the Compliance with Omnibus Motion until after the final resolution of Desembrana's Motion for Reconsideration pending with the OSP.[15]

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[10] *Id*.

[11] *Id*.

[12] See *id*. at 4-5.

[13] *Id*. at 5.

[14] *Id*.

[15] *Id*.

Seven days later, the OSP issued a Resolution denying Desembrana's Motion for Reconsideration. This Resolution dated January 27, 2017 was approved by the Office of the Ombudsman on February 8, 2017.[16]

On February 6, 2017, Desembrana filed a Motion to Dismiss invoking his right to speedy disposition citing the following delays: (i) 1 year and 2 months delay in the resolution of his Motion for Reconsideration with the OSP; and (ii) 2 years and 2 months delay in the conduct of preliminary investigation.[17]

The Sandiganbayan granted Desembrana's Motion to Dismiss through the assailed Resolution, ruling as follows:

> The attendant circumstances herein show that the [Sandiganbayan] directed the Office of the Ombudsman on July 8, 2015 to conduct a full and complete preliminary investigation. The Court, in its Resolution, clarified that a "*full and complete preliminary investigation*" includes the opportunity for the respondent to file a motion for reconsideration, to wit:
>
> > A full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan.
>
> The preliminary investigation in this case was deemed terminated on October 21, 2015 when the Honorable Ombudsman approved the Resolution dated September 29, 2015. Contrary to the directive of this Court, however, accused Desembrana has not yet been afforded the opportunity to file a motion for reconsideration when the prosecution filed its [Compliance with Omnibus Motion] on November 10, 2015 before [the Sandiganbayan]. Thus, in his [Comment on Compliance], [Desembrana] prayed for [the Sandiganbayan] to hold in abeyance any action on the prosecution's [Compliance with Omnibus Motion] in view of the motion for reconsideration he filed on November 9,

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[16] *Id*.

[17] *Id*.

2015 before the Office of the Ombudsman. Since then, and until the Court issued its January 20, 2017 Resolution directing the prosecution to notify the Court once the motion for reconsideration of the accused has been resolved, there has been no action from the Office of the Ombudsman as to the motion of the accused. As correctly pointed out by Desembrana, it has been 1 year and 2 months since he filed said motion.

The prosecution claims that the delay is caused by lack of compliance on the part of Desembrana to the procedural rule of the Office of the Ombudsman, specifically Section 7(a), Rule II thereof which states that the filing of a motion for reconsideration requires leave of court in cases where an information has already been filed in court, as in the instant case. It further averred that the said requirement was deemed met only when the [Sandiganbayan] issued its January 20, 2017 Resolution.

The [Sandiganbayan] will not stand for such ratiocination, which, if not flawed, is misleading. The [Sandiganbayan] has granted leave of court when it issued its Resolution on July 8, 2015 directing the prosecution to conduct a **full and complete** preliminary investigation and defining the same in clear and unequivocal terms, consistent with the pronouncement of the Supreme Court in *Sales vs. Sandiganbayan* that under the existing rules of the Office of the Ombudsman, the grant of a motion for reconsideration is an integral part of the preliminary investigation proper. x x x

x x x x x x x x x

The [Sandiganbayan] reiterates that the accused was no longer required to obtain leave of court because it has already been granted. But even assuming that x x x there was no such leave, the lack of action by the prosecution on the motion for reconsideration of the accused cannot be justified because it could have directed the respondent to obtain leave of court. It could have denied the motion, as well, if that were the case. In this situation, the prosecution chose to do nothing and left herein preliminary investigation vulnerable to being challenged for being constitutionally infirm.[18] (Emphasis and underscoring in the original; citation omitted)

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[18] *Rollo*, pp. 44-45.

In the assailed Resolution, the Sandiganbayan appears to have relied on the Court's ruling in *Sales v. Sandiganbayan*,[19] a case which interpreted the old Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules). Under this old provision, leave of court was not a requisite to the filing of a motion for reconsideration or reinvestigation before the Office of the Ombudsman. Section 7, Rule II was amended on February 16, 2000, seventeen (17) years prior to the issuance of the assailed Resolution.

The Sandiganbayan denied the OSP's subsequent Motion for Reconsideration. Hence, the OSP filed this Petition ascribing grave abuse of discretion to the Sandiganbayan.

As stated at the outset, I agree that no inordinate delay can be attributed to the OSP.

To recall, the Sandiganbayan directed the OSP to conduct a full and complete preliminary investigation on July 8, 2015. While the OSP failed to faithfully comply with the 60-day deadline set by the Sandiganbayan, it filed two (2) separate motions requesting for extension, first on September 9, 2015 or two (2) days prior to the Sandiganbayan's deadline, and second on October 12, 2015.

Notably, the OSP already submitted its recommendation to the Ombudsman as early as September 29, 2015. Nevertheless, it filed its second Motion for Extension of Time as it had to await the approval of the Ombudsman. Twenty (20) days following the approval of its recommendation, the OSP filed its Compliance with Omnibus Motion with the Sandiganbayan.

While it is undisputed that Desembrana's Motion for Reconsideration was pending with the OSP at the time it filed its Compliance with Omnibus Motion, the OSP cannot be faulted for proceeding in accordance with Section 7, Rule II of the Ombudsman Rules, as amended:

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[19] 421 Phil. 176 (2001).

Section 7. Motion for reconsideration –

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, **with corresponding leave of court in cases where the information has already been filed in court**;

b) **The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion**. (Emphasis supplied)

The pendency of Desembrana's Motion for Reconsideration did not operate as a bar to the filing of the Compliance with Omnibus Motion. In any event, it must be stressed that in its Reply dated January 8, 2016, the OSP already raised that Desembrana was required to obtain leave of court before it could act on his Motion for Reconsideration. Clearly, the OSP cannot be faulted for not resolving Desembrana's Motion for Reconsideration prior to the issuance of the assailed Resolution.

Ultimately, the attendant circumstances show that while the OSP failed to comply with the Sandiganbayan's 60-day deadline, the delay it incurred cannot be characterized as inordinate or unreasonable. Hence, I agree with the OSP's contention that the Sandiganbayan acted with grave abuse of discretion amounting to lack of jurisdiction when it whimsically and capriciously ascribed inordinate delay on the part of the OSP. **Thus, there is sufficient basis to grant the Petition.**

However, the *ponencia* goes further by imputing inordinate delay on the part of the Sandiganbayan:

x x x **The Sandiganbayan is responsible for the delay. It could have easily said what it ruled on January 20, 2017 on November 10, 2015 or at the latest November 24, 2015. There was nothing complex about the issues presented in the "Compliance with Omnibus Motion" to justify a timeline of more than a year to resolve it. By exercising ordinary diligence, the Sandiganbayan could have decided the motion within just a week, as in fact it**

was able to issue its Resolution just two weeks from the end of our famous long and festive holiday break in December. In any event, as explained above, the Sandiganbayan gravely abused its discretion in blindly relying upon *Sales* to justify its ruling or stance that "*we did not have to tell you so*," as regards the leave of court for the OSP to resolve private respondent's motion for reconsideration.

x x x x x x x x x

x x x **[T]he Sandiganbayan gravely abused its discretion not only in imputing blame to the OSP for the delay on the basis of an inapplicable case law, but also in failing to move the case forward upon the lapse of the period to conduct preliminary investigation**. x x x[20] (Emphasis supplied; italics in the original)

In this connection, the *ponencia* states that Desembrana's failure to assert his right to speedy disposition during the 14-month impasse at the Sandiganbayan is deemed a waiver of said right.[21] It further states that Desembrana did not suffer any prejudice as a result of such delay considering that he is out on bail and had taken advantage of every opportunity to be heard and set forth his defense.[22]

Respectfully, I disagree.

Waiver

In *Cagang*, the majority formulated a uniform mode of analysis for cases involving the right to speedy disposition and speedy trial. With respect to the waiver of these rights, the Decision in *Cagang* states:

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.

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[20] *Id.* at 17-18.

[21] See *id.* at 18.

[22] *Id.*

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**.[23] (Emphasis supplied)

In my Dissenting Opinion in *Cagang*, I expressed my reservations against the treatment of the accused's failure to assert his or her right to speedy disposition as an implied waiver. Thus, I urged the Court in *Cagang* to revisit the case *of Dela Peña v. Sandiganbayan*[24] (*Dela Peña*) where the Court held that silence on the part of the accused operates as an implied waiver of one's right to speedy disposition. To restate:

The right to speedy disposition is two-pronged. *Primarily*, it serves to extend to the individual citizen a guarantee against State abuse brought about by protracted prosecution. Conversely, it imposes upon the State the concomitant duty to expedite all proceedings lodged against individual citizens, whether they be judicial, quasi-judicial or administrative in nature. **This constitutional duty imposed upon the State stands regardless of the vigor with which the individual citizen asserts his right to speedy disposition. Hence, the State's**

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[23] *Cagang v. Sandiganbayan, Fifth Division, supra* note 2, at 451.

[24] 412 Phil. 921 (2001) [*En Banc*, Per *C.J.* Davide, Jr.].

duty to dispose of judicial, quasi-judicial or administrative proceedings with utmost dispatch cannot be negated solely by the inaction of the respondent upon the dangerous premise that such inaction, without more, amounts to an implied waiver thereof.

Verily, the Court has held that the State's duty to resolve criminal complaints with utmost dispatch is one that is mandated by the Constitution. Bearing in mind that the Bill of Rights exists precisely to strike a balance between governmental power and individual personal freedoms, it is, to my mind, unacceptable to place on the individual the burden to assert his or her right to speedy disposition of cases when the State has the burden to respect, protect, and fulfill the said right.

It is thus not the respondent's duty to follow up on the prosecution of his case, for it is the prosecution's responsibility to expedite the same within the bounds of reasonable timeliness. Considering that the State possesses vast powers and has immense resources at its disposal, it is incumbent upon it alone to ensure the speedy disposition of the cases it either initiates or decides. Indeed, as the Court held in *Secretary of Justice v. Lantion*, "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need." x x x

Proceeding therefrom, I find the adoption of the third factor in *Barker's* balancing test improper. Instead, I respectfully submit that in view of the fundamental differences between the scope of the Sixth Amendment right to speedy trial on one hand, and the right to speedy disposition on the other, the third factor in *Barker's* balancing test (that is, the assertion of one's right) should no longer be taken against those who are subject of criminal proceedings.[25] (Emphasis supplied)

I maintain my position in *Cagang*.

In my view, Desembrana's alleged failure to assert his right to speedy disposition should not be construed as an implied waiver of such right. Doing so unduly places upon him the

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[25] *J.* Caguioa, Dissenting Opinion in *Cagang v. Sandiganbayan, Fifth Division*, *supra* note 2, at 473-475.

burden to expedite the criminal cases filed against him. Time and again, this Court has ruled that such burden falls on the State, thus:

> x x x [T]here is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.
>
> Likewise, contrary to the argument of the OSP, the U.S. case of *Barker v. Wingo*, from which the balancing test originated, recognizes that a respondent in a criminal case has no compulsory obligation to follow up on his case. It was held therein 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."[26] (Citations omitted)

Further, as stated in my Dissenting Opinion in *Cagang*:

> x x x The ridiculousness of the principle of waiver of the right to speedy disposition of cases, however, could be easily gleaned from the ratiocination in *Dela Peña* itself — wherein it cited the filing of a motion for early resolution as an instance where the individual would be deemed not to have waived the right. **It is absurd to place on the individual the burden to *egg on*, so to speak, government agencies to prioritize a particular case when it is their duty in the first place to resolve the same at the soonest possible time**. To stress, it is the State which has the sole burden to see to it that the cases which it files, or are filed before it, are resolved with dispatch. Thus, to sustain the same principle laid down in *Dela Peña* in present and future jurisprudence is to perpetuate the erroneous notion that the individual, in any way, has the burden to expedite the proceedings in which he or she is involved.[27] (Emphasis supplied)

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[26] *Remulla v. Sandiganbayan (Second Division)*, 808 Phil. 739, 755-756 (2017). [Second Division, Per J. Mendoza].

[27] J. Caguioa, Dissenting Opinion in *Cagang v. Sandiganbayan, Fifth Division*, *supra* note 2, at 475-476.

Here, the *ponencia* faults Desembrana for failing to assert his right to speedy disposition during the 14-month impasse at the Sandiganbayan even as it concedes that Desembrana actively participated in the Sandiganbayan proceedings. In fact, as set forth in the narration of facts, Desembrana timely filed his responsive pleadings to the Compliance with Omnibus Motion.[28] In my view, it is unreasonable to require Desembrana to do more in order to move his criminal cases forward. To repeat, it is the State which has the duty to ensure that the criminal cases it files are resolved with dispatch.

To my mind, it is unjust to state that Desembrana should have done more to signify his non-waiver of his right to speedy disposition and at the same time admonish him for allegedly contributing to the delay of his own case merely because he filed his share of motions and pleadings.

Prejudice

With due respect, I also take exception to the statement that Desembrana could not have suffered any prejudice as a result of Sandiganbayan's delay because he is out on bail.

The prejudice suffered by the accused as a result of a criminal action is not limited to pre-trial incarceration. In *Corpuz v. Sandiganbayan*[29] the Court held:

> x x x **Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the 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**

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[28] See *ponencia*, pp. 5, 18.

[29] 484 Phil. 899 (2004) [Second Division, Per J. Callejo, Sr.].

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.[30] (Emphasis supplied; citations omitted)

In *Cagang*, I stated that the right to speedy disposition attaches the moment the respondent or accused is exposed to prejudice. In this connection, I stressed that prejudice does not arise solely from the restraint on one's liberty but also from the impairment of the interests which the right to speedy disposition had been crafted to protect, thus:

> The right to speedy disposition covers the periods "before, during, and after trial." Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, covers not only preliminary investigation, but extends further, to cover the fact-finding process. As explained by the Court in *People v. Sandiganbayan*:
>
> > The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated. x x x
>
> Moreover, in *Torres v. Sandiganbayan* (*Torres*) the Court categorically stated that the speedy disposition of cases covers "not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper."
>
> Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration, unnecessary anxiety and concern,

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[30] *Id.* at 918.

and the impairment of one's defense. To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition and trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations).

Prejudice is not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense. Hence, contrary to the majority, I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction. The scope of right to speedy disposition corresponds not to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.[31] (Emphasis supplied; citations omitted)

Based on the foregoing, I vote to **GRANT** the present Petition for *Certiorari* and **DIRECT** the Sandiganbayan to proceed with the hearing of the criminal cases pending against respondent Raul Y. Desembrana.

However, I maintain that the waiver of the right to speedy disposition should not be implied solely from one's silence or inaction. I also maintain that the prejudice which results from criminal prosecution is not limited to incarceration, but necessarily covers all the interests which the right to speedy disposition had been crafted to protect — unnecessary anxiety, concern, and most importantly, the impairment of one's defense.

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[31] *J.* Caguioa, Dissenting Opinion in *Cagang v. Sandiganbayan, Fifth Division*, *supra* note 2, at 473.

FIRST DIVISION

[G.R. No. 233304. July 28, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ERNESTO Q. TONGSON, SR., NORMA LIMSIACO, ERNESTO L. TONGSON, JR., RAY L. TONGSON, CRISTOBAL L. TONGSON, NORMALYN L. TONGSON, and KERWIN L. TONGSON,** *respondents.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; ACCRETION; IN THE EVENT THAT THE LAND SITUATED ALONG THE RIVERBANK IS INDEED SHOWN TO HAVE INCREASED GRADUALLY OVER TIME FROM SOIL DEPOSITS BROUGHT BY THE RIVER'S CURRENT, THERE ARISES A DISPUTABLE PRESUMPTION THAT THE CHANGE WAS GRADUAL AND CAUSED BY ALLUVIUM. — [A]ccretion benefits a riparian owner when the following requisites are present: 1)That the deposit be gradual and imperceptible; 2) That it resulted from the effects of the current of the water; and 3) That the land where accretion takes place is adjacent to the bank of the river. x x x In the absence of evidence that the change in the course of the river was sudden or that it occurred through avulsion, the presumption is that the change was gradual and was caused by alluvium and erosion. There is no question that the foregoing requisites must be sufficiently established by the riparian owners applying for land registration over the additional portion. In the event that the land situated along the riverbank is indeed shown to have increased gradually over time from soil deposits brought by the river's current, there arises a disputable presumption that the change was gradual and caused by alluvium.

2. ID.; ID.; ID.; IT IS INCUMBENT UPON THE PARTY SEEKING JUDICIAL CONFIRMATION UNDER LAND REGISTRATION LAWS ON A CLAIM THAT THE SUBJECT LAND IS A PRODUCT OF ACCRETION TO ESTABLISH THE PRESENCE OF THE REQUISITES FOR

ACCRETION. — It is likewise settled that "an accretion does not automatically become registered land just because the lot that receives such accretion is covered by a Torrens Title. Ownership of a piece of land is one thing; registration under the Torrens system of the ownership is another." For this reason, it is incumbent upon respondents seeking judicial confirmation under land registration laws on a claim that the subject land is a product of accretion to establish the presence of the three cited requisites.

3. ID.; LAND REGISTRATION; FOR FINDINGS OF THE CENRO AND THE DENR TO BE CONCLUSIVE ON THE COURTS TO ESTABLISH THE FACT OF ACCRETION, THE CERTIFYING OFFICER, THE LAND SURVEYOR, AND ANY SIMILARLY COMPETENT OFFICER OF THE SAID AGENCY SHOULD HAVE BEEN PRESENT IN COURT TO PROVIDE THE FACTUAL BASES OF THEIR FINDINGS. — For the findings of the CENRO and the DENR to be conclusive on the courts to establish the fact of accretion, the certifying officer, the land surveyor, or any similarly competent officer of the said agency should have been presented in court to provide the factual bases of their findings. Given that the application suggests that the subject land incrementally materialized through three or four generations, only a competent officer could testify as to the historical metes and bounds or the soil composition of the subject land within its jurisdiction. Ernesto, Sr.'s testimony alone does not establish whether the registered lots, which were paraphernal properties from Norma's side of the family, originally bordered the east riverbank of the Aguisan River. Ernesto, Sr., could also not be expected to be familiar, in the span of time under consideration, how the river's current changed the property line causing the accretion.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Valencia Valencia Ciocon Dionela Pandan Rubica Rubica & Garcia Law Offices for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* assailing the Court of Appeals (CA) – Cebu City's September 30, 2016 Decision[1] and July 20, 2017 Resolution[2] in CA-G.R. CV No. 04457, which affirmed the March 22, 2011 Amended Decision[3] of the Regional Trial Court (RTC) of Himamaylan City, Branch 56, Negros Occidental, in Land Registration Case No. 3.

Ernesto Q. Tongson, Sr. (Ernesto, Sr.), Norma Limsiaco (Norma), and their children, Ernesto L. Tongson, Jr., Ray L. Tongson, Cristobal L. Tongson, Normalyn L. Tongson, and Kerwin L. Tongson (collectively, respondents) were the applicants in the land registration case from which this petition originated.[4]

Norma, married to Ernesto, Sr., is the registered owner of a parcel of land under Transfer Certificate of Title (TCT) No. T-135049, described as Lot No. 10, Pcs-06-000698 with an area of 32,840 square meters.[5] Their children are the registered owners of an adjoining parcel of land under TCT No. T-144637, described as Lot No. 9, Pcs-06-000698 and measuring 28,907 square meters.[6] The said registered lots are adjacent to the parcel of land subject of the application and described in the Approved Technical Description,[7] as follows:

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[1] Penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Edward B. Contreras, concurring; *rollo*, pp. 35-48.

[2] *Id.* at 51-53.

[3] *Id.* at 54-59.

[4] *Id.* at 39.

[5] *Id.* at 56.

[6] *Id.*

[7] *Rollo*, p. 54.

A parcel of land, (Plan of Land, **Psu-06-001615**), situated in the Barangay of Talaban, City of Himamaylan, Province of Negros Occidental, Island of Negros. **Bounded on the E., along line 1-2 by Lot 10, Pcs-00-000698**; on the S., along line 2-3 by Public Land; **on the West, along line 3-4 by Aguisan River**; on the N., along line 4-5 by Public Land, point 5 by Lot 8, Pcs-06-000698; **on the E., along line 5-6 by Lot 9, along line 6-1 by Lot 10, both of Pcs-06-000698**, containing an area of **Ten Thousand One Hundred Forty Two (10,142) square meters, more or less**. (Emphasis supplied)[8]

The registered lots and the land subject of the application were inherited from Norma's predecessors.[9] The subject land is claimed to have been formed by accretion from alluvial deposits caused by the natural current of the Aguisan River along the west side of respondents' combined properties.[10]

In support of Ernesto, Sr.'s testimony[11] that the portion of land sought to be registered came into being because of the action of the Aguisan River, respondents submitted Certifications,[12] respectively dated September 23, 2008 and February 1, 2010, issued by the City Environment and Natural Resources Office (CENRO) of Kabankalan City regarding the survey of the subject land, with the latter certifying that the said land is not covered by any public land application for patent or title; that it had issued a Survey Authority; and considering further that the subject land is an accretion (alluvium), confirmation and issuance of title over it belong to the courts. Respondents also submitted a Certification[13] dated March 1, 2010 from the Department of Environment and Natural Resources (DENR), Iloilo City, on its approval of Psu-06-001615 on February 13, 2008, regarding the subject land which adjoins the lots registered in the names of respondents.

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[8] *Id*.

[9] *Rollo*, p. 56.

[10] *Id*.

[11] *Rollo*, p. 93.

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

[13] *Id*. at 15.

Neither an answer nor an opposition to respondents' application was filed by the Office of the Solicitor General (OSG), notwithstanding its entry of appearance.[14] Furthermore, no interested party who might interpose a claim on the subject land manifested their opposition after publication, mailing, and posting of the Notice of Initial Hearing; thus, a general default was deemed declared and respondents were then required to present evidence in support of their application.[15]

On March 14, 2011, the RTC of Himamaylan City, Branch 56, Negros Occidental, rendered judgment approving the application.[16] However, Ernesto Q. Tongson, Sr.'s name erroneously appeared as Ernesto Q. Limsiaco, Sr., due to a typographical error mistakenly applying the surname of Norma.[17] The RTC amended the decision on March 22, 2011, to correct the error.[18] As disposed:

> **WHEREFORE, premises considered**, the verified application for registration as amended is hereby **GRANTED**. It is hereby ordered that the subject lot, Psu-06-001615 with an area of 10,142 square meters more or less, situated at Barangay Talaban, Himamaylan City, Negros Occidental, be registered in the names of applicants, NORMA LIMSIACO, married to Ernesto Q. Tongson, Sr.; ERNESTO L. TONGSON, JR., married to Anna Liza Montero; RAY L. TONGSON, married to Herminia Zayco; CRISTOBAL L. TONGSON, married to Ma. Regina Francina Clemente; NORMALYN L. TONGSON, married to Christopher Belmonte; and KERWIN L. TONGSON, single; all are Filipinos, of legal ages, and residents of Barangay Talaban, Himamaylan City, Negros Occidental.
>
> Upon finality of this decision, the Land Registration Authority is hereby directed to issue the corresponding Decree of Registration and certificate of title over the subject parcel of land in the names of herein applicants.

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[14] *Id.* at 39.

[15] *Id*.

[16] *Rollo,* pp. 39-40.

[17] *Id.* at 40.

[18] *Id.* at 54-59.

SO ORDERED.[19]

The OSG appealed, but the CA-Cebu City found that the pieces of evidence presented by respondents were given proper attention and correct appreciation by the RTC. In particular, it ruled that the CENRO of the DENR had already confirmed that the subject land was alluvium due to the accretion caused by the Aguisan River.[20] Citing Article 457[21] of the Civil Code, the CA-Cebu City held that the addition to the land formed by alluvion belongs automatically to the riparian owner as a natural incident to ownership. Consequently, the dispositive portion of the September 30, 2016 Decision[22] under present review reads:

WHEREFORE, the appeal is **DENIED**. The Amended Decision of the Regional Trial Court, Branch 56, Himamaylan, Negros Occidental, which approved the Application for Registration in Land Registration Case No. 3, is **AFFIRMED**.

SO ORDERED.[23]

Considering that the OSG's ensuing Motion for Reconsideration[24] was denied[25] by the CA-Cebu City for lack of merit, petitioner is before us contending that the CA-Cebu City erred in holding that the CENRO certification is sufficient proof that the subject land resulted from accretion of alluvium.

In support of its position, the OSG cites the following grounds:

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[19] *Id*. at 59.

[20] *Id*. at 44.

[21] To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

[22] *Supra* note 1.

[23] *Rollo,* p. 48.

[24] *Id*. at 156-160.

[25] *Supra* note 2.

I. THE CENRO CERTIFICATION IS NOT A ***PRIMA*** *FACIE* PROOF THAT THE SUBJECT LAND RESULTED FROM ACCRETION[; AND]

II. THE SIZE OF THE SUBJECT LOT MAKES IT HIGHLY IMPROBABLE THAT IT WAS THE RESULT OF AN ACCRETION WHICH WAS GRADUAL AND IMPERCEPTIBLE.[26]

On January 30, 2018, respondents filed their Comment[27] on the petition, arguing that petitioner raises matters that were already considered by both the RTC and CA-Cebu City when both courts upheld respondents' right as riparian owners and concurred that respondents satisfactorily substantiated their application for registration, particularly that the subject land is alluvium due to accretion.

Also on record is the OSG's January 14, 2020 Reply[28] to respondents' Comment, amplifying its position that the CA-Cebu City erroneously gave weight to the CENRO's Certification that the subject land is an accretion to the titled properties.

We are inclined to set aside the CA-Cebu City's disposition sustaining the trial court's ruling.

As can readily be gleaned, exercising our discretionary review over the case involves examining anew whether the respondents adduced sufficient evidence that the land sought to be registered under their names came about by accretion to their registered lots. Normally:

> In petitions for review on *certiorari* under Rule 45 of the Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.[29]

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[26] *Rollo*, pp. 17-18.

[27] *Id*. at 177-182.

[28] *Id*.

[29] *Republic of the Philippines v. de Tensuan*, 720 Phil. 326, 336-337 (2013), citing *Republic v. Dela Paz*, G.R. No. 171631, November 15, 2010, 634 SCRA 610, 618.

In this case, we find that respondents failed to provide adequate evidence in support of the lower courts' factual findings and legal conclusion that the land subject of their application is an accretion to their registered parcels of land. No doubt:

> [A]ccretion benefits a riparian owner when the following requisites are present: 1) That the deposit be gradual and imperceptible; 2) That it resulted from the effects of the current of the water; and 3) That the land where accretion takes place is adjacent to the bank of the river. x x x In the absence of evidence that the change in the course of the river was sudden or that it occurred through avulsion, the presumption is that the change was gradual and was caused by alluvium and erosion.[30] (Citations omitted)

There is no question that the foregoing requisites must be sufficiently established by the riparian owners applying for land registration over the additional portion. In the event that the land situated along the riverbank is indeed shown to have increased gradually over time from soil deposits brought by the river's current, there arises a disputable presumption that the change was gradual and caused by alluvium. Should the applicant successfully establish the fact of accretion, certainly:

> Accretions which the banks of rivers may gradually receive from the effect of the current become the property of the owners of the banks. Such accretions are natural incidents to land bordering on running streams and the provisions of the Civil Code in that respect are not affected by the Land Registration Act.[31] (Citation omitted).

It is likewise settled that "an accretion does not automatically become registered land just because the lot that receives such accretion is covered by a Torrens Title. Ownership of a piece of land is one thing; registration under the Torrens system of that ownership is another."[32] For this reason, it is incumbent upon respondents seeking judicial confirmation under land

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[30] *Bagaipo v. Court of Appeals*, 400 Phil. 1237, 1245-1246 (2000).

[31] *Id*. at 1246.

[32] *Josephine Delos Reyes and Julius Peralta v. Municipality of Kalibo, Aklan*, G.R. No. 214587, February 26, 2018.

registration laws on a claim that the subject land is a product of accretion to establish the presence of the three cited requisites.

Petitioner mainly contends that the lower courts relied on the CENRO Certifications presented by the applicants during trial, which it argues are insufficient in themselves. Thus, resolution of the petition boils down to the probative weight accorded by the lower courts on the CENRO Certification over the existence of the alluvial deposits in an application for land registration, which in this case is unopposed by the Land Registration Authority, the DENR, or any interested party. "Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like the DENR, are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts."[33]

The CENRO and DENR's Certifications are not empty requirements; however, Ernesto, Sr., was not competent to testify on the factual and legal conclusions expressed in the said certifications. The records disclose that apart from the CENRO and DENR Certifications, Ernesto, Sr. testified that the registered lots were inherited by his wife Norma and their children from Norma's predecessors, going all the way back to Norma's grandmother.[34] By his own admission, he only came to know that the subject land already measured 10,142 square meters, more or less, because of the CENRO's land survey.[35] He could not say whether it was already around 10,000 square meters when he married Norma in 1961.[36] Ernesto, Sr., could only competently testify that he and his family had been cultivating the said land as early as 1990; that it was partly a fishpond; and that he had been paying taxes on the property since 2004.[37]

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[33] *Id*.

[34] *Rollo*, p. 104.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 91-92.

For the findings of the CENRO and the DENR to be conclusive on the courts to establish the fact of accretion, the certifying officer, the land surveyor, or any similarly competent officer of the said agency should have been presented in court to provide the factual bases of their findings. Given that the application suggests that the subject land incrementally materialized through three or four generations, only a competent officer could testify as to the historical metes and bounds or the soil composition of the subject land within its jurisdiction. Ernesto, Sr.'s testimony alone does not establish whether the registered lots, which were paraphernal properties from Norma's side of the family, originally bordered the east riverbank of the Aguisan River. Ernesto, Sr., could also not be expected to be familiar, in the span of time under consideration, how the river's current changed the property line causing the accretion.

Proceeding from the foregoing, our statement in *Republic of the Philippines v. Lydia Capco de Tensuan*,[38] that government certifications such as those issued by the CENRO "are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein," applies in this case. The appropriate officer must testify on the facts stated, or other competent evidence must be adduced by the party relying on the certification, even if the application is unopposed by other possible claimants during trial. Then, "[s]uch findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant."[39]

The OSG speculates further that the subject land could not have been the result of gradual and imperceptible accretion, given that it measures more or less 10,142 square meters. Notably, however, the two adjoining properties of respondents, the riparian owners in this case, respectively measure 32,840 square meters and 28,907 square meters.[40] On its own, 10,142 square meters

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[38] G.R. No. 171136, October 23, 2013.

[39] *Delos Reyes v. Municipality of Kalibo, Aklan*, *supra* note 32.

[40] *Rollo*, p. 56.

seem such a sizable figure; but taken together with the aggregate expanse of respondents' two adjoining properties and the span of time involved, we are not prepared to conclude that gradual accretion is improbable based solely on the size of the accretion. It remains a case to case question. Again, only land survey and mapping experts of the CENRO and the DENR can competently establish or dispute such fact.

WHEREFORE, the petition is **GRANTED**. Accordingly, the September 30, 2016 Decision and July 20, 2017 Resolution of the Court of Appeals – Cebu City in CA-G.R. CV No. 04457 are **SET ASIDE**. Respondents' application for land registration is **DENIED** for failure to adequately substantiate their claim of accretion.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 237506. July 28, 2020]

SAN MIGUEL CORPORATION, *petitioner*, *vs.* **LEONARA**[*] **FRANCISCO *VDA. DE* TRINIDAD, SPS. TEODORICO F. TRINIDAD and SUSANA COSME-TRINIDAD, SPS. GEMMA F. TRINIDAD-GANDIONGCO**[**] **and ALFREDO M. GANDIONGCO,**[***] **JR., SPS. MANUEL F. TRINIDAD**

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[*] Also referred to as "Leonara" in some parts of the *rollo*.

[**] Referred to as Gandionco in some parts of the *rollo*.

[***] Also referred to as Gandionco in some parts of the *rollo*.

and RUBI REMIGIO TRINIDAD and SPS. GRACE F. TRINIDAD-MALOLOS and BISMARK D. MALOLOS, ROBERTO N. GANDIONCO, *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; CONTRACT OF MORTGAGE; REQUISITES TO BE VALID; THIRD PERSONS NOT PARTIES TO THE PRINCIPAL OBLIGATION MAY SECURE SUCH OBLIGATION BY MORTGAGING THEIR OWN PROPERTY. —** For a contract of mortgage to be valid, the following essential requisites must be met: *first*, that the mortgage is constituted to secure the fulfillment of a principal obligation; *second*, the mortgagor is the absolute owner of the thing mortgaged; and third, the persons constituting the mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Third persons not parties to the principal obligation may secure such obligation by mortgaging their own property.

2. **ID.; ID.; ID.; "PLAIN MEANING" RULE; THE INTENT OF THE PARTIES TO AN INSTRUMENT IS EMBODIED IN THE WRITING ITSELF, AND WHEN THE WORDS ARE CLEAR AND UNAMBIGUOUS, THE INTENT IS TO BE DISCOVERED ONLY FROM THE EXPRESS LANGUAGE OF THE AGREEMENT; THE EXECUTION OF THE REAL ESTATE MORTGAGES AND REGISTRATION OF THE SAME WITH THE REGISTRY OF DEEDS ARE WITHIN THE SCOPE OF THE AUTHORITY GRANTED UNDER THE SPECIAL POWER OF ATTORNEY (SPA) IN CASE AT BAR. —** Article 1878 of the Civil Code requires an SPA in cases where real rights over immovable property are created or conveyed. Here, the SPAs specifically authorized Roberto to "offer as collateral" to SMC the subject properties x x x. The language of the subject SPAs are clear and unambiguous. In interpreting contracts, Article 1370 of the Civil Code unequivocally provides that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This is similar to the "plain meaning rule" which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement."

Contrary to the CA's ruling, the phrase "to offer" the subject properties "as collateral, security or property bond with SMC," coupled with the "full power and authority" to do all that is necessary for all intents and purposes of the contract, is a specific and express authority to mortgage the subject properties in favor of SMC. This is so considering that the presentation of the TCTs by Roberto to SMC was for the purpose of complying with the collateral requirement for the dealership. As such, executing the real estate mortgages and registering the same with the register of deeds are well within the scope of the authority granted.

3. ID.; ID.; ID.; PRIVATE OR SECRET ORDERS AND INSTRUCTIONS OF THE PRINCIPAL DO NOT PREJUDICE THIRD PERSONS WHO HAVE RELIED UPON THE SPECIAL POWER OF ATTORNEY OR INSTRUCTIONS SHOWN TO THEM. — It is of no moment that it was the supposed "understanding" of the registered owners that "should SMC accept their certificates of title as collateral, Roberto would bring the necessary documents from SMC which [the registered owners] would then sign." Article 1900 of the Civil Code expressly states that "[s]o far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent." Article 1902 likewise unequivocally states that "[p]rivate or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown to them."

4. ID.; ID.; ID.; APPARENT AUTHORITY; WHEN CAN ARISE; THERE CAN BE NO APPARENT AUTHORITY OF AN AGENT WITHOUT ACTS OR CONDUCT ON THE PART OF THE PRINCIPAL, AND SUCH ACTS OR CONDUCT OF THE PRINCIPAL MUST HAVE BEEN KNOWN AND RELIED UPON IN GOOD FAITH, AND AS A RESULT OF THE EXERCISE OF REASONABLE PRUDENCE BY A THIRD PERSON AS CLAIMANT, AND SUCH MUST HAVE PRODUCED A CHANGE OF POSITION TO ITS DETRIMENT. — Assuming, however, that Roberto exceeded the limits of his authority under the SPA and such unauthorized acts were not ratified by Gemma and Trinidad, *et al.*, the latter

are still bound by the mortgages entered by Roberto under the doctrine of apparent authority. As explained in *Woodchild Holdings, Inc. v. Roxas Electric and Construction Co., Inc.*: It bears stressing that apparent authority is based on estoppel and can arise from two instances: first, the principal may knowingly permit the agent to so hold himself out as having such authority, and in this way, the principal becomes estopped to claim that the agent does not have such authority; second, the principal may so clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that he actually has such authority. There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant and such must have produced a change of position to its detriment. The apparent power of an agent is to be determined by the acts of the principal and not by the acts of the agent. For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence.

5. ID.; ID.; ID.; A REGISTERED OWNER WHO PLACES IN THE POSSESSION OF ANOTHER AN SPA AND THE OWNER'S DUPLICATES OF THE CERTIFICATE OF TITLES, EFFECTIVELY REPRESENTS TO A THIRD PARTY THAT THE HOLDER OF SUCH DOCUMENTS HAS THE REQUISITE AUTHORITY TO DEAL WITH THE PROPERTY. — In this case, in addition to executing similarly worded SPAs expressly authorizing Roberto to offer specific properties as collateral and to do all things necessary in furtherance of said purpose, Gemma and Trinidad, *et.al.*, delivered their original owner's duplicate TCTs to Roberto. This happened not only once, but even on four separate occasions, and this made possible the execution of the mortgages on two of the properties, their registration, and the delivery by SMC of beer stocks to Roberto. In *Domingo v. Robles*, which involved a purportedly forged sale made with the aid of an agent who had possession of the original owner's duplicate TCTs, the Court upheld the sale and held: x x x. The registered owner who places

in the hands of another an executed document of transfer of registered land effectively represents to a third party that the holder of such document is authorized to deal with the property. Although the present case involves an SPA and not an executed deed, the Court finds the above quoted-ruling applicable by analogy since Roberto's possession of the SPAs and the owner's duplicates of the TCTs made it appear to SMC that he had the requisite authority to execute the REMs, and to register the same with the register of deeds.

6. ID.; ID.; ID.; EVEN IF THE AGENT EXCEEDED HIS AUTHORITY UNDER THE SPA, THE PRINCIPAL MUST BE BOUND BY THE MORTGAGES EXECUTED BY THE FORMER, FOR "AS BETWEEN TWO INNOCENT PERSONS, ONE OF WHOM MUST SUFFER THE CONSEQUENCES OF A BREACH OF TRUST, THE ONE WHO MADE IT POSSIBLE BY HIS ACT OF CONFIDENCE MUST BEAR THE LOSS." — [G]emma and Trinidad, *et al.* did not exercise even the slightest diligence to ascertain the whereabouts of their owner's duplicate TCTs, but instead relied on Roberto's explanation that the titles were still in SMC's possession which has yet to decide which title to accept as collateral when asked about the status of the certificates of title. They only revoked the SPAs executed in favor of Roberto upon receiving news that Roberto's business had closed down, and that Roberto was able to mortgage two of their properties. Again, assuming that Roberto exceeded his authority under the SPAs, Gemma and Trinidad, *et al.*, must be bound by the mortgages executed by the former, for "as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss."

7. ID.; ID.; ID.; THE PRAYER FOR AWARD OF DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES MUST BE DENIED, WHERE THE PETITION DOES NOT ALLEGE THE FACTUAL AND LEGAL BASES IN SUPPORT THEREOF. — [S]MC's prayer for award of moral damages (in the amount of ₱500,000.00), exemplary damages (in the amount of ₱100,000.00), and attorney's fees and litigation expenses (in the amount of ₱600,000.00) must be denied, as its present petition does not even allege the factual and legal bases in support thereof.

8. ID.; ID.; ID.; THIRD-PARTY OR ACCOMMODATION MORTGAGORS WHO SECURE THE FULFILLMENT OF ANOTHER'S OBLIGATION BY MORTGAGING THEIR OWN PROPERTIES ARE NOT SOLIDARILY BOUND WITH THE PRINCIPAL OBLIGOR, FOR IT IS ONLY UPON THE DEFAULT OF THE LATTER THAT THE CREDITOR MAY HAVE RECOURSE ON THE THIRD-PARTY OR ACCOMMODATION MORTGAGORS, BUT THE LIABILITY OF THE LATTER EXTENDS ONLY TO THE AMOUNT SECURED BY THE MORTGAGES OVER THEIR PROPERTIES; REMAND OF THE CASE TO REGIONAL TRIAL COURT, PROPER. — Roberto's indebtedness to SMC is undisputed. While the Court rules that the mortgages executed by Roberto over the subject properties are valid, it must be clear that Roberto's indebtedness to SMC arose from the dealership which he entered into in his personal capacity, and not on behalf of Gemma and Trinidad, *et al.* Thus, Gemma and Trinidad, *et al.*, can only be considered as third-party or accommodation mortgagors, and can only be held liable to the extent of the amount secured by the mortgages over their properties. This Court has held: There is x x x no legal provision nor jurisprudence in our jurisdiction which makes a third person who secures the fulfillment of another's obligation by mortgaging his own property to be solidarity bound with the principal obligor, x x x The signatory to the principal contract — loan — remains to be primarily bound. It is only upon the default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan. And the liability of the third-party mortgagors extends only to the property mortgaged. Should there be any deficiency, the creditor has recourse on the principal debtor. Unfortunately, the records available to the Court are insufficient to determine whether Roberto still has any outstanding liability to SMC after applying the proceeds of the foreclosure sale. In particular, the amount secured by the mortgages, as well as SMC's bid in the foreclosure sale, are not specified in the pleadings or in the attachments thereto. For this reason, the Court deems it to the best interest of the parties to give due course to SMC's cross-claim against Roberto, and consequently, to remand the case solely for the purpose of determining the amount of Roberto's outstanding liability, if any, after applying the proceeds of foreclosure to satisfy his indebtedness.

CAGUIOA, *J., concurring opinion:*

1. CIVIL LAW; LAND REGISTRATION; OWNER'S DUPLICATE CERTIFICATE OF TITLE; THE PARTIES' VOLUNTARY DELIVERY OF THEIR ORIGINAL OWNER'S DUPLICATE CERTIFICATES OF TITLE TO THEIR AGENT, AND FAILURE TO EXERCISE ORDINARY DILIGENCE TO INQUIRE ABOUT THE STATUS OR WHEREABOUTS THEREOF AFTER THE LAPSE OF REASONABLE PERIOD, IS FATAL TO THEIR CASE. — x x x [I]n addition to executing similarly worded SPAs expressly authorizing Roberto to offer specific properties as collateral and to do all things necessary in furtherance of said purpose, respondents delivered their original owner's duplicate certificates of title to Roberto. Notably, no reason was proffered as to why respondents did not or could not instead provide photocopies or certified true copies of the same. Worse, respondents delivered the same on four different occasions over the course of several years. During this period, it appears that respondents failed to exercise even ordinary diligence to inquire about the status or whereabouts of their owner's duplicates. **This is fatal to respondents' case**.

2. ID.; ID.; ID.; PRESENTATION OF THE OWNER'S DUPLICATE CERTIFICATE CONSTITUTES CONCLUSIVE AUTHORITY FROM THE REGISTERED OWNER IN FAVOR OF THE REGISTER OF DEEDS (RD) TO ENTER A NEW CERTIFICATE OR TO MAKE A MEMORANDUM OF REGISTRATION IN ACCORDANCE WITH THE ACCOMPANYING VOLUNTARY INSTRUMENT; CONVERSELY, NON-PRESENTATION OF THE OWNER'S DUPLICATE CERTIFICATE OF TITLE ABSOLUTELY BARS THE REGISTRATION OF ANY AND ALL VOLUNTARY TRANSACTIONS; WITHOUT THE OWNER'S DUPLICATE CERTIFICATE OF TITLE, A SALE OR MORTGAGE WHILE VALID, WILL NOT AND CANNOT BIND REGISTERED LAND. — The legal significance of delivering the original owner's duplicate certificate of title must be understood in the context of its distinct and irreplaceable function in the land registration system. In *Philippine Bank of Communications v. The Register of Deeds for the Province of Benguet*, the Court explained: x x x. x x x. Evidently, the owner's duplicate certificate is "crucial to the

full and effective exercise of ownership rights over registered land." It is a fundamental aspect of the Torrens system. Presentation of the owner's duplicate certificate constitutes **conclusive authority** from the registered owner in favor of the Register of Deeds (RD) to enter a new certificate or to make a memorandum of registration in accordance with the accompanying voluntary instrument. Conversely, non-presentation of the owner's duplicate certificate of title **absolutely bars** the registration of any and all voluntary transactions. In other words, without the owner's duplicate, a sale or mortgage while valid, will not and cannot bind registered land.

3. ID.; CONTRACTS; AGENCY; AGENCY BY ESTOPPEL; ONE WHO CLOTHES ANOTHER WITH APPARENT AUTHORITY AS HIS AGENT AND HOLDS HIM OUT TO THE PUBLIC AS SUCH CANNOT BE PERMITTED TO DENY THE AUTHORITY OF SUCH PERSON TO ACT AS HIS AGENT, TO THE PREJUDICE OF INNOCENT THIRD PARTIES DEALING WITH SUCH PERSON IN GOOD FAITH AND IN THE HONEST BELIEF THAT HE IS WHAT HE APPEARS TO BE; THE PRESENTATION OF AN EXPRESS AUTHORITY TO OFFER SPECIFIC PROPERTIES AS COLLATERAL, TOGETHER WITH THE ORIGINAL OWNER'S DUPLICATE CERTIFICATES, WOULD INDUBITABLY LEAD ANY REASONABLE PERSON TO BELIEVE THAT THE AGENT INDEED POSSESSES THE REQUISITE AUTHORITY TO CONSTITUTE THE REAL ESTATE MORTGAGES AND TO REGISTER THE SAME WITH THE REGISTRY OF DEEDS. — In view of this **distinctive function**, registered owners are expected to exercise reasonable diligence in safeguarding the original owner's duplicate certificates of title and in ensuring that they remain in their possession or in the possession of persons they trust. Under these premises, the voluntary delivery of original owner's duplicates gains new significance. As applied to the instant case, the presentation of (1) an express authority to offer specific properties as collateral (2) **together with the original owner's duplicate certificates,** would indubitably lead any reasonable person to believe that the agent indeed possesses the requisite authority to constitute the REMs and to register the same with the RD. As such, respondents should be deemed bound by the mortgages under

Article 1911 of the Civil Code, *viz*.: ART. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers, (n) The Court has held that "one who clothes another with apparent authority as his agent and holds him out to the public as such cannot be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be." In an agency by estoppel, "the principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing." x x x

4. ID.; ID.; ID.; A PERSON'S APPARENT AUTHORITY TO MORTGAGE THE PROPERTY IS ABSOLUTELY AFFIRMED AND CONFIRMED WHEN THE REGISTERED OWNER REPEATEDLY EXECUTE THE SPECIAL POWER OF ATTORNEY IN HIS FAVOR AND SUCCESSIVELY DELIVERED TO HIM THE ORIGINAL OWNER'S DUPLICATE; AN ORDINARY REGISTERED OWNER WOULD NOT CASUALLY PART AND ALLOW A THIRD PERSON TO RETAIN HIS OR HER ORIGINAL OWNER'S DUPLICATE CERTIFICATE OF TITLE FOR ANY SIGNIFICANT PERIOD WITHOUT CAUSE. — Even assuming therefore that Roberto's authority to mortgage the property was insufficient, respondents absolutely affirmed and confirmed said authority when they repeatedly executed the aforementioned SPAs and successively delivered the corresponding owner's duplicate TCTs to Roberto in a span of four years. x x x Indeed, an ordinary registered owner would not casually part with his or her original owner's duplicate. Certainly, an ordinary registered owner would never allow a third person to retain the same for any significant period without cause. Undoubtedly, an ordinary registered owner would inquire about the whereabouts of his or her owner's duplicate and demand its return after the lapse of a reasonable period. By delivering said owner's duplicates to Roberto and allowing SMC to retain the same, respondents repeatedly held Roberto out as their agent and clothed him with the apparent authority to continuously deal with SMC, to execute the REMs, and to register the same with the RD.

5. ID.; ID.; ID.; PRIVATE OR SECRET ORDERS AND INSTRUCTIONS OF THE PRINCIPAL DO NOT PREJUDICE THIRD PERSONS WHO HAVE RELIED UPON THE SPECIAL POWER OF ATTORNEY OR INSTRUCTIONS SHOWN TO THEM; AS BETWEEN TWO INNOCENT PARTIES, THE ONE WHO MADE IT POSSIBLE FOR THE WRONG TO BE DONE SHOULD BE THE ONE TO BEAR THE RESULTING LOSS. — [R]espondents' claims that they did not specifically authorize Roberto to execute the REMs but merely agreed that the latter would bring the necessary documents for the former to sign once SMC accepted their certificates of title to be nonsensical and irrelevant. Notably, Article 1900 of the Civil Code expressly states that "[s]o far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent." Further, Article 1902 unequivocally holds that "x x x [p]rivate or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown to them." Although it appears that Roberto defrauded respondents, such fact cannot relieve respondents of their liability to SMC for "it is an equitable maxim that as between two innocent parties, the one who made it possible for the wrong to be done should be the one to bear the resulting loss."

6. ID.; ID.; ID.; A REGISTERED OWNER WHO REPEATEDLY SIGNED A SPECIAL POWER OF ATTORNEY IN FAVOR OF ANOTHER, AND REPEATEDLY PLACED IN THE HANDS OF THE LATTER HIS OR HER ORIGINAL OWNER'S DUPLICATE CERTIFICATES OF TITLE, EFFECTIVELY REPRESENTS TO A THIRD PARTY THAT THE HOLDER OF SUCH DOCUMENT IS AUTHORIZED TO DEAL WITH THE PROPERTIES; RESPONDENTS ARE ESTOPPED FROM DENYING THEIR AGENT'S AUTHORITY AND ARE BOUND TO COMPLY WITH THE OBLIGATIONS VALIDLY EXECUTED IN THEIR NAME. — In *Domingo v. Robles,* x x x the Court upheld the purportedly forged sale made with the aid of an agent who had possession of the original owner's

duplicate, and held: x x x The Torrens Act requires, as a prerequisite to registration, the production of the owner's certificate of title and the instrument of conveyance. The registered owner who places in the hands of another an executed document of transfer of registered land effectively represents to a third party that the holder of such document is authorized to deal with the property. The foregoing reasoning is applicable by analogy to the instant case. By **repeatedly** signing the subject SPAs and by **repeatedly** placing the original owner's duplicate TCTs in the hands of Roberto, respondents represented to SMC that Roberto was duly authorized to mortgage the properties. x x x [W]ithout the owner's duplicates, the mortgages could never have been registered. Relying in good faith on this apparent authority and believing that the mortgages were validly constituted, SMC approved Roberto's dealership application and delivered beer stocks amounting to about ₱7,000,000.00. In view of the foregoing, respondents are estopped from denying Roberto's authority and are bound to comply with the obligations validly executed in their name. Although respondents are likewise victims of Roberto's fraud, they cannot escape liability to SMC under the principle "that as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss." In any event, respondents' liability herein is without prejudice to their right to seek reimbursement and/or to recover damages from Roberto.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Judd L. Anastacio & Steve M. Santillan for respondents.

D E C I S I O N

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

Through this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court petitioner San Miguel Corporation

[1] *Rollo,* pp. 11-30.

(SMC) seeks a review of the Court of Appeals' (CA) Decision[2] dated October 10, 2017 and Resolution[3] dated February 14, 2018 which denied SMC's appeal, and, thus, affirmed the Regional Trial Court's (RTC) Decision dated August 28, 2014 which voided the real estate mortgages (REMs) and subsequent foreclosure over the subject properties for lack of authority to mortgage on the part of the attorney-in-fact.

Facts

Respondents Leonara Francisco *Vda. De* Trinidad, Teodorico F. Trinidad, Gemma Trinidad-Gandionco, Manuel F. Trinidad, and Grace F. Trinidad (collectively, Trinidad, *et al.*,) are the registered co-owners of two parcels of land located at Pamplona, Las Piñas City, and covered by Transfer Certificate of Title (TCT) Nos. T-6346 and T-6347. Respondent Gemma Trinidad-Gandionco (Gemma) is the registered owner of two parcels of land, likewise located at Pamplona, Las Piñas City, and covered by TCT Nos. T-5433 and T-52796.[4]

Gemma's brother-in-law, respondent Roberto N. Gandionco (Roberto) opened a beer dealership for Masbate City with SMC. One of SMC's standard requirements for a dealership is the submission of sufficient collateral, in money or other valuable properties, to secure the beer stocks to be taken out from SMC.[5]

As such, Roberto approached Gemma and asked for help with the submission of the collateral requirement. Gemma lent TCT No. T-52796, and allowed Roberto to offer the same as collateral. After three months, Roberto again approached Gemma for additional collateral as the value of the property covered by TCT No. T-52796 was insufficient. Gemma again acceded

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[2] Penned by Associate Justice Renato C. Francisco, with Associate Justices Sesinando E. Villon and Manuel M. Barrios, concurring; *id.* at 31-46.

[3] *Id.* at 47-48.

[4] *Id.* at 33.

[5] *Id.* at 13.

and lent TCT No. T-5433 to Roberto.[6] In 2005, Roberto again asked Gemma if there is another property that can be offered to SMC so Roberto can obtain additional stocks. After obtaining the consent of Trinidad, *et al.*, Roberto was lent TCT No. T-6347. For the fourth time, in 2007, Roberto asked from Gemma if he could offer another property to SMC so he could obtain additional stock. Again, after obtaining the consent of Trinidad, *et al.*, Roberto was lent TCT No. T-6346.

In these four instances, Gemma and Trinidad, *et al.*, executed the corresponding special power of attorney (SPA) in favor of Roberto, which were similarly-worded and varying only as to the property involved, as follows:

> To offer as collateral, security or property bond with [SMC] a parcel of land located at Las Piñas City containing an area of ____ square meters and all improvements thereon and covered by TCT No. ____.
>
> HEREBY GIVING AND GRANTING unto my/our said Attorney-in-Fact full power and authority whatsoever requisite necessary to be done in and about the premises as fully to all intents and purposes as I/WE might or could lawfully do if personally present and acting; and
>
> HEREBY RATIFYING AND CONFIRMING all that my/our Attorney-in-Fact shall lawfully do or cause to be done under and by virtue of these presents.[7]

When asked about the status of the certificates of title, Roberto would explain that the titles were still in SMC's possession which has yet to decide which title to accept as collateral. It was the understanding of Gemma and Trinidad, *et al.*, that should SMC accept their certificates of title as collateral, Roberto would bring the necessary documents from SMC which Gemma and Trinidad, *et al.*, would then sign.[8]

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[6] *Id.* at 34.

[7] *Id.* at 40.

[8] *Id.* at 34.

However, using the SPAs, Roberto executed REMs over the properties covered by TCT Nos. T-6347 and T-5433, both in favor of SMC. These mortgages were annotated on the titles.

Meantime, Roberto availed of beer stocks from SMC which he regularly paid. However, in August 2007, 18 successive post-dated checks issued by Roberto were dishonored, leaving unpaid obligations amounting to about Seven Million Pesos (₱7,000,000.00).[9] When efforts to collect failed, SMC undertook to extra-judicially foreclose the REMs. At the foreclosure sale, SMC emerged as the highest bidder.

In 2008, Gemma and Trinidad, *et al.*, learned that Roberto's business had closed down, and that Roberto surreptitiously mortgaged two of their properties. Consequently, Gemma and Trinidad, *et al.*, executed four revocations of the SPAs wherein they cancelled all the SPAs issued in favor of Roberto. They also wrote a letter to SMC informing the latter that the SPAs had been revoked.[10] No reply was given by SMC until Gemma and Trinidad, *et al.*, learned of the foreclosure proceedings.

Aggrieved, Gemma and Trinidad, *et al.*, filed the complaint *a quo* for the annulment of mortgage and foreclosure sale and for the recovery of their titles.

In their Answer with Compulsory Counterclaim and Cross-claim, SMC argued that the revocations of the SPAs were belatedly made as the REMs were already constituted over the properties. Thus, SMC argued, at the time the REMs were made, the SPAs were still valid and constituted sufficient authority for Roberto to enter into the mortgage contract. SMC also denied the allegation that they knew of Roberto's limited authority and that the REMs were entered into surreptitiously. Finally, SMC contended that Gemma and Trinidad, *et al.*, were guilty of laches as they only questioned the validity of the REMs when there was a threat of actual foreclosure.[11]

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[9] *Id.* at 14.

[10] *Id.* at 35.

[11] *Id.* at 36.

Roberto did not file any answer, and, as such, was declared in default.[12]

On August 28, 2014, the RTC rendered its Decision voiding the REMs, and, consequently, the extra-judicial foreclosure over the properties. According to the RTC, Roberto's authority is only to offer the subject properties as collateral. It held that SMC should have been placed on guard by the fact that the SPAs were long executed before the REMs were entered into.[13] The RTC also directed SMC to return to Gemma and Trinidad, *et al.*, their Owner's Duplicate copies of TCT Nos. T-6346, T-6347, T-5433, and T-52796. It also directed SMC to pay moral damages, attorney's fees, and costs of suit.

SMC's cross-claim against Roberto was likewise dismissed by the RTC on account of SMC's failure to prove Roberto's liability. The RTC noted that SMC did not present evidence, such as receipts, to prove Roberto's liability, and, merely relied on the Certificate of Sale.

SMC's motion for reconsideration was similarly denied, thus, it brought the case to the CA on appeal.

SMC argued that the RTC erred in finding that the SPAs in favor of Roberto did not include the authority to mortgage or encumber the property. SMC also questioned the award of damages and attorney's fees, as well as the dismissal of its cross-claim against Roberto.

In its presently assailed Decision, the CA dismissed SMC's appeal. The CA held that a power of attorney must be strictly construed. The subject SPAs merely authorized Roberto to offer the subject properties as collateral, but not to enter into a mortgage contract. According to the CA, to interpret the SPAs as likewise giving Roberto the power to mortgage the property is to unduly enlarge the term "to offer." Because Roberto exceeded his authority, the CA concluded that no valid mortgage

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[12] *Id.*

[13] *Id.* at 38.

was constituted over the properties, and, as such, the ensuing extra-judicial foreclosures by SMC are likewise void.

As regards SMC's cross-claim against Roberto, the CA sustained its denial as SMC failed to introduce evidence in support of SMC's claim that Roberto was liable for the amount of ₱7,000,000.00. According to the CA, the Certificate of Sale does not prove Roberto's liabilities but merely establishes the fact that SMC was awarded as the highest bidder at the foreclosure sale.

Finally, the CA deleted the award for moral damages and attorney's fees for lack of proof that SMC acted in bad faith.

In disposal, the CA held:

WHEREFORE, premises considered, the Appeal is **DENIED**. The Assailed Decision dated 28 August 2014 in Civil Case No. 08-0093 is **AFFIRMED with MODIFICATIONS** in so far as the award for moral damages in the amount of Five Hundred Thousand Pesos (Php500,000.00) and the award of attorney's fees and costs of suit in the amount of Three Hundred Thousand Pesos (Php300,000.00) are hereby **DELETED**.

SO ORDERED.

Thus, SMC's resort to the present petition raising the following:

Issues

Whether the [CA] erred when it affirmed the trial court's ruling that the SPAs did not include the authority to mortgage the property, despite the attendant circumstances in the case.

Whether the [CA] erred in denying the cross-claims of SMC against [Gandionco], considering that [Gandionco] was declared in default, applying Section 3 of Rule 9 of the Rules of Court.[14]

Ruling of the Court

The petition is partly granted.

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[14] *Id.* at 16.

The SPAs specifically authorizing Roberto to offer the properties as collateral constitutes sufficient authority to enter into a contract of mortgage

For a contract of mortgage to be valid, the following essential requisites must be met: *first*, that the mortgage is constituted to secure the fulfillment of a principal obligation; *second*, the mortgagor is the absolute owner of the thing mortgaged; and third, the persons constituting the mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose. Third persons not parties to the principal obligation may secure such obligation by mortgaging their own property.[15]

In the instant case, it was Roberto who obtained certain obligations from SMC which he secured with the subject properties. The properties, are, in turn, owned by Gemma and Trinidad, *et al.*, who are third parties in relation to the principal obligation of Roberto to SMC. Since Gemma and Trinidad, *et al.*, were not the ones who personally mortgaged their properties to secure Roberto's obligations with SMC, the query to be had is whether Roberto was legally authorized to do so.

Article 1878[16] of the Civil Code requires an SPA in cases where real rights over immovable property are created or

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[15] See CIVIL CODE, Article 2085.

[16] ART. 1878. Special powers of attorney are necessary in the following cases:

(1) To make such payments as are not usually considered as acts of administration;
(2) To effect novations which put an end to obligations already in existence at the time the agency was constituted;
(3) To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;
(4) To waive any obligation gratuitously;

conveyed. Here, the SPAs specifically authorized Roberto to "offer as collateral" to SMC the subject properties, to wit:

> To offer as collateral, security or property bond with [SMC] a parcel of land located at Las Piñas City containing an area of ____ square meters and all improvements thereon and covered by TCT No. ____.
>
> HEREBY GIVING AND GRANTING unto my/our said Attorney-in-Fact full power and authority whatsoever requisite necessary to be done in and about the premises as fully to all intents and purposes as I/WE might or could lawfully do if personally present and acting; and
>
> HEREBY RATIFYING AND CONFIRMING all that my/our Attorney-in-Fact shall lawfully do or cause to be done under and by virtue of these presents.[17]

The language of the subject SPAs are clear and unambiguous. In interpreting contracts, Article 1370 of the Civil Code unequivocally provides that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."[18] This is

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(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;
(6) To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;
(7) To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;
(8) To lease any real property to another person for more than one year;
(9) To bind the principal to render some service without compensation;
(10) To bind the principal in a contract of partnership;
(11) To obligate the principal as a guarantor or surety;
(12) To create or convey real rights over immovable property;
(13) To accept or repudiate an inheritance;
(14) To ratify or recognize obligations contracted before the agency;
(15) Any other act of strict dominion. (Emphasis supplied)

[17] *Supra* note 7.

[18] CIVIL CODE, Article 1370.

similar to the "plain meaning rule" which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement."[19]

Contrary to the CA's ruling, the phrase "to offer" the subject properties "as collateral, security or property bond with SMC," coupled with the "full power and authority" to do all that is necessary for all intents and purposes of the contract, is a specific and express authority to mortgage the subject properties in favor of SMC. This is so considering that the presentation of the TCTs by Roberto to SMC was for the purpose of complying with the collateral requirement for the dealership. As such, executing the real estate mortgages and registering the same with the register of deeds are well within the scope of the authority granted.

It is of no moment that it was the supposed "understanding" of the registered owners that "should SMC accept their certificates of title as collateral, Roberto would bring the necessary documents from SMC which [the registered owners] would then sign."[20] Article 1900 of the Civil Code expressly states that "[s]o far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent." Article 1902 likewise unequivocally states that "[p]rivate or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown to them."

Assuming, however, that Roberto exceeded the limits of his authority under the SPA and such unauthorized acts were not

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[19] *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 388 (2009), citing *Benguet Corporation v. Cabildo*, 585 Phil. 23 (2008).

[20] *Supra* note 8.

ratified by Gemma and Trinidad, *et al.*, the latter are still bound by the mortgages entered by Roberto under the doctrine of apparent authority. As explained in *Woodchild Holdings, Inc. v. Roxas Electric and Construction Co., Inc.*:[21]

> It bears stressing that apparent authority is based on estoppel and can arise from two instances: first, the principal may knowingly permit the agent to so hold himself out as having such authority, and in this way, the principal becomes estopped to claim that the agent does not have such authority; second, the principal may so clothe the agent with the indicia of authority as to lead a reasonably prudent person to believe that he actually has such authority. There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant and such must have produced a change of position to its detriment. The apparent power of an agent is to be determined by the acts of the principal and not by the acts of the agent.
>
> For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence.[22] x x x (Citations omitted)

In this case, in addition to executing similarly worded SPAs expressly authorizing Roberto to offer specific properties as collateral and to do all things necessary in furtherance of said purpose, Gemma and Trinidad, *et al.*, delivered their original owner's duplicate TCTs to Roberto. This happened not only once, but even on four separate occasions, and this made possible the execution of the mortgages on two of the properties, their registration, and the delivery by SMC of beer stocks to Roberto.

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[21] 479 Phil. 896 (2004).

[22] *Id.* at 914.

In *Domingo v. Robles*,[23] which involved a purportedly forged sale made with the aid of an agent who had possession of the original owner's duplicate TCTs, the Court upheld the sale and held:

> The sale was admittedly made with the aid of Bacani, petitioner's agent, who had with him the original of the owner's duplicate Certificate of Title to the property, free from any liens or encumbrances. The signatures of Spouses Domingo, the registered owners, appear on the Deed of Absolute Sale. Petitioner's husband met with Respondent Yolanda Robles and received payment for the property. The Torrens Act requires, as a prerequisite to registration, the production of the owner's certificate of title and the instrument of conveyance. The registered owner who places in the hands of another an executed document of transfer of registered land effectively represents to a third party that the holder of such document is authorized to deal with the property.[24]

Although the present case involves an SPA and not an executed deed, the Court finds the above quoted-ruling applicable by analogy since Roberto's possession of the SPAs and the owner's duplicates of the TCTs made it appear to SMC that he had the requisite authority to execute the REMs, and to register the same with the register of deeds.

Furthermore, Gemma and Trinidad, *et al.* did not exercise even the slightest diligence to ascertain the whereabouts of their owner's duplicate TCTs, but instead relied on Roberto's explanation that the titles were still in SMC's possession which has yet to decide which title to accept as collateral when asked about the status of the certificates of title. They only revoked the SPAs executed in favor of Roberto upon receiving news that Roberto's business had closed down, and that Roberto was able to mortgage two of their properties. Again, assuming that Roberto exceeded his authority under the SPAs, Gemma and Trinidad, *et al.*, must be bound by the mortgages executed by the former, for "as between two innocent persons, one of whom

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[23] G.R. No. 153743, March 18, 2005, 453 SCRA 812.

[24] *Rollo*, p. 819.

must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss."[25]

On the basis of the foregoing, a reversal of the assailed CA ruling is in order. Nevertheless, SMC's prayer for award of moral damages (in the amount of ₱500,000.00), exemplary damages (in the amount of ₱100,000.00), and attorney's fees and litigation expenses (in the amount of ₱600,000.00) must be denied, as its present petition does not even allege the factual and legal bases in support thereof.

Remand necessary to determine Roberto's outstanding liability to SMC, if there is any

Roberto's indebtedness to SMC is undisputed. While the Court rules that the mortgages executed by Roberto over the subject properties are valid, it must be clear that Roberto's indebtedness to SMC arose from the dealership which he entered into in his personal capacity, and not on behalf of Gemma and Trinidad, *et al.* Thus, Gemma and Trinidad, *et al.*, can only be considered as third-party or accommodation mortgagors, and can only be held liable to the extent of the amount secured by the mortgages over their properties. This Court has held:

> There is x x x no legal provision nor jurisprudence in our jurisdiction which makes a third person who secures the fulfillment of another's obligation by mortgaging his own property to be solidarily bound with the principal obligor. x x x The signatory to the principal contract — loan — remains to be primarily bound. It is only upon the default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan. And the liability of the third-party mortgagors extends only to the property mortgaged. Should there be any deficiency, the creditor has recourse on the principal debtor.[26] (Citation omitted)

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[25] *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550, 560.

[26] *Land Bank of the Philippines v. Belle Corporation*, 768 Phil. 368, 390 (2015), citing *Cerna v. Court of Appeals*, G.R. No. L-48359, March 30, 1993, 220 SCRA 517, 522-523.

Unfortunately, the records available to the Court are insufficient to determine whether Roberto still has any outstanding liability to SMC after applying the proceeds of the foreclosure sale. In particular, the amount secured by the mortgages, as well as SMC's bid in the foreclosure sale, are not specified in the pleadings or in the attachments thereto. For this reason, the Court deems it to the best interest of the parties to give due course to SMC's cross-claim against Roberto, and consequently, to remand the case solely for the purpose of determining the amount of Roberto's outstanding liability, if any, after applying the proceeds of foreclosure to satisfy his indebtedness.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 10, 2017 and Resolution dated February 14, 2018 of the Court of Appeals insofar as it declared the real estate mortgages dated September 26, 2007 and July 12, 2007 and the consequent extrajudicial foreclosure sales as void, ordered petitioner San Miguel Corporation to return to respondents their owner's duplicate copies of Transfer Certificates of Title Nos. T-6347 and T-5433, and dismissed San Miguel Corporation's cross-claim against Roberto Gandionco, are **REVERSED and SET ASIDE**.

San Miguel Corporation's prayer for award of moral damages (in the amount of ₱500,000.00), exemplary damages (in the amount of ₱100,000.00), and attorney's fees and litigation expenses (in the amount of ₱600,000.00) is **DENIED** for lack of merit.

For the purpose of determining the exact amount of respondent Roberto Gandionco's outstanding liability to San Miguel Corporation, if there is any, the case is hereby **REMANDED** to the Regional Trial Court of Las Piñas City.

SO ORDERED.

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

Caguioa, J. (Working Chairperson), see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the *ponencia*.

I submit this Concurring Opinion only to expound on the significance of delivering the physical possession of the original owner's duplicate Transfer Certificates of Title (TCTs) to Roberto N. Gandionco (Roberto), purported agent of the registered owners thereof (respondents).

To reiterate the facts — petitioner San Miguel Corporation (SMC) requires its dealers to submit sufficient collateral to secure the beer stocks taken out of SMC.[1] Roberto approached respondents for help with the submission of the collateral requirement.[2] Pursuant thereto, respondents executed similarly worded Special Powers of Attorney (SPAs) authorizing respondent Roberto to "offer as collateral" TCT Nos. T-52796, T-5433, T-6347, and T-6346 in favor of SMC.[3] Respondents likewise delivered physical possession of the original owner's duplicate TCTs to Roberto on four different occasions and over the course of several years.[4] Thereafter, real estate mortgages (REMs) were executed and annotated on some of the aforementioned titles.[5] When Roberto failed to pay, SMC foreclosed on the mortgages.[6] It was only then that respondents purportedly learned that Roberto had mortgaged their properties. They informed SMC that the SPAs had been revoked and thereafter filed a complaint for annulment of mortgage and foreclosure sale.[7]

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[1] *Ponencia*, p. 2.

[2] *Id.*

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

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

Based on the foregoing, respondents should be deemed bound by the mortgages under the **doctrine of agency by estoppel**.

As acutely observed by the *ponencia*, in addition to executing similarly worded SPAs expressly authorizing Roberto to offer specific properties as collateral and to do all things necessary in furtherance of said purpose, respondents delivered their original owner's duplicate certificates of title to Roberto.[8] Notably, no reason was proffered as to why respondents did not or could not instead provide photocopies or certified true copies of the same. Worse, respondents delivered the same on four different occasions over the course of several years.[9] During this period, it appears that respondents failed to exercise even ordinary diligence to inquire about the status or whereabouts of their owner's duplicates. **This is fatal to respondents' case.**

The legal significance of delivering the original owner's duplicate certificate of title must be understood in the context of its distinct and irreplaceable function in the land registration system. In *Philippine Bank of Communications v. The Register of Deeds for the Province of Benguet*,[10] the Court explained:

> It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It is conclusive evidence with respect to the ownership of the land described therein. In *The Heirs of Alfredo Cullado v. Gutierrez*, the Court explained:
>
> > Indeed, the bedrock of the Torrens system is the indefeasibility and incontrovertibility of a land title where there can be full faith reliance thereon. Verily, the Government has adopted the Torrens system due to its being the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. To the registered owner, the Torrens system gives

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[8] *Id.* at 8.

[9] *Id.* at 2.

[10] G.R. No. 222958, March 11, 2020.

> him complete peace of mind, in order that he will be secured in his ownership as long as he has not voluntarily disposed of any right over the covered land. On the part of a person transacting with a registered land, like a purchaser, he can rely on the registered owner's title and he should not run the risk of being told later that his acquisition or transaction was ineffectual after all, which will not only be unfair to him, but will also erode public confidence in the system and will force land transactions to be attended by complicated and not necessarily conclusive investigations and proof of ownership. x x x

In other words, ownership of registered land is evidenced by the certificate of title, which is indefeasible and incontrovertible. Presidential Decree No. (P.D.) 1529 or the "Property Registration Decree" mandates the issuance of this certificate of title in **duplicates** — the original certificate of title, which is either an original certificate of title or TCT to be kept by the Register of Deeds and an owner's duplicate certificate of title to be kept by the registered owner. x x x

x x x x x x x x x

x x x [T]here is no doubt that the owner's duplicate certificate of title is a fundamental aspect of the Torrens system. While a registered owner is free to exercise and enjoy all manner of rights over his/her property [*i.e.*, (1) *Jus possidendi* or the right to possess: (2) *Jus utendi* or the right to use and enjoy; (3) *Jus fruendi* or the right to the fruits; (4) *Jus accessionis* or right to accessories; (5) *Jus abutendi* or the right to consume the thing by its use; (6) *Jus disponendi* or the right to dispose or alienate; and (7) *Jus vindicandi* or the right to vindicate or recover] and non-registration thereof does not affect the validity of said acts as between the parties, no voluntary transaction affecting the land will be registered (and thus bind third persons) without the owner's duplicate certificate of title as mandated by P.D. 1529, *viz.*:

CHAPTER V
SUBSEQUENT REGISTRATION

I. VOLUNTARY DEALINGS WITH REGISTERED LANDS

GENERAL PROVISIONS

SEC. 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing

laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

SEC. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

SEC. 53. *Presentation of owner's duplicate upon entry of new certificate*. — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a

forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

SEC. 54. *Dealings less than ownership, how registered.* — No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner. x x x

The requirement that the owner's duplicate certificate of title be presented for voluntary transactions is precisely what gives the registered owner "security" and "peace of mind" under the Torrens System. Without the owner's duplicate certificate of title, transfers and conveyances like sales and donations, mortgages and leases, and agencies and trusts while valid, will not bind the registered land. As such, the owner's duplicate certificate of title safeguards ownership. x x x[11]

Evidently, the owner's duplicate certificate is "crucial to the full and effective exercise of ownership rights over registered land."[12] It is a fundamental aspect of the Torrens system. Presentation of the owner's duplicate certificate constitutes **conclusive authority** from the registered owner in favor of the Register of Deeds (RD) to enter a new certificate or to make a memorandum of registration in accordance with the accompanying voluntary instrument.[13] Conversely, non-presentation of the owner's duplicate certificate of title **absolutely bars** the registration of any and all voluntary

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[11] *Id.* at 7-12. Citations omitted; underscoring supplied.

[12] *Id.* at 12.

[13] PROPERTY REGISTRATION DECREE, Presidential Decree No. (P.D.) 1529, June 11, 1978, Sec. 53.

transactions.[14] In other words, without the owner's duplicate, a sale or mortgage while valid, will not and cannot bind registered land.

In view of this **distinctive function**, registered owners are expected to exercise reasonable diligence in safeguarding the original owner's duplicate certificates of title and in ensuring that they remain in their possession or in the possession of persons they trust. Under these premises, the voluntary delivery of original owner's duplicates gains new significance.

As applied to the instant case, the presentation of (1) an express authority to offer specific properties as collateral (2) **together with the original owner's duplicate certificates**, would indubitably lead any reasonable person to believe that the agent indeed possesses the requisite authority to constitute the REMs and to register the same with the RD. As such, respondents should be deemed bound by the mortgages under Article 1911 of the Civil Code, *viz.*:

> ART. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers. (n)[15]

The Court has held that "one who clothes another with apparent authority as his agent and holds him out to the public as such cannot be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be."[16] In an agency by estoppel, "the principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing."[17]

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[14] *Id.*

[15] Underscoring supplied.

[16] *Cuison v. Court of Appeals*, 298 Phil. 162, 167 (1993).

[17] *AFP Retirement and Separation Benefits System v. Sanvictores*, 793 Phil. 442, 452-453 (2016).

Thus, in the early case of *Macke v. Camps*,[18] the Court held a café owner liable for the payment of goods received by a certain Ricardo Flores, after it was shown that the former left the latter in charge of the business and allowed him to use the title of "managing agent" during periods of prolonged absence. Similarly, the Court in *Cuison v. Court of Appeals*[19] held petitioner liable for the payment of various paper products delivered in accordance with orders made by a certain Tiu Huy Tiac, after it was shown that petitioner held the latter out to the public as the manager of his store. The Court therein explained:

> By his representations, petitioner is now estopped from disclaiming liability for the transaction entered into by Tiu Huy Tiac on his behalf. It matters not whether the representations are intentional or merely negligent so long as innocent third persons relied upon such representations in good faith and for value. As held in the case of Manila Remnant Co., Inc. v. Court of Appeals (191 SCRA 622 [1990]):
>
> > "More in point, we find that by the principle of estoppel, Manila Remnant is deemed to have allowed its agent to act as though it had plenary powers. Article 1911 of the Civil Code provides:
> >
> > > 'Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.'
> >
> > The above-quoted article is new. It is intended to protect the rights of innocent persons. In such a situation, both the principal and the agent may be considered as joint tortfeasors whose liability is joint and solidary.
> >
> > Authority by estoppel has arisen in the instant case because by its negligence, the principal, Manila Remnant, has permitted its agent, A.U. Valencia and Co., to exercise powers not granted to it. That the principal might not have had actual knowledge of the agent's misdeed is of no moment."

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[18] 7 Phil. 553, 555 (1907).

[19] *Supra* note 16.

Tiu Huy Tiac, therefore, by petitioner's own representations and manifestations, became an agent of petitioner by estoppel. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon (Article 1431, Civil Code of the Philippines). A party cannot be allowed to go back on his own acts and representations to the prejudice of the other party who, in good faith, relied upon them (Philippine National Bank v. Intermediate Appellate Court, et al., 189 SCRA 680 [1990]).

Taken in this light, petitioner is liable for the transaction entered into by Tiu Huy Tiac on his behalf. Thus, even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers (Article 1911 Civil Code), as in the case at bar.

Finally, although it may appear that Tiu Huy Tiac defrauded his principal (petitioner) in not turning over the proceeds of the transaction to the latter, such fact cannot in any way relieve nor exonerate petitioner of his liability to private respondent. For it is an equitable maxim that as between two innocent parties, the one who made it possible for the wrong to be done should be the one to bear the resulting loss (Francisco vs. Government Service Insurance System, 7 SCRA 577 [1963]).[20]

Even assuming therefore that Roberto's authority to mortgage the property was insufficient, respondents absolutely affirmed and confirmed said authority when they repeatedly executed the aforementioned SPAs and successively delivered the corresponding owner's duplicate TCTs to Roberto in a span of four years.

In this regard, I find respondents' assertion that "[w]hen asked about the status of the certificates of title, Roberto would explain that the titles were still in SMC's possession which has yet to decide which title to accept as collateral"[21] to be a flimsy excuse, which cannot justify the years of neglect and inaction. Why would SMC require the original owner's duplicates

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[20] *Id.* at 170-171; underscoring supplied.

[21] *Ponencia*, p. 3.

if it had yet to decide which title to accept as collateral? Certainly, a photocopy or certified true copy would have served the same purpose. Why would SMC retain the original owner's duplicates if it had no intention to constitute mortgages thereon? These matters should have alerted respondents to investigate with the RD as to the status of their titles. Evidently, respondents were grossly negligent.

Indeed, an ordinary registered owner would not casually part with his or her original owner's duplicate. Certainly, an ordinary registered owner would never allow a third person to retain the same for any significant period without cause. Undoubtedly, an ordinary registered owner would inquire about the whereabouts of his or her owner's duplicate and demand its return after the lapse of a reasonable period. By delivering said owner's duplicates to Roberto and allowing SMC to retain the same, respondents repeatedly held Roberto out as their agent and clothed him with the apparent authority to continuously deal with SMC, to execute the REMs, and to register the same with the RD.

I likewise find respondents' claims that they did not specifically authorize Roberto to execute the REMs but merely agreed that the latter would bring the necessary documents for the former to sign once SMC accepted their certificates of title[22] to be nonsensical and irrelevant. Notably, Article 1900 of the Civil Code expressly states that "[s]o far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent." Further, Article 1902 unequivocally holds that "x x x [p]rivate or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown to them." Although it appears that Roberto defrauded respondents, such fact cannot relieve respondents

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[22] *Id.*

of their liability to SMC for "it is an equitable maxim that as between two innocent parties, the one who made it possible for the wrong to be done should be the one to bear the resulting loss."[23]

In the landmark case of *Blondeau v. Nano*,[24] which involved a purportedly forged mortgage constituted through the aid of a purported agent who had possession of the original owner's duplicate TCTs, the Court upheld the validity of the mortgage and held:

> But there is a narrower ground on which the defenses of the defendant-appellee must be overruled. Agustin Nano [(purported agent)] had possession of Jose Vallejo's [(registered owner/purported mortgagor)] title papers. Without those title papers handed over to Nano with the acquiescence of Vallejo, a fraud could not have been perpetuated. x x x
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> The Torrens system is intended for the registration of title, rather than the muniments of title. It represents a departure from the orthodox principles of property law. Under the common law, if the pretended signature of the mortgagor is a forgery, the instrument is invalid for every purpose and will pass no title or rights to anyone, unless the spurious document is ratified and accepted by the mortgagor. The Torrens Act on the contrary permits a forged transfer, when duly entered in registry, to become the root of a valid title in *bona fide* purchaser. The act erects a safeguard against a forged transfer being registered, by the requirement that no transfer shall be registered unless the owner's certificate was produced along with the instrument of transfer. An executed transfer of registered lands placed by the registered owner thereof in the hands of another operates as a representation to a third party that the holder of the transfer is authorized to deal with the lands. (53 C. J., 1141, 1142; Act No. 496, as amended, Secs. 47, 51, 55.)
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> x x x x x x x x x
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> Other incidental facts might be mentioned and other incidental legal propositions might be discussed, but in its final analysis this is

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[23] *Cuison v. Court of Appeals, supra* note 16 at 172.

[24] 61 Phil. 625 (1935).

a case of a mortgagee relying upon a Torrens title, and loaning money in all good faith on the basis of the title standing in the name of the mortgagors only thereafter to discover one defendant to be an alleged forger and the other defendant, if not a party to the conspiracy, at least having by his negligence or acquiescence made it possible for the fraud to transpire. Giving to the facts the most favorable interpretation for Vallejo, yet, as announced by the United States Supreme Court, the maxim is, as between two innocent persons, in this case Angela Blondeau and Jose Vallejo, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss, in this case Jose Vallejo. x x x[25]

In *Domingo v. Robles*,[26] which was likewise cited by the *ponencia*, the Court upheld the purportedly forged sale made with the aid of an agent who had possession of the original owner's duplicate, and held:

The sale was admittedly made with the aid of Bacani, petitioner's agent, who had with him the original of the owner's duplicate Certificate of Title to the property, free from any liens or encumbrances. The signatures of Spouses Domingo, the registered owners, appear on the Deed of Absolute Sale. Petitioner's husband met with Respondent Yolanda Robles and received payment for the property. The Torrens Act requires, as a prerequisite to registration, the production of the owner's certificate of title and the instrument of conveyance. The registered owner who places in the hands of another an executed document of transfer of registered land effectively represents to a third party that the holder of such document is authorized to deal with the property.[27]

The foregoing reasoning is applicable by analogy to the instant case. By **repeatedly** signing the subject SPAs and by **repeatedly** placing the original owner's duplicate TCTs in the hands of Roberto, respondents represented to SMC that Roberto was

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[25] *Id.* at 627-632; underscoring supplied.

[26] 493 Phil. 916 (2005).

[27] *Id.* at 922; underscoring supplied.

duly authorized to mortgage the properties. As discussed, without the owner's duplicates, the mortgages could never have been registered.[28] Relying in good faith on this apparent authority and believing that the mortgages were validly constituted, SMC approved Roberto's dealership application and delivered beer stocks amounting to about ₱7,000,000.00.[29] In view of the foregoing, respondents are estopped from denying Roberto's authority and are bound to comply with the obligations validly executed in their name.

Although respondents are likewise victims of Roberto's fraud, they cannot escape liability to SMC under the principle "that as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss."[30] In any event, respondents' liability herein is without prejudice to their right to seek reimbursement and/or to recover damages from Roberto.[31]

In conclusion, (1) the authority "to offer" the subject properties "as collateral, security or property bond with SMC," (2) with the "full power and authority" to do all that is necessary for all intents and purposes of the contract, (3) coupled with the act of physically delivering to Roberto's possession the owner's duplicate TCTs — result in any person's understanding that Roberto had the specific and express authority to mortgage the subject properties in favor of SMC. To hold otherwise, is not only to contravene clear unequivocal provisions of law, but worse, to justify a deception, and accordingly make the Court complicit to this fraud.

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[28] P.D. 1529, Sec. 51.

[29] *Ponencia*, p. 3.

[30] *Tenio-Obsequio v. Court of Appeals*, 300 Phil. 588, 601 (1994).

[31] CIVIL CODE, Art. 1909 states:

> ART. 1909. The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation.

FIRST DIVISION

[G.R. Nos. 237888 & 237904. July 28, 2020]

WENCESLAO A. SOMBERO, JR., *petitioner*, *vs*. **OFFICE OF THE OMBUDSMAN, and NATIONAL BUREAU OF INVESTIGATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; BEING NOT A TRIER OF FACTS, THE SUPREME COURT GENERALLY DEFERS TO THE SOUND JUDGMENT OF THE OFFICE OF THE OMBUDSMAN EXCEPT IF IT HAS BEEN MADE WITH GRAVE ABUSE OF DISCRETION.— Article XI, Section 12 of the Constitution and R.A. No. 6670 empower the OMB to act on criminal complaints against public officials and government employees with a wide latitude of investigatory and prosecutory prerogatives. Respect for the OMB's constitutional mandate and practicality leads this Court to exercise restraint in interfering with the former's performance of its functions. Besides, its power to investigate puts OMB in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. And, being a non-trier of facts, this Court generally defers to the sound judgment of the OMB except if it has been made with grave abuse of discretion.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; FINDING THEREOF NEED ONLY TO REST ON EVIDENCE SHOWING THAT MORE LIKELY THAN NOT A CRIME HAS BEEN COMMITTED AND THERE IS ENOUGH REASON TO BELIEVE THAT IT WAS COMMITTED BY THE ACCUSED; CASE AT BAR. — Let it *first* be emphasized that Sombero's Petition involves the preliminary stage in a criminal case. During a preliminary investigation, the OMB merely determines whether probable cause exists to warrant the filing of a criminal case against an accused. Such investigation is not a part of the trial and is executive in nature. The executive finding of probable cause requires only substantial evidence and not absolute certainty of guilt. The finding of probable

cause need only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. Thus, the OMB is not bound by the technical rules on evidence. Therefore, in order to arrive at its finding of probable cause, the OMB only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.

3. CRIMINAL LAW; REPUBLIC ACT NO. 7080 (PLUNDER ACT); PLUNDER; ELEMENTS. — The crime of Plunder, as culled from the law itself (*i.e.*, R.A. No. 7080), has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d); and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or acquired is at least ₱50 Million Pesos.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; PROPER OFFENSE TO BE CHARGED AGAINST THE OFFENDER IS WITHIN THE DISCRETION OF THE OFFICE OF THE OMBUDSMAN; THERE IS NOTHING INHERENTLY IRREGULAR OR CONTRARY TO LAW IN FILING AGAINST AN ACCUSED AN INDICTMENT FOR AN OFFENSE DIFFERENT FROM WHAT IS CHARGED IN THE INITIATORY COMPLAINT, IF WARRANTED BY EVIDENCE DEVELOPED DURING THE PRELIMINARY INVESTIGATION; RIGHT TO DUE PROCESS OF THE ACCUSED, NOT VIOLATED IN CASE AT BAR. — *Enrile v. Salazar* tells us that there is nothing inherently irregular or contrary to law in filing against an accused an indictment for an offense different from what is charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation. Corollarily, the OMB is given ample room and a wide-ranging margin of discretion in determining not only what will constitute sufficient evidence that will establish "probable cause" for the filing of an information against a supposed offender, but the proper offense to be charged as well against said offender depending again on the evidence submitted

by the parties during the preliminaiy investigation. "In fact, the Ombudsman may investigate and prosecute on its own, without need for a complaint-affidavit, for as long as the case falls within its jurisdiction."

APPEARANCES OF COUNSEL

Flaminiano Arroyo & Dueñas for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

Certiorari is an extraordinary prerogative writ that is not demandable as a matter of right. For the Court to even consider a petition for *certiorari,* it must clearly and convincingly show the presence of grave abuse of discretion.[1] Unfortunately, such is not the case here.

Before this Court, on March 26, 2018, petitioner Wenceslao "Wally" A. Sombero, Jr. (Sombero) filed the instant Petition[2] for *Certiorari* under Rule 65 of the Rules of Court with Urgent Application for the Issuance of a Restraining Order or *Status Quo Ante Order* seeking to annul and set aside the Consolidated Resolution[3] dated October 23, 2017 and Consolidated Order[4] dated November 23, 2017 of the Office of the Ombudsman (OMB) in OMB-C-C-16-0525, OMB-C-C-17-0001, and OMB-C-C-17-0089 finding probable cause to indict him, along with several others, for: (*i*) Plunder defined and penalized under Section 2 of Republic Act (R.A.)No. 7080[5]; (*ii*) Violation of

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[1] *Clave v. Office of the Ombudsman (Visayas),* 801 Phil. 967, 975 (2016).

[2] *Rollo* (Vol. I), pp. 3-46.

[3] *Id.* at 47-67.

[4] *Id.* at 68-76.

[5] AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER (As amended by R.A. No. 7659, approved Dec. 13, 1993).

Section 3(e) of R.A. No. 3019[6]; (*iii*) Direct Bribery under Article 210 of the Revised Penal Code (RPC); and (*iv*) Presidential Decree No. (PD) 46.[7]

Factual Antecedents

On December 16, 2016, Sombero filed before the OMB a Complaint-Affidavit[8] for violation of Section 3(e) of R.A. No. 3019 against Bureau of Immigration (BI) Deputy Commissioners Al C. Argosino (Argosino) and Michael B. Robles (Robles). This was docketed as OMB-C-C-16-0525.

On December 22, 2016, a Second Complaint[9] was filed by the then BI Acting Intelligence Chief Charles T. Calima, Jr. (Calima) before the OMB also charging Argosino and Robles with violation of Section 3(e) of R.A. No. 3019 and R.A. No. 7080, docketed as OMB-C-C-17-0001.

Lastly, on January 26, 2017, National Bureau of Investigation (NBI) Director Dante A. Gierran filed the Third Complaint,[10] this time charging Argosino, Robles, Calima, Sombero, and Jack Lam (Lam) with direct bribery, receiving/soliciting gifts, violation of Section 3(e) of R.A. No. 3019, and PD 46. This was docketed as OMB-C-C-17-0089.

All three complaints are predicated upon the same set of facts summarized below:

On November 24, 2016, pursuant to BI Mission Order (MO) No. JHM-2016-065[11] issued by Commissioner Jaime H. Morente

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[6] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[7] MAKING IT PUNISHABLE FOR PUBLIC OFFICIALS AND EMPLOYEES TO RECEIVE, AND FOR PRIVATE PERSONS TO GIVE GIFTS ON ANY OCCASION, INCLUDING CHRISTMAS.

[8] *Rollo* (Vol. I), pp. 77-99.

[9] *Id.* at 125-140.

[10] *Id.* at 155-175.

[11] Dated November 23, 2016; *id.* (Vol. II) at 589.

(Commissioner Morente), the Fugitive Search Unit of the BI conducted a law enforcement operation at the Fontana Leisure Park and Casino (Fontana) in Clark Freeport Zone, Angeles, Pampanga, resulting in the apprehension of 1,316 undocumented Chinese nationals who were running an illegal online casino.[12] Fontana was reportedly owned by Lam and managed by Ng Khoen Hon also known as Norman Ng (Ng).[13]

Amidst the crisis in Fontana, Sombero allegedly reached out to Ng, introduced himself as the President of the Asian Gaming Service Providers Association, Inc. (AGSPA), and arranged for the latter to meet with Department of Justice (DOJ) Secretary Vitaliano N. Aguirre II (Secretary Aguirre) and Argosino.[14]

On November 26, 2016, at the VIP room of High Street Cafe situated inside Shangri-La Hotel in Bonifacio Global City, Sombero introduced Lam, Ng, and a certain Alex Yu (Yu) to Secretary Aguirre and Argosino.[15] Sombero then told Secretary Aguirre about the plight of the businessmen and even uttered the words: "*Secretary, matagal na walang nag-aalaga kay Jack Lam. So pwede ho ba ang Secretary of Justice ang mang (sic) ninong sa kanya?*"[16] However, Secretary Aguirre ignored this and left the room within minutes.[17] Thus, it was Sombero and Argosino who allegedly agreed on the amount of ₱100 Million and ₱50 Million of which must be given immediately.[18] That same day, before midnight, Argosino and Robles showed up in the City of Dreams (COD) in Pasay City and waited at a restaurant.[19] At around 2:00 a.m. on November 27, 2016,

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[12] *Id.* (Vol. I) at 49.

[13] *Id.* at 50.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 51.

[19] *Id.*

Sombero, carrying two paper bags each containing ₱10 Million, met with Argosino and Robles at the restaurant.[20] After a few conversations, Sombero left the restaurant, leaving the two bags with Argosino and Robles.[21] By 5:45 a.m., Sombero was back with three more paper bags filled with ₱10 Million each.[22] They then proceeded to the parking lot and loaded three paper bags in Argosino's car and the other two paper bags in Robles' car.[23] Sombero also took ₱2 Million from the ₱50 Million.[24]

On November 30, 2016, Argosino, Robles, Sombero, Ng, and Yu met at a suite at the Crown Hotel and discussed bail matters.[25] After that, Argosino kept on demanding the other ₱50 Million even though none of the Chinese workers had been released.[26] Thus, Sombero went to Calima and divulged the transaction.[27] Consequently, Calima visited Argosino and Robles on separate occasions and informed them that he knew about the ₱50 Million exchange on November 27, 2016 at COD.

On December 8, 2016, Argosino and Robles approached Commissioner Morente and claimed that Calima was harassing them. Calima was thus summoned to the Commissioner's office.[28] There, Calima showed Commissioner Morente the evidence pertaining to Argosino and Robles' transaction with Sombero.[29] It was then that the two Deputy Commissioners admitted that they were in possession of the ₱50 Million.[30] Thereafter, Calima

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[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*. at 52.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 164.

[30] *Id*.

and Argosino met after office hours to discuss damage control during which, Calima's share was fixed at ₱18 Million.[31]On December 9, 2016, at around 2:00 p.m., Argosino delivered two paper bags containing a total of ₱18 Million to Calima.[32] Thereafter, Calima was fired by Secretary Aguirre while Robles and Argosino resigned.

Pursuant to the Order[33] dated March 10, 2017 of the OMB directing the respondents in OMB-C-C-17-0089 to submit their counter-affidavits, Sombero, in particular, submitted his Counter-Affidavit[34] on April 10, 2017, claiming that he only assisted the detained Chinese nationals in his capacity as President of AGSPA. Moreover, he asserted that it was Argosino who asked for ₱100Million and insisted that half of the said amount be given at once as a show of goodwill. He also contended that he received ₱2 Million from Argosino for the purpose of forming a legal team to assist in the processing of the release of the Chinese individuals.

OMB Consolidated Resolution and Order

On October 23, 2017, the OMB issued the assailed Consolidated Resolution finding probable cause to charge Sombero, Argosino, Robles, Calima, and Lam. The dispositive portion of which, reads:

> **WHEREFORE,** finding probable cause to indict respondents, let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:
>
> One (1) count of **Violation of Section 3 (e)** of **[RA. No.] 3019** against **[ARGOSINO, ROBLES,** and **petitioner]**;

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[31] *Id.* at 165.

[32] *Id.*

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

[34] *Id.* (Vol. II) at 811-826.

One (1) count of **Violation of Section 3 (e) of [R.A. No.] 3019** against **[CALIMA]**;

One (1) count of **Violation [of R.A.. No.] 7080** against **[ARGOSINO, ROBLES,** and **petitioner]**;

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against **[ARGOSINO, ROBLES,** and **petitioner]**;

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against **[CALIMA]**;

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES, petitioner,** and **LAM]**; and

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES,** and **CALIMA]**.

SO ORDERED.[35]

However, upon separate Motions for Reconsideration filed by Sombero, Calima, Lam, Argosino, and Robles, the OMB issued a Consolidated Order dated November 23, 2017, modifying its earlier Resolution, *viz*.:

WHEREFORE, finding probable cause to indict respondents except [Calima], let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:

One (1) count of Violation of Section 3 (e) of [R.A. No.] 3019 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation [of R.A. No] 7080 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Article 210, Revised Penal Code against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation of [PD 46] against [ARGOSINO, ROBLES, petitioner, and LAM].

SO ORDERED.[36]

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[35] *Id*. (Vol. 1) at 66.

[36] *Id*. at 75.

After due consideration of the testimonial and documentary evidence, the OMB concluded that Argosino and Robles, taking advantage of their official positions as BI Deputy Commissioners, conspired with Sombero in acquiring ill-gotten wealth in the aggregate amount of ₱50 Million intended as a bribe to release the 1,316 undocumented Chinese nationals found illegally working inside Fontana.

As regards Calima, the OMB found that Commissioner Morente's testimony before the Committee on Accountability of Public Officers and Investigations on February 16, 2017 validated Calima's contention that his actions were pursuant to a duly authorized counter-intelligence operation that he was conducting and that his receipt of the ₱18 Million was solely for the purpose of gathering more evidence against Argosino and Robles. Thus, the charges against Calima were dropped.

Accordingly, on March 23, 2018, the OMB filed before the Sandiganbayan (SB) an Information[37] charging Argosino, Robles, and Sombero with violation of R.A. No. 7080 docketed as SB-18-CRM-0241.

Hence, this Petition for *Certiorari* filed by Sombero raising the following issues:

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND PROBABLE CAUSE TO CHARGE [HIM] WITH PLUNDER.

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT VIOLATED [HIS] RIGHT TO DUE PROCESS.[38]

Our Ruling

Plainly stated, the issue in this case is whether or not the OMB committed any grave abuse of discretion in rendering

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[37] *Id*. (Vol. II) at 1024-1027.

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

the assailed Consolidated Resolution and Consolidated Order finding probable cause against Sombero, *et al.* for the charges against them.

The Court rules in the negative.

Article XI, Section 12 of the Constitution[39] and R.A. No. 6670[40] empower the OMB to act on criminal complaints against public officials and government employees with a wide latitude of investigatory and prosecutory prerogatives.[41] Respect for the OMB's constitutional mandate and practicality leads this Court to exercise restraint in interfering with the former's performance of its functions.[42] Besides, its power to investigate[43] puts OMB in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. And, being a non-trier of facts, this Court generally defers to the sound judgment of the OMB except if it has been made with grave abuse of discretion.[44]

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[39] CONSTITUTION, Article XI. Accountability of Public Officers

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

[40] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES (1989).

[41] *Presidential Commission on Good Government v. Desierto,* 445 Phil. 154-219 (2003).

[42] *Dichaves v. Ombudsman,* 802 Phil. 564-597 (2016).

[43] CONSTITUTION, Article XI. Accountability of Public Officers

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SEC. 13 The Office of the Ombudsman shall have the following powers, functions, and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[44] *Dichaves v. Ombudsman, supra* note 42.

Certainly, the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari* lies with Sombero.[45] He must sufficiently prove that the OMB's Consolidated Resolution and Consolidated Order finding probable cause to indict him may be reviewed or even set aside by this Court based on the narrow ground of grave abuse of discretion amount to lack or excess of jurisdiction.

Here, Sombero posits that there is no probable cause to charge him with plunder, in conspiracy or otherwise, since: (a) the amassing, accumulation, and acquisition of the ill-gotten wealth must be accomplished through a series or combination of overt or criminal acts; and (b) the element of a "main plunderer" is missing. Clearly, Sombero's arguments are centered on the OMB's appreciation of facts. And, if only to determine the presence or absence of grave abuse of discretion, the Court now looks into the OMB's justifications in concluding that probable cause exists in this case.

There is probable cause to indict Sombero, et al.

Let it *first* be emphasized that Sombero's Petition involves the preliminary stage in a criminal case. During a preliminary investigation, the OMB merely determines whether probable cause exists to warrant the filing of a criminal case against an accused. Such investigation is not a part of the trial and is executive in nature.[46] The executive finding of probable cause requires only substantial evidence and not absolute certainty of guilt.[47] The finding of probable cause need only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused.[48] Thus, the OMB is not bound by

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[45] *People v. Sandiganbayan,* 681 Phil. 90-127 (2012).

[46] *Ledesma v. Court of Appeals,* 344 Phil. 207-240 (1997).

[47] *Dichaves v. Ombudsman, supra* note 42.

[48] *Galario v. Ombudsman,* G.R. No. 166797, July 10, 2007, 527 SCRA 190.

the technical rules on evidence.[49] Therefore, in order to arrive at its finding of probable cause, the OMB only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.[50]

After a judicious review, the Court holds that, in the present case, the OMB's finding of probable cause for violation of R.A. No. 7080 against Sombero, *et al.* is supported by substantial evidence. The crime of Plunder, as culled from the law itself (*i.e.*, R.A. No. 7080), has the following elements: (*a*) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)[51]; and (*c*) that the aggregate amount or total value

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[49] *Estrada v. Ombudsman*, 751 Phil. 821-980 (2015).

[50] *Clave v. Office of the Ombudsman (Visayas), supra* note 1.

[51] Section 1 (d) states:

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and or business associates by any combination or series of the following means or similar schemes.

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;

of the ill-gotten wealth amassed, accumulated, or acquired is at least ₱50 Million Pesos. Here, as correctly found by the OMB, the presence of the first element is undisputed for Argosino and Robles were serving as BI Deputy Commissioners at the time relevant to the case.[52] *Next*, based on the documentary evidence adduced, Argosino and Robles, in connivance with Sombero, came into possession of ill-gotten wealth through a series of overt acts committed on a single day — in the wee hours of November 27, 2016, they received or collected a sum of money on two instances in consideration for their supposed intercession or assistance in the release of the detained Chinese nationals.[53] *Lastly*, on the strength of Ng and Yu's affidavits and of Robles' own admission in his Counter-Affidavit, the total aggregate amount involved is ₱50 Million.

Anent the requirement of a main plunderer, the Office of the Solicitor General in its Consolidated Comment[54] properly pointed out that what is at issue here are the Consolidated Resolution and Consolidated Order issued by the OMB after finding probable cause to indict Sombero *et al*. for Plunder. The disquisition then regarding the lack of a main plunderer — who was supposed to be identified in the Information — is at this stage, premature. In *Macapagal-Arroyo v. People*,[55] we held that because Plunder is a crime that only a public official can commit by amassing, accumulating, or acquiring ill-gotten

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5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[52] *Rollo* (Vol. I), p. 60.

[53] *Id*.

[54] *Id*. (Vol. II) at 1049-1071.

[55] 808 Phil. 1042-1107 (2017).

wealth in the total value of at least ₱50 Million, the identification in the Information of such public official as the main plunderer among the several individuals thus charged, is logically necessary under the law itself. It is, thus, clear that the main plunderer must be identified in the Information and not necessarily in the questioned OMB Consolidated Resolution and Consolidated Order.

Sombero's constitutional right to due process was not violated.

Sombero maintains that his right to due process was violated. According to him, the initial complaint against him and his co-respondents *a quo* was for violation of Section 3(e) of R.A. No. 3019. Yet, the OMB, after preliminary investigation, filed an Information against him and several others for violation of R.A. No. 7080 instead.

Surely, Sombero's argument is untenable. *Enrile v. Salazar*[56] tells us that there is nothing inherently irregular or contrary to law in filing against an accused an indictment for an offense different from what is charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation. Corollarily, the OMB is given ample room and a wide-ranging margin of discretion in determining not only what will constitute sufficient evidence that will establish "probable cause" for the filing of an information against a supposed offender, but the proper offense to be charged as well against said offender depending again on the evidence submitted by the parties during the preliminary investigation. "In fact, the Ombudsman may investigate and prosecute on its own, without need for a complaint-affidavit, for as long as the case falls within its jurisdiction."[57]

In fine, the Court finds the foregoing facts sufficient to engender a reasonable belief that the overt acts of Sombero

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[56] 264 Phil. 593-637 (1990).

[57] *Galario v. Ombudsman, supra* note 48.

satisfy all of the elements of the law allegedly violated. In turn, these facts rule out any arbitrariness in the OMB's determination of probable cause. Stated otherwise, Sombero failed to show that the OMB capriciously and whimsically exercised its judgment in determining the existence of probable cause to warrant the issuance of a writ of *certiorari* and nullify its findings on the ground that these were made in excess of jurisdiction.

All told, the presence or absence of the elements of the crime charged and the validity of a party's defense or accusation, as well as the admissibility of testimonies and other documentary proof, are matters best passed upon during a full-blown trial on the merits.[58] Hence, Sombero's assertions anchored on the absence of some elements of the crime charged are better ventilated during trial and not during preliminary investigation.

WHEREFORE, the present petition is **DISMISSED** for lack of merit. The Consolidated Resolution dated October 23, 2017 and Consolidated Order dated November 23, 2017 of the Office of the Ombudsman are hereby **AFFIRMED.**

Acting on the Urgent Motion for Provisional Release from Detention due to COVID-19 dated April 15, 2020 of petitioner Wenceslao A. Sombero, Jr., the Court RESOLVES to REFER the same to the Sandiganbayan where petitioner's case docketed as SB-18-CRM-0241 is pending, for appropriate action.

SO ORDERED.

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

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[58] *Estrada v. Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018.

FIRST DIVISION

[G.R. No. 241249. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RYAN FETALCO *y* SABLAY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; STATUTORY RAPE; WHEN AND HOW COMMITTED; IT IS ENOUGH THAT THE AGE OF THE VICTIM IS PROVEN AND THAT THERE WAS SEXUAL INTERCOURSE. —** Statutory rape is committed when: (1) the offended party is under twelve (12) years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. In statutory rape, it is enough that the age of the victim is proven and that there was sexual intercourse. It is not necessary to prove that the victim was intimidated or that force was used against her, because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF, ESPECIALLY WHEN ALREADY AFFIRMED BY AN APPELLATE COURT ON APPEAL, IS ACCORDED GREAT RESPECT, IF NOT BINDING SIGNIFICANCE, ON FURTHER APPEAL TO THE SUPREME COURT; RATIONALE. —** In the present case, both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of statutory rape, and this Court finds no cogent reason to depart from these findings. It is elementary that the assessment of a trial court in matters pertaining to the credibility of witnesses, especially when already affirmed by an appellate court on appeal, are accorded great respect — if not binding significance — on further appeal to this Court. The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue. Accordingly, the errors

assigned by the appellant are insufficient to overturn the findings of the RTC and the CA.

3. ID.; ID.; ID.; IN RAPE CASES, WHEN OFFENDED PARTIES ARE YOUNG AND IMMATURE GIRLS, COURTS ARE INCLINED TO LEND CREDENCE TO THEIR VERSION OF WHAT TRANSPIRED, CONSIDERING NOT ONLY THEIR RELATIVE VULNERABILITY, BUT ALSO THE SHAME AND EMBARRASSMENT TO WHICH THEY WOULD BE EXPOSED IF THE MATTER ABOUT WHICH THEY TESTIFIED WERE NOT TRUE. — Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.

4. ID.; ID.; ID.; ACCURACY IN A TESTIMONIAL ACCOUNT HAS NEVER BEEN USED AS A STANDARD IN TESTING THE CREDIBILITY OF A WITNESS, SINCE HUMAN MEMORY IS FICKLE AND PRONE TO THE STRESSES OF EMOTIONS, ESPECIALLY SO WHEN THE TESTIMONY IS GIVEN BY A CHILD VICTIM; CASE AT BAR. — The alleged inconsistencies in AAA's testimony are not enough to sway this Court to depart from the RTC and the CA's findings. x x x We find [the] alleged inconsistencies [in AAA's testimony] too thin for us to question AAA's credibility. This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness. This is especially true when the testimony is given by child victims who were exposed to extremely traumatic situations at a very tender age.

5. ID.; ID.; ID.; ID.; ALLEGED INCONSISTENCY ON THE PLACE WHERE THE CRIME OF RAPE HAPPENED IS A MINOR INCONSISTENCY WHICH SHOULD GENERALLY BE GIVEN LIBERAL APPRECIATION; PLACE OF COMMISSION OF THE CRIME OF RAPE IS NOT AN ESSENTIAL ELEMENT THEREOF. — [T]he inconsistency as regards the place of the commission of the offense is not material so as to render AAA's testimony incredible. The alleged inconsistency on the place where the crime happened is a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that appellant's commission of the crime charged has been sufficiently proved, a condition that had been satisfied in this case.

6. ID.; ID.; A MEDICO-LEGAL REPORT IS NOT INDISPENSABLE TO THE PROSECUTION OF RAPE CASES, IT BEING MERELY CORROBORATIVE IN NATURE. — We do not find it necessary anymore to belabor on the issue raised by the appellant on the probative value of the medico-legal report. A medico-legal report is not indispensable to the prosecution of the rape case, it being merely corroborative in nature. At this point, the fact of rape and the identity of the perpetrator were proven even by the lone testimony of AAA. The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime.

7. ID.; ID.; CREDIBILITY OF WITNESSES; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES; FOR THE DEFENSE OF ALIBI TO PROSPER, IT MUST BE SUFFICIENTLY CONVINCING AS TO PRECLUDE ANY DOUBT ON THE PHYSICAL IMPOSSIBILITY OF THE PRESENCE OF THE ACCUSED AT THE *LOCUS CRIMINIS* OR ITS IMMEDIATE VICINITY AT THE TIME OF INCIDENT; CASE AT BAR. — As regards, the defense of alibi, We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. For the defense of alibi to prosper, it must be

sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. Here, appellant claims that he was at his brother's house at the time of the incident. Unfortunately for him, he was clearly in the immediate vicinity of the *locus criminis* at the time of the commission of the crime as he admitted that this place is one house away from where AAA lives. Moreover, accused-appellant did not even bother to corroborate his alibi by presenting his cousins whom he says he was with.

8. CRIMINAL LAW; QUALIFIED STATUTORY RAPE UNDER ARTICLE 266-B OF THE REVISED PENAL CODE; PROPER DESIGNATION OF THE CRIME COMMITTED IN CASE AT BAR. — This Court, however, modifies the designation of the crime committed. Sexual intercourse with a woman who is below 12 years of age constitutes statutory rape. As a qualification, Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a child below seven (7) years old." The age of the victim (four [4] years old) was sufficiently alleged in the Information and proved by the prosecution. Hence, the crime committed by appellant is qualified statutory rape under Article 266-B, with death as its imposable penalty. Nevertheless, We note that the RTC imposed the correct penalty which is *reclusion perpetua*, without eligibility for parole, in view of the enactment of Republic Act No. 9346 (R.A. 9346), which prohibits the imposition of death penalty.

9. CIVIL LAW; DAMAGES; IN CASES OF SIMPLE OR QUALIFIED RAPE, AMONG OTHERS, WHERE THE IMPOSABLE PENALTY IS DEATH BUT THE SAME IS REDUCED TO *RECLUSION PERPETUA* BECAUSE OF R.A. 9346, AMOUNTS OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES ARE PEGGED UNIFORMLY AT PhP100,000.00. — We likewise modify the amounts awarded to AAA. In the case of *People v. Jugueta*, the increase in the amounts of civil indemnity, moral damages and exemplary damages has been explained in detail. As it now stands, in cases of simple or qualified rape, among others, where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. 9346, the amounts of civil indemnity, moral damages and exemplary damages are pegged uniformly

at ₱100,000.00. Thus, the awards of civil indemnity, moral damages and exemplary damages, given to AAA, should be increased to ₱100,000.00 each.

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 this Court is the appeal of the Decision[1] of the Court of Appeals (*CA*) promulgated on February 28, 2018 which affirmed, with modification, the Judgment[2] dated May 18, 2016 of the Regional Trial Court (RTC), Branch 169, [redacted] City in Criminal Case No. 33880-MN — which found appellant Ryan Fetalco *y* Sablay guilty beyond reasonable doubt of Statutory Rape.

In an Information dated February 24, 2006, appellant was charged with rape. The Information accused the appellant of having carnal knowledge of AAA,[3] a lass then only four (4) years old:

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda (now a member of this Court) and Renato C. Francisco, concurring; *rollo*, pp. 2-20.

[2] Penned by Judge Emmanuel D. Laurea; CA *rollo*, pp. 53-58.

[3] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes*"; Republic Act No. 9262, "*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes*"; Section 40 of A.M. No. 04-10-11-SC, known as the "*Rule on Violence Against Women and Other Purposes*"; Section 40 of A.M. No. 04-10-11-SC, known as the "*Rule on Violence Against Women*

That on or about the 17th day of July 2005, in the City of [redacted], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then [and there] willfully, unlawfully and feloniously have sexual intercourse with [AAA], a minor of 4-year (sic) old, against her will and without her consent, circumstances which debase, degrade and demean the intrinsic worth and dignity of a child as a human being, thereby endangering her youth, normal growth and development.

CONTRARY TO LAW.[4]

During arraignment, appellant pleaded not guilty to the charge. The prosecution presented three witnesses — private complainant AAA; complainant's mother BBB; and Medico-Legal Officer Dr. Ruby Grace Sabino-Dingson (*Dr. Sabino-Dingson*).

On July 23, 2005, or six days after the incident, AAA, who was then four years old,[5] executed a *Sinumpaang Salaysay*[6] wherein she stated that appellant inserted in her vagina the former's hairy male organ that resembled a rat which AAA referred to as "*daga*." In October 2007, or two years after the incident, AAA was presented in court and she averred that she knew appellant because he used to be their neighbor when they were still living in [redacted].[7] On September 18, 2008, she testified that she was sleeping at the house of appellant when she was awakened and she saw her private part bleeding. She further narrated that appellant first inserted a "*daga*" in her vagina, and afterwards inserted a "*pantusok ng fishball*."[8]

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and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[4] *Rollo*, p. 3.

[5] Per her Birth Certificate (Exhibit "C").

[6] Exhibits, p. 14.

[7] TSN, October 17, 2007, pp. 3-4.

[8] TSN, September 18, 2008, p. 5.

However, during AAA's cross-examination on October 12, 2010, she narrated that appellant inserted a fishball stick in her vagina, and not a finger nor a "*daga*."[9] She further narrated that there was no bleeding of her private organ,[10] and that the incident transpired in their house, and not in the house of appellant.[11] When asked, AAA also admitted that her family was renting the place owned by the family of appellant, and that the relationship of her mother and appellant's family was not good.[12]

During trial, complainant's mother BBB testified that she was at their house when the incident happened. According to her, AAA disclosed that appellant inserted something that resembles a rat in her vagina. Allegedly, AAA described it as "*titi ni kuya na maitim parang daga may balahibo*." BBB further testified that the incident took place in the house of appellant, and that AAA did not mention a finger or a fishball stick being inserted in her vagina.[13]

The prosecution, likewise, presented P/Supt. Dr. Sabino-Dingson, Medico-Legal Officer and Concurrent Chief of the Medico Legal Division, PNP Crime Laboratory, Camp Crame, Quezon City. Dr. Sabino-Dingson presented to the court the original copy of Medico Legal Report No. M-2760-05 dated July 23, 2005 which was signed by Police Chief Inspector Pierre Paul F. Carpio (*Dr. Carpio*) and the Request for Genital Examinations from the Women and Children's Protection Desk of the [redacted] Police Station. Dr. Sabino-Dingson testified that the examination was performed by Dr. Carpio and that based on their record, it can be deduced that AAA's hymen has shallow healed lacerations at 9 o'clock position and with conclusion that shows clear evidence of penetrating trauma.

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[9] TSN, October 12, 2010, pp. 2-4.

[10] *Id.* at 7.

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

[12] *Id.* at 9.

[13] *Rollo*, p. 7.

She further testified that based on her experience as medical examiner, the conclusion given by Dr. Carpio is consistent with the testimony given by AAA on what appellant did to her.

The appellant denied all the charges against him. He testified that on July 17, 2005, he was cleaning his brother's house with his cousins from 9 o'clock until 11 o'clock in the morning. They then had lunch at around 11:30 o'clock in his brother's house which appellant admitted is only one house away from AAA's house. The appellant further averred that the only reason why he was accused of rape was because AAA's family failed to pay rentals for three (3) months.

On May 18, 2016, the RTC promulgated its Decision convicting appellant of Statutory Rape. The dispositive portion of the Decision reads as follows:

> **WHEREFORE**, premises considered, the Court finds accused RYAN FETALCO Y SABLAY GUILTY beyond reasonable doubt of STATUTORY RAPE, and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* without eligibility for parole, with all the accessory penalties provided by law, and to pay the costs.
>
> In the service of his sentence, the accused is entitled to the benefits of Article 29 of the Revised Penal Code as amended.
>
> Accused is further ordered to indemnify the offended party in the sum of Seventy[-]Five Thousand Pesos (Php75,000.00) as civil indemnity; Seventy[-]Five Thousand Pesos (Php75,000.00) as moral damages; and Thirty Thousand Pesos (Php30,000.00) as exemplary damages.
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> **SO ORDERED**.[14]

In convicting the appellant, the RTC held that while there were indeed discrepancies in AAA's testimony, the court is inclined to give considerable latitude to the child witness and to give credence to her testimony when she, in child-like innocence and candor, described the object that was inserted into her vagina as "*daga*," having been struck most by its

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[14] CA *rollo*, pp. 189-190.

hairiness. Noting that AAA was merely four (4) and a half years old at the time of the incident, the court held that it is highly improbable that a girl of tender years would impute to any man a crime as serious as rape if what she claims is not true. Moreover, the court held that any doubt that may surround AAA's testimony was erased by the result of the medico-legal examination performed on AAA which showed "clear evidence of penetrating trauma." Lastly, the RTC rules that appellant's defense of denial and alibi cannot be given any weight if not substantiated by clear and convincing evidence.[15]

Thus, appellant appealed before the CA. On February 28, 2018, the CA promulgated its assailed Decision which affirmed with modification the decision of the RTC, thus:

> **WHEREFORE**, the appeal is DISMISSED. The May 18, 2016 Decision of the RTC of Malabon City, Branch 169 in Crim. Case No. 33880-MN is AFFIRMED WITH MODIFICATION as to the amount of damages. Accused-appellant Ryan Fetalco y Sablay is GUILTY beyond reasonable doubt of STATUTORY RAPE as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code. Appellant is ordered to pay AAA the following amounts: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid.
>
> **SO ORDERED**.[16]

The CA held that all the elements of Statutory Rape are present. As to the contention that the inconsistencies on AAA's testimony cast doubt on the accusation of rape by sexual intercourse, the court highlighted the fact that AAA executed the *Sinumpaang Salaysay* when she was only four years old, six days after the crime was committed. Hence, considering that what transpired was still fresh in AAA's mind at that time, the court held that AAA's statement in the *Sinumpaang Salaysay*

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

[16] *Rollo*, p. 19.

that appellant inserted a "*daga*" into her private organ cannot be disregarded. Moreover, the court ruled that two years had already passed since the incident when AAA testified during trial that what was inserted was not a "*daga*" but a fishball stick. As to appellant's averment that the testimony of the medico-legal officer who testified in court is considered hearsay since he was not the one who personally examined AAA, the CA held that the medical examination of the victim or the presentation of medical certificate is not essential to prove the commission of rape since the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime.[17]

Hence, this appeal wherein the appellant presents the following issues:

I.

THE TRIAL COURT GRAVELY ERRED WHEN IT GAVE FULL CREDENCE TO THE INCONSISTENT TESTIMONIES OF PRIVATE COMPLAINANT AAA AND BBB.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE RAPE BY SEXUAL INTERCOURSE AS ALLEGED IN THE INFORMATION.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ABSENCE OF ACTUAL PROOF AS THE MEDICO-LEGAL OFFICER WHO PREPARED THE MEDICAL CERTIFICATE WAS NOT PRESENTED IN COURT.

IV.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S DEFENSES OF DENIAL AND ALIBI.[18]

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[17] *Id.* at 13-17.

[18] CA *rollo*, pp. 33-34.

In his Brief, appellant contends that AAA's contradictory statements on important details in her *Sinumpaang Salaysay* and her testimony when she was called to testify in court cast serious doubt on the guilt of appellant. Appellant further contends that the medico-legal report must not be given probative weight because the medico-legal officer who prepared the medical certificate was not presented in court.

The primary issue to be resolved by this Court, in the instant case, is whether or not the appellant's guilt has been proven beyond reasonable doubt.

OUR RULING

The appeal is dismissed.

The pertinent provisions of Article 266-A of the Revised Penal Code, as amended, provide:

Art. 266-A. *Rape; When and How Rape is Committed.* —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Statutory rape is committed when: (1) the offended party is under twelve (12) years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. In statutory rape, it is enough that the age of the victim is proven and that there was sexual

intercourse.[19] It is not necessary to prove that the victim was intimidated or that force was used against her, because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own.[20]

In the present case, both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of statutory rape, and this Court finds no cogent reason to depart from these findings. It is elementary that the assessment of a trial court in matters pertaining to the credibility of witnesses, especially when already affirmed by an appellate court on appeal, are accorded great respect — if not binding significance — on further appeal to this Court. The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue.[21] Accordingly, the errors assigned by the appellant are insufficient to overturn the findings of the RTC and the CA.

The presence of the first element is unquestionable. As evidenced by her Birth Certificate[22] showing that she was born on January 19, 2001, AAA was only four (4) years old at the time the crime was committed in 2005. It is settled that in cases of statutory rape, the age of the victim may be proved by the presentation of her birth certificate.[23]

The second element of the crime was duly proven by the prosecution with the testimony of the victim. AAA positively identified the accused as the one who ravaged her and she clearly narrated her harrowing experience in the hands of the accused. She explained that she knew appellant as their neighbor,[24] and

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[19] *People v. Brioso*, 788 Phil. 292, 305 (2016).

[20] *People v. Lopez*, 617 Phil. 733, 745 (2009).

[21] *People v. Ramon Bay-od*, G.R. No. 238176, January 14, 2019.

[22] Exhibit "C".

[23] *People v. Jalosjos*, 421 Phil. 43, 84 (2001).

[24] TSN, October 17, 2007, pp. 3-4.

narrated how the latter inserted into her vagina his hairy male organ, which AAA referred to as "*daga*."[25] Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[26]

The alleged inconsistencies in AAA's testimony are not enough to sway this Court to depart from the RTC and the CA's findings. Appellant is fixated with AAA's testimonies given in 2008 wherein she said that the incident took place at the house of the appellant where she was sleeping and that he removed her panty then used his finger and a fishball stick to poke her vagina.[27] He claims that these are inconsistent with AAA's statements that the incident happened at their house and that appellant inserted a "*daga*," referring to his genitalia.

We find these alleged inconsistencies too thin for us to question AAA's credibility. This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[28] This is especially

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[25] TSN, September 18, 2008, p. 5.

[26] *People v. Chingh*, 661 Phil. 208, 218 (2011).

[27] *Rollo*, p. 38.

[28] *People v. Lagbo*, 780 Phil. 834, 843 (2016).

true when the testimony is given by child victims who were exposed to extremely traumatic situations at a very tender age.

Moreover, the inconsistency as regards the place of the commission of the offense is not material so as to render AAA's testimony incredible. The alleged inconsistency on the place where the crime happened is a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that appellant's commission of the crime charged has been sufficiently proved,[29] a condition that had been satisfied in this case.

Our review of AAA's testimony revealed the same to be a clear and categorical account of how the appellant had carnal knowledge of her. AAA bluntly recalled that appellant inserted both the "*daga*" and a fishball stick, to wit:

Q: Going back to your Affidavit where you affixed your thumbmark, do you recall if you tell (sic) the police was inserted on your vagina, you said "DAGA"?
A: Yes, Sir.

Q: What did you tell the police "DAGA" and not stick of fishballs?
A: At first, "DAGA," after a while stick, Ma'am.

Q: Where did he get the "DAGA"?

Fiscal:

We would like to manifest that the witness is already crying. May we ask for continuance as per request of the Social Worker.[30]

The alleged inconsistency brought about by AAA's statement that appellant inserted a fish ball stick is more imagined than real. AAA categorically testified that appellant inserted two objects: his penis *a.k.a.* "*daga*" and a fishball stick. Simply because AAA failed to mention one of these items one time during the trial does not mean that she was lying during all the other times when she clearly conveyed that she was raped.

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[29] *People v. Vergara*, 724 Phil. 702, 710 (2014).

[30] TSN, September 18, 2008, pp. 5-6.

The victim was just a child called to remember each and every harrowing moment of her plight. In this case, the proceedings even lasted for years. It must be noted that it was 2005 when she executed her *Sinumpaang Salaysay* wherein she stated that appellant inserted into her vagina his hairy male organ which resembled a rat. In 2008, she testified in court that accused-appellant inserted both his "*daga*" and a fishball stick. And in 2010, almost five years after the time of rape, she stated that what was inserted was a fishball stick. It is, thus, clear that there were considerable gaps between the dates when she had testified.

At such a young age, it is only natural for AAA to forget some details of her horrors to cope with the trauma. Rape is a painful experience which is oftentimes not remembered in detail. It is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[31]

In *People v. Piosang*,[32] We have held that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering that AAA was only four (4) years old when she was raped and was only six (6) years old when she took the witness stand, she could not have invented a horrible story.[33]

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[31] *People v. Brioso, supra* note 18, at 310.

[32] 710 Phil. 519, 526 (2013).

[33] *Id.*

We do not find it necessary anymore to belabor on the issue raised by the appellant on the probative value of the medico-legal report. A medico-legal report is not indispensable to the prosecution of the rape case, it being merely corroborative in nature. At this point, the fact of rape and the identity of the perpetrator were proven even by the lone testimony of AAA. The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime.[34]

As regards, the defense of alibi, We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. Here, appellant claims that he was at his brother's house at the time of the incident. Unfortunately for him, he was clearly in the immediate vicinity of the *locus criminis* at the time of the commission of the crime as he admitted that this place is one house away from where AAA lives.[35] Moreover, accused-appellant did not even bother to corroborate his alibi by presenting his cousins whom he says he was with.

This Court, however, modifies the designation of the crime committed. Sexual intercourse with a woman who is below 12 years of age constitutes statutory rape. As a qualification, Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a child below seven (7) years old." The age of the victim (four [4] years old) was sufficiently alleged in the Information and proved by the prosecution. Hence, the crime committed by appellant is qualified statutory rape under Article 266-B, with

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[34] *People v. Hernando Bongos*, G.R. No. 227698, January 31, 2018.

[35] *People v. Jordan Batalla y Aquino*, G.R. No. 234323, January 7, 2019.

death as its imposable penalty. Nevertheless, We note that the RTC imposed the correct penalty which is *reclusion perpetua*, without eligibility for parole, in view of the enactment of Republic Act No. 9346 (R.A. 9346), which prohibits the imposition of death penalty.[36]

Lastly, We likewise modify the amounts awarded to AAA. In the case of *People v. Jugueta*,[37] the increase in the amounts of civil indemnity, moral damages and exemplary damages has been explained in detail. As it now stands, in cases of simple or qualified rape, among others, where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. 9346, the amounts of civil indemnity, moral damages and exemplary damages are pegged uniformly at ₱100,000.00. Thus, the awards of civil indemnity, moral damages and exemplary damages, given to AAA, should be increased to ₱100,000.00 each.[38]

WHEREFORE, the instant appeal is **DISMISSED**. The February 28, 2018 Decision of the Court of Appeals is **AFFIRMED** with the following **MODIFICATIONS**:

1) Accused-appellant is **ORDERED** to **PAY** the increased amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages; and

2) Accused-appellant is additionally **ORDERED** to **PAY** the victim, AAA, interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[36] *People v. Gani*, 710 Phil. 466, 475 (2013).

[37] *People v. Jugueta*, 783 Phil. 806 (2016).

[38] *People v. Brioso, supra* note 18, at 319.

FIRST DIVISION

[G.R. Nos. 243560-62. July 28, 2020]

NANCY A. CATAMCO (formerly NANCY C. PEREZ), *petitioner, vs.* **SANDIGANBAYAN SIXTH DIVISION; OFFICE OF THE OMBUDSMAN; and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 243261-63. July 28, 2020]

POMPEY M. PEREZ, *petitioner, vs.* **SANDIGANBAYAN (SIXTH DIVISION),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN (A.O. 07); SUPPLETORY APPLICATION OF THE PERIODS PROVIDED UNDER RULE 112 OF THE RULES OF COURT. — In assessing whether petitioners' right to speedy disposition of cases was violated, *Cagang* dictates that the Court first examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation. If the Ombudsman exceeded the prescribed period, the burden of proof shifts to the State. While the Rules of Procedure of the Ombudsman does not provide a period within which the preliminary investigation should be concluded, the periods provided under Rule 112 of the Rules of Court, finds suppletory application.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROCEDURE; THE INVESTIGATING OFFICER OF THE OMBUDSMAN HAS TEN (10) DAYS FROM THE TERMINATION OF THE INVESTIGATION OR THE SUBMISSION OF THE CASE FOR RESOLUTION TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE. — Section 3(f), Rule 112 of the Revised Rules on Criminal Procedure provides that the investigating prosecutor has ten (10) days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial." In addition, Section 4 of the same rule states that "within five (5) days from his resolution, [the investigating

prosecutor] shall forward the record of the case x x x to the Ombudsman or his deputy x x x, [who] shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action." Thus, "the investigating officer of the Ombudsman, has ten (10) days from the termination of the investigation or the submission of the case for resolution, to determine existence of probable cause to indict an accused."

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; IF THE DELAY OCCURS BEYOND THE GIVEN TIME PERIOD AND THE RIGHT IS INVOKED, THE BURDEN OF PROOF IS SHIFTED TO THE PROSECUTION TO PROVE THAT THE DELAY IS REASONABLE AND JUSTIFIED. — From the filing of the last motion for reconsideration on September 28, 2017 to the approval of the Order denying said motions for reconsideration, a period of almost four (4) months passed. The Informations in the present cases were filed on April 27, 2018 or almost four (4) months thereafter. In other words, from the filing of the last counter-affidavit on May 20, 2015, it took the Ombudsman two (2) years, eleven (11) months and twelve (12) days to resolve the Complaint and file the Informations before the court. Thus, following *Cagang*, the burden of proof in this case is shifted to the prosecution, who must establish that the delay is reasonable and justified under the circumstances.

4. ID.; ID.; ID.; ID.; ID.; ONCE THE BURDEN OF PROOF SHIFTS TO THE PROSECUTION IT MUST PROVE THE FOLLOWING. — In *Cagang*, the Court held that once the burden of proof shifts to prosecution, the prosecution must prove the following: "*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."

5. ID.; ID.; ID.; ID.; RIGHT TO SPEEDY DISPOSITION OF CASES MUST BE RAISED AT THE EARLIEST POSSIBLE TIME. — Lastly, the Court finds that petitioners timely asserted their rights at the earliest possible time. In their motions for reconsideration of the Ombudsman's resolution finding probable cause, petitioners already invoked their right to speedy disposition of cases.

APPEARANCES OF COUNSEL

Quimosing-Tiu Law Office and *Galit Law Office* for petitioner N. Catamco.

De Leon & Deciderio for petitioner P. Perez.

D E C I S I O N

CAGUIOA, *J.*:

The instant consolidated Petitions for *Certiorari*[1] filed by the petitioner Nancy A. Catamco (Catamco), docketed as G.R. Nos. 243560-62, and by petitioner Pompey M. Perez (Perez), docketed as G.R. Nos. 243261-63, assail the Resolution[2] dated August 7, 2018 and Resolution[3] dated October 12, 2018 of the Sixth Division of the Sandiganbayan in SB-18-CRM-0337, SB-18-CRM-0338 and SB-18-CRM-0339, both of which denied their respective motions to dismiss the case for lack of merit.

The Facts

In 2004, a Memorandum of Agreement[4] was executed between the Department of Agriculture and the Municipal Government of Poro, represented by Municipal Mayor Edgar R. Rama (Mayor Rama), by which the amount of ₱5,000,000.00 would be released to the municipality for the procurement of farm inputs and implements for distribution to farmers.[5] The municipality utilized the fund for the purchase of biochemical fertilizers for farmer-beneficiaries under the plant now, pay later scheme.[6] Mayor

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[1] *Rollo* (G.R. Nos. 243560-62), pp. 3-71; *rollo* (G.R. Nos. 243261-63), pp. 3-26.

[2] *Rollo* (G.R. Nos. 243261-63), pp. 28-42. Penned by Sandiganbayan Associate Justice Sarah Jane T. Fernandez, with Associate Justices Karl B. Miranda and Kevin Narce B. Vivero, concurring.

[3] *Id.* at 45-55.

[4] *Rollo* (G.R. Nos. 243560-62), pp. 261-262.

[5] *Rollo* (G.R. Nos. 243261-63), p. 96.

[6] *Id.*

Rama was authorized by the Sangguniang Bayan to directly purchase liquid Vitacrop fertilizers from Perzebros Company, which was owned by herein petitioners Perez and Catamco.[7]

Sometime in 2006, based on an alleged finding of the Commission on Audit (COA) of overpricing and irregularities in the procurement process,[8] the Office of the Ombudsman (Ombudsman) launched Task Force Abono (TFA) to specifically conduct a fact-finding investigation into the purported "fertilizer fund scam."[9]

A Complaint dated December 27, 2012[10] was thereafter filed by the TFA on June 21, 2013[11] against Perez, Catamco and the other public officials involved in the transaction. The Complaint alleged that the following circumstances, *inter alia*, evinced collusion between the public and private respondents: (i) there was a shortage of 225 bottles delivered as against the purchase order of 3,333 units; (ii) the macronutrient specifications in the label were not met when the fertilizers were subjected to laboratory testing; (iii) based on a canvass conducted from other suppliers of fertilizers with equivalent macronutrient compositions, "Vitacrop" was overpriced by at least 1,092%; (iv) there was no justification to resort to direct contracting; (v) Perzebros was only incorporated two (2) months prior to the award of the procurement contract; and (vi) it took only a day from the issuance of the Sangguniang Bayan Resolution authorizing the municipal mayor to directly purchase fertilizers from Perzebros, to the completion of the delivery, and the acceptance and inspections of the fertilizers by the municipal government.[12]

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[7] *Id.*

[8] Audit Observation Memorandum No. 2004-003 dated July 6, 2004, *rollo* (G.R. Nos. 243560-62), pp. 312-315; Audit Observation Memorandum No. 2005-06 dated June 5, 2005, *rollo* (G.R. Nos. 243560-62), pp. 327-330.

[9] *Rollo* (G.R. Nos. 243261-63), p. 38.

[10] *Id.* at 36.

[11] *Rollo* (G.R. Nos. 243560-62), p. 398.

[12] *Rollo* (G.R. Nos. 243261-63), pp. 98-99.

On July 19, 2013, the Ombudsman directed the respondents to file their respective counter-affidavits. The respondents filed their respective counter-affidavits from September 12, 2014 to May 20, 2015.[13]

After more than two (2) years, or on July 17, 2017, the Ombudsman issued its Resolution[14] finding probable cause to indict Perez, Catamco and their co-respondents, including Mayor Rama, for one (1) count of violation of Section 3 (e) of Republic Act (R.A.) No. 3019 and two (2) counts of Malversation under Article 217 of the Revised Penal Code (RPC).[15] Said Resolution was approved on August 1, 2017.[16]

Thereafter, petitioners Perez, Catamco, and two other co-respondents filed their motions for reconsideration on August 23, 2017, September 25, 2017 and September 28, 2017, respectively.[17] These were denied in an Order[18] dated November 10, 2017 and approved on January 18, 2018. Four (4) months thereafter, the corresponding Informations[19] were filed before the Sandiganbayan.[20]

Before arraignment, Catamco and Perez each moved for the dismissal of the case against them claiming that the Ombudsman's inordinate delay of more than twelve (12) years, from the conduct of its investigation in 2006 until the filing of the Information in court, violated their constitutional right to speedy disposition of cases.[21]

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[13] *Id.* at 36.

[14] *Id.* at 94-115.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 117-122.

[19] *Rollo* (G.R. Nos. 243560-62), pp. 74-82.

[20] *Rollo* (G.R. Nos. 243261-63), p. 37.

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

In its *Consolidated Comment/Opposition*,[22] the Ombudsman prayed for the dismissal of the motions, arguing that time it took to conclude the investigation in the instant case, from the filing of the Complaint in 2013 until the filing of the Information in 2018, cannot be considered as inordinate delay because of the need to meticulously review and evaluate the numerous records and considering the fact that a steady stream of cases reaches the Ombudsman.[23]

Ruling of the Sandiganbayan

In its Resolution dated August 7, 2018, the Sandiganbayan denied petitioners' respective motions to dismiss. Applying the "Balancing Test,"[24] the Sandiganbayan found that petitioners' right to speedy disposition of their case was not violated. While the Sandiganbayan conceded that there was a delay of four (4) years and seven (7) months to issue a Resolution, it agreed with the Ombudsman's claim that such delay was justified due to the voluminous records and number of respondents involved. The Sandiganbayan further noted that jurisprudence has recognized that the steady stream of cases reaching the Ombudsman would inevitably cause some delay. The Sandiganbayan also found the length of delay in this case as reasonable because the Ombudsman had to wait for all respondents to file their respective counter-affidavits.

Moreover, the Sandiganbayan ruled that the delay did not only prejudice petitioners and their co-accused, it also made it harder for the prosecution, who has the burden of proving the guilt of the accused, to prove its case.

Perez and Catamco moved for reconsideration of the Sandiganbayan's Resolution, but the same was denied in a Resolution dated October 12, 2018.

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[22] *Rollo* (G.R. Nos. 243560-62), pp. 396-405.

[23] *Id.* at 397-399.

[24] *Rollo* (G.R. Nos. 243261-63), p. 35.

Hence, the consolidated Petitions.

Issue

Whether the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in denying the motions to dismiss respectively filed by petitioners.

The Court's Ruling

The consolidated petitions are impressed with merit. The Court rules that the Sandiganbayan gravely abused its discretion in denying petitioners' respective motions to dismiss for violation of their right to speedy disposition of cases. To be sure, a straightforward application of the guidelines provided by the Court in the recent case of *Cagang v. Sandiganbayan, Fifth Division* (*Cagang*),[25] compels the grant of these petitions.

In *Cagang*, the Court laid down the following guidelines in resolving issues concerning the right to speedy disposition of cases:

> *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.
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> *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.

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[25] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

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.

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.[26] (Italics in the original)

Applying the foregoing parameters to the present case, the Court finds that, contrary to the Sandiganbayan's ruling, petitioners' right to speedy disposition of cases was violated by the Ombudsman's delay in concluding the preliminary investigation.

There was inordinate delay in the resolution of the preliminary investigation.

In assessing whether petitioners' right to speedy disposition of cases was violated, *Cagang* dictates that the Court first examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation. If the Ombudsman exceeded the prescribed period, the burden of proof shifts to the State.[27] While the Rules of Procedure of the Ombudsman does not provide a period within which the preliminary investigation should be concluded, the periods provided under Rule 112 of the Rules of Court, finds suppletory application.[28]

Section 3 (f), Rule 112 of the Revised Rules on Criminal Procedure provides that the investigating prosecutor has ten (10) days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial." In addition, Section 4 of the same rule states that "within five (5) days from his resolution, [the investigating prosecutor] shall forward the record of the case x x x to the Ombudsman

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[26] *Id*. at 449-451.

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

[28] Section 3. Rules of Court, application. — 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. (Ombudsman Administrative Order No. 07, RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule V, April 10, 1990.)

or his deputy x x x, [who] shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action." Thus, the investigating officer of the Ombudsman, has ten (10) days from the termination of the investigation or the submission of the case for resolution, to determine existence of probable cause to indict an accused.

In the present case, the Ombudsman failed to observe the period prescribed under its rules.

Records show that on June 21, 2013,[29] the Complaint was filed against petitioners and other twelve (12) co-respondents. They were directed to file their respective counter-affidavits on July 19, 2013.[30] The respondents, together with petitioners, filed their respective counter-affidavits from September 12, 2014 to May 20, 2015.[31] However, from the date the last counter-affidavit was filed, the case remained stagnant for two (2) years and two (2) months, until the investigating officer issued a Resolution, on July 17, 2017, finding probable cause against petitioners and their co-respondents.[32]

The Court further notes that Section 7, Rule II of the Rules of Procedure of the Ombudsman, as amended by Administrative Order No. 15-01,[33] "sanction[s] the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration."[34] However, in this case, the Ombudsman still took almost a year from the issuance of the said Resolution to file the corresponding Informations with the Sandiganbayan. And even if the Court

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[29] *Rollo* (G.R. Nos. 243560-62), p. 398.

[30] *Rollo* (G.R. Nos. 243261-63), p. 36.

[31] *Id*.

[32] *Id*.

[33] Ombudsman Administrative Order No. 15-01, AMENDMENT OF SECTION 7, RULE II OF ADMINISTRATIVE ORDER NO. 07, February 16, 2001.

[34] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 172476-99, September 15, 2010, 630 SCRA 505, 513.

were to consider the period for the resolution of the motions for reconsideration filed by petitioners and their co-respondents, the Ombudsman still took a considerable time in concluding its preliminary investigation. From the filing of the last motion for reconsideration on September 28, 2017 to the approval of the Order denying said motions for reconsideration, a period of almost four (4) months passed.[35] The Informations in the present cases were filed on April 27, 2018 or almost four (4) months thereafter.[36] In other words, from the filing of the last counter-affidavit on May 20, 2015, it took the Ombudsman two (2) years, eleven (11) months and twelve (12) days to resolve the Complaint and file the Informations before the court. Thus, following *Cagang*, the burden of proof in this case is shifted to the prosecution, who must establish that the delay is reasonable and justified under the circumstances.[37]

The Ombudsman failed to prove that the delay was reasonable and justified.

In *Cagang*, the Court held that once the burden of proof shifts to prosecution, the prosecution must prove the following: "*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."[38]

To discharge its burden, the Ombudsman, in its comment and opposition to the motions to dismiss filed by petitioners, simply averred that:

14. Based on the timeline of events, the need to meticulously and assiduously review and evaluate the numerous records, and the

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[35] *Rollo* (G.R. Nos. 243261-63), pp. 36-37.

[36] *Id.* at 37.

[37] *Supra* note 25, at 442-443.

[38] *Id.* at 450-451; italics in the original.

mathematical computations required to conclude the existence of probable cause, the lapse of time in the resolution of the present cases can hardly be considered inordinate delay resulting in a violation of the accused's right to speedy disposition of cases. Any delay attendant to the resolution of the present cases was reasonable and normal in the ordinary process of justice, and accused themselves contributed to the delay when they asked for additional time to file counter-affidavits.

15. The Supreme Court also made the following pronouncement in *Dansal v. Fernandez Sr.*:

> The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.[39] (underscoring in the original)

In other words, to justify the delay in the preliminary investigation, the Ombudsman merely claimed that it needed time to meticulously evaluate and review numerous records and relied heavily on this Court's recognition in a previous case of the steady stream of cases handled by the Ombudsman. However, while this Court has indeed recognized the reality and inevitability of institutional delay,[40] it does not, by itself, justify the Ombudsman's failure to comply with the periods provided under the rules. No less than the Constitution mandates the Ombudsman to act promptly on complaints filed before it,[41] which duty was further reinforced by R.A. No. 6770[42] or "The Ombudsman Act of 1989," to promote efficient government

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[39] *Rollo* (G.R. Nos. 243560-62), p. 399.

[40] *Id.*

[41] *Id.*

[42] Approved on November 17, 1989.

service to the people. Thus, absent any proof of how the steady stream of cases or heavy workload affected the resolution of a case, the Ombudsman cannot repeatedly hide behind this generic excuse.

In *Coscolluela v. Sandiganbayan*,[43] the Court ruled that absent any extraordinary complication, which the Ombudsman must adequately prove, "such as the degree of difficulty of the questions involved in the case, or any event external thereto that effectively stymied [the Ombudsman's] normal work activity," any delay in the resolution of the preliminary investigation is not justified.[44] Further, in *Cagang*, the Court held that once delay is established, the prosecution has the burden to prove, among others, that the issues are so complex and the evidence so voluminous, which render the delay inevitable.[45]

Here, despite the glaring lack of proof of any of these circumstances, the Sandiganbayan still ruled that the delay in the resolution of the Complaint against petitioners was reasonable. The Sandiganbayan blindly agreed with, and even justified, the Ombudsman's unsubstantiated claims of "voluminous records" by taking notice that this case is part of the "Fertilizer Fund Scam."

> According to the prosecution, considering the voluminous records that the Office of the Ombudsman had to meticulously review, and the number of respondents, the delay in the termination of the preliminary investigation is justified.
>
> This Court is inclined to agree with the prosecution. In *Mendoza-Ong v. Sandiganbayan*, citing *Dansal v. Fernandez*, the Supreme Court recognized that the steady stream of cases reaching the Office of the Ombudsman would inevitably cause some delay. To wit:
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> > x x x. "Speedy disposition of cases" is consistent with reasonable delays. The Court takes judicial notice of the fact

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[43] 714 Phil. 55 (2013).

[44] *Id.* at 63.

[45] *Supra* note 25, at 458.

> that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to lodge freely their complaints against alleged wrongdoing of government personnel. A steady stream of cases reaching the Ombudsman inevitably results. Naturally, disposition of those cases would take some time. x x x
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> x x x x x x x x x

As for the delay in the fact-finding investigation, nothing in the records indicate the exact date when the fact-finding investigation of the Office of the Ombudsman commenced. In any event, it appears that the Office of the Ombudsman created Task Force Abono, the nominal complainant in the preliminary investigation, to conduct an investigation on transactions in connection with the Fertilizer Fund Scam. Said Fertilizer Fund Scam did not involve only a handful of transactions, but numerous transactions, concerning many local government units and officials from several regions. This necessarily translates to voluminous records that the Office of the Ombudsman must evaluate.[46]

Even worse, while the Sandiganbayan, found, as a fact, that the instant case is simple and does not require a long time to resolve, it nonetheless ruled that delay here was reasonable given the numerous cases handled by the Ombudsman, *viz.*:

> **The present cases involve only a few of such transactions, *i.e.*, those in the Municipality of Poro, Cebu. <u>While this Court finds that the cases at bar do not involve unusually complex factual or legal issues</u>, the time it took to conduct the fact-finding investigation is not unreasonable, considering the number of transactions subject of the fact-finding investigation. To be sure, individual cases not involving complex factual or legal issues should not take long to resolve. However, it is undeniable that numerous cases — both related and not related to the Fertilizer Fund Scam, regardless of the complexity involved, would take more time to dispose of**.[47] (Emphasis and underscoring supplied)

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[46] *Rollo* (G.R. Nos. 243261-63), pp. 37-38.

[47] *Id.* at 38.

In *Martinez III v. People*,[48] *(Martinez III)* petitioners therein were also charged for violation of Section 3 (e) of R.A. No. 3019 in relation to the local government's purchase, in 2004, of fertilizers from Sikap Yaman. The TFA filed the complaint on May 11, 2011. On July 20, 2011, the Ombudsman ordered petitioners therein to file their respective counter-affidavits, which were filed on September 19, 2011. The Ombudsman's Resolution finding probable cause was issued on February 2, 2015 and the corresponding Informations were filed before the Sandiganbayan on June 28, 2016.[49]

The Ombudsman claimed that it promptly and expeditiously acted on the case considering that it was part of the so-called "Fertilizer Fund Scam," which involved high ranking public officials and non-government organizations. The Court, however, found the Ombudsman's excuse totally bereft of merit and ruled that the delay in the conduct of the preliminary investigation violated petitioners' right to the speedy disposition of their case, *viz.*:

> It is quite notable that from the time the petitioners were ordered to submit their counter-affidavit on July 20, 2011, it took the Office of the Ombudsman until June 28, 2016, or *almost five years* from the time they were required to submit their counter-affidavits, to file the corresponding informations. Given the unusual length of such interval, the Prosecution bears the burden to justify the prolonged conduct of the preliminary investigation, but it did not offer any suitable explanation.
>
> **The representation by the OSG that the Office of the Ombudsman had investigated the present case in conjunction with the other Fertilizer Fund scam cases did not sufficiently justify the close to five years spent in conducting the preliminary investigation**. There was no allegation, to start with, that the petitioners had conspired with those involved in the other so-called Fertilizer Fund scam cases, which might have explained the long period necessary for the preliminary examination. **The delay was really inordinate**

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[48] G.R. No. 232574, October 1, 2019.

[49] *Id.* at 2.

and oppressive considering that the informations ultimately filed against the petitioners did not appear to have resulted from a complex preliminary investigation that involved the review of voluminous documentary and other evidence. Moreover, the petitioners were only initially charged for their non-compliance with COA Circular No. 96-003 that concerned accounting and auditing guidelines on the release of fund assistance to NGOs and people's organizations. **Under the circumstances, the protracted preliminary investigation by the Office of the Ombudsman evidently ran counter to the aforecited express constitutional mandate to promptly act on complaints filed with it**.[50] (Emphasis and underscoring supplied)

Similar to *Martinez III*, it also took the Ombudsman almost *five years* to complete the preliminary investigation in this case from the time petitioners were ordered to file their counter-affidavits on July 19, 2013 until the corresponding Informations were filed before the Sandiganbayan, on April 27, 2018.

Moreover, a perusal of the Ombudsman's Resolution and the Informations filed against petitioners shows that the issues in this case are simple, straightforward and are easily determinable **considering that only one transaction is involved**. There was also no allegation that petitioners herein had conspired with those involved in the other so called "Fertilizer Fund Scam" cases. In fact, the Ombudsman's primary findings that petitioners violated the Procurement Law and that the transaction was made with undue haste are mere reiterations of the audit findings and previous issuances of the COA.[51] While a meticulous review and verification of documents may have been necessary given the number of respondents in this case, a protracted investigation of more than two (2) years from the time the last counter-affidavit was filed is still quite unreasonable **especially considering that, at the end of the day, the Ombudsman merely relied on, and even adopted as its *only* facts, the audit findings and previous issuances of the COA**. In this light, the Ombudsman's delay in the termination of the preliminary investigation against all respondents was clearly unjustified.

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[50] *Id.* at 7.

[51] *Rollo* (G.R. Nos. 243261-63), pp. 103-113.

Lastly, the Court finds that petitioners timely asserted their rights at the earliest possible time. In their motions for reconsideration of the Ombudsman's resolution finding probable cause, petitioners already invoked their right to speedy disposition of cases.[52]

Verily, by simply following the guidelines of *Cagang*, the Court is left with no choice but to consider the prosecution's failure to prove sufficient justification for the delay. And, in view of petitioners' timely invocation of their right to speedy disposition of cases, it is quite evident that the Sandiganbayan committed grave abuse of discretion in denying the motions to dismiss the case.

WHEREFORE, the consolidated petitions are hereby **GRANTED**. The assailed Resolutions dated August 7, 2018 and October 12, 2018 of the Sixth Division of the Sandiganbayan are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is ordered to **DISMISS** Criminal Case Nos. SB-18-CRM-0337, SB-18-CRM-0338, and SB-18-CRM-0339 for violation of petitioners' Constitutional right to speedy disposition of cases.

SO ORDERED.

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

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[52] See *id.* at 39, 119.

FIRST DIVISION

[G.R. No. 244629. July 28, 2020]

MARBY FOOD VENTURES CORPORATION, MARIO VALDERRAMA, and EMELITA VALDERRAMA, *petitioners, vs.* **ROLAND DELA CRUZ, GABRIEL DELA CRUZ, JOSE PAULO ANZURES, EFREN TADEO, BONGBONG SANTOS, MARLON DE RAFAEL, CRIS C. SANTIAGO, ELMER MARANO, ARMANDO RIVERA, and LOUIE BALMES,** *respondents*.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; KINDS OF EMPLOYMENT; FIELD PERSONNEL; FIELD PERSONNEL ARE THOSE WHO REGULARLY PERFORM THEIR DUTIES AWAY FROM THE PRINCIPAL PLACE OF BUSINESS OF THE EMPLOYER AND WHOSE ACTUAL HOURS OF WORK IN THE FIELD CANNOT BE DETERMINED WITH REASONABLE CERTAINTY. —** In *Auto Bus Transport Systems, Inc. v. Bautista*, this Court clarified that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. We held that field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Therefore, to determine whether an employee is a field employee, it is also necessary to confirm if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; PAYMENT OF MONETARY CLAIMS; BURDEN OF PROOF RESTS ON THE EMPLOYER. —** Specifically, with respect to labor cases, the burden of proving payment of monetary claims rests

on the employer. The rationale for this is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that overtime, differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker but in the custody and absolute control of the employer.

3. ID.; LABOR STANDARDS; DEDUCTION OF WAGES OF EMPLOYEE BY EMPLOYER, WHEN APPLICABLE. — It is clearly stated in Article 113 of the Labor Code that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code, similarly, provides that deductions from the wages of the employees may be made by the employer when such deductions are authorized by law, or when the deductions are with the written authorization of the employees for payment to a third person. Therefore, any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as well as the Omnibus Rules implementing it. Further, Article 116 of the Labor Code clearly provides that it is unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker without the worker's consent.

APPEARANCES OF COUNSEL

Katherine Maurera for petitioners.
Bonifacio F. Aranjuez, Jr. 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] under Rule 45 of the Rules of Court, seeking the review of the

[1] *Rollo*, pp. 11-27.

Decision[2] dated October 19, 2018 and Resolution[3] dated January 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP Nos. 151531 & 151557 wherein the CA affirmed the Decision[4] of the National Labor Relations Commission (NLRC) which in turn partially reversed the ruling of the Labor Arbiter (LA).

Factual Antecedents

Marby Food Ventures Corporation (Marby) is a domestic corporation duly organized and existing under Philippine laws engaged in the business of production and distribution of baked goods. Mario Valderrama is the President/CEO of Marby while Ma. Emelita Valderrama is the Vice-President.[5]

Roland dela Cruz, Jose Paulo Anzures, Efren Tadeo, Bongbong Santos, Marlon de Rafael, Cris Santiago, Jr., Elmer Maraño, Armando Rivera, Louie Balmes, Raymond Pagtalunan and Gabriel dela Cruz, (hereafter referred to as respondents) were all employed by Marby as drivers. Mark Francis Bernardino (Bernardino) meanwhile was hired as salesman. They all filed a complaint for underpayment of wage, overtime pay and 13th month pay, non-payment of holiday pay, service incentive leave pay, sick and vacation leave pay under the Collective Bargaining Agreement (CBA), illegal deductions, moral and exemplary damages and attorney's fees against petitioners, docketed as NLRC Case No. RAB-III-10-24653-16.[6]

In their Position Paper, respondents averred that they were underpaid their daily wage, overtime work pay and 13th month pay. They also did not receive their holiday pay, service incentive

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[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a Member of the Court), with Associate Justices Victoria Isabel A. Paredes and Henri Jean Paul B. Inting (now a member of this Court), concurring; *rollo*, pp. 45-59.

[3] *Id.* at 38-40.

[4] Decision was not attached.

[5] *Rollo*, p. 45.

[6] *Id.*

leave pay for the year 2013 and eight days of vacation leave and eight days of sick leave as provided for in their Collective Bargaining Agreement (CBA). They also questioned the unauthorized salary deductions made by Marby labeled as "everything" in their payslips.[7]

For Bernardino, he alleged that Marby failed to pay him his 13th month pay, service incentive leaves for the year 2013 and eight days of vacation leave and eight days of sick leave as required under their CBA. He was also made to shoulder the salaries of the drivers and helpers assigned to him. He further averred that Marby also made unauthorized salary deductions from his commissions.[8]

Petitioners on the other hand insist that respondents have been receiving the required minimum wage and 13th month pay. The alleged unauthorized deductions are penalties imposed on them for deliveries made outside the imposed delivery hours, bad orders, shortages in liquidation and cell phone plans. They claimed that respondents were duly informed of the nature of the deductions and have consented to the same. Nevertheless, Marby ceased imposing said deductions since September 2016.

As to the claim for overtime pay, holiday pay and service incentive leave pay, petitioners maintained that respondents are not entitled to the same for being field personnel.[9]

Ruling of the LA

After the parties submitted their respective pleadings and documents in support of their positions, the Labor Arbiter dismissed the case with prejudice in a Decision dated December 15, 2016.[10]

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[7] *Id.* at 46.

[8] *Id.*

[9] *Id.*

[10] *Id.*

The Labor Arbiter ruled that respondents are not entitled to their claims for overtime pay, holiday pay, service incentive leave pay, vacation leave and sick leave pay and illegal deductions.

Ruling of the NLRC

Undeterred, respondents together with Bernardino filed an appeal before the NLRC. In a Resolution dated February 28, 2017, the NLRC partially reversed the ruling of the Labor Arbiter, finding Tadeo, Pagtalunan and Bernardino to have been receiving the required minimum wage as well as the proper 13th month pay. As for the rest of the respondents, the NLRC declared them to be field personnel, thus, unqualified for certain monetary claims. However, it ordered Marby and its co-petitioners to pay respondents their salary differentials and 13th month pay. The *fallo* of the Decision reads:

WHEREFORE, premised on all the foregoing, the appeal is PARTLY GRANTED and the Decision appealed from is hereby MODIFIED conformably with the above findings.

Accordingly, [Marby and co-]respondents are hereby directed to pay the following complainants their wage differentials and 13th month differentials as follows:

1.	RONALD DELA CRUZ	₱20,308.16
2.	JOSE PAULO ANZURES	₱26,223.16
3.	BONGBONG SANTOS	₱17,773.16
4.	MARJON DE RAFAEL	₱18,590.00
5.	CRIS C. SANTIAGO	₱20,308.16
6.	ELMER MARANO	₱26,223.16
7.	ARMANDO RIVERA	₱21,998.16
8.	LOUIE BALMES	₱21,998.16
9.	GABRIEL DELA CRUZ	₱19,970.16
	TOTAL	₱193,392.28

Respondents are likewise directed to pay attorney's fees equivalent to ten (10%) percent of the total monetary award amounting to ₱19,339.22.

In all other aspects the Decision is AFFIRMED.

SO ORDERED.

Both parties filed their respective motions for reconsideration. For the first time, petitioners presented payrolls of respondents while reiterating their argument that the latter are receiving the basic minimum wage as they are paid a "premium" called "overtime pay" on top of their basic salary which must be included in the computation of their daily wage rate.[11]

In a Resolution dated April 24, 2017, both motions were denied by the NLRC.[12]

On July 10, 2017, respondents and Bernardino filed a petition for *certiorari* before the CA docketed as CA-G.R. SP. No. 151531 alleging that: the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in not awarding double indemnity as provided in Section 12, Republic Act (R.A.) No. 6727[13] as amended by R.A. No. 8188;[14] in declaring that Tadeo and Pagtalunan are not entitled to wage and 13th month pay differentials, and; affirming the conclusion of the LA that they are not entitled to overtime pay, holiday pay, service incentive leave pay, vacation leave and sick leave pay and illegal deductions.

Petitioners, likewise, filed a petition for *certiorari* docketed as CA-G.R. SP. No. 151557 assailing the award of wage differentials, 13th month pay and attorney's fees in favor of respondents.[15]

For failure to execute the Verification and Certification of Non-Forum Shopping, Bernardino and Pagtalunan were dropped as parties in CA-G.R. SP. No. 151531.

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

[12] *Id.* at 47.

[13] Also known as the Wage Rationalization Act.

[14] AN ACT INCREASING THE PENALTY AND INCREASING DOUBLE INDEMNITY FOR VIOLATION OF THE PRESCRIBED INCREASES OR ADJUSTMENT IN THE WAGE RATES, AMENDING FOR THE PURPOSE SECTION TWELVE OF REPUBLIC ACT NUMBERED SIXTY-SEVEN HUNDRED TWENTY-SEVEN, OTHERWISE KNOWN AS THE WAGE RATIONALIZATION ACT.

[15] *Id.* at 48.

On March 2, 2018, CA-G.R. SP. Nos. 151531 and 151557 were consolidated as it involved the same issues and parties.[16]

Ruling of the CA

In a Decision[17] dated October 19, 2018, the CA granted respondents' petition for *certiorari*, thus:

> **WHEREFORE**, the petition in CA-G.R. SP. No. 151531 is hereby **GRANTED**.
>
> Respondents-employers are hereby **ORDERED** to pay complainants-employees double their salary differentials, overtime pay differentials, service incentive leave pay, holiday pay and 13th month pay.
>
> Respondents-employers are likewise **ORDERED** to **REIMBURSE** to complainants-employees the deductions made from their salaries.
>
> Respondents-employers are also ORDERED to pay ten percent (10%) of the total monetary award as attorney's fees.
>
> Interest at the rate of six percent (6%) per annum shall be imposed on all monetary awards from the date of finality of this Decision until full payment.
>
> CA-G.R. SP. No. 151557 is DISMISSED for lack of merit.
>
> The present case is hereby REMANDED to the concerned Labor Arbiter for proper computation.
>
> **SO ORDERED**.

The CA ruled that respondents are regular employees entitled to overtime pay, holiday pay and service incentive leave pay. This is because based on the position paper of petitioners, respondents are tasked to deliver Marby's goods at a specified time and place. In short, they were still bound by a specific timetable within which to make deliveries even if they have the freedom to choose which route to take in order to deliver the goods. To support the foregoing, the CA highlighted the

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[16] *Id.* at 49.

[17] *Supra* note 2.

admission made by petitioners that respondents are required to log their time-in and time-out in the company and as such, actual work hours were ascertainable with reasonable certainty.

As to the issue on minimum wage, the CA ruled that respondents are entitled to salary differentials. This is because the amount termed as "overtime pay" in the employees' payslips cannot be considered as premium pay to support the allegation that the employees are receiving the proper minimum wage.

As to Tadeo, the CA ruled that he is also entitled to salary differentials, except for the year 2016. This was arrived at by comparing the daily wage rate in respondents' position paper and that of the minimum wage for Region III.

As for the 13th month pay, the CA agreed with the NLRC in awarding the same to respondents, with Tadeo, since they were all receiving salaries below minimum wage. Hence, the basis for their 13th month pay was erroneous.

As to overtime pay, holiday pay, and service incentive leave pay, the CA ruled that since respondents are regular employees of Marby, it follows that they are entitled to said benefits.

The CA also ruled that the petitioners are liable for illegal deductions because there was no written conformity by the employees of the deductions imposed by Marby.

Lastly, the CA awarded attorney's fees of ten (10%) percent of the monetary award to the respondents as they were constrained to file the instant case to protect their interest. Furthermore, they awarded respondents double their salary differentials, overtime pay differentials, service incentive leave pay, holiday pay and 13th month pay pursuant to R.A. No. 6727.[18]

The petitioners are now before this Court, seeking to reverse and set aside the CA's Consolidated Decision dated October 19, 2018 and Resolution dated January 21, 2019, raising the following issues:

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[18] *Id.* at 49-58.

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT GRANTED THE PETITION OF THE RESPONDENTS

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DISMISSED THE PETITION OF THE PETITIONERS[19]

Petitioners reiterate their position that respondents (complainants *a quo*) are field personnel who are not entitled to overtime pay, holiday pay and service incentive leave. They also claim to have paid the correct minimum wage and 13th month pay. Aside from that, they assail the award of reimbursements for deductions, the grant of attorney's fees and double indemnity.[20]

Ruling of the Court

The petition is DENIED. We affirm the CA ruling with modification.

Respondents are regular employees and not field personnel

Article 82 of the Labor Code is instructive on the characterization of the term "field personnel." It provides:

ART. 82. *Coverage*. — The provisions of this title [Working Conditions and Rest Periods] shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

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[19] *Id.* at 15.

[20] *Id.* at 11-27.

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

In *Auto Bus Transport Systems, Inc. v. Bautista*,[21] this Court clarified that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. We held that field personnel are those who regularly perform their duties away from the principal place of business of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty. Therefore, to determine whether an employee is a field employee, it is also necessary to confirm if actual hours of work in the field can be determined with reasonable certainty by the employer. In so doing, an inquiry must be made as to whether or not the employee's time and performance are constantly supervised by the employer.[22]

Guided by the foregoing norms, the CA properly resolved that the respondents-employees are not field personnel but regular employees who perform tasks usually necessary and desirable to petitioners' business. Unmistakably, the respondents are not field personnel as defined above and the CA's finding in this regard is supported by the established facts of this case: (1) the respondents were directed to do their deliveries at a specified time and place; (2) respondents are required to log their time-in and time-out in the company to ensure accomplishment of their daily deliveries for the day and therefore their actual work hours could be determined with reasonable certainty; and (3) the respondents supervised their time and performance of duties.

Consequently, respondents are entitled to overtime pay, holiday pay and service incentive leave pay accorded to regular

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[21] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514 Phil. 488 (2005).

[22] *Id.* at 873-874, citing the Bureau of Working Conditions, Advisory Opinion to Philippine Technical-Clerical Commercial Employees Association.

employees of the petitioners three years prior to the filing of the complaint in accordance with *Arriola v. Pilipino Star Ngayon*[23] that all money claims arising from employer-employee relations shall be filed within three years from the time the cause of action accrued; otherwise they shall be forever barred. Hence, the money claims will be computed from September 30, 2013 or three years prior to the filing of the complaint on September 30, 2016.

Respondents are entitled to minimum wage salary differentials, overtime pay, holiday pay, and service incentive leave

Petitioners posit that the amount labeled as "overtime pay" should be included in the computation of minimum wage because in reality it is premium pay given by the company whether they rendered extended hours of overtime or not.

The nomenclature "overtime pay" in the payslips of respondents provides a presumption that indeed overtime was rendered by them. There was no tenable explanation offered as to this ongoing practice. Petitioners did not even present the daily time records of the respondents to prove that they were given premium pay for work not rendered. Also, if the same was in reality "premium pay," this should have been the term that was used in the payslips. As the argument proffered by petitioners on this score run counter to what an ordinary man would consider reasonable, we are inclined to believe that this explanation is merely being advanced to escape liability.

As for holiday pay and service incentive leave pay, it is settled that as a rule, a party who alleges payment as a defense has the burden of proving it.[24]

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[23] G.R. No. 175689, August 13, 2014.

[24] *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721 (2002); *Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001); *Villar v. National Labor Relations Commission*, 387 Phil. 620 (2000); *Audion Electric Co., Inc. v. NLRC*, 367 Phil. 620 (1999); *Ropali Trading Corporation v. NLRC*,

Specifically, with respect to labor cases, the burden of proving payment of monetary claims rests on the employer. The rationale for this is that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[25]

In the case at bar, except for the bare allegation of petitioners, no proof was presented to prove payment of the contested benefits.

Considering that there was in fact no "premium pay" that was given by petitioners to respondents, the latter are entitled to minimum wage pay differentials.

As for Tadeo, he is entitled to salary differentials, except for 2016. The CA ruled that there was no basis to the claim that he has been receiving minimum wage because as the NLRC held, the daily rate presented by the respondents were not disputed by petitioners, hence, they are deemed admitted. To quote:

In complainants-employees' Position Paper, Efren Tadeo was receiving a daily rate of ₱120.00 for 2013, Php294.00 for 2014, Php349.00 for 2015 and Php364.00 for 2016.

The Wage Orders for Region III covering these periods are:

"Wage Order No. III-17, daily rate – ₱336, effectivity October 1, 2012-October 30, 2014

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357 Phil. 551 (1998); *National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission (4th Division)*, 353 Phil. 551 (1998); *Pacific Maritime Services, Inc. v. Ranay*, 341 Phil. 716 (1997); *Jimenez v. National Labor Relations Commission*, 326 Phil. 84 (1996); *Philippine National Bank v. Court of Appeals*, 256 SCRA 44, 49 (1996); *Good Earth Emporium, Inc. v. Court of Appeals*, 272 Phil. 373 (1991); *Villaflor v. Court of Appeals*, 192 SCRA 680, 690 (1990); *Biala v. Court of Appeals*, 269 Phil. 53 (1990); *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787 (1989).

[25] *Villar v. National Labor Relations Commission*, 387 Phil. 706 (2000).

Wage Order No. III-18, daily rate – ₱349, effectivity November 1, 2014-December 31, 2015

Wage Order No. III-19, daily rate – ₱364, effectivity January 1, 2016"

For failure of respondents-employers to refute the allegation on Tadeo's daily wage rate, the same is deemed admitted. Comparing the said rate to the minimum wage rate, there is no dispute that Efren Tadeo had received salary below the minimum wage rate except for the year 2016. As such, he is entitled to salary differentials.

Respondents are entitled to 13th month pay differentials

Because respondents received salaries below the minimum wage, the basis in computing their 13th month pay was inaccurate. Hence, they should be awarded 13th month pay differentials.

On the part of Tadeo, since he is receiving salary below the minimum wage, his 13th month pay is likewise below that which he should have been receiving. Hence, an award for 13th month pay differentials for the benefit of Tadeo is proper.

Respondents are entitled to reimbursements of deductions

It is clearly stated in Article 113[26] of the Labor Code that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations

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[26] **Article 113.** ***Wage Deduction.*** — No employer, in his own behalf or in behalf of any person, shall make any deduction from wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

In cases where the employer is authorized by law or regulations issued by Secretary of Labor.

issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code, similarly, provides that deductions from the wages of the employees may be made by the employer when such deductions are authorized by law, or when the deductions are with the written authorization of the employees for payment to a third person.[27] Therefore, any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as well as the Omnibus Rules implementing it. Further, Article 116[28] of the Labor Code clearly provides that it is unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker without the worker's consent.

In the instant case, petitioners confirmed the alleged deductions but reasoned that the same were due to the penalties they imposed for deliveries outside the delivery hours, cell phone plans, bad orders and liquidation shortage. This act is a clear violation of the labor code since there was no written conformity coming from the respondents regarding the deduction. Hence, reimbursement of these illegal deductions should be returned to the respondents.

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[27] **Rule VIII, Section 10. Deductions from the wages of the employees may be made by the employer in any of the following cases:**

(a) When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues adhere the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself;

(b) When the deductions are with the written authorization of the employees for payment to a third person and the employer agrees to do so, provided that the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction.

[28] **Article 116. Withholding of wages and kickbacks prohibited.** — It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

Respondents are entitled to attorney's fees

Article 2208 of the New Civil Code of the Philippines is instructive regarding the policy that should guide the courts when awarding attorney's fees to a litigant. The general rule is that the parties may stipulate the recovery of attorney's fees. In the absence on such stipulation, Art. 2208 provides that 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. (Emphasis supplied)

Here, we agree with the ruling of the CA that the respondents are entitled to attorney's fees of ten percent (10%) of the monetary awards after being compelled to litigate by the failure of petitioner to pay minimum wage and labor standards benefits.

Petitioners are not liable for double the unpaid benefits owing to the employees

As for double the unpaid benefits, a modification in the CA ruling is in order.

Pursuant to Section 12 of R.A. No. 6727, as amended by R.A. No. 8188, petitioners are required to pay double the amount owed to respondents.

> Section 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (₱25,000.00) nor more than One hundred thousand pesos (₱100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years, or both such fine and imprisonment at the discretion of the court: *Provided*, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.
>
> **The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: *Provided*, That payment of indemnity shall not absolve the employer from the criminal liability imposable under this Act.**
>
> If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice president, chief executive officer, general manager, managing director or partner. (Emphasis supplied)

In the instant case, the petitioners argue that the rule on double indemnity applies only if there is refusal or failure to pay the adjustment in wage rate. They deny that they unjustly refused any payment that respondents are legally entitled to.

Petitioners' contention is well taken.

In *Philippine Hoteliers, Inc., Dusit Hotel Nikko-Manila v. NUWHRAIN-Dusit Hotel Nikko Chapter*,[29] the denial of the grant of double indemnity was anchored on the following:

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[29] 613 Phil. 491-507.

The Court, however, finds no basis to hold Dusit Hotel liable for double indemnity. Under Section 2 (m) of DOLE Department Order No. 10, Series of 1998,[30] the Notice of Inspection Result "shall specify the violations discovered, if any, together with the officer's recommendation and computation of the unpaid benefits due each worker **with an advice** that the employer shall be liable for double indemnity in case of refusal or failure to correct the violation within five calendar days from receipt of notice." A careful review of the Notice of Inspection Result dated 29 May 2002, issued herein by the DOLE-NCR to Dusit Hotel, reveals that the said Notice did not contain such an advice. Although the Notice directed Dusit Hotel to correct its noted violations within five days from receipt thereof, it was not sufficiently apprised that failure to do so within the given period would already result in its liability for double indemnity. The lack of advice deprived Dusit Hotel of the opportunity to decide and act accordingly within the five-day period, as to avoid the penalty of double indemnity. By 22 October 2002, the DOLE-NCR, through Dir. Maraan, already issued its Order directing Dusit Hotel to pay 144 of its employees the total amount of ₱1,218,240.00, corresponding to their unpaid ECOLA under WO No. 9; plus the penalty of double indemnity, pursuant to Section 12 of Republic Act No. 6727, as amended by Republic Act No. 8188.[31]

Here, there was no order from any competent authority advising the petitioners to pay unpaid employee benefits with sanctions for double indemnity in case of refusal or failure to correct the violation. Hence, it cannot be said that it refused or failed to pay any of the prescribed increases or adjustments in the wage rates to come within the purview of Section 12 of R.A. No. 6727, as amended by RA No. 8188. As such, there is no basis to hold the petitioners for double indemnity.

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[30] Guidelines on the Imposition of Double Indemnity for Non-Compliance with the Prescribed Increases or Adjustments in Wage Rates.

[31] Constitutes the compliance order, defined under Section 2 (n) of DOLE Department Order No. 10 as "the order issued by the regional director, after due notice and hearing conducted by himself or a duly authorized hearing officer finding that a violation has been committed and directing the employer to pay the amount due each worker within ten (10) calendar days from receipt thereof."

WHEREFORE, the Decision dated October 19, 2018 and the Resolution dated January 21, 2019 of the Court of Appeals in CA-G.R. SP Nos. 151531 & 151557 are hereby **AFFIRMED with MODIFICATION** in that the penalty for double indemnity is **DELETED**.

Interest at the rate of 6% per annum shall be imposed on all monetary awards from the date of finality of this Decision until full payment.

The present case is hereby remanded to the concerned Labor Arbiter for proper computation.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 246461. July 28, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSENDO LEAÑO *y* LEAÑO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640; LINKS IN THE CHAIN OF CUSTODY RULE. — In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that

unnecessary doubts concerning the identity of the evidence are removed. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

2. ID.; ID.; ID.; MARKING OF THE SEIZED ITEMS IS REQUIRED TO BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR IMMEDIATELY UPON CONFISCATION TO TRULY ENSURE THAT THEY ARE THE SAME ITEMS THAT ENTER THE CHAIN AND ARE EVENTUALLY THE ONES OFFERED IN EVIDENCE. — The ***first link*** speaks of seizure and marking which should be immediately done at the place of arrest and seizure. It includes the physical inventory and taking of photographs of the seized items in the presence of the accused and third-party witnesses. ***People v. Martinez*** instructs that consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done in the presence of the apprehended violator immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.

3. ID.; ID.; ID.; IMPORTANCE OF THE REQUIRED INSULATING WITNESSES AT THE TIME OF SEIZURE AND CONFISCATION; WHEN THEIR PRESENCE MAY BE EXCUSED. — Too, in ***People v. Asaytuno, Jr.*** citing ***People***

v. Tomawis, the Court has emphasized the importance of the required insulating witnesses at the time of seizure and confiscation, thus: The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. **It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.** x x x While their absence at the place of arrest may be excused as we have held in ***People v. Lim*** when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault, nothing of such nature existed in this case. The prosecution failed to acknowledge the procedural deficiencies in handling the seized drugs here, much less, offer any explanation why the police officers deviated from the prescribed procedures.

4. ID.; ID.; ID.; A SINGLE POLICE OFFICER'S ACT OF BODILY KEEPING THE SEIZED DRUGS IS VIEWED WITH DISTRUST; FRAUGHT WITH DANGERS, RECKLESS, IF NOT DUBIOUS, AND A DOUBTFUL AND SUSPICIOUS WAY OF ENSURING THE INTEGRITY OF THE ITEMS. — In ***People v. Dela Cruz***, the Court held that a single police officer's act of bodily keeping the seized drugs is viewed with distrust, fraught with dangers, reckless, if not dubious, and a doubtful and suspicious way of ensuring the integrity of the items. x x x In ***Dela Cruz***, the Court, too, rejected the segregation in two (2) different pockets of the seized dangerous drugs as a sufficient measure to preserve the integrity of the illicit drugs. Placing the confiscated drugs, even if marked, inside the pocket of one (1) of the arresting police officers is not the proper way of securing the seized drugs. For no one would know what other things are inside his or her pockets and what could have come out of the same.

5. ID.; ID.; ID.; IN CASE OF STIPULATION BY THE PARTIES TO DISPENSE WITH THE ATTENDANCE AND TESTIMONY OF THE FORENSIC CHEMIST, IT SHOULD BE STIPULATED THAT THE FORENSIC CHEMIST WOULD HAVE TESTIFIED THAT HE TOOK THE PRECAUTIONARY STEPS REQUIRED IN ORDER TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM. — In ***People v. Ubungen*** citing ***People v. Pajarin***, the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial. Here, the parties' stipulation did not mention that these precautionary steps were in fact done by the forensic chemist.

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] seeks to reverse the Court of Appeals' Decision dated September 14, 2018[2] in CA-G.R. CR-HC No. 09528 affirming the conviction of appellant Rosendo Leaño *y* Leaño for violations of Section 5 and Section 11, Article II of Republic

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[1] Notice of Appeal dated October 9, 2018, *rollo*, p. 14.

[2] *Id.* at 3-13; CA *rollo*, pp. 80-90.

Act No. 9165 (RA 9165) and imposing on him the corresponding penalties.

The Proceedings Before the Trial Court

The Charges

Appellant Rosendo Leaño y Leaño was charged in the following Informations:[3]

Criminal Case No. 16058

The undersigned accuses ROSENDO LEAÑO y LEAÑO @ TOTONG with VIOLATION OF SEC. 5. ART. II OF R.A. 9165, committed as follows:

"That on or about July 01, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the 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, a dangerous drug, weighing ZERO POINT ZERO SIX TWO EIGHT (0.0628) GRAM, and that the accused was found positive for the use of Methamphetamine, a dangerous drug, after the screening and confirmatory tests on the urine sample taken from him.

"CONTRARY TO LAW."

Criminal Case No. 16059

The undersigned accuses ROSENDO LEAÑO y LEAÑO @ TOTONG with VIOLATION OF SEC. 11, IN RELATION TO SEC. 25, ARTICLE II OF R.A. 9165, committed as follows:

"That on or about July 01, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully have in his possession, custody and control two (2) heat-sealed transparent plastic sachets(,) containing methamphetamine hydrochloride commonly known as 'shabu', a dangerous drug, weighing ZERO POINT ZERO NINE FIVE ONE (0.0951) GRAM, and that the accused was found positive for the use of Methamphetamine, a dangerous drug, after

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[3] Record (Crim. Case Nos. 16058-59), pp. 1-2.

the screening and confirmatory tests on the urine sample taken from him.

"CONTRARY TO LAW."

The cases were raffled off to the Regional Trial Court (RTC) - Branch 92, Balanga City, Bataan. On arraignment, appellant pleaded *not guilty* to both charges.[4]

During the trial, PO1 Paul Nemen M. Pajarin and PO1 Elton P. Berdonar testified for the prosecution while appellant testified for the defense.[5]

The parties stipulated on the expertise and qualifications of forensic chemist PCI Vernon Rey Santiago, PO1 Pajarin's delivery of the specimens to PO2 Dorigo and PCI Santiago of the Bataan Provincial Crime Laboratory, the crime laboratory's receipt of the request for laboratory examination and the specimens to be tested, including the turnover of appellant for drug testing, the existence of Chemistry Report Nos. D-358-16-Bataan and DT-286-16-Bataan, and that the specimens brought for examination were the same ones tested by PCI Santiago.[6]

The Prosecution's Version

PO1 Pajarin testified that on July 1, 2016, around 5:30 in the afternoon, while he was on duty at the Balanga City Police Station, a confidential informant arrived and informed him that a certain "Totong" of Barangay Sibacan was selling illegal drugs. PO1 Pajarin relayed the information to Police Chief Insp. Tampis,[7] who immediately ordered a buy-bust operation on "Totong."

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[4] *Id.* at 25 & 28.

[5] TSN dated June 28, 2017, pp. 2-7.

[6] TSN dated September 15, 2016, pp. 2-5; TSN dated October 6, 2016, pp. 2-7.

[7] Referred to as PSupt. Joel K. Tampis in separate Sinumpaang Salaysay of PO1 Pajarin and PO1 Berdonar, Record (Crim. Case No. 16058), pp. 95-98.

Upon his instruction, the confidential informant called and informed appellant that he (PO1 Pajarin) wanted to buy ₱500.00 worth of *shabu*. They agreed to meet at the Petron gasoline station near the Shell gasoline station in Barangay Poblacion, Balanga City, Bataan.[8]

Thereafter, PCInsp. Tampis designated him as *poseur-buyer*. He was given a Five Hundred Peso (₱500.00) bill marked money with serial no. FG366755. He wrote "BCPS" on the marked money. PO2 Abelardo Tacto coordinated with the Philippine Drug Enforcement Agency-Regional Office III (PDEA-Region III) and submitted the Coordination Form[9] and Pre-Operation Report.[10] Subsequently, PDEA-Region III issued a Certificate of Coordination[11] with control no. 10004-072016-0059.[12]

While preparing for the operation, appellant called the confidential informant around 8 o'clock in the evening and informed the latter that he was already on his way to the Petron gasoline station. He (PO1 Pajarin) and the confidential informant left the police station on board a motorcycle while PO1 Berdonar and team leader SPO2 Michael S. Yutuc[13] followed them on board a silver Toyota Innova.[14]

A few minutes later, they arrived at the designated meeting place. He (PO1 Pajarin) parked beside the gasoline station while PO1 Berdonar positioned himself around ten (10) meters away and pretended he was waiting for a ride. After a while, the confidential informant saw appellant walking toward them. The

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[8] TSN dated November 10, 2016, pp. 2-6.

[9] Exhibit D, Record (Crim. Case No. 16058), p. 100.

[10] Exhibit E, *id.* at 101.

[11] Exhibit C, *id.* at 99.

[12] TSN dated November 10, 2016, pp. 4-6; TSN dated March 1, 2017, pp. 3-5.

[13] Name of team leader appeared in the Sinumpaang Salaysay of PO1 Pajarin and PO1 Berdonar, *supra* note 7.

[14] TSN dated November 10, 2016, pp. 6-7.

confidential informant told him (PO1 Pajarin) that the man approaching them was "Totong." Appellant instructed him (PO1 Pajarin), "*Iabot mo na ang pera, boss*" (Hand me the money, boss). He obliged and handed appellant the marked ₱500.00 bill. In turn, appellant handed him one (1) sachet containing white crystalline substance. He then placed it inside his right pocket. After the exchange, he removed his bull cap to signal PO1 Berdonar that the transaction was already consummated. PO1 Berdonar then rushed to the scene while he introduced himself to appellant as police officer and arrested him. Appellant later identified himself as Rosendo L. Leaño, *alias* "Totong."[15]

He then frisked appellant and recovered the ₱500 bill marked money as well as a Marlboro box containing two (2) more heat-sealed plastic sachets of suspected *shabu*. He marked the sachet subject of the sale "PMP"[16] and the two confiscated sachets "PMP-1" and "PMP-2"[17] in the presence of appellant and PO1 Berdonar. He put back the two (2) sachets marked as "PMP-1" and "PMP-2" inside the Marlboro box[18] and slid the box into his left pocket, and the sachet he purchased, into his right pocket. After PO1 Berdonar informed appellant of his constitutional rights, the latter was brought to Balanga City Police Station.[19]

At the station, the confiscated items were inventoried and photographed in the presence of appellant, PO1 Berdonar, DOJ representative Villamor Sanchez and Barangay Kagawad Armando Zabala who all signed the inventory[20] of seized items.[21]

After the inventory, he (PO1 Pajarin) brought the confiscated items with markings "PMP," "PMP-1" and "PMP-2" to the

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[15] *Id.* at 8-9.

[16] Exhibit N, *id.* at 11.

[17] Exhibits O and O-1, *id.*

[18] Exhibit O-2, *id.* at 12.

[19] *Id.* at 9-11.

[20] Exhibit F, Record (Crim. Case No. 16058), p. 102.

[21] TSN dated November 10, 2016, pp. 12-13.

Bataan Crime Laboratory for examination. He also submitted a request for appellant's drug test. The items and appellant were turned over to PO2 Dorigo and PCI Santiago.[22]

Forensic Chemist, PCI Vernon Rey Santiago did a chemical test on the specimens which yielded positive results for methamphetamine hydrochloride. Appellant's urine test yielded the same positive results.[23]

A Spot Report was submitted to the PDEA on the buy-bust operation, appellant's arrest, and the seizure from appellant of three (3) sachets containing suspected *shabu*.[24]

The prosecution submitted the following object and documentary evidence: a) Sinumpaang Salaysay of PO1 Paul Nemen M. Pajarin,[25] b) Sinumpaang Salaysay of PO1 Elton P. Berdonar,[26] c) Certificate of Coordination,[27] d) Coordination Form,[28] e) Pre-Operation Report,[29] f) Inventory Receipt of property/ies seized,[30] g) Pictures taken during the inventory,[31] h) Request for Laboratory Examination,[32] i) Chemistry Report No. D-358-16 Bataan,[33] j) Request for Drug Testing,[34]

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[22] *Id.* at 13-15.

[23] *Id.* at 14-15; Exhibits H-K, Record (Crim. Case No. 16058), pp. 104-107.

[24] TSN dated November 10, 2016, p. 16.

[25] Exhibits A-A2, Record (Crim. Case No. 16058), pp. 95-96.

[26] Exhibits B-B1, *id.* at 97-98.

[27] Exhibit C, *supra* note 11.

[28] Exhibit D, *supra* note 9.

[29] Exhibit E, *supra* note 10.

[30] Exhibit F, *id.* at 102.

[31] Exhibit G, *id.* at 103.

[32] Exhibit H, *id.* at 104.

[33] Exhibit I, *id.* at 105.

[34] Exhibit J, *id.* at 106.

k) Chemistry Report No. DT-286-16 Bataan,[35] l) Spot Report[36] m) ₱500.00 bill,[37] n) Specimen with marking "PMP,"[38] o) Specimen with markings "PMP-1" and "PMP-2,"[39] and p) one (1) box of Marlboro country cigarette with marking "PMP-3."[40]

The Defense' Version

Appellant testified that on July 1, 2016, around 5 o'clock in the afternoon, he went to Balanga City to buy vitamins for his two (2) children. He then decided to buy food at a nearby store called Vercons. He parked his motorcycle near the Petron gasoline station because the store's parking area was already full.[41]

When he returned from Vercons, he boarded his motorcycle and was about to rev the engine when a silver Toyota Innova blocked his path. Four (4) men alighted from the car and accosted him. At gun point, the men handcuffed him and took his bag. He asked what was it all about but they did not reply. They covered his head and forced him into the car. There, they took his cellphone, ID, a box of cigarettes and ₱3,000.00 cash. The men also took turns punching and kicking him in different parts of his body while forcing him to produce the drugs which they claimed he was carrying.[42]

When they arrived at the safe house, the men again repeatedly hit him and ordered him to produce the drugs until 9 o'clock in the evening or a case will be filed against him. At 9 o'clock

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[35] Exhibit K, *id.* at 107.

[36] Exhibit L, *id.* at 108.

[37] Exhibit M, *id.* at 109.

[38] Exhibit N, *supra* note 16.

[39] Exhibits O and O-1, *supra* note 17.

[40] Exhibit O-2, *supra* note 18.

[41] Panghukumang Salaysay, Record (Crim. Case No. 16058), pp. 117-119.

[42] *Id.* at 118-119.

in the morning, he was brought to the Balanga City Police Station where he was shown three (3) sachets of *shabu*, cash, and a cigarette packet all of which were allegedly recovered from him. He denied the items were his, claiming the police merely planted them on him.[43]

On cross, appellant admitted that he did not park at the food store parking area near Vercons. Instead, he still crossed the main street where he parked his motorcycle. He also said that because of the beatings he got from the police, he suffered a foot injury. He acknowledged that he was examined at the Bataan General Hospital but did not present proof of his alleged foot injury. He stated he did not file a complaint against the police officers who caused his injury because they allegedly threatened him. He admitted though that he had never before met the police officers who arrested him.[44]

The Trial Court's Ruling

As borne in its Joint Decision[45] dated July 12, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, in view of the foregoing, accused, **ROSENDO LEAÑO *y* LEAÑO** is found **GUILTY BEYOND REASONABLE DOUBT**:

a. For violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 16058 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** without eligibility for parole and to PAY the fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).

b. For violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 16059 and is hereby sentenced to suffer the penalty of imprisonment of **FIFTEEN (15)**

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[43] *Id.* at 119.

[44] TSN dated June 28, 2017, pp. 3-7.

[45] CA *rollo*, pp. 39-53.

YEARS AND ONE (1) DAY as minimum to TWENTY YEARS (20) YEARS as maximum without eligibility for parole and to pay the fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00).

SO ORDERED.

The Proceedings Before the Court of Appeals

Appellant faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged procedural lapses in conducting the entrapment operation and the prosecution's failure to establish compliance with the chain of custody which affected the integrity of the *corpus delicti*.[46]

On the other hand, the Office of the Solicitor General (OSG) defended the verdict of conviction. It argued that PO1 Pajarin's testimony satisfactorily established the elements of the crimes charged. The items seized from appellant were confirmed to be *shabu*. The prosecution witnesses' positive and clear testimony of what transpired before, during, and after the buy-bust operation until the confiscated items were inventoried and examined, prevailed over appellant's denial or theory of frame-up.

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated September 14, 2018.[47] It concluded that the arresting officers complied with requirements of Section 21 of RA 9165. It dispensed with the presence of the media representative as the inventory was done before a kagawad and a DOJ representative. Too, it ruled that the inventory was not required to be done at the scene of the crime as it may be done at the police station or office of the apprehending officers in case of *in flagrante delicto* arrests. It also ruled that the integrity of

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

[47] Penned by Associate Justice Ricardo R. Rosario and concurred in by now Supreme Court Associate Justice Ramon Paul L. Hernando and Associate Justice Gabriel T. Robeniol.

the seized items was not diminished when PO1 Pajarin temporarily slid the same into his pockets while he was conducting the arrest. It held that the plastic sachets containing *shabu* marked by PO1 Pajarin and those submitted to and tested at the crime laboratory and finally offered in court were the same items seized from appellant.[48]

The Present Appeal

Appellant now seeks anew a verdict of acquittal. In compliance with Resolution dated September 25, 2019, appellant and OSG manifested[49] that they were adopting their respective briefs submitted to the Court of Appeals.

Appellant essentially argues that the police officers repeatedly breached the chain of custody rule, as follows : (1) the marking of the seized items was defective for it did not show the date, time, and place of seizure, (2) the police officer merely slid the confiscated items into his pockets instead of securing them inside an envelope or evidence bag, (3) the photographing and inventory of the seized items were not done at the place of arrest, and (4) there was no justification for the procedural deviations in this case.

On the other hand, the OSG maintains that the identity, integrity, and evidentiary value of the seized drugs had been duly preserved despite the minor lapses, hence, the verdict of conviction should stay in place.[50]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies in the handling of the drugs in question?

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[48] *Supra* note 2.

[49] *Id.* at 26-28, 30-31.

[50] CA *rollo*, pp. 57-73.

Ruling

Appellant was charged with unauthorized sale and possession of dangerous drugs allegedly committed on July 1, 2016. The applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640). Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drugs cases:

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:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/ or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items;

(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 by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of 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 immediately upon completion of the said examination and certification.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[51] Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[52]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[53]

The chain of custody rule came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[54]

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[51] *People v. Barte*, 806 Phil. 533, 542 (2017).

[52] *People v. Ameril*, G.R. No. 222192, March 13, 2019.

[53] *People v. Luminda*, G.R. No. 229661, November 20, 2019.

[54] *People v. Bombasi*, G.R. No. 230555, October 9, 2019.

The ***first link*** speaks of seizure and marking which should be immediately done at the place of arrest and seizure. It includes the physical inventory and taking of photographs of the seized items in the presence of the accused and third-party witnesses.

People v. Martinez[55] instructs that consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done in the presence of the apprehended violator immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized. Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.

Here, PO1 Pajarin marked the sachets of *shabu* at the place of arrest but without the presence of any insulating witnesses required under Sec. 21, RA 9165, as amended. As for the physical inventory and photographing of the seized items, the same were done not in the place of arrest but in the police station. The prosecution failed to offer any explanation for these procedural deviations, thus:

Pros. Punay

x x x x x x x x x

Q What did you do with those two (2) sachets that you were able to recover from his possession?
A I put markings with my initials, mam.

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[55] 652 Phil. 347, 377 (2010).

Q What markings did you place?
A PMP-1 and PMP-2, mam.

Q Who were present during the marking?
A @Totong and our asset and PO1 Berdonar, mam.

Q After you marked those two (2) sachets, what did you do next?
A Thereafter, I put markings on the sachet I purchased from him, mam.

Q What markings did you place?
A I put my initials - PMP, mam.

Q If those sachets will be shown to you, will you be able to identify it?
A Yes, mam.

Q By the way, from which pocket were you able to confiscate the two (2) sachets of shabu?
A Right pocket, mam.

Q What else were you able to confiscate from the accused aside from the two (2) sachets?
A I was able to recover the marked money from him, mam.

Q Anything else?
A None else, mam.

Q Are you sure?
A Yes, mam.

Q Showing to you clear plastic containing several evidences (sic) please go over the same and identify the sachet which you earlier mentioned?
A (witness is taking from a clear plastic and took out smaller sachets as well as a box of Marlboro cigarette)

Q Can you please identify the sachet that you were able to buy from the accused?
A (witness is pointing to a sachet with marking PMP.)

The sachet identified by the witness was previously marked as Exhibit N.

Q How about the other two (2) sachets?
A PMP-1 and PMP-2 as the sachets I recovered from the accused, mam.

The sachets identified by the witness were previously marked as Exhibits O and O-1.

Q And you took out from this evidence; this big plastic white box of Marlboro cigarette; what is the relation of that box?
A The two (2) sachets of shabu I recovered from his right pocket were contained in this Marlboro box, mam.

Q When I asked you earlier if there were anything else you were able to recover from the accused, why did you not mention the Marlboro box?
A I just failed to mention it, mam.

Q Why did you not mention it?
A I just forgot to mention about the box, mam.

Q After you marked the specimen(s) you brought and purchased from the accused, what did you do with the specimen(s)?
A I put the specimen(s) back inside the box and I placed (them) inside my pocket, mam.

Q What happened next?
A After informing @ Totong of his constitutional rights, we brought him to the police station, mam.

Q And from the buy-bust area up to the police station, who is in possession of the specimen(s)?
A I, mam.

Q How were you possessing (them)?
A (They were) inside my pocket, mam.

By the way, the Marlboro box identified by the witness was previously marked as Exhibit O-2.

Q What happened at the police station?
A We prepared the inventory receipt for the inventory of the evidence, mam.

Q What is your proof that indeed there was an inventory conducted before the police station?
A There were photographs, mam.

Q If the inventory receipt and photographs will be shown to you, will you be able to identify it?
A Yes, mam.

Q Showing to you Exhibit F-Inventory receipt of property seized, can you go over the same and tell us what is the relation of that to the one you are referring to?
A This is the inventory receipt we prepared, mam.

Q And in that inventory receipt appears several signatures, whose signatures are those?
A The signatures of the arresting officer, my signature, signature of PO1 Berdonar, signature of Rosendo Leaño, signature of Barangay Kagawad Armando Zabala and signature of DOJ representative-Villamor Sanchez, mam.

Q How did you know that those were their signature?
A I was present when they affixed their signatures, mam.

Q You also mentioned of pictures, I am showing to you pictures marked as Exhibits G and G-1; will you please go over these and tell us what is the relation of these to the (one) you are referring to?
A (the witness is pointing to the picture; the person wearing shorts identifying as himself; beside him is the DOJ representative-Villamor Sanchez, PO1 Berdonar, Kagawad Zabala and the accused Rosendo L. Leaño.)

Q Who took those pictures?
A One of the duty officers at that time, mam.

Q Where were those pictures taken?
A At the Balanga City Police Station (BCPS), mam.

Q How about the second picture?
A This is the inventory receipt we prepared as well as the marked money, the specimen and the box, mam.

Q After the inventory, what happened to the specimen?
A After the inventory I brought the specimen to the Crime Laboratory, mam.[56]

x x x x x x x x x

Section 21 of RA 9165 requires that police operatives must mark, inventory, and photograph the seized items **immediately** after seizure or confiscation to maintain the integrity of the

[56] TSN dated November 10, 2016, pp. 9-13.

confiscated drugs to be used as evidence. For with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[57]

Too, in ***People v. Asaytuno, Jr.***[58] citing ***People v. Tomawis***,[59] the Court has emphasized the importance of the required insulating witnesses at the time of seizure and confiscation, thus:

> The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.
>
> **It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.**
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
>
> **To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that**

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[57] *People v. Manabat*, G.R. No. 242947, July 17, 2019.

[58] G.R. No. 245972, December 2, 2019.

[59] G.R. No. 228890, April 18, 2018, 862 SCRA 131, 150.

they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation." (Emphasis supplied)

While their absence at the place of arrest may be excused as we have held in ***People v. Lim***[60] when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault, nothing of such nature existed in this case. The prosecution failed to acknowledge the procedural deficiencies in handling the seized drugs here, much less, offer any explanation why the police officers deviated from the prescribed procedures.

In any event, the subsequent inventory and photographing of the seized items at the police station in the presence of appellant, Barangay Kagawad Zabala, and DOJ representative Sanchez did not validate the incipiently defective marking, and failure to conduct the inventory and photographing themselves at the *situs criminis*.

Another. PO1 Pajarin admitted sliding one seized sachet into his left pocket and another into his right pocket and keeping them the whole time until their turnover to the laboratory for examination.

In ***People v. Dela Cruz***,[61] the Court held that a single police officer's act of bodily keeping the seized drugs is viewed with distrust, fraught with dangers, reckless, if not dubious, and a doubtful and suspicious way of ensuring the integrity of the items, thus:

> The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

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[60] G.R. No. 231989, September 4, 2018.

[61] 744 Phil. 816, 834-835 (2014).

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, **common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers.** One need not engage in a meticulous counterchecking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21. (Emphasis supplied)

In ***Dela Cruz***, the Court, too, rejected the segregation in two (2) different pockets of the seized dangerous drugs as a sufficient measure to preserve the integrity of the illicit drugs. Placing the confiscated drugs, even if marked, inside the pocket of one (1) of the arresting police officers is not the proper way of securing the seized drugs. For no one would know what other things are inside his or her pockets and what could have come out of the same.

The ***second link*** refers to the turnover of the seized drug from the apprehending officer to the investigating officer, and the ***third link***, to its turnover by the investigating officer to the forensic chemist for laboratory examination.

Here, no testimony was offered relating to the transmittal of the subject sachets from the arresting officer to the investigating officer. There was also no mention of how the seized items were handled after the inventory up to the time the items were handed over to the forensic chemist. PO1 Pajarin merely testified that after the inventory, he brought the items to the laboratory for examination. The information gap after the inventory up till the submission of the seized items for laboratory examination was not explained, thus, casting doubt

on the condition of the seized items under the custody of PO1 Pajarin.

The Court, in ***People v. Gayoso***,[62] acquitted Gayoso because the prosecution failed to adduce evidence on how the seized drug was handled during the second and third links. The Court ruled that considering this series of intervening gaps, it cannot be reasonably concluded that the confiscated item was the same one presented for laboratory examination and eventually presented in court.

Lastly, the ***fourth link*** pertains to the turnover and submission of the seized items from the forensic chemist to the court. To dispense with the forensic chemist's testimony, both the prosecution and the defense offered for stipulation PCI Santiago's expertise and qualifications, delivery, submission and receipt of the specimens for laboratory examination and the results thereof, and the admission that the specimens brought for examination were the same ones which PCI Santiago examined. The prosecution, however, failed to prove the manner by which the specimens were handled before PCI Santiago received them, how he examined the items, and how these items were stored or kept in custody until they were presented as evidence in court.

In ***People v. Ubungen***[63] citing ***People v. Pajarin***,[64] the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking

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[62] 808 Phil. 19, 33-34 (2017).

[63] G.R. No. 225497, July 23, 2018.

[64] 654 Phil. 461, 466 (2011).

on the same to ensure that it could not be tampered pending trial. Here, the parties' stipulation did not mention that these precautionary steps were in fact done by the forensic chemist.

In light of the foregoing considerations, the chain of custody here was breached several times over starting from the first link all the way through the fourth link. Verily, it cannot be said that the identity and integrity of the *corpus delicti*, including its evidentiary value were deemed preserved. A verdict of acquittal is indubitably in order.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated September 14, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09528 is **SET ASIDE**.

Appellant **Rosendo Leaño *y* Leaño** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice.

Let an entry of judgment immediately issue.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 246960. July 28, 2020]

INTERORIENT MARITIME ENTERPRISES, INC. and/or INTERORIENT MARITIME, DMCC for and in behalf of WILBY MARINE LTD., and/or DAISY S. SUMO, *petitioners, vs.* **ILDEFONSO T. HECHANOVA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY A PARTY TO A CASE; RATIONALE. — While the Court lauds the CA in showing compassion to a seafarer, we are still a court of law. In *Bucal v. Bucal*, "[i]t is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case. The rationale for the rule was explained in *Development Bank of the Philippines [DBP] v. Teston*," *viz.*: Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant. *Bucal* further elucidated the reason for the rule: For the same reason, this protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard.

2. ID.; ID.; ID.; A COURT CANNOT GRANT MONETARY AWARDS ON ITS OWN INITIATIVE WHERE THE COMPLAINANT DID NOT ALLEGE AND PRAY FOR THEM; CHANGING THE THEORY OF THE CASE IN THE MIDDLE OF THE PROCEEDINGS IS AGAINST THE RULES OF FAIR PLAY AND JUSTICE. — The records reveal that Hechanova's complaint is for total and permanent disability benefits. He neither complained of illegal dismissal, nor claimed for salary for the unexpired portion of the contract and reimbursement of placement fee and other deductions. Hechanova was consistent in his pleadings that he was interested in total and permanent disability benefits and not the monetary claims of an illegally dismissed seafarer. Following the pronouncements in *Bucal* and *DBP*, the CA cannot grant the monetary awards on its own initiative since the complainant, Hechanova did not allege and pray for them. Furthermore, when the CA unilaterally

held that he was illegally dismissed from employment, the theory of the case was changed in the middle of the proceedings, which is against the rules of fair play and justice. Consequently, Interorient was surprised at the finding of illegal dismissal, since it was not raised as an issue from the beginning and they were not given the opportunity to present evidence to rebut it.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Balubar Law Office for respondent.

R E S O L U T I O N

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

The courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.[1]

The Case

This petition for review on *certiorari* under Rule 45 assails the August 28, 2018 Court of Appeals (CA) Decision[2] and April 29, 2019 Resolution in CA-G.R. SP No. 149536, which affirmed with modification the September 28, 2016 National Labor Relations Commission (NLRC) Decision. The CA denied the claim for disability benefits, but awarded full reimbursement of placement fee and deductions with interest, and salary for the unexpired portion of the employment contract, with attorney's fees in favor of respondent.

The Facts

In February 2015, petitioner Interorient Maritime Enterprises, Inc. (Interorient) hired respondent Ildefonso T.

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[1] *Bucal v. Bucal*, G.R. No. 206957, 760 Phil. 921 (2015).

[2] Penned by Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Jhosep Y. Lopez, concurring; *rollo*, pp. 33-41.

Hechanova (Hechanova) as master on board *M/V Livadi* for nine months.[3]

On June 24, 2015, or three months after boarding the vessel, Hechanova was relieved from duty in Amsterdam because a new master came in. He was repatriated despite an uncompleted employment contract, and he was promised of a redeployment.[4]

On June 27, 2015, Hechanova arrived in the Philippines and reported immediately at Interorient's office for redeployment. On June 29, 2015, he underwent pre-employment medical examination, and was assessed with "small medical problem, low blood count." After taking the prescribed medication to improve blood count, he again underwent medical check-up and was assessed as fit for duty. On June 30, 2015, the company-designated physician issued a medical certificate on his fitness to work.[5]

On July 3, 2015, he experienced chills and suffered high fever. When his condition worsened, he was admitted at the Chinese General Hospital. He developed septic shock and was transferred to the intensive care unit. He was assessed as not fit to work. At this time, Hechanova's wife requested for medical assistance from Interorient, who asked for proof of Hechanova's medical conditions. After 26 days in the hospital, Hechanova was discharged. He continued taking his medications and underwent physical therapy. Having been denied medical assistance, Hechanova filed a complaint for total and permanent disability benefits against Interorient.[6]

For its part, Interorient averred that Hechanova performed poorly on board, which prompted his early repatriation. On his return to the Philippines, he reported to Interorient's office for debriefing. An Offsigners Data Slip form was given to him

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[3] *Id.* at 33.

[4] *Id.* at 34.

[5] *Id.*

[6] *Id.*

to be filled out. It contained questions on satisfaction of employment, complaints, unpaid claims, and injuries or illnesses suffered during employment, among others. Hechanova answered that he was satisfied with his employment, he had no unpaid claims, and he did not suffer any illness or injury during his employment.[7]

Hechanova also filled out an employment application form, which consisted of questions concerning health and injuries. He indicated that he did not have any illness or injury. On June 30, 2015, he was issued a medical certificate stating that he was fit for sea duty.[8]

Interorient confirmed that Hechanova's wife asked for medical assistance, but failed to provide the requested medical documents. Thus, it had no basis to act on the request. Interorient argued that the complaint for total disability benefits had no basis. To be entitled to total disability benefits, the illness or injury must be work-related, and must have been suffered during the seafarer's employment. None of these are present. Hence, Interorient cannot be held liable for Hechanova's illness, which happened after his employment was severed. Further, he did not comply with the 3-day post medical examination by a company-designated physician to examine his condition. As a result, he failed to prove his claim.[9]

The Labor Arbiter's Decision

On May 30, 2016, the Labor Arbiter (LA) rendered a decision in Interorient's favor. The LA noted that Hechanova did not report anything unsatisfactory while working on board. The forms that he filled out showed he did not suffer any illness or injury. Thus, there is no reason for post-medical examination. Even if he did undergo such examination, his claim would still fail because there is no basis that his illness was work-related.

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[7] *Id.* at 35.

[8] *Id.*

[9] *Id.* at 35-36.

Hechanova's doctor did not specify the cause of his sepsis and possible osteitis of L3 vertebra. Hechanova failed to demonstrate the link between his duties as master and his ailments.[10] Hence, Interorient's case prevailed.

The NLRC Decision

On appeal, the NLRC affirmed the LA's decision and reiterated its findings.[11] Hechanova's claim for disability benefits, damages, and attorney's fee were dismissed.[12] Hechanova moved for reconsideration, which the NLRC denied in its November 22, 2016 Resolution.[13] Hechanova elevated the case before the CA.

The CA Decision

On August 28, 2018, the CA affirmed with modification the NLRC's decision. The CA agreed with the factual findings of the LA and the NLRC that Hechanova's illness was not work related; thus, Interorient may not be held liable for the disability benefits.[14]

However, the CA ordered Interorient to: (1) fully reimburse Hechanova of his placement fee and deductions with 12% interest per annum; (2) salary for the unexpired portion of his employment contract; and (3) attorney's fees at 10% of the wages recovered.[15]

The CA explained that, pursuant to *Serrano v. Gallant Maritime Services, Inc.*,[16] the monetary award shall be paid an employee in case of termination of overseas employment without just, valid or authorized cause as defined by law or contract.

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[10] *Id.* at 36.

[11] NLRC Decision dated September 28, 2016; *id.* at 41.

[12] *Id.*

[13] *Id.* at 11.

[14] *Id.* at 40.

[15] *Id.* at 41.

[16] 601 Phil. 245 (2009).

The records do not show any reason for the pretermination of Hechanova's contract. There is no indication that Hechanova suffered from any illness or injury on board, or that he complained against his employer, or that his employer complained of his poor performance. What the records reveal was that Hechanova requested to be signed-off from *M/V Livadi*. The CA elucidated that this is not a reason to deny him of the monetary award due him. The CA gave credence to his allegation that he was signed-off because he was promised of redeployment upon his repatriation.[17]

Both parties moved for reconsideration, which the CA denied in its April 29, 2019 Resolution.[18] Notably, only Interorient filed a petition for *certiorari* under Rule 45 before the Court. Hechanova did not file a petition from the denial of his motion for reconsideration. Thus, the issue presented before the Court pertains only to Interorient's standpoint.

The Issue Presented

Whether or not the CA erred in modifying the NLRC's decision and ordering the full reimbursement of placement fee and deductions with interest, and salary for the unexpired portion of the employment contract, with attorney's fees.

The Court's Ruling

The petition is meritorious.

In its Petition, Interorient argues that (1) there is no basis for the monetary award because Hechanova did not claim them; (2) his poor performance, inefficiency and incompetence were grounds to terminate his services; (3) the documents confirmed that he has no complaints against his employer; (4) he did not pay for placement fees and deductions because charging them is illegal; and (5) attorney's fees should only be awarded upon finding of bad faith.[19]

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

[18] *Id.* at 44-47.

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

In its Comment, Hechanova focused his discussion on illegal dismissal and his entitlement to the monetary claims granted by the CA. He did not respond to the issue of whether his cause of action was limited to total and permanent disability and excluded the monetary claims subject of this petition.[20]

While the Court lauds the CA in showing compassion to a seafarer, we are still a court of law. In *Bucal v. Bucal*,[21] "[i]t is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case. The rationale for the rule was explained in *Development Bank of the Philippines [DBP] v. Teston*," *viz.*:

> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant. (Citation omitted)

Bucal further elucidated the reason for the rule:

> For the same reason, this protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is "the sporting idea of fair play" which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard.[22] (Citation omitted).

The records reveal that Hechanova's complaint is for total and permanent disability benefits.[23] He neither complained of illegal dismissal, nor claimed for salary for the unexpired portion of the contract and reimbursement of placement fee and other

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[20] *Id.* at 104-111.

[21] *Supra* note 1, at 921-922.

[22] *Id.* at 922.

[23] *Rollo*, p. 33.

deductions. Hechanova was consistent in his pleadings that he was interested in total and permanent disability benefits and not the monetary claims of an illegally dismissed seafarer.[24]

Following the pronouncements in *Bucal* and *DBP*, the CA cannot grant the monetary awards on its own initiative since the complainant, Hechanova did not allege and pray for them. Furthermore, when the CA unilaterally held that he was illegally dismissed from employment, the theory of the case was changed in the middle of the proceedings, which is against the rules of fair play and justice. Consequently, Interorient was surprised at the finding of illegal dismissal, since it was not raised as an issue from the beginning and they were not given the opportunity to present evidence to rebut it.

Interorient's first argument alone is a ground to grant the petition. The Court shall no longer discuss the second and third arguments as they pertain to the issue of illegal dismissal, which is not Hechanova's cause of action. The fourth argument requires an examination of documentary evidence and signifies that the argument is a factual issue, which is not a proper subject of a petition under Rule 45. Lastly, on the issue of attorney's fees, the Court finds the absence of bad faith on the part of Interorient. While Interorient confirmed that Hechanova's wife asked for medical assistance, the latter failed to provide the requested medical documents. Thus, Interorient has no basis to act on the request. It is not the same as an unjustified inaction forcing one to litigate.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals Decision dated August 28, 2018 in CA-G.R. SP No. 149536 is **MODIFIED**. The Court **DELETES** the following:

1. The finding of illegal dismissal;
2. The reimbursement of placement fee and other deductions with 12% interest per annum;

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[24] *Id.* at 13-14, 33-40, 45, 120-121.

3. The salary for the unexpired portion of the contract; and

4. The attorney's fees at 10% of the amount of salary.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Inting,[*] and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 246999. July 28, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARVIN BALBAREZ *y* HERNANDEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165) AS AMENDED BY RA 10640; ILLEGAL POSSESSION OF DANGEROUS DRUGS; LINKS IN THE MOVEMENT AND CUSTODY OF THE SEIZED DRUGS THAT MUST BE ESTABLISHED, ENUMERATED. — In illegal possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily established

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[*] Additional member in lieu of Associate Justice Amy C. Lazaro-Javier per Raffle dated June 22, 2020.

the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.

2. ID.; ID.; ID.; ID.; RECORDS REVEAL A BROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS IN THIS CASE; UTTER DISREGARD OF THE REQUIRED PROCEDURES CREATED A HUGE GAP IN THE CHAIN OF CUSTODY WARRANTING ACQUITTAL OF THE ACCUSED. — In this case, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts serious doubt as to the integrity of the chain of custody. Admittedly, there was no representative from the media and the Department of Justice, and any elected public official. x x x [T]here was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved. Moreover, the link between the investigating officer and the forensic chemist was not established with certainty. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. x x x In sum, the utter disregard of the required procedures created a huge gap in the chain of custody. We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Marvin must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

LOPEZ, *J.*:

The conviction of Marvin Balbarez for illegal possession of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals' Decision[1] dated July 11, 2018 in CA-G.R. CR-HC No. 09558, which affirmed the findings of the Regional Trial Court (RTC).

ANTECEDENTS

Marvin ranked second on the list of the top ten drug personalities in Los Baños, Laguna.[2] On April 23, 2011, the municipal police planned a buy-bust operation against Marvin based on reports that he is selling *shabu* in Barangay Malinta. In the briefing, the police asset was designated as *poseur-buyer* while Police Officer (PO) 2 Michael Angelo Palanca, PO1 Ruperto Lapitan, Jr., and PO1 Jeremias Ramos acted as apprehending officers. After coordination with the Philippine Drug Enforcement Agency, the operatives proceeded to the target area. Thereat, the *poseur-buyer* gave the boodle money to Marvin. Upon receipt of the payment, Marvin handed to the *poseur-buyer* a plastic sachet containing white crystalline substance.[3] At that moment, the *poseur-buyer* executed the pre-arranged signal by flicking the sachet.

The buy-bust team rushed in, introduced themselves as police officers, and arrested Marvin. The *poseur-buyer* turned over the sachet to PO1 Ramos, who marked it with "MHB1." On the other hand, PO2 Palanca searched Marvin and recovered from him two plastic sachets. PO2 Palanca gave the sachets to PO1 Ramos, who marked them with "MHB2" and "MHB3." Also, the entrapment team took photographs of the seized items

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[1] *Rollo*, pp. 4-25; penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Pablito A. Perez.

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

[3] *Id.* at 85.

at the police station.[4] Thereafter, PO1 Ramos forwarded the contrabands to Police Chief Inspector Dona Villa Huelgas for laboratory examination. The substances tested positive for methamphetamine hydrochloride.[5] Thus, Marvin was charged with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165 before the RTC docketed as Criminal Case Nos. 18225-2011-C and 18228-2011-C, respectively, to wit:

[Criminal Case No. 18225-2011-C]

That on or about 23 April 2011, in the Municipality of Los Baños, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously sell and deliver one (1) small heat-sealed transparent plastic sachet containing 0.02 gram of methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.[6]

[Criminal Case No. 18228-2011-C]

That on or about 23 April 2011, in the Municipality of Los Baños, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously possess two (2) heat-sealed transparent plastic sachet containing 0.04 gram of methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.[7]

Marvin denied the accusations and claimed he was driving his tricycle, with two passengers on board, when PO1 Ramos flagged him down. Afterward, PO1 Ramos brought them to the police station and were ordered to strip their clothes. Later,

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[4] *Id.* at 86.

[5] See records, p. 12.

[6] *Id.* at 1; *rollo*, p. 5.

[7] *Rollo*, p. 5.

the passengers were allowed to go home while he was left incarcerated.[8]

On May 30, 2016, the RTC convicted Marvin of the charges.[9] On July 11, 2018, the Court of Appeals acquitted Marvin of illegal sale (Case No. 18225-2011-C) but affirmed his guilt as to illegal possession (Criminal Case No. 18228-2011-C) of dangerous drugs,[10] thus:

> **WHEREFORE**, in view of the foregoing, the appeal is **PARTIALLY GRANTED**. The Decision dated May 30, 2016 rendered by the Regional Trial Court in Calamba City Laguna, Branch 36 in Criminal Case No. 18228-2011-C for Violation of Section 11, Article II of R.A. No. 9165 is **AFFIRMED**. For failure to prove the guilt of the accused-appellant beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165, the disposition in the aforesaid Decision pertaining to Criminal Case No. 18225-2011-C is **REVERSED and SET ASIDE**, and accused-appellant is **ACQUITTED** of the said charge.
>
> **SO ORDERED**.[11] (Emphasis in the original.)

RULING

We acquit.

In illegal possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[12] Thus, it is essential to ensure that the substance recovered from the

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[8] CA *rollo,* p. 41.

[9] *Id.* at 59-69.

[10] *Rollo,* pp. 4-24.

[11] *Id.* at 23-24.

[12] See also *People v. Cariño,* G.R. No. 233336, January 14, 2019, 890 SCRA 346; *People v. Crispo, et al.*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042 (2018); and *People v. Mamangon*, 824 Phil. 728, 736 (2018); *People v. Partoza*, 605 Phil. 883, 890 (2009).

accused is the same substance offered in court.[13] Indeed, the prosecution must satisfactorily established the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.[14] Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640[15] amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations shall apply, to wit:

[Section 21, paragraph 1, Article II of RA 9165]

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.

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[13] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[14] *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

[15] RA No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

[Section 21(a), Article II of the IRR of RA 9165]

> (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: x x x ***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*;** (Emphases and italics supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[16] Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.[17] In *People v. Lim*,[18] it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and**

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[16] *People v. Dela Cruz*, 591 Phil. 259, 272 (2008), citing *People v. Orteza*, 555 Phil. 700 (2007); *People v. Santos, Jr.*, 562 Phil. 458, 469-470 (2007); *People v. Nazareno*, 559 Phil. 387, 392 (2007).

[17] *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

[18] G.R. No. 231989, September 4, 2018.

sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original.)

Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[19] In *People v. Caray*,[20] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,[21] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts

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[19] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, *supra* note 17; and *People v. Maralit y Casilang*, G.R. No. 232381, August 1, 2018.

[20] G.R. No. 245391, September 11, 2019.

[21] G.R. No. 243615, November 11, 2019.

serious doubt as to the integrity of the chain of custody. Admittedly, there was no representative from the media and the Department of Justice, and any elected public official. The allegation that Marvin made a scene during the arrest which prompted the police to leave the crime scene was unsubstantiated. Worse, there was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved.

Moreover, the link between the investigating officer and the forensic chemist was not established with certainty. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Foremost, the records do not show whether PO1 Ramos is the investigating officer. Secondly, PO1 Ramos' testimony lacks details on how the seized items fell into the hands of the forensic chemist. Third, the request for laboratory examination indicates the possibility that a certain PO1 Geminano and PO1 Valencia are included in the chain of custody but were not presented as witnesses. Lastly, P/Chief Insp. Huelgas' testimony and the stipulation of the parties are insufficient. In *People of the Philippines v. Pajarin*,[22] this Court identified the following matters which are ordinarily covered by the testimony of the forensic chemist who examines the seized items: (1) that he received the seized article as marked, properly sealed and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial. Should the parties decide to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. These circumstances were neither stipulated by the parties nor mentioned in the testimony of P/Chief Insp. Huelgas.[23]

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[22] 654 Phil. 461 (2011).

[23] TSN, January 18, 2012, p. 5.

In sum, the utter disregard of the required procedures created a huge gap in the chain of custody. We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Marvin must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated July 11, 2018 in CA-G.R. CR-HC No. 09558 is **REVERSED** and **SET ASIDE**. Marvin Balbarez *y* Hernandez is **ACQUITTED** in Criminal Case No. 18228-2011-C and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Decision.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248382. July 28, 2020]

JERRY BARAYUGA *y* JOAQUIN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; RELAXATION OF THE STRICT APPLICATION THEREOF IS PROPER WHEN THE SAME WILL TEND TO OBSTRUCT RATHER THAN SERVE THE BROADER INTERESTS OF JUSTICE IN LIGHT OF THE PREVAILING CIRCUMSTANCES OF THE CASE. —** It has been held that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of 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. ***Heirs of Zaulda v. Zaulda*** is instructive: The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."

2. **LEGAL ETHICS; ATTORNEYS; AS A RULE, NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT; ONE EXCEPTION IS WHEN THE COUNSEL'S ACTUATIONS ARE GROSS OR PALPABLE, RESULTING IN SERIOUS INJUSTICE TO CLIENT. —** While the Court applauds the Court of Appeals' zealousness in upholding procedural rules, it cannot simply allow a man to be incarcerated for life without his conviction being reviewed due to the negligence of his counsel. While as a general rule, negligence of the counsel binds the client, one of the exceptions is when the counsel's actuations are gross or palpable, resulting in serious injustice to client. A lawyer is deemed to be grossly negligent when he or she fails to exercise even the slightest of care or diligence, or entirely omits the same. Gross negligence examines a thoughtless disregard of consequences without exerting any effort to avoid them.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165; CHAIN OF CUSTODY RULE; DULY RECORDED AUTHORIZED MOVEMENTS AND CUSTODY OF SEIZED DRUGS OR CONTROLLED CHEMICALS OR PLANT SOURCES OF DANGEROUS DRUGS OR LABORATORY EQUIPMENT OF EACH STAGE FROM SEIZURE TO SAFEKEEPING AND THEIR PRESENTATION IN COURT. — In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. It must prove that the dangerous drug seized from petitioner is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt. Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases. x x x Section 21(a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision. x x x These provisions embody the chain of custody rule. They are the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record includes the identity and signature of the person who held temporary custody of the seized items, the date and time when the transfer of custody was made in the course of the items' safekeeping and use in court as evidence, and their final disposition.

4. ID.; ID.; ID.; LINKS THEREIN THAT MUST BE PROVED FOR A SUCCESSFUL OPERATION OF AN ILLEGAL DRUGS CASE. — ***People v. Omamos*** reiterated that for a successful prosecution of a case involving illegal drugs, the following four (4) links in the chain of custody must be proved: **First**, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; **Second**, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; **Third**, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and **Fourth**, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

5. ID.; ID.; ID.; ID.; MARKING, DEFINED; PRESENCE OF REQUIRED WITNESSES IS MANDATORY AND AIMED AT PREVENTING THE EVILS OF SWITCHING, PLANTING OR CONTAMINATION OF THE *CORPUS DELICTI*. — "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. Marking though should be done in the presence of the apprehended violator and the required insulating witnesses *i.e.* a representative from the media and the Department of Justice (DOJ), and any elected public official immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody. x x x In ***People v. Escaran***, the Court emphasized that the presence of the witnesses from the DOJ, the media, and from public elective office at the time of apprehension is mandatory. The insulating presence of these witnesses during the seizure, marking, inventory and photograph of the dangerous drugs will prevent the evils of switching, planting or contamination of the *corpus delicti*. Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug.

6. ID.; ID.; ID.; ID.; DEVIATIONS THEREFROM MAY BE EXCUSED WHENEVER THERE ARE COMPELLING REASONS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR. — The Court concedes that RA 9165 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The Court, however, cannot apply such liberality in this case. Here, the prosecution did not at all offer any explanation as for the absence of the required insulating witnesses during the marking, inventory and photograph of the seized dangerous drug. Too, while PO1 Sugayen explained why he opted the marking to be done at the police station – that he does not have a pen at that time and that they were already attracting a crowd, the same are insufficient to render the saving clause applicable. For this reason, there is no occasion for the proviso "as long as the integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; ARISES ONLY WHEN THE RECORDS DO NOT INDICATE ANY IRREGULARITY OR FLAW IN THE PERFORMANCE OF OFFICIAL DUTY. — The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused. Hence, if the chain of custody rule had not been complied with, or no justifiable reason exists for its non-compliance, the Court must acquit as a matter of right.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 assails the following dispositions of the Court of Appeals in CA-G.R. CR-HC No. 07395 entitled "*People of the Philippines v. Jerry Barayuga y Joaquin*," *viz.*:

1. Decision[1] dated May 28, 2018 affirming his conviction for violation of Section 5 of Republic Act 9165 (RA 9165);

[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Now Supreme Court Associate Justice Mario V. Lopez and Associate Justice Pablito A. Perez; *rollo*, pp. 52-62.

2. Resolution[2] dated September 19, 2018 ordering the issuance of an entry of judgment in view of petitioner's failure to file a notice of appeal within the reglementary period; and

3. Resolution[3] dated July 10, 2019 denying reconsideration.

The Charge

Petitioner Jerry Barayuga *y* Joaquin was charged with violation of Section 5 of RA 9165 for the sale of 0.0803 gram of *methamphetamine hydrochloride*, otherwise known as *shabu*, *viz*.:

Criminal Case No. 15176-13

That on or about 12:20 pm of May 30, 2012 in the City of Laoag and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver to a police poseur-buyer one (1) heat-sealed transparent plastic sachet containing 0.0803 gram of Methamphetamine Hydrochloride locally known as "shabu," a dangerous drug, without any license or authority, in violation of [Section 5, Article II of RA 9165].

CONTRARY TO LAW.[4]

On arraignment, petitioner pleaded "not guilty."[5]

The Proceedings Before the Trial Court

PO1 Jackson Sugayen (PO1 Sugayen), SPO1 Jonathan Alonzo (SPO1 Alonzo) and SPO4 Rovimanuel Balolong (SPO4 Balolong) testified for the prosecution. Testimonies of Police Inspector Amiely Ann Navarro (P/Insp. Navarro) of the Philippine National Police (PNP)-Ilocos Norte Provincial Crime Laboratory, SPO4 Wilfredo Calubaquib (SPO4 Calubaquib),

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[2] *Rollo*, p. 63.

[3] *Id.* at 34-39.

[4] *Id.* at 78.

[5] *Id.* at 79.

and SPO2 Ferdinand Santos (SPO1 Santos) were dispensed with upon admission by the defense of their proffered testimonies.[6] Petitioner testified as sole witness for the defense.[7]

The Prosecution's Evidence

PO1 Sugayen testified that on May 30, 2012, around 11:50 in the morning, he was on duty at the Laoag City PNP Office when he received a call from SPO4 Balolong instructing him to proceed to the house of their asset in Brgy. 10. When he arrived, SPO4 Balolong informed him that the asset was able to order ₱1,000.00 worth of *shabu* from petitioner and that he was to act as *poseur*-buyer in the buy-bust operation later that day. SPO4 Balolong, too, called the police station and ordered SPO4 Calubaquib to accomplish the proper forms and have the serial number of the ₱1,000.00 buy-bust money recorded on the blotter. SPO4 Balolong then handed him the ₱1,000.00 buy-bust money.

He and the asset rode a motorcycle to Brgy. 20, General Luna Street corner Lampitoc Street while SPO4 Balolong convoyed them with his car. Moments later, petitioner arrived. The asset introduced him to petitioner as the buyer of *shabu*. He then gave the buy-bust money to petitioner which the latter pocketed. In exchange, petitioner gave him a plastic sachet containing white crystalline substance from a fliptop cigarette box.

After the sale was consummated, he held petitioner and said *"Police ako, arestado ka."* SPO4 Balolong approached them because petitioner tried to resist arrest. He read petitioner his rights while SPO4 Balolong frisked him. SPO4 Balolong recovered from petitioner the fliptop cigarette box and buy-bust money.[8]

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[6] *Id.*

[7] *Id.*

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

Subsequently, the arresting team brought petitioner to the police station where he marked the sachet with his initials "JBS" in front of petitioner and duty investigator SPO1 Alonzo before turning it over to SPO1 Alonzo.[9]

SPO4 Rovimanuel Balolong testified that on May 30, 2012, around 11:50 in the morning, he was at home when one of their police assets called and informed him about petitioner's illegal drug activities. He called PO1 Sugayen and directed him to proceed to the asset's house. There, he informed PO1 Sugayen that the latter will act as *poseur*-buyer who will buy ₱1,000.00 worth of *shabu* from petitioner. The ₱1,000.00 marked "RBB" was recorded in the police blotter by SPO4 Calubaquib.

He, PO1 Sugayen and the police asset proceeded to Brgy. 20. He acted as back up and waited in his car while PO1 Sugayen and the asset transacted with petitioner. After the sale was consummated, he saw PO1 Sugayen hold petitioner. He hurriedly approached them and assisted in petitioner's arrest. He frisked petitioner and recovered from him the ₱1,000.00 marked money and a flip top cigarette box. They brought petitioner to the police station where he turned over the seized money and the flip top cigarette box to SPO1 Alonzo.[10]

The parties stipulated on the supposed testimony of **SPO1 Alonzo** as the investigator and evidence custodian of the case. On May 30, 2012, he received from PO1 Sugayen one (1) heat-sealed transparent plastic sachet containing alleged *methamphetamine hydrochloride*. He does not know the source of such plastic sachet though he witnessed PO1 Sugayen mark it "LCPS" "JJB" before placing his signature. He prepared a letter-request for laboratory examination and requested SPO1 Santos to prepare the other documents. On even date, he brought the letter-request together with the seized sachet to the crime laboratory which were received by forensic chemist Police Inspector P/Insp. Navarro. He wrote his name and affixed his

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[9] *Id.* at 53.

[10] *Id.* at 54.

signature on the space beside "Delivered by": in the rubber stamp receipt. He could identify the seized sachet and the letter-request for laboratory examination.[11]

The parties, too, stipulated that on May 30, 2012, around 12:30 in the afternoon, **SPO4 Calubaquib** received a call from SPO4 Balolong instructing him to enter in the police blotter the serial number of the buy-bust money.[12]

More, **SPO1 Santos** was the one who prepared the Inventory of Seized Items and affixed his signature on behalf of SPO4 Loreto Ancheta, the Senior Evidence Custodian who was not around that time.[13]

Finally, the parties stipulated that on May 30, 2012, around 4:30 in the afternoon, forensic chemist **P/Insp. Navarro** received from SPO1 Alonzo a letter-request for the examination of one (1) heat-sealed plastic sachet containing alleged *shabu* together with the plastic sachet marked "LCPS," "JJB," "JBS" and a signature. She conducted a qualitative examination on the contents of the sachet and found them positive for *methamphetamine hydrochloride*. After examination, she sealed the sachet with masking tape and marked it "D-035-2012-IN May 30, 2012 AALN" and affixed her signature. She executed Initial Laboratory Report No. D-035-2012-IN and Chemistry Report No. D-035-2012-IN which contained her findings. She submitted the sachet, letter-request and Chemistry Report No. D-035-2012-IN to evidence custodian PO1 Erlanger Aguinaldo for safekeeping. On June 22, 2012, she and PO1 Aguinaldo retrieved the sachet, letter-request and Chemistry Report from their evidence locker and submitted the same to the RTC branch clerk of court Atty. Bernadette Espejo. She could identify the sachet, letter-request and Chemistry Report issued by Atty. Espejo.[14]

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[11] *Id.*

[12] *Id.* at 54-55.

[13] *Id.* at 55.

[14] *Id.*

The prosecution offered as documentary evidence the Letter Request for Laboratory Examination, Inventory of Evidence, and Chemistry Report No. D-035-2012-N.[15]

The Defense's Evidence

Petitioner testified that on May 30, 2012, around 9:30 in the morning, he was at home when he received a text from his friend Mark Cid inviting him to play mahjong at the latter's house. Around 11:30 in the morning, Mark messaged him again, saying all the other players were already there. He then rode his motorcycle to Mark's house but when he arrived, Mark told him one player was still missing so he left to have lunch.

While he was traversing Lampitoc Street toward General Luna Street, two (2) men blocked his way, one of whom he later identified as PO1 Sugayen. As he stopped his motorcycle to avoid bumping them, one of the men held the handlebars of his motorcycle while the other introduced himself as a policeman and tried to handcuff him. Suddenly, SPO4 Balolong appeared out of nowhere, grabbed his hand, told him to stop struggling and uttered invectives at him. The policemen frisked him and took his coin purse containing four (4) pieces of ₱1,000.00 bills which he was supposed to use in playing mahjong, his cellphone, cigarettes, and a lighter. He was made to board a car and, thereafter, brought to the police station. Along the way, SPO4 Balolong told him, *"Kinunak kenka idin dika pulos pagtalnaen"* (I told you before, I will never let you live in peace).[16]

At the police station, PO1 Sugayen strip-searched him but found nothing. SPO4 Balolong arrived, pointed a gun at him and threatened to shoot him if he did not produce the item. He asked SPO4 Balolong what he was talking about but the latter simply told him he received a text message stating he had the items with him. He insisted he did not know these "items" they were referring to.

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[15] *Id.*

[16] *Id.* at 56.

SPO4 Balolong left for a moment but later returned with a plastic sachet. When he continued to deny knowledge of what the policemen were talking about, SPO4 Balolong pointed to the sachet and said, *"Dayton lattan ne"* (This one will do). SPO4 Balolong also took out a ₱1,000.00 bill from his wallet. The police then took pictures of him pointing at the plastic sachet and ₱1,000.00 bill on top of a table as he was instructed to do.

Four (4) hours later, he was brought to the crime laboratory. Along the way, SPO1 Alonzo stopped by N. Corpuz Street to buy a pen to mark something. At the crime laboratory, his urine sample was taken, after which he was brought back to the police station.[17]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision[18] dated January 30, 2015, the trial court found petitioner guilty as charged, thus:

> **WHEREFORE**, judgment is hereby rendered finding accused Jerry Barayuga y Joaquin GUILTY beyond reasonable doubt as charged of illegal sale of shabu and is accordingly sentenced to suffer the penalty of LIFE IMPRISONMENT and pay a fine of ₱500,000.00.
>
> The shabu subject hereof is confiscated for proper disposition as the law prescribes.
>
> SO ORDERED.[19]

The trial court held that the prosecution sufficiently established petitioner's act of selling dangerous drugs. It gave credence to the testimonies of the prosecution witnesses, consistent as they were with documentary and object evidence.[20]

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

[18] Penned by Judge Philip G. Salvador; *rollo*, pp. 78-90.

[19] *Rollo*, p. 90.

[20] *Id.* at 213.

As for the chain of custody rule, the trial court acknowledged the same to have been breached: the marking and inventory of the confiscated items were not done at the *situs criminis* right after petitioner's arrest but at the police station; it was not mentioned whether the inventory and photograph were done in the presence of the insulating witnesses required under RA 9165; and no photographs of the seized items were taken, or if there were any, the same were not presented in court. This notwithstanding, the trial court was convinced that the arresting officers as well as those who subsequently took possession of the seized dangerous drug preserved the integrity of the *corpus delicti*.[21]

Petitioner's self-serving denial deserved scant consideration. He was caught selling dangerous drugs *in flagrante delicto* by the buy-bust team.[22]

The Proceedings before the Court of Appeals

Petitioner faulted the trial court in rendering a verdict of conviction against him when no actual buy-bust operation took place considering:

First. PO1 Sugayen merely handed him the marked money but the negotiation of the sale was only between him and the asset.

Second. In SPO4 Balolong and PO1 Sugayen's Joint Affidavit, they stated that the marked money bore the serial number 164724 and yet on record, the serial number was 164725.

Lastly. There was no pre-arranged signal agreed upon among the members of the buy-bust team as to indicate consummation of the sale.

At any rate, the prosecution failed to establish an unbroken chain of custody as the police officers did not immediately

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

[22] *Id.* at 89.

mark the seized dangerous drug at the scene of the buy bust sale. Too, no photograph of the seized items was taken.[23]

On the other hand, the Office of the Solicitor General (OSG) maintained that petitioner's arrest was the result of a legitimate buy-bust operation as he was caught in the act of selling *shabu*. The integrity and evidentiary value of the *corpus delicti* were also preserved.[24]

The Court of Appeals' Ruling

By Decision dated May 28, 2018,[25] the Court of Appeals affirmed. It agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. PO1 Sugayen narrated in detail how the transaction transpired from the time he and the asset arrived at Brgy. 20, General Luna Street corner Lampitoc Street and met with petitioner until the time he handed the marked money in exchange for a plastic sachet containing 0.0803 gram of *shabu*. SPO4 Balolong corroborated PO1 Sugayen's testimony. The chain of custody of the *corpus delicti* had also been preserved.[26]

Although the marking was not done at the place where petitioner was apprehended, this lapse did not render the seized item inadmissible. PO1 Sugayen explained that he marked the sachet at the police station because he did not bring a pen and they were already attracting a crowd at the scene of the buy-bust operation.[27]

It dismissed petitioner's allegation that no valid buy-bust operation took place. For although it was the asset who brokered

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[23] *Id.* at 58.

[24] *Id.* at 59.

[25] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Now Supreme Court Associate Justice Mario V. Lopez and Associate Justice Pablito A. Perez; *rollo*, pp. 52-62.

[26] *Id.* at 60.

[27] *Id.*

the transaction, the asset introduced PO1 Sugayen as the buyer and petitioner willingly accepted the ₱1,000.00 bill from the PO1 Sugayen and handed over the plastic sachet of *shabu* in return.[28]

Anent the discrepancies in the serial number of the buy-bust money as appearing in the Joint Affidavit of Arrest *vis-à-vis* the one presented in evidence, SPO4 Balolong testified that there was a mere clerical error in the serial number stated in the Joint Affidavit of Arrest. At any rate, the marked money used in a buy-bust operation was not indispensable evidence but merely corroborative in nature.[29]

Through Resolution dated September 19, 2018,[30] the Court of Appeals ordered the issuance of an Entry of Judgment in view of petitioner's failure to file a notice of appeal within the reglementary period.

Petitioner moved for reconsideration, seeking for the Court of Appeals to lift the entry of judgment and admit his notice of appeal.[31] The Court of Appeals denied the motion by Resolution[32] dated July 10, 2019.

The Present Petition

Petitioner now asks the Court to reverse the assailed disposition of the Court of Appeals and prays anew for his acquittal. While he is aware that the correction of wrongful conviction may only be remedied by a notice of appeal or a motion for reconsideration, which his counsel failed to file in his case, he seeks the kind indulgence of this Court to relax technical rules of procedure in order to serve the broader interest of substantial justice.[33]

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[28] *Id.* at 59.

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

[30] *Id.* at 63.

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

[32] *Id.* at 34-39.

[33] *Id.* at 15.

He averred that at the time the Court of Appeals' Decision dated May 28, 2018 and Resolution dated September 29, 2018 were issued, Atty. Emilio Edgar V. Doloroso, Jr. remained to be his counsel-of-record. Although Atty. Doloroso received copies of the dispositions of the Court of Appeals, it was not established that his counsel informed him of their contents. It was Atty. Doloroso's duty to at least confer with him whether he intended to appeal his conviction. As it was though, Atty. Doloroso, Jr. failed to protect his interest.

Meanwhile, he is an inmate who is serving time at the New Bilibid Prison. Surely, he did not have the means and capacity to immediately communicate with his counsel. Since he did not receive word from his counsel about any adverse ruling from the Court of Appeals, he was surprised to have received Resolution dated September 19, 2018 ordering the issuance of an entry of judgment in his case. Hence, he immediately wrote a letter to the Public Attorney's Office (PAO) seeking legal assistance.[34]

Petitioner prays that considering the gravity of the penalty he stands to suffer, the relaxation of procedural rules is warranted especially since he has a meritorious case.[35] He argued that in actions involving sale of dangerous drugs, there must be proof that indeed the transaction took place. In his case, though, the asset who brokered the sale transaction between him and PO1 Sugayen was not presented as a witness so as to shed light as to how the sale started and how it was consummated.[36]

As for the chain of custody, he claims that the courts below blatantly disregarded Section 21 of RA 9165. For one, the marking was not done at the place of the arrest. PO1 Sugayen's explanation that he opted to mark the seized dangerous drug at the police station because he did have a pen with him and that they were already attracting a crowd, is not a valid reason to

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[34] *Id.* at 18.

[35] *Id.* at 20.

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

excuse non-compliance with Section 21. For another, the marking, inventory and photograph, if any, were not in the presence of the three (3) insulating witnesses. In view of the multiple lapses in the chain of custody rule, the identity and integrity of the dangerous drug here had not been preserved.[37] His acquittal is therefore in order.

In its Comment dated February 6, 2020,[38] the OSG ripostes that negligence of petitioner's counsel binds him for it is for petitioner to communicate with his counsel regarding the progress and development of his case.[39] Despite receiving the Court of Appeals Decision dated May 28, 2018 on June 14, 2018, petitioner did not make any move to contact his counsel for purposes of appealing his conviction before the Court. It was only on November 12, 2018 that he decided to write the PAO for legal assistance. Meantime, the Court of Appeals' decision had become final and executory and, as such, may no longer be revisited. To do otherwise would violate the principle of immutability of judgment.[40]

Issues

1. Did the Court of Appeals err in finding no compelling reason to lift the entry of judgment in CA-G.R. CR-HC No. 07395?

2. Did the arresting police officers comply with the chain of custody rule?

Ruling

The petition is meritorious.

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

[38] *Id.* at 117-128.

[39] *Id.* at 123.

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

Petitioner's case merits relaxation of procedural rules

It has been held that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of 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] ***Heirs of Zaulda v. Zaulda***[42] is instructive:

> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."
>
> What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. *x x x*

While the Court applauds the Court of Appeals' zealousness in upholding procedural rules, it cannot simply allow a man to be incarcerated for life without his conviction being reviewed due to the negligence of his counsel. While as a general rule, negligence of the counsel binds the client, one of the exceptions

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[41] *Curammeng v. People*, 799 Phil. 575, 581-582 (2016).

[42] 729 Phil. 639, 651 (2014).

is when the counsel's actuations are gross or palpable, resulting in serious injustice to client.[43] A lawyer is deemed to be grossly negligent when he or she fails to exercise even the slightest of care or diligence, or entirely omits the same. Gross negligence examines a thoughtless disregard of consequences without exerting any effort to avoid them.[44]

Here, at the time the entry of judgment against petitioner was issued, Atty. Doloroso remained to be petitioner's counsel-of-record. There was no showing that a written consent from petitioner or a permission from the court to withdraw as counsel was obtained by him after due notice of hearing. Therefore, his failure to protect petitioner's interests by not appealing the judgment, much less, discuss with petitioner his available remedies, amounted to gross negligence which effectively deprived petitioner the opportunity to dispute his conviction. The Court views this not as mere oversight on the part of Atty. Doloroso but downright abandonment of his client.

At any rate, petitioner who is serving life in prison could not be expected to have the capacity to immediately communicate with his counsel. More, he was not negligent in pursuing his case. For upon receipt of a copy of the Court of Appeals' Resolution dated September 19, 2018 on October 24, 2018, he immediately wrote the PAO and sought assistance in elevating his case before this Court. In view of these circumstances, the Court finds that the relaxation of strict procedural rules is warranted here and lifts the entry of judgment issued by the Court of Appeals, especially considering petitioner's meritorious case as discussed below.

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[43] *Bagaporo v. People of the Philippines*, G.R. No. 211829, January 30, 2019.

[44] See *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*, 608 Phil. 478, 494 (2009).

Lapses in the chain of custody rule cast doubts on the identity and integrity of the corpus delicti

Petitioner was charged with illegal sale of dangerous drugs committed on May 20, 2012. The governing law, therefore, is RA 9165 prior to its amendment in 2014.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[45] It must prove that the dangerous drug seized from petitioner is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*.:

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:

(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.

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[45] *People v. Barte*, 806 Phil. 533, 542 (2017).

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz.*:

> (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;
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> x x x x x x x x x

These provisions embody the chain of custody rule. They are the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record includes the identity and signature of the person who held temporary custody of the seized items, the date and time when the transfer of custody was made in the course of the items' safekeeping and use in court as evidence, and their final disposition.[46]

People v. Omamos[47] reiterated that for a successful prosecution of a case involving illegal drugs, the following four (4) links in the chain of custody must be proved:

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[46] *Largo v. People*, G.R. No. 201293, June 19, 2019.

[47] G.R. No. 223036, July 10, 2019.

First, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

Second, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the first link which petitioner avers was breached.

The **first link** refers to the marking, inventory and photograph of the seized items.

"Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[48] Marking though should be done in the presence of the apprehended violator and the required insulating witnesses *i.e.*, a representative from the media and the Department of Justice (DOJ), and any elected public official[49] immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.[50]

Here, PO1 Sugayen testified that he only marked the seized items at the police station, only in the presence of petitioner and SPO1 Alonzo. Verily, not one of the required insulating persons witnessed the marking of the seized items. Neither was there an attempt on the arresting officers to secure their presence for the marking, inventory and photograph of the seized

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[48] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[49] *People v. Escaran*, G.R. No. 212170, June 19, 2019.

[50] *People v. Ramirez and Lachica*, G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

dangerous drug after the buy bust operation. Hence, the source, identity, and integrity of these items remained questionable.

Too, the chain of custody rule ordains that the apprehending team must, immediately after seizure and confiscation, conduct a physical inventory and photograph these items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as three (3) required witnesses.[51]

SPO1 Santos admitted that the inventory of the seized item was not done in the presence of any of the three (3) insulating witnesses required under Section 21 of RA 9165. As for the photograph, the arresting officers claimed to have taken photographs of the seized item but records show otherwise. They offered no justification for their omission.

In ***People v. Escaran***,[52] the Court emphasized that the presence of the witnesses from the DOJ, the media, and from public elective office at the time of apprehension is mandatory. The insulating presence of these witnesses during the seizure, marking, inventory and photograph of the dangerous drugs will prevent the evils of switching, planting or contamination of the *corpus delicti*. Their presence at the time of seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drug.

In fine, the first link had been broken.

Surely, these lapses in the chain of custody rule cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty. ***Mallillin v. People***[53] ordained:

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[51] See *People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, August 20, 2019.

[52] *Supra*, note 49.

[53] 576 Phil. 576, 587 (2008).

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

The Court concedes that RA 9165 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The Court, however, cannot apply such liberality in this case.

Here, the prosecution did not at all offer any explanation as for the absence of the required insulating witnesses during the marking, inventory and photograph of the seized dangerous drug. Too, while PO1 Sugayen explained why he opted the marking to be done at the police station — that he does not have a pen at that time and that they were already attracting a crowd, the same are insufficient to render the saving clause applicable. For this reason, there is no occasion for the proviso "as long as the integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the

accused.[54] Hence, if the chain of custody rule had not been complied with, or no justifiable reason exists for its non-compliance, the Court must acquit as a matter of right.[55]

ACCORDINGLY, the petition is **GRANTED**. The Entry of Judgment dated September 19, 2018 in CA-G.R. CR-HC No. 07395 is **LIFTED**. The Court of Appeals' Decision dated May 28, 2018 and Resolution dated July 10, 2019 are **REVERSED** and **SET ASIDE**.

Jerry Barayuga *y* Joaquin is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Jerry Barayuga *y* Joaquin from custody unless he is being held for some other lawful cause or causes, (b) and to submit his report on the action taken within five (5) days from notice. Let entry of judgment be immediately issued.

SO ORDERED.

Peralta, C.J., Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.,* concur.

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[54] *Largo v. People, Supra,* Note 46.

[55] *People v. Año*, G.R. No. 230070, March 14, 2018.

[*] Associate Justice Mario V. Lopez recused from the case due to prior participation in Court of Appeals. Associate Justice Ramon Paul L. Hernando assigned as additional member.

FIRST DIVISION

[G.R. No. 248701. July 28, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LIONEL ECHAVEZ BACALTOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; CONSIDERING THAT THE ALLEGED CRIME WAS COMMITTED PRIOR TO THE EFFECTIVITY OF THE LAW AMENDING THE JURISDICTION OF THE SANDIGANBAYAN (RA 10660), THE SAME IS INAPPLICABLE AND THE SANDIGANBAYAN CORRECTLY ASSUMED JURISDICTION OVER THE CASE. — The jurisdiction of the Sandiganbayan is outlined in Section 4 of PD 1606, as amended by Section 2 of RA 10660[.] x x x Prior to its amendment, Section 4 of PD 1606 did not set a threshold amount of damage or damages allegedly suffered by the government which would vest the Sandiganbayan with jurisdiction over the offense. The amendment was introduced in RA 10660 which took effect on May 5, 2015. x x x [T]he amended jurisdiction of the Sandiganbayan only covers offenses committed only after RA 10660 took effect on May 5, 2015. x x x Here, the Information charged appellant with violating Section 3(e) of RA 3019 around February 2015. Appellant himself categorically admitted in his memorandum that he received *honoraria* of ₱17,512.50 in February 2015. Thus, when the alleged crime was committed, RA 10660 had yet to take effect, hence, the same is inapplicable here.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS OF LAW; CIRCUMSTANCES IN THIS CASE SHOW THAT APPELLANT WAS AFFORDED HIS RIGHT TO DUE PROCESS OF LAW. — [A]ppellant was afforded his right to due process of law. The following circumstances negate appellant's claim of due process violation: **First**, appellant waived his right to question the proceedings before the Sandiganbayan. He did not raise this issue before the court below. In fact, by his own deliberate act, appellant voluntarily waived

his right to present evidence. x x x At any rate, appellant still was able to formally offer his documentary exhibits. **Second**, appellant actively participated in the proceedings before the Sandiganbayan as in fact he entered a plea of not guilty, entered into joint stipulation of facts, filed his memorandum, and formally offered his documentary exhibits. ***SSK Parts Corporation v. Camas*** held that active participation in the proceedings *a quo* are all part and parcel of right to due process. As appellant had all the opportunities to be heard, he may not complain that he was denied due process.

3. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS TO SUSTAIN A CONVICTION FOR VIOLATION OF SECTION 3 (e) THEREOF. — To sustain a conviction for violation of Sec. 3(e) of RA 3019, the prosecution must sufficiently establish the following elements: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage or preference.

4. ID.; ID.; THREE MODES OF COMMITTING THE OFFENSE PENALIZED UNDER SECTION 3 (e) OF RA 3019, EXPOUNDED. — A violation of Section 3(e) of RA 3019 may be committed in three (3) ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three (3) in connection with the prohibited acts mentioned in Section 3(e) is enough to convict. ***Fonacier v. Sandiganbayan*** expounded on the different modes of committing the offense penalized under Section 3(e), *viz.*: "***Partiality***" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "***Bad faith*** does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "***Gross negligence*** has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in

so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of *any* of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

5. ID.; ID.; ID.; APPELLANT ACTED IN GOOD FAITH WHEN HE RECEIVED THE QUESTIONED HONORARIUM. — [F]ive percent (5%) of the total PhilHealth *honoraria* was allocated to the non-health professionals OR staff of the PCB Provider. As to who these non-health or professionals mentioned, they were not specifically identified. The rule does not expressly indicate whether they need be part of the official roll of employees of the Municipal Health Office. Non-health professionals include the rank and file employees or administrative staff of the Municipal Health Office who are not among the front liners providing access to health care. It also covers volunteers and community members of health teams. This led appellant to honestly believed, albeit mistakenly, that the office of the municipal mayor which exercises control and supervision over the Municipal Health Office and its personnel, may likewise be covered by the term "non-health professional." Consequently, he acted in good faith when he received the ₱17,512.50 honorarium, anchored as it was on the honest belief that he was legally entitled to the benefit. x x x [A]ppellant's subsequent restitution of the *honorarium* upon receipt of the COA notice of disallowance all the more bolsters his claim of good faith. In ***Zamboanga City Water District v. Commission on Audit***, the Court held that lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

6. ID.; ID.; ID.; NEITHER COULD APPELLANT'S RECEIPT OF THE HONORARIUM AMOUNT TO MANIFEST PARTIALITY NOR GROSS INEXCUSABLE NEGLIGENCE. — Neither could appellant's receipt of the *honorarium* amount to manifest partiality. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Appellant could not have been predisposed to favor himself when his basis for his receipt of the *honorarium* was his honest

belief of his entitlement thereto. Lastly, appellant did not act with gross inexcusable negligence. Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. Here, gross inexcusable negligence cannot be imputed on appellant for his erroneous interpretation of the provision of the law. He did not carve out from empty space his supposed entitlement thereto because he had legal basis, albeit, it was a mistaken interpretation of Section V (G) of PhilHealth Circular No. 010 s. 2012.

CAGUIOA, *J., concurring opinion:*

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); ELEMENTS FOR VIOLATION OF SECTION 3(e) THEREOF, ENUMERATED. —** To be found guilty of violating Section 3(e) of RA 3019, the following elements must concur: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

2. **ID.; ID.; ID.; CONCEPT OF BAD FAITH; APPELLANT'S GENUINE BELIEF, THOUGH ERRONEOUS, THAT HE WAS ENTITLED TO AN HONORARIUM NEGATES MALICIOUS INTENT. —** It is ***well-established*** that evident bad faith "does not simply connote bad judgment or negligence" but of having a "**palpably and patently fraudulent and dishonest purpose** to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will**. It contemplates a state of mind affirmatively operating with **furtive design or with some motive or self-interest or ill will or for ulterior purposes**." Simply put, it partakes of the **nature of fraud.** The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of a government circular. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.** x x x Evident bad faith

"contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes." It connotes "a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will." Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive[.]" **Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."** x x x In the case at bar, as pointed out by the *ponencia*, Bacaltos honestly believed that as municipal mayor exercising control and supervision over the Municipal Health Office and its personnel, he is a non-health professional entitled to a five percent *honorarium* under the PhilHealth Circular. Certainly, Bacaltos's interpretation of the law is not completely unfounded. The relevant provision of the PhilHealth Circular x x x did not provide a definition of who may be considered as "non-health professionals." It only gave a few examples and left the rest open to interpretation. When a law or circular leaves room for interpretation, misinterpretation is inevitable. While learned members of the bench and bar can easily discern that a municipal mayor is not covered by the said provision, an ordinary layman like Bacaltos cannot be faulted for incorrectly interpreting the ambiguous category of "non-health professionals" in the PhilHealth Circular. x x x Thus, when Bacaltos included himself in the category of non-health professionals entitled to five percent *honoraria*, this action cannot be considered as having been done without basis. Bacaltos's genuine belief that he was entitled to an *honorarium* negates *dolo* or wrongful or malicious intent. To stress, when the accused is alleged to have acted with evident bad faith under Section 3(e) of RA 3019, which is the case here, the crime alleged is a crime of ***dolo*** –– an offense committed with *wrongful or malicious intent*. The same cannot be said of Bacaltos who believed in good faith, albeit erroneously, that he was covered by the PhilHealth circular.

3. ID.; ID.; ID.; MANIFEST PARTIALITY, EXPLAINED; THERE IS NO GROUND TO SUPPORT A FINDING THAT APPELLANT ACTED WITH MANIFEST PARTIALLY. —

There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." **Similar to the modality of evident bad faith, mere partiality is not sufficient — the same must be manifest.** Here, there is no ground to support a finding that Bacaltos acted with manifest partiality. As discussed, Bacaltos cannot be faulted for misinterpreting the ambiguous provision in the PhilHealth Circular. His interpretation is not entirely baseless as to amount to a deliberate misapplication of the said circular. Furthermore, Bacaltos knew that his entitlement to the *honorarium* was still contingent on PhilHealth's approval in view of the reservation expressed by the Municipal Accountant with respect to his receipt of the *honorarium*. **Thus, even without a Notice of Disallowance from the Commission on Audit (COA), he returned ₱33,478.12, representing all the moneys he received pursuant to the PhilHealth Circular, which amount is ₱15,965.62 more than the *honorarium* subject of this case.** To my mind, these are badges of good faith proving that Bacaltos honestly believed that he was entitled to an *honorarium*. Based on the foregoing, no manifest partiality can be imputed to Bacaltos. When the language of the law or regulation is not clear, as in this case, there is all the more basis to give the accused the benefit of the doubt for his erroneous interpretation and acquit him of the charge for violation of Section 3(e) of RA 3019.

4. ID.; ID.; ID.; GROSS NEGLIGENCE, DEFINED; NEITHER IS THE ELEMENT OF GROSS NEGLIGENCE PRESENT IN THIS CASE. — Neither is the element of gross negligence present in this case. Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. In *Yapyuco v. Sandiganbayan*, the Court stated that "[i]n criminal negligence, the injury caused to another **should be unintentional, it being the incident of another act performed without malice**," and "that a deliberate intent to do an unlawful act is essentially

inconsistent with the idea of reckless imprudence" which is a form of negligence. Bacaltos's act of receiving an *honorarium* under the mistaken belief that he is entitled thereto is one of *dolo*, not *culpa*. He is charged with "willfully, unlawfully, criminally," causing undue injury to the government. A crime alleged to be *willfully* committed is contrary to an act predicated on negligence or *culpa*. Hence, there could not have been gross inexcusable negligence or *culpa* in this case.

5. ID.; ID.; ID.; INFLICTING DAMAGE TO ANOTHER MUST BE SHOWN TO HAVE BEEN DONE WITH CORRUPT INTENT; THERE WAS NO SHOWING THAT APPELLANT HAD FRAUDULENT, MUCH LESS CORRUPT, INTENT TO CAUSE DAMAGE TO THE GOVERNMENT. — Under current jurisprudence, in order to be found guilty of causing undue injury, it is enough that the public officer has inflicted damage to another. Proof of the extent or quantum of damage is not essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible. I respectfully submit that this line of reasoning should no longer be followed. The aforementioned understanding of "undue injury" is too broad that every single misstep committed by public officers that result in injury to any party falls under the definition and would thus possibly be criminally punishable. Every error — no matter how minor — would satisfy the fourth element as the threshold is simply that an injury be inflicted on another. x x x Granted that the maxims "ignorance of the law excuses no one" and "public office is a public trust" are true, the Court should refrain from interpreting laws without heed to its practical consequences. By maintaining the threshold for the fourth element at the bare minimum of inflicting damage to another, the Court will effectively discourage individuals from joining public service. **It is simply unreasonable to criminally punish every little mistake that incidentally caused damage to another even when these acts were *not done with corrupt intent.*** In the instant case, for example, Bacaltos's act of receiving an *honorarium* was motivated not by any corrupt intent to cause injury to the government or to unduly receive any illegal pecuniary benefit. Based on the evidence, his actuations were simply founded on his honest belief that he was a non-health professional exercising control and supervision over the Municipal Health

Office and its personnel, that therefore entitled him to receive an *honorarium*. Hence, no graft and corruption actually transpired. **There was no showing that Bacaltos had fraudulent, much less corrupt, intent to cause damage to the Government. Again, he even returned more than what he actually received.**

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for plaintiff-appellee.
Alma Naidas-Enriquez & Associates for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Appellant Lionel Echavez Bacaltos seeks to reverse and set aside the Decision[1] dated May 17, 2019 of the Sandiganbayan in SB-18-CRM-0010 finding him guilty of violation of Section 3 (e) of RA 3019, the *Anti-Graft and Corrupt Practices Act*.

Antecedents

The charge and plea

By Information dated January 12, 2018, appellant was charged before the Sandiganbayan with violation of Section 3 (e) of RA 3019, *viz.*:

That in February 2015, or sometime prior or subsequent thereto, in the Municipality of Sibonga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, **LIONEL ECHAVEZ BACALTOS**, a high-ranking public officer, being the Mayor of the Municipality of Sibonga, Cebu, in such capacity, committing the crime in relation to office, acting with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government by receiving an honorarium from the Philippine Health Insurance

[1] *Rollo*, pp. 5-19.

Corporation (PhilHealth) in the amount of Php17,512.50, despite the fact that he was not entitled to receive it since the said honorarium was exclusively given and intended for the municipal health personnel, and accused was not a member of the municipal health personnel, thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.[2]

On arraignment, appellant pleaded not guilty.[3] During the pre-trial, the parties stipulated, thus:[4]

JOINT STIPULATIONS

The PEOPLE, represented by the Office of the Special Prosecutor and **accused LIONEL ECHAVEZ BACALTOS**, represented by ATTY. JULIUS CEASAR S. ENTISE, unto this Honorable Court, most respectfully stipulate on the following:

1. At the time material to the allegation in the Information, the accused is a public officer holding the position of the Municipal Mayor of Sibonga, Province of Cebu;

2. That whenever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses the accused admits that he is the same person being referred to in this case;

3. Under its program, PhilHealth Regional Office VII released the fund for Per Family Payment Rate (PFPR) for the provision of primary care benefit services to the Municipal Health Office of Sibonga, Cebu for the years 2012, 2013, 2014, and 2015;

4. Under the prescribed disposition and allocation of the PFPR, twenty percent (20%) of the fund shall be exclusively utilized as honoraria of the staff of the health facility and in the improvement of their capability to be able to provide better health services:

    (a) Ten percent (10%) for the physician;

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[2] *Id*. at 5-6.

[3] *Id.* at 6.

[4] Sandiganbayan Crim. Case No. SB-18-CRM-0010, record, pp. 148-154.

(b) Five percent (5%) for the other health professional staff of the facility;
(c) Five percent (5%) for non-health professional/staff including volunteers;

5. In February 2015, accused Bacaltos certified the Obligation Request No. 0499-02-15-300 (Exhibit "E") for the payment of the twenty percent (20%) PhilHealth honoraria to health personnel in the amount of Php280,197.00;

6. From the 20% PhilHealth Capitation Fund for Personnel Honorarium, accused Bacaltos received the amount of Php17,512.50 as *honorarium* in 2015 and signed payrolls (EXHIBIT "F") for this purpose;

7. Accused Bacaltos is not a physician, or a health or non-health professional staff, nor a volunteer of Municipal Health Office of Sibonga, Cebu from 2014-2015.

II
ISSUES

1. Whether accused Bacaltos acted with manifest partiality, evident bad faith or gross inexcusable negligence in receiving an honorarium from the Philippine Health Insurance Corporation (PhilHealth) in the amount ₱17,512.50, despite the fact that he was not entitled thereto since the said honorarium was exclusively given and intended for the municipal health personnel, and accused was not a member thereof or not;

2. Whether accused Bacaltos caused undue injury to the government by receiving the honorarium;

3. Whether accused Bacaltos violated Section 3(e) of Republic Act No. 3019, as amended in receiving an honorarium from the Philippine Health Insurance Corporation (PhilHealth) in the amount of ₱17,512.50, despite the fact that he was not entitled to receive it since the said honorarium was exclusively given and intended for the municipal health personnel, and accused was not a member thereof, causing undue injury to the government in the aforesaid amount;

4. Whether accused is entitled to the honorarium being the Municipal Mayor of Sibonga, Cebu.[5] x x x x x x x x x

[5] *Id.* at 7.

On the basis thereof, the prosecution and the defense manifested that they would dispense with the presentation of evidence.[6] The Sandiganbayan then ordered the prosecution and the defense to formally offer their exhibits and file their respective comments thereon. Both parties complied and filed their respective memoranda.[7]

The Prosecution's Version

In line with the government's Kalusugang Pangkalahatan Program, the Philippine Health Insurance Corporation (PhilHealth), by Board Resolution No. 1587, s. 2012, approved the Primary Care Benefit (PCB) Package, designed to provide Filipinos access to quality health services. The PCB Package was offered through government health facilities registered with PhilHealth. In exchange for their services, these PCB Providers were paid incentives on a Per Family Payment Rate (PFPR).[8]

On May 28, 2012, PhilHealth Regional Vice President William O. Chavez sent a letter to appellant informing him of Section V (G) of PhilHealth Circular No. 010 s. 2012 which prescribed the allocation of the PFPR, thus:[9]

> G. The disposition and allocation of the PFPR shall be, as follows:
>
> 1. Eighty percent (80%) of PFPR is for operational cost and shall be divided, as follows:
>
> a. Minimum of forty percent (40%) for drugs and medicines (PNDF) (to be dispensed at the facility) including drugs and medicines for Asthma, AGE and pneumonia; and
>
> b. Maximum of forty percent (40%) for reagents, medical supplies, equipment (i.e., ambulance, ambubag, stretcher, etc.), information technology (IT equipment specific for facility use needed to facilitate reporting and database build-up), capacity building for staff,

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[6] *Id.* at 6.

[7] Sandiganbayan Crim. Case No. SB-18-CRM-0010, record, p. 139.

[8] *Rollo*, p. 11.

[9] *Id.*

infrastructure or any other use related, necessary for the delivery of required service including referral fees for diagnostic services if not able in the facility.

2. **The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility** and for the improvement of their capabilities as would enable them to provide better health services:

a. Ten percent (10%) for the physician;
b. Five percent (5%) for other health professional staff of the facility; and
c. Five percent (5%) for non-health professionals/staff, including volunteers and community members of health teams (e.g., Women's Health Team, Community Health Team). (Emphases supplied)

The Municipal Health Office of Sibonga, Cebu was registered as a PCB provider and had been allocated PFPRs from 2012 to 2015.[10]

In February 2015, appellant, then Municipal Mayor of Sibonga, Cebu, certified Obligation Request No. 0499-02-15-300[11] for the release of the twenty percent (20%) *honoraria* for health personnel in the amount of ₱280,197.00. Based on Item 16 of the 2015 payroll summary, appellant received ₱17,512.50 of the amount as *honorarium*.[12] The same payroll summary bore the Municipal Accountant's annotation, expressing reservation for Item 16 to the effect that payment thereof was still subject to the PhilHealth's existing rules and regulations. Appellant admitted during the pre-trial that he was not a physician, health or non-health staff, nor volunteer of the Municipal Health Office in the years 2014 and 2015. Neither did his name appear on its list of personnel.[13]

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[10] *Id.*

[11] Sandiganbayan Crim. Case No. SB-18-CRM-0010, record, p. 183.

[12] *Rollo*, p. 13.

[13] *Id.*

Hence, appellant was not entitled to the *honorarium*. He clearly acted with manifest partiality, evident bad faith, or gross inexcusable negligence when he requested and accepted the *honorarium* over the Municipal Accountant's reservation. Appellant's unwarranted receipt of the honorarium caused undue injury to the government in the amount of ₱17,512.50.[14]

The prosecution offered in evidence appellant's Service Record (Exhibit B), Municipal Health Office's List of Personnel (Exhibit C), Letter dated August 24, 2015 to Mary Jojie P. Chan (Exhibit D), Obligation Request No. 0499-02-15-300 (Exhibit E), payroll summary with attached list (Exhibit F), disbursement voucher dated March 2, 2015 (Exhibit G), PhilHealth Regional Vice President William O. Chavez' letter dated May 28, 2012 (Exhibit HH), performance commitment dated December 16, 2014 (Exhibit H), PFP's summary released to LGU Sibonga (Exhibit I), Disbursement Vouchers and Official Receipts issued by the Office of the Treasurer, Sibonga, Cebu.[15]

The Version of the Defense

Appellant admitted having received ₱17,512.50 as *honorarium* from the PhilHealth Capitation Fund but denied having acted

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[14] *Id.*

[15] Disbursement Voucher No. 140940 (Exhibit J), Official Receipt No. 7221579 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit K), Disbursement Voucher No. 160141 (Exhibit L), Official Receipt No. 11396017 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit M), Disbursement Voucher No. 160137 (Exhibit N), Official Receipt No. 11396018 issued by Office of the Treasurer, Sibonga, Cebu (Exhibit O), Disbursement Voucher No. 160277 (Exhibit P), Official Receipt No. 113998919 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit Q), Disbursement Voucher No. 140914 (Exhibit T), Official Receipt No. 7221578 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit U), Disbursement Voucher No. 150032 (Exhibit V), Official Receipt No. 8206356 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit W), Disbursement Voucher No. 140939 (Exhibit X), Official Receipt No. 7221580 issued by the Office of the Treasurer, Sibonga, Cebu (Exhibit Y), Disbursement Voucher No. 160140 (Exhibit Z), Official Receipt No. 11396020 issued by the Treasurer's Office, Sibonga, Cebu (Exhibit AA), Disbursement Voucher No. 150367 (Exhibit BB), and Official Receipt No. 10293273 (Exhibit CC); *id.* at 8-9.

with manifest partiality, evident bad faith, or gross inexcusable negligence in his receipt thereof. Owing to his exercise of control and supervision over the Municipal Health Office and its personnel, he honestly believed he was entitled to the five percent (5%) *honorarium* for non-health personnel. In fact, the Commission on Audit (COA) did not even issue a Notice of Disallowance on the release of the subject *honorarium*.[16] Lastly, the prosecution failed to adduce evidence that the PhilHealth suffered injury as a result thereof.[17]

The defense formally offered the following exhibits: the Committee Report Re: Administrative Complaint dated April 5, 2017 of Mary Jojie P. Chan docketed as Administrative Case No. SP CBU 2015-30 by the Complaints and Investigation Committee of the Sangguniang Panlalawigan of Cebu Province (Exhibit 1), Resolution No. 1225-2017 Adopting and Approving the Committee Report dated April 5, 2017 of the Committee on Complaints and Investigation of the Sangguniang Panlalawigan of Cebu Province (Exhibit 2), and Certification dated September 3, 2018 issued by the Municipal Accountant of the Municipality of Sibonga, Cebu (Exhibit 3).[18]

The Sandiganbayan's Ruling:

As borne by its Decision[19] dated May 17, 2019, the Sandiganbayan Fourth Division rendered a verdict of conviction, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **Lionel Echavez Bacaltos GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019 and is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day, as minimum, to eight (8) years, as maximum,

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[16] *Id.* at 13.

[17] *Id.* at 14.

[18] *Id.* at 10; Sandiganbayan Crim. Case No. SB-18-CRM-0010, record, pp. 262-263.

[19] *Rollo*, pp. 5-19.

with perpetual disqualification from holding public office. Accused **Lionel Echavez Bacaltos** is also **ORDERED** to indemnify the Municipality of Sibonga, Cebu, the amount of Seventeen Thousand Five Hundred Twelve Pesos and Fifty Centavos (PhP17,512.50).

SO ORDERED.[20]

According to the Sandiganbayan, the prosecution had sufficiently established appellant's guilt for violation of Section 3 (e) of RA 3019. Appellant was then Municipal Mayor of Sibonga, Cebu when he approved and received ₱17,512.50 as *honorarium* despite the fact that he was ineligible to receive it. The Sandiganbayan rejected appellant's defense of good faith and held that his receipt of the *honorarium* deprived other personnel of the Municipal Health Office of the benefit and caused undue injury to the government.

Appellant's Omnibus Motion for Reconsideration was denied by Resolution dated July 12, 2019.[21]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In his Supplemental Brief,[22] appellant essentially argues:

First, the Sandiganbayan had no jurisdiction over the case. He allegedly caused undue injury to the government in the amount of ₱17,512.50 which is within jurisdictional threshold of the Regional Trial Court (RTC) under RA 10660.[23] Too, the summary payroll is unclear as to the date of actual payment which is crucial in determining whether RA 10660 would apply

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[20] *Id.* at 18.

[21] *Id.* at 133.

[22] *Id.* at 59-73.

[23] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

to the present case. At any rate, the assailed decision was based on pure speculation and conjectures.

Second, the Office of the Special Prosecutor failed to prove that he received ₱17,512.50 because it failed to indicate from which PFPR fund (2012, 2013, 2014 and 2015) appellant's *honorarium* was sourced. The Obligation Request merely stated that he approved the release of ₱280,187.00 while the summary payroll enumerated its recipients. Approval of the release of payment is not the same as receiving the amount of ₱17,512.50 in 2015. The Office of the Special Prosecutor likewise failed to prove that he received ₱17,512.50 in February 2015 since the corresponding disbursement voucher was dated March 2, 2015.

Third, he never admitted having received ₱17,512.50 from the PFPR as *honorarium*. In the Pre-Trial Order dated November 26, 2018, what he admitted on February 2015 he certified the Obligation Request for payment of the PhilHealth *honoraria*.

Fourth, he was deprived of his right to due process of law when the Sandiganbayan directed him to submit his memorandum after the termination of the pre-trial. This was clearly an involuntary waiver of his right to present evidence. The Sandiganbayan brushed aside his defense of good faith and decided in such a way that mere presentation of the pertinent documents was sufficient to declare him to have acted with manifest partiality and evident bad faith.

Lastly, he immediately refunded subject amount upon his receipt of the COA's notice of disallowance.

On the other hand, the People of the Philippines, through the Office of the Ombudsman-Office of the Special Prosecutor defends the Sandiganbayan's verdict of conviction. In its Supplemental Brief,[24] the People counters:

First. The Sandiganbayan had jurisdiction since the crime charged was committed before the effectivity of RA 10660.

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[24] *Rollo*, pp. 123-148.

Contrary to appellant's claim that the prosecution failed to prove the exact time he received the *honorarium*, appellant himself admitted in his memorandum that he received ₱17,512.50 in February 2015.

Second. All the elements of the crime of violation of Sec. 3 (e) of RA 3019 were sufficiently established. Appellant was then Municipal Mayor of Sibonga, Cebu when he, with manifest partiality, evident bad faith or gross inexcusable negligence, accepted *honoraria* from the PhilHealth's Capitation Fund despite the fact that he was not qualified to receive it. His unwarranted receipt thereof caused undue injury to the government.

Third. Appellant was not deprived of his right to present evidence. The Sandiganbayan merely adhered to the Revised Guidelines for Continuous Trial of Criminal Cases when it narrowed down the issues based on the parties' stipulations during the pre-trial. Thereafter, the Sandiganbayan deemed it proper to simply require the parties to submit their respective memoranda, to which the parties did not object.

Lastly. Restitution or refund of the *honorarium* does not exonerate appellant from criminal liability.

Threshold Issues

1. Did the Sandiganbayan have jurisdiction over the case?
2. Was appellant's right to due process violated?
3. Is appellant guilty of violation of Sec. 3 (e) of RA 3019?

Ruling

The Sandiganbayan correctly assumed jurisdiction over the case

The jurisdiction of the Sandiganbayan is outlined in Section 4 of PD 1606, as amended by Section 2 of RA 10660,[25] *viz.*:

[25] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN,

SEC. 4. ***Jurisdiction.*** — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x x x x x x

(b) **City mayors**, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;

x x x x x x x x x

Provided, **That the Regional Trial Court shall have exclusive original jurisdiction where the information:** (a) does not allege any damage to the government or any bribery; or **(b) alleges damage to the government** or bribery arising from the same or closely related transactions or acts **in an amount not exceeding One million pesos (₱1,000,000.00)**. *(Emphases supplied)*

Prior to its amendment, Section 4 of PD 1606 did not set a threshold amount of damage or damages allegedly suffered by the government which would vest the Sandiganbayan with jurisdiction over the offense. The amendment was introduced in RA 10660 which took effect on May 5, 2015.

Generally, the jurisdiction of a court to try a criminal case is determined at the time it was filed.[26] By way of exception, however, Section 5 of RA 10660 ordains:

SECTION 5. ***Transitory Provision.*** — This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun:

FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR. (Amendment to P.D. No. 1606 (Functional and Structural Organization of the Sandiganbayan), Republic Act No. 10660, April 16, 2015).

[26] See *People v. Sandiganbayan*, 613 Phil. 407, 419 (2009).

Provided, That: **(a) Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on "Jurisdiction";** and (b) Section 3, amending Section 5 of Presidential Decree No. 1606, as amended, on "Proceedings, How Conducted; Decision by Majority Vote" **shall apply to cases arising from offenses committed after the effectivity of this Act.** *(Emphases added)*

Verily, the amended jurisdiction of the Sandiganbayan only covers offenses committed only after RA 10660 took effect on May 5, 2015. This has already been settled in ***Ampongan v. Sandiganbayan***,[27] *viz.*:

> It is clear from the transitory provision of R.A. No. 10660 that the amendment introduced regarding the jurisdiction of the Sandiganbayan shall apply to cases arising from offenses committed after the effectivity of the law. Consequently, the new paragraph added by R.A. No. 10660 to Section 4 of Presidential Decree (P.D.) No. 1606, as amended, transferring the exclusive original jurisdiction to the RTC of cases where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos, applies to cases which arose from offenses committed after the effectivity of R.A. No. 10660.

Here, the Information charged appellant with violating Section 3 (e) of RA 3019 around February 2015. Appellant himself categorically admitted in his memorandum[28] that he received *honoraria* of ₱17,512.50 in February 2015. Thus, when the alleged crime was committed, RA 10660 had yet to take effect, hence, the same is inapplicable here.

Appellant was afforded his right to due process of law.

Too, appellant was afforded his right to due process of law. The following circumstances negate appellant's claim of due process violation:

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[27] G.R. Nos. 234670-71, August 14, 2019.

[28] Sandiganbayan Crim. Case No. SB-18-CRM-0010, record, pp. 287-293.

First, appellant waived his right to question the proceedings before the Sandiganbayan. He did not raise this issue before the court below. In fact, by his own deliberate act, appellant voluntarily waived his right to present evidence. Per the minutes[29] of the session held by the Sandiganbayan Fourth Division dated August 31, 2018, the parties manifested they were no longer presenting their respective evidence, thus:

> The parties upon conferring on their joint stipulation of facts manifested that they are ready to submit their joint stipulation/narration of facts, thus the pre-trial was declared terminated without prejudice to the issuance of a Pre-Trial Order by the Court. ***Upon manifestation of the parties that they are no longer presenting their respective evidence***, the parties were given 15 days, 1) from date for the prosecution to file its offer of exhibits; 2) the defense, from receipt of its copy of the prosecution's offer, to file its comment/opposition thereto, and upon resolution of the prosecution's offer by the Court; 3) for the defense to file its offer of exhibits, and lastly; 4) from receipt of copy, for the prosecution to file its comment or opposition thereto. The parties upon receipt of the Court's resolution on the accused's offer of exhibits were given 30 days within which to file their respective Memorandum. Thereafter, the case will be submitted for decision. By agreement of the parties, the promulgation of judgment was set on FEBRUARY 22, 201[9] at 1:30 P.M. *(Emphases added)*.

At any rate, appellant still was able to formally offer his documentary exhibits.[30]

Second, appellant actively participated in the proceedings before the Sandiganbayan as in fact he entered a plea of not guilty, entered into joint stipulation of facts, filed his memorandum, and formally offered his documentary exhibits. ***SSK Parts Corporation v. Camas***[31] held that active participation[32]

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[29] *Id.* at 137.

[30] *Id.* at 262-263.

[31] 260 Phil. 730-734 (1990).

[32] *i.e.*, by filing its answer to the complaint, presenting a position paper to the Regional Director, submitting evidence in support of its claim, and appealing the decision of the Regional Director to the Secretary of Labor.

in the proceedings *a quo* are all part and parcel of right to due process. As appellant had all the opportunities to be heard, he may not complain that he was denied due process.

Finally, Section 4, Rule 118 decrees that trial shall be limited to matters not disposed of during the pre-trial:

SECTION 4. *Pre-trial Order*. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, ***limit the trial to matters not disposed of***, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.[33] *(Emphasis supplied)*

The Revised Guidelines for Continuous Trial of Criminal Cases[34] ordains that proposals for stipulations shall be done with the active participation of the court itself and shall not be left alone to the counsel. Thus, the Sandiganbayan here endeavored to facilitate a joint stipulation of facts between the prosecution and the defense. As a result, the only remaining question left to be resolved was one of law — whether appellant was entitled to *honorarium* from the PhilHealth's Capitation Fund.

Appellant did not act with manifest partiality, evident bad faith, and/or inexcusable negligence when he received the honorarium

Appellant was charged with violation of Sec. 3 (e) of RA 3019 otherwise known as the *Anti-Graft and Corrupt Practices Act*, *viz.*:

SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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[33] Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, October 3, 2000.

[34] A.M. No. 15-06-10-SC, April 25, 2017.

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

To sustain a conviction for violation of Sec. 3 (e) of RA 3019, the prosecution must sufficiently establish the following elements: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage or preference.[35]

Here, the first and second elements are undisputed. Appellant was then Municipal Mayor of Sibonga, Cebu. He was performing his official functions when he certified Obligation Request No. 0499-02-15-300 for the payment of the twenty percent (20%) PhilHealth *honoraria* in 2015.

We focus on the third element.

A violation of Section 3 (e) of RA 3019 may be committed in three (3) ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three (3) in connection with the prohibited acts mentioned in Section 3 (e) is enough to convict.[36] ***Fonacier v. Sandiganbayan***[37] expounded on the different modes of committing the offense penalized under Section 3 (e), *viz.*:

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[35] See *Sabio v. Sandiganbayan (First Division)*, G.R. Nos. 233853-54, July 15, 2019.

[36] See *Sison v. People*, 628 Phil. 573, 583 (2010).

[37] 308 Phil. 660, 693-694 (1994).

"***Partiality***" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "***Bad faith*** does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "***Gross negligence*** has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of *any* of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction. *(Emphases supplied)*.

Here, appellant allegedly violated Section 3 (e) when he, with manifest partiality, evident bad faith, and/or gross inexcusable negligence, received ₱17,512.50 from the PhilHealth Capitation Fund as *honorarium* despite his alleged non-entitlement thereto.

Section V (G) of PhilHealth Circular No. 010 s. 2012 provides the disposition and allocation of the PhilHealth *honoraria* as follows:

> 2. The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility and for the improvement of their capabilities as would enable them to provide better health services:
>
> a. Ten percent (10%) for the physician;
> b. Five percent (5%) for other health professional staff of the facility; and
> c. ***Five percent (5%) for non-health professionals/staff***, including volunteers and community members of health teams (e.g., Women's Health Team, Community Health Team). *(Emphases added)*

Hence, five percent (5%) of the total PhilHealth *honoraria* was allocated to the non-health professionals OR staff of the PCB Provider. As to who these non-health or professionals

mentioned, they were not specifically identified. The rule does not expressly indicate whether they need be part of the official roll of employees of the Municipal Health Office.

Non-health professionals include the rank and file employees or administrative staff of the Municipal Health Office who are not among the front liners providing access to health care. It also covers volunteers and community members of health teams. This led appellant to honestly believed, albeit mistakenly, that the office of the municipal mayor which exercises control and supervision over the Municipal Health Office and its personnel, may likewise be covered by the term "non-health professional." Consequently, he acted in good faith when he received the ₱17,512.50 honorarium, anchored as it was on the honest belief that he was legally entitled to the benefit.[38] Otherwise stated, appellant did not act in bad faith when he mistakenly interpreted Section V (G) of PhilHealth Circular No. 010 s. 2012.

At any rate, bad faith *per se* is not enough for one to be held criminally liable for violation of Section 3 (e) of RA 3019; bad faith must be evident. It must partake the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive or ill will for ulterior purposes.[39] In short, it is a manifest deliberate intent on the part of the accused to do wrong or to cause damage[40] unlike here.

In ***Ysidoro v. Leonardo-de Castro***,[41] the Court decreed that an erroneous interpretation of a provision of law, absent any showing of some dishonest or wrongful purpose, does not constitute and does not necessarily amount to bad faith.

Neither could appellant's receipt of the *honorarium* amount to manifest partiality. There is manifest partiality when there

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[38] See *Silang v. Commission on Audit,* 769 Phil. 327, 348 (2015).

[39] See *Antonino v. Hon. Ombudsman Desierto, et al.*, 595 Phil. 18, 42 (2008).

[40] See *Republic of the Philippines v. Hon. Desierto,* 516 Phil. 509, 516 (2006).

[41] See 681 Phil. 1, 19 (2012).

is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[42] Appellant could not have been predisposed to favor himself when his basis for his receipt of the *honorarium* was his honest belief of his entitlement thereto.

Lastly, appellant did not act with gross inexcusable negligence. Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[43] Here, gross inexcusable negligence cannot be imputed on appellant for his erroneous interpretation of the provision of the law. He did not carve out from empty space his supposed entitlement thereto because he had legal basis, albeit, it was a mistaken interpretation of Section V (G) of PhilHealth Circular No. 010 s. 2012.

In ***Ysidoro***,[44] the Court upheld Mayor Ysidoro's acquittal of violation of Section 3 (e) of RA 3019 for the prosecution's failure to discharge its burden of proving that Ysidoro acted in bad faith and the presence of the exculpatory proof of good faith. There, Mayor Ysidoro ordered the deletion of private complainant's name in the payroll for RATA and productivity pay. In acquitting him, the Court held that the presence of badges[45] of good faith on the part of Mayor Ysidoro negated his alleged bad faith.

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[42] See *Albert v. Sandiganbayan*, 599 Phil. 439, 450 (2009).

[43] *Id.*

[44] *Supra* note 41.

[45] First, the investigation of the alleged anomalies by Ysidoro was corroborated by the physical transfer of Doller and her subordinates to the Office of the Mayor and the prohibition against outside travel imposed on Doller. Second, the existence of the Ombudsman's cases against Doller. And third, Ysidoro's act of seeking an opinion from the COA Auditor on the proper interpretation of Section 317 of the Government Accounting and Auditing Manual before he withheld the RATA.

Lastly, appellant's subsequent restitution of the *honorarium* upon receipt of the COA notice of disallowance all the more bolsters his claim of good faith. In ***Zamboanga City Water District v. Commission on Audit***,[46] the Court held that lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

All told, appellant is acquitted for two (2) reasons, **one**, absence of the third element on the modes of committing the offense under Sec. 3 (e) of RA 3019, and **two**, the exculpatory proof of good faith.

ACCORDINGLY, the appeal is **GRANTED** and the Decision[47] dated May 17, 2019 of the Sandiganbayan in SB-18-CRM-0010, **REVERSED** and **SET ASIDE**.

Appellant **Lionel Echavez Bacaltos** is **ACQUITTED** of violation of Sec. 3 (e) of RA 3019. Let the corresponding entry of final judgment be immediately issued.

SO ORDERED.

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

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the accused-appellant should be acquitted. I submit this separate concurring opinion if only to stress anew that a violation of a regulation that is not penal in nature does not, as it cannot, automatically translate into a violation of Section 3 (e) of Republic Act No. (RA) 3019.

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[46] 779 Phil. 225 (2016).

[47] *Rollo*, pp. 5-19.

Brief review of the facts

Pursuant to the government's Kalusugang Pangkalahatan Program, the Philippine Health Insurance Corporation (PhilHealth) approved the Primary Care Benefit (PCB) Package which was intended to provide Filipinos access to quality health services. The PCB Package was offered through government health facilities registered with PhilHealth.

The Municipal Health Office of Sibonga, Cebu was registered as a PCB provider. In exchange for its service, the said Municipal Health Office had been allocated incentives on a Per Family Payment Rate (PFPR) from 2012 to 2015.

In May 2012, PhilHealth Regional Vice President William O. Chavez (Regional Vice President Chavez) sent a letter to accused-appellant Lionel Echavez Bacaltos (Bacaltos), then mayor of the Municipality of Sibonga, Cebu, informing him of Section V (G) of PhilHealth Circular No. 010 s. 2012 (PhilHealth Circular) which prescribed the allocation of the PFPR, thus:

G. The disposition and allocation of the PFPR shall be, as follows:

1. Eighty percent (80%) of PFPR is for operational cost and shall be divided, as follows:

a. Minimum of forty percent (40%) for drugs and medicines (PNDF) (to be dispensed at the facility) including drugs and medicines for Asthma, AGE and pneumonia; and

b. Maximum of forty percent (40%) for reagents, medical supplies, [equipment] (i.e., ambulance, ambubag, stretcher, etc.), information technology (IT equipment specific for facility use needed to facilitate reporting and database build[-]up), capacity building for staff, infrastructure or any other use related, necessary for the delivery of required service including referral fees for diagnostic services if not able in the facility.

2. **The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility** and for the improvement of their capabilities as would enable them to provide better health services:

a. Ten percent (10%) for the physician;

b. Five percent (5%) for other health professional staff of the facility; and

c. Five percent (5%) for non-health professionals/staff, including volunteers and community members of health teams (e.g., Women's Health Team, Community Health Team).[1]

In February 2015, Bacaltos certified Obligation Request No. 0499-02-15-300 for the release of the twenty percent (20%) *honoraria* for health personnel in the amount of ₱280,197.00. Based on Item 16 of the 2015 payroll summary, Bacaltos received ₱17,512.50 representing his five percent (5%) *honorarium*. The said payroll summary bore the Municipal Accountant's reservation to the effect that payment of the ₱17,512.50 is still subject to PhilHealth's existing rules and regulations.

An Information[2] was filed against Bacaltos for violation of Section 3 (e) of RA 3019, the accusatory portion of which reads:

That in February 2015, or sometime prior or subsequent thereto, in the Municipality of Sibonga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, LIONEL ECHAVEZ BACALTOS, a high-ranking public officer, being the Mayor of the Municipality of Sibonga, Cebu, in such capacity, committing the crime in relation to office, acting with **manifest partiality, evident bad faith and/or gross inexcusable negligence**, did then and there **willfully, unlawfully and criminally** cause undue injury to the government by receiving an honorarium from the Philippine Health Insurance Corporation (PhilHealth) in the amount of Php17,512.50, despite the fact that he was not entitled to receive it since the said honorarium was exclusively given and intended for the municipal health personnel, and accused was not a member of the municipal health personnel, thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.[3]

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[1] Emphasis supplied. See Records, p. 188.

[2] See *Rollo*, pp. 5-6.

[3] Records, p. 1. Emphasis and underscoring supplied.

Bacaltos admitted that he received the ₱17,512.50 but averred that he believed in good faith that he was entitled thereto as the municipal mayor exercising control and supervision over the Municipal Health Office and its personnel.

The Sandiganbayan found Bacaltos guilty of violation of Section 3 (e) of RA 3019. It rejected Bacaltos's defense of good faith, holding that he acted with evident bad faith and manifest partiality when he received the *honorarium*.

The *ponencia* reverses and rules that Bacaltos should be acquitted of the charge against him.

As stated at the outset, I fully concur with the ruling of the *ponencia*.

The element of evident bad faith was absent

To be found guilty of violating Section 3 (e) of RA 3019, the following elements must concur:

(1) the offender is a public officer;
(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[4]

The existence of the first two elements — that Bacaltos was a public officer and the act in question was done in the discharge of his official functions — are not disputed. The controversy lies in the existence of the third and fourth elements, particularly whether his act of receiving the *honorarium* was done through manifest partiality or evident bad faith, and resulted in undue injury to the Government.[5]

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[4] *Sison v. People*, 628 Phil. 573, 583 (2010).

[5] The Sandiganbayan found that Bacaltos acted with manifest partiality and evident bad faith only.

I agree with the view of the *ponencia* that Bacaltos did not act in bad faith when he received the *honorarium* based on his honest belief that he was entitled to it based on an erroneous interpretation of the PhilHealth Circular.

It is ***well-established*** that evident bad faith "does not simply connote bad judgment or negligence"[6] but of having a "**palpably and patently fraudulent and dishonest purpose** to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will**. It contemplates a state of mind affirmatively operating with **furtive design or with some motive or self-interest or ill will or for ulterior purposes**."[7] Simply put, it partakes of the **nature of fraud**.[8]

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of a government circular. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.**

As explained by the Court in *Sistoza v. Desierto*,[9] "mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*."[10]

Evident bad faith "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes."[11] It connotes "a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will."[12]

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[6] *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994). Emphasis supplied.

[7] *Fuentes v. People*, 808 Phil. 586, 594 (2017).

[8] *Fonacier v. Sandiganbayan*, *supra* note 6.

[9] 437 Phil. 117 (2002).

[10] *Id.* at 130. Italics in the original.

[11] *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

[12] *Reyes v. People*, 641 Phil. 91, 104 (2010).

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was "spurred by any corrupt motive[.]"[13] **Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."**[14]

In *Jacinto v. Sandiganbayan*,[15] evident bad faith was not appreciated by the Court because:

> x x x the actions taken by the accused were not entirely without rhyme or reason; he refused to release the complainant's salary because the latter failed to submit her daily time record; he refused to approve her sick-leave application because he found out that she did not suffer any illness; and he removed her name from the plantilla because she was moonlighting during office hours. Such actions were measures taken by a superior against an erring employee who studiously ignored, if not defied, his authority.[16]

In *Alejandro v. People*,[17] evident bad faith was ruled out "because the accused therein gave his approval to the questioned disbursement after relying on the certification of the bookkeeper on the availability of funds for such disbursement."[18]

In the case at bar, as pointed out by the *ponencia*, Bacaltos honestly believed that as municipal mayor exercising control and supervision over the Municipal Health Office and its personnel, he is a non-health professional entitled to a five percent *honorarium* under the PhilHealth Circular.

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[13] *Republic v. Desierto*, 516 Phil. 509, 516 (2006).

[14] *Collantes v. Marcelo*, 556 Phil. 794, 806 (2007).

[15] 258-A Phil. 20 (1989).

[16] *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 843-844 (1998).

[17] 252 Phil. 413 (1989).

[18] *Llorente, Jr. v. Sandiganbayan*, *supra* note 16 at 844.

Certainly, Bacaltos's interpretation of the law is not completely unfounded. The relevant provision of the PhilHealth Circular states:

> 2. The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility and for the improvement of their capabilities as would enable them to provide better health services:
>
> x x x x x x x x x
>
> **c. Five percent (5%) for non-health professionals/staff, including volunteers and community members of health teams (e.g., Women's Health Team, Community Health Team).**[19]

Clearly, the regulation did not provide a definition of who may be considered as "non-health professionals." It only gave a few examples and left the rest open to interpretation.

When a law or circular leaves room for interpretation, misinterpretation is inevitable. While learned members of the bench and bar can easily discern that a municipal mayor is not covered by the said provision, an ordinary layman like Bacaltos cannot be faulted for incorrectly interpreting the ambiguous category of "non-health professionals" in the PhilHealth Circular. Even the municipal accountant was not certain how to interpret the subject provision as evidenced by his annotation in the payroll summary. Indeed, as the municipal mayor, Bacaltos is a non-health professional who exercises control and supervision over the Municipal Health Office. If volunteers and community members of health teams are entitled to *honoraria*, it is not farfetched to believe that a mayor who controls and supervises the operations of the entire Municipal Health Office and its personnel would likewise be considered a non-health professional. In fact, even PhilHealth Regional Vice President Chavez recognized the authority of Bacaltos over the Municipal Health Office when he sent a letter to Bacaltos, prescribing the allocation and distribution of the PFPR. Thus, when Bacaltos

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[19] Emphasis supplied.

included himself in the category of non-health professionals entitled to five percent *honoraria*, this action cannot be considered as having been done without basis.

Bacaltos's genuine belief that he was entitled to an *honorarium* negates *dolo* or wrongful or malicious intent. To stress, when the accused is alleged to have acted with evident bad faith under Section 3 (e) of RA 3019, which is the case here, the crime alleged is a crime of ***dolo***[20] — an offense committed with *wrongful or malicious intent*.[21] The same cannot be said of Bacaltos who believed in good faith, albeit erroneously, that he was covered by the PhilHealth circular.

The element of manifest partiality was absent

There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."[22] **Similar to the modality of evident bad faith, mere partiality is not sufficient — the same must be manifest.**

Here, there is no ground to support a finding that Bacaltos acted with manifest partiality. As discussed, Bacaltos cannot be faulted for misinterpreting the ambiguous provision in the PhilHealth Circular. His interpretation is not entirely baseless as to amount to a deliberate misapplication of the said circular. Furthermore, Bacaltos knew that his entitlement to the *honorarium* was still contingent on PhilHealth's approval in view of the reservation expressed by the Municipal Accountant with respect to his receipt of the *honorarium*. **Thus, even without a Notice of Disallowance from the Commission on Audit**

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[20] *Uriarte v. People*, 540 Phil. 477, 494 (2006).

[21] *Beradio v. Court of Appeals*, 191 Phil. 153, 163 (1981).

[22] *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64916>.

(COA), he returned ₱33,478.12,[23] **representing all the moneys he received pursuant to the PhilHealth Circular, which amount is ₱15,965.62 more than the *honorarium* subject of this case.** To my mind, these are badges of good faith proving that Bacaltos honestly believed that he was entitled to an *honorarium*.

Based on the foregoing, no manifest partiality can be imputed to Bacaltos. When the language of the law or regulation is not clear, as in this case, there is all the more basis to give the accused the benefit of the doubt for his erroneous interpretation and acquit him of the charge for violation of Section 3 (e) of RA 3019.

The element of gross inexcusable negligence was absent

While the Sandiganbayan did not premise its conviction on this ground, it may nonetheless be apropos to discuss this element.

Neither is the element of gross negligence present in this case. Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[24]

In *Yapyuco v. Sandiganbayan*,[25] the Court stated that "[i]n criminal negligence, the injury caused to another **should be unintentional, it being the incident of another act performed without malice**," and "that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence"[26] which is a form of negligence.

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[23] *Rollo*, p. 144.

[24] *Roy III v. Ombudsman*, G.R. No. 225718, March 4, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66111>.

[25] 689 Phil. 75 (2012).

[26] *Id.* at 123.

Bacaltos's act of receiving an *honorarium* under the mistaken belief that he is entitled thereto is one of *dolo*, not *culpa*. He is charged with "willfully, unlawfully, criminally,"[27] causing undue injury to the government. A crime alleged to be *willfully* committed is contrary to an act predicated on negligence or *culpa*. Hence, there could not have been gross inexcusable negligence or *culpa* in this case.

To stress, Bacaltos's violation of a provision in a PhilHealth Circular that is not penal in nature, does not, as it should not, ***automatically*** translate into evident bad faith, manifest partiality, or gross inexcusable negligence that makes one guilty of a violation of Section 3 (e) of RA 3019. For it to amount to a violation of Section 3 (e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that ***the prosecution must prove the existence of factual circumstances that point to fraudulent intent***.

The prosecution was not able to prove beyond reasonable doubt the element of causing undue injury

The element of causing undue injury to the government is likewise absent in the present case.

RA 3019 was crafted as an anti-graft and corruption measure. The crux of the acts punishable under RA 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized."[28] Graft entails the acquisition of gain in *dishonest* ways.[29]

Thus, in charging a public officer of "causing undue injury," it is not enough that damage was actually inflicted in violation

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[27] See *Rollo*, p. 5.

[28] Senate Deliberations of RA 3019 dated July 1960.

[29] *BLACK'S LAW DICTIONARY* 794 (9th ed. 2009).

of laws, rules and regulations. The damage must have been effected with *corrupt intent, a dishonest design, or some unethical interest*. This is in keeping with the purpose of RA 3019, at the heart of which is the concept of graft.

I realize that this is not the understanding under the current state of jurisprudence. In *Guadines v. Sandiganbayan*,[30] the Court defined undue injury this way:

> The term "undue injury" in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." The Court said so in *Llorente vs. Sandiganbayan*, thus:
>
> > In jurisprudence, "undue injury" is consistently interpreted as "actual damage." Undue has been defined as "more than necessary, not proper, [or] illegal"; and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.[31]

Under current jurisprudence, in order to be found guilty of causing undue injury, it is enough that the public officer has inflicted damage to another.[32] Proof of the extent or quantum of damage is not essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.[33]

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[30] 665 Phil. 563 (2011).

[31] *Id.* at 577. (Emphasis and citation omitted)

[32] The mode of giving unwarranted benefit, advantage or preference to another does not require damage. *Sison v. People*, *supra* note 4 (damage is not required under the mode of giving unwarranted benefit, advantage or preference to another), with *Guadines v. Sandiganbayan*, *supra* note 30 (damage is required under the mode of causing undue injury which is consistently interpreted as similar to the civil concept of actual damage).

[33] *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 718 (2005), citing *Fonacier v. Sandiganbayan*, *supra* note 6. But see *Tiongco v. People* (accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/

I respectfully submit that this line of reasoning should no longer be followed.

The aforementioned understanding of "undue injury" is too broad that every single misstep committed by public officers that result in injury to any party falls under the definition and would thus possibly be criminally punishable. Every error — no matter how minor — would satisfy the fourth element as the threshold is simply that an injury be inflicted on another. For instance, an allowance withheld in good faith based on an interpretation of the law that is subsequently judicially declared incorrect would be sufficient basis for affirming the existence of the fourth element, which may lead to the incarceration of a public officer simply because he misunderstood a provision that is only later on revealed to be clear and unambiguous by members of the bench who are well-versed in principles of statutory construction and the law.

Granted that the maxims "ignorance of the law excuses no one" and "public office is a public trust" are true, the Court should refrain from interpreting laws without heed to its practical consequences. By maintaining the threshold for the fourth element at the bare minimum of inflicting damage to another, the Court will effectively discourage individuals from joining public service. **It is simply unreasonable to criminally punish every little mistake that incidentally caused damage to another even when these acts were *not done with corrupt intent*.**

In the instant case, for example, Bacaltos's act of receiving an *honorarium* was motivated not by any corrupt intent to cause injury to the government or to unduly receive any illegal pecuniary benefit. Based on the evidence, his actuations were simply founded on his honest belief that he was a non-health professional exercising control and supervision over the Municipal Health Office and its personnel, that therefore entitled him to receive an *honorarium*. Hence, no graft and corruption

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64833>) where the Court held that the undue injury must be specified, quantified and proven to the point of moral certainty.

actually transpired. **There was no showing that Bacaltos had fraudulent, much less corrupt, intent to cause damage to the Government. Again, he even returned more than what he actually received.**

I reiterate my position in *Villarosa v. People*[34] that not all violations of a law or regulation are equivalent to evident bad faith, manifest partiality, or gross inexcusable negligence *even if* they cause undue injury to any party. **For an act to fall under Section 3 (e) of RA 3019, the same must be done with *fraudulent and corrupt intent*.** Such is the purpose of RA 3019 which this Court is mandated to uphold.

Based on the foregoing, I vote to **ACQUIT** accused-appellant Lionel Echavez Bacaltos of the crime of violation of Section 3 (e) of RA 3019.

EN BANC

[G.R. No. 252117. July 28, 2020]

IN THE MATTER OF THE URGENT PETITION FOR THE RELEASE OF PRISONERS ON HUMANITARIAN GROUNDS IN THE MIDST OF THE COVID-19 PANDEMIC,

DIONISIO S. ALMONTE, represented by his wife GLORIA P. ALMONTE, IRENEO O. ATADERO, JR., represented by his daughter APRILLE JOY A. ATADERO, ALEXANDER RAMONITA K. BIRONDO, represented by his sister JEANETTE B. GODDARD, WINONA MARIE O. BIRONDO, represented by her sister-in-law JEANETTE B. GODDARD, REY CLARO CASAMBRE, represented

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[34] *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020.

by his daughter XANDRA LIZA C. BISENIO, FERDINAND T. CASTILLO, represented by his wife NONA ANDAYA-CASTILLO, FRANCISCO FERNANDEZ, JR., represented by his son FRANCIS IB LAGTAPON, RENANTE GAMARA, represented by his son KRISANTO MIGUEL B. GAMARA, VICENTE P. LADLAD, represented by his wife FIDES M. LIM, EDIESEL R. LEGASPI, represented by his wife EVELYN C. LEGASPI, CLEOFE LAGTAPON, represented by her son FRANCIS IB LAGTAPON, GEANN PEREZ, represented by her mother ERLINDA C. PEREZ, ADELBERTO A. SILVA, represented by his son FREDERICK CARLOS J. SILVA, ALBERTO L. VILLAMOR, represented by his son ALBERTO B. VILLAMOR, JR., VIRGINIA B. VILLAMOR, represented by her daughter JOCELYN V. PASCUAL, OSCAR BELLEZA, represented by his brother LEONARDO P. BELLEZA, NORBERTO A. MURILLO, represented by his daughter NALLY MURILLO, REINA MAE NASINO, represented by her aunt VERONICA VIDAL, DARIO TOMADA, represented by his wife AMELITA Y. TOMADA, EMMANUEL BACARRA, represented by his wife ROSALIA BACARRA, OLIVER B. ROSALES, represented by his daughter KALAYAAN ROSALES, LILIA BUCATCAT, represented by her grandchild LELIAN A. PECORO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, EDUARDO AÑO, in his capacity as Secretary of the Interior and Local Government, MENARDO GUEVARRA, in his capacity as Secretary of Justice, J/DIRECTOR ALLAN SULLANO IRAL in his capacity as the Chief of the Bureau of Jail Management and Penology, USEC. GERALD Q. BANTAG, in his capacity as the Director General of the Bureau of Corrections, J/CINSP. MICHELLE NG-BONTO in her capacity as the Warden of the Metro Manila District Jail 4, J/CINSP. ELLEN B. BARRIOS, in her capacity as the Warden of the Taguig City Jail Female Dorm, J/SUPT. RANDEL H. LATOZA in his**

capacity as the Warden of the Manila City Jail, J/SUPT. CATHERINE L. ABUEVA, in her capacity as the Warden of the Manila City Jail-Female Dorm, J/CSUPT. JHAERON L. LACABEN, in his capacity as the Correction Superintendent New Bilibid Prison-West, CTSUPT. VIRGINIA S. MANGAWIT, in her capacity as the Acting Superintendent of the Correctional Institution for Women, *respondents.*

PERALTA, *C.J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE; WHEN BAIL IS NOT A MATTER OF RIGHT; RESOLVING THE QUESTION OF WHETHER PETITIONERS DESERVE PROVISIONAL LIBERTY, WHICH IS CERTAINLY A QUESTION OF FACT, IS NOT THE PROVINCE OF THIS COURT. –– The release of petitioners on bail is restricted by twin fundamental provisions of the Constitution and the Rules of Court. Section 7 of Rule 114 of the Rules of Court instructs that a person charged with a capital offense or with an offense punishable by *reclusion perpetua* or life imprisonment shall not be entitled to bail when the evidence of guilt is strong. The rule echoes from Section 13, Article III of the Constitution which stresses that bail, while ordinarily a right of an accused, is not available to those charged of a capital offense or an offense punishable by life imprisonment or *reclusion perpetua* when the evidence of guilt is strong. x x x [P]etitioners are all charged with crimes or offenses that are punishable by death, life imprisonment or *reclusion perpetua*. Worse, one of them was already convicted by the trial court. Hence, none of the petitioners can claim to be entitled to bail as a matter of right. Their entitlement to bail is a matter reposed to judicial discretion—particularly, to the discretion of the court where their cases are pending. The question of whether petitioners are deserving of provisional liberty, much more of whether the evidence of guilt against them are strong, are certainly questions of fact. Resolving such questions in the first instance is not, and has never been, the province of this Court. It is not difficult to see the merit in the OSG's argument, therefore, that the instant petition suffers from infirmity—for the same not only ignores

the doctrine of hierarchy of courts—but also implores this Court to act on a matter that lies outside its competence as it is not ordinarily legally equipped to evaluate evidence respecting the right to bail.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; APPLICATION FOR BAIL OR RECOGNIZANCE; JUDICIAL DISCRETION IN GRANTING BAIL MAY BE EXERCISED ONLY DURING BAIL HEARING WITH DUE NOTICE TO THE PROSECUTION AND AFTER THE PERTINENT EVIDENCE IS SUBMITTED. —[J]udicial discretion in granting bail may be exercised only after pertinent evidence is submitted to a court during a bail hearing after due notice to the prosecution. The necessity, if not indispensability, of a bail hearing under the circumstances is all the more revealed if we consider that certain factors in the fixing of a bail bond–such as the nature and circumstances of the crime, character and reputation of the accused, the weight of the evidence against him, the probability of the accused appearing at the trial, whether or not the accused is a fugitive from justice, and whether or not the accused is under bond in other cases—unequivocally require the presentation of evidence and a reasonable opportunity for the prosecution to refute it.

3. ID.; ID.; ID.; APPLICABILITY OF THE DOCTRINES IN *ENRILE V. SANDIGANBAYAN, ET AL.* (*ENRILE*); THE COURT NEVER QUALIFIED THE *ENRILE* RULING AS HAVING ONLY A *PRO HAC VICE* APPLICATION; *PRO HAC VICE* DECISIONS HAS ALREADY BEEN DECLARED ILLEGAL IN OUR JURISDICTION; MEANING AND CONCEPT OF *PRO HAC VICE*, REITERATED. — *Pro hac vice* is a Latin term meaning "*for this one particular occasion.*" Similarly, a *pro hac vice* ruling is one ***"expressly qualified as xxx cannot be relied upon as a precedent to govern other cases."*** The Court never expressly qualified the *Enrile* ruling as having only a *pro hac vice* application. In fact, the Court even if it minded to, could not have validly made such qualification, considering that the promulgation of *pro hac vice* decisions has already been declared as illegal in our jurisdiction. In the 2017 *en banc* case of *Knights of Rizal v. DMCI Homes, Inc.*, we held: *Pro hac vice* means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in

other cases. **A *pro hac vice* decision violates statutory law – Article 8 of the Civil Code – which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."** The decision of the Court in this case cannot be *pro hac vice* because by mandate of the law every decision of the Court forms part of the legal system of the Philippines. **If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution.**

4. ID.; ID.; ID.; ID.; *ENRILE* DOES NOT APPLY AS THE CIRCUMSTANCES THEREIN ARE DIFFERENT FROM THE CIRCUMSTANCES IN CASE AT BAR. — Petitioners err in their invocation of *Enrile* simply because the circumstances in that case are different from the circumstances herein. *First,* the petitioner in *Enrile*—the Senator Juan Ponce Enrile—underwent bail hearing with the *Sandiganbayan* prior to his resort to this Court. What Senator Enrile assailed before this Court then was the Sandiganbayan's denial of his *Motion to Fix Bail* and its *Motion for Reconsideration.* In the instant case, however, petitioners are asking the Court to grant their provisional liberty by way of bail or recognizance without filing a motion before the trial courts having jurisdiction over their respective cases. *Second,* in his bail hearing for the *Sandiganbayan,* Senator Enrile was able to present evidence of his current fragile state of health. Based on that, the Court was able to infer that Senator Enrile's advanced age and ill health required special medical attention. On the other hand, to prove their medical conditions, petitioners herein attached medical certificates and other documents in their petition. However, the Court cannot simply take judicial notice of petitioners' age and health conditions. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support. Age and health conditions necessitate the presentation of evidence. This further emphasizes the need to conduct a bail hearing. *Lastly,* Senator Enrile's medical condition was not the only consideration why he was afforded the benefit of bail. In

Enrile, the Court affirmed the right to bail because Senator Enrile was likewise not shown to be a danger to the community and his risk of flight was nil – a conclusion that was impelled not only by his social and political standing, but also by his voluntary surrender to the authorities.

5. ID.; ID.; ID.; THE COURT TREATS THE INSTANT PETITION AS PETITIONERS' BAIL OR RECOGNIZANCE APPLICATION AND REFER TO THE TRIAL COURTS WITH THE DIRECTIVE TO RESOLVE WITH DISPATCH. –– We come to the conclusion that petitioners are probably seeking administrative – not judicial – remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than to: (a) treat the instant petition as petitioners' application for bail or recognizance, (b) refer the same to the respective trial courts where their criminal cases are pending for resolution and (c) direct said courts to resolve such incidents with deliberate dispatch. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As they hereby complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing it is that same exact fear which looms outside of prison walls.

6. ID.; EVIDENCE; JUDICIAL NOTICE; THE COURT TAKES JUDICIAL NOTICE OF THE FACT THAT THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY (BJMP) AND THE BUREAU OF CORRECTIONS HAVE IMPLEMENTED PREVENTIVE AND PRECAUTIONARY MEASURES AGAINST A POTENTIAL COVID-19 OUTBREAK IN DETENTION AND CORRECTIONAL FACILITIES. — The Court is mindful that a contagion within the country's penal institutions is neither unlikely nor impossible. Yet, we take judicial notice of the fact that following the executive

declaration of a public health emergency in March, the Bureau of Jail Management and Penology *(BJMP)* and the Bureau of Corrections, under a joint mandate to protect the health and safety of all PDLs and detention prisoners, have implemented preventive and precautionary measures against a potential COVID-19 outbreak in detention and correctional facilities. The measures include the total lockdown of penal institutions, the designation of isolation facilities within premises, the procurement of personal protective equipment, as well as nutrition and on-site education campaigns. Only recently, the Bureau of Corrections has also put in place necessary infrastructure to provide inmates facility for online visits/video conference with their relatives.

LEONEN, *J.*, *separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE AND RECOGNIZANCE ACT OF 2012 (RA 10389); BAIL OR RECOGNIZANCE AS TRADITIONAL MODES OF SECURING PROVISIONAL RELEASE OF AN ACCUSED PENDING TRIAL OR APPEAL, ELABORATED. — The traditional mode of securing provisional release of an accused pending trial or appeal is through bail or recognizance. Article III, Section 13 of the 1987 Constitution provides: SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required. Under the Revised Rules of Criminal Procedure, bail is the security given by or on behalf of a person in custody so that they may be provisionally released. It is meant to ensure their appearance before any court. Generally, all persons are entitled to the right to be released on bail. However, the grant of bail is subject to several conditions, requirements, procedures, and qualifications. Likewise, there are circumstances when release on bail shall not be granted. In *People v. Escobar*, this Court explained that the right to bail is premised on the presumption of innocence[.] x x x Meanwhile, release on recognizance is generally allowed if it is provided by law or the Rules of Court.

Rule 114, Section 15 of the Revised Rules of Criminal Procedure states: SECTION 15. *Recognizance.* — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person. x x x In *People v. Abner*, this Court defined recognizance as a record entered in court allowing for the release of an accused subject to the condition that they will appear for trial[.] x x x Under Republic Act No. 10389, or the Recognizance Act of 2012, release on recognizance is allowed if any person in custody or detention "is unable to post bail due to abject poverty." It is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment, so long as the application is timely filed. Republic Act No. 10389 further enumerates the procedure, requirements, and disqualifications for release on recognizance. In *Espiritu v. Jovellanos*, this Court enumerated the instances when release on recognizance is allowed under Rule 114 of the Revised Rules of Criminal Procedure: x x x [T]he release on recognizance of any person under detention may be ordered only by a court and only in the following cases: (a) when the offense charged is for violation of an ordinance, a light felony, or a criminal offense, the imposable penalty for which does not exceed 6 months imprisonment and/or ₱2,000 fine, under the circumstances provided in R.A. No. 6036; (b) where a person has been in custody for a period equal to or more than the minimum of the imposable principal penalty, without application of the Indeterminate Sentence Law or any modifying circumstance, in which case the court, in its discretion, may allow his release on his own recognizance; (c) where the accused has applied for probation, pending resolution of the case but no bail was filed or the accused is incapable of filing one; and (d) in case of a youthful offender held for physical and mental examination, trial, or appeal, if he is unable to furnish bail and under the circumstances envisaged in P.D. No. 603, as amended (Art. 191).

2. ID.; ADMINISTRATIVE LAW; BUREAU OF CORRECTIONS AND BUREAU OF JAIL MANAGEMENT AND PENOLOGY; OTHER MODES OF RELEASE OF PRISONERS PROVIDED IN THEIR RESPECTIVE MANUAL, ENUMERATED. — The other modes of release are reflected in the Bureau of Corrections Operating Manual, which provides the following: SECTION 1. *Basis for Release*

of an Inmate. – An inmate may be released from prison: a. upon the expiration of his sentence; b. by order of the Court or of competent authority; or c. after being granted parole, pardon or amnesty. SECTION 2. *Who May Authorize Release.* – The following are authorized to order or approve the release of inmates: a. the Supreme Court or lower courts, in cases of acquittal or grant of bail; b. the President of the Philippines, in cases of executive clemency or amnesty; c. the Board of Pardons and Parole, in parole cases; and d. the Director, upon the expiration of the sentence of the inmate. Similarly, the Revised Bureau of Jail Management and Penology Comprehensive Operations Manual provides the modes and guidelines for the release of inmates. Section 31 states in part: SECTION 31. *Modes and Guidelines for Release.* – The following modes and guidelines shall be observed when inmates are to be released from detention: 1. An inmate may be released through: a. Service of sentence; b. Order of the Court; c. Parole; d. Pardon; and e. Amnesty.

3. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; HUMANITARIAN CONSIDERATION OR MEDICAL CONDITION IS NOT A LEGAL JUSTIFICATION FOR TEMPORARY RELEASE OF DETAINEES. — Release on bail for humanitarian considerations or medical conditions is not found in the Constitution, in any local or international law, or in any rule of procedure. While petitioners enjoy the constitutional rights to life and health, these rights do not result in the automatic grant of bail for those who are of advanced age and frail health. Detainees cannot be allowed temporary release without following the law. If petitioners or any other detainees seek to be released on bail, a hearing is necessary to determine the amount of bail. If they are charged with a crime punishable by *reclusion perpetua* or life imprisonment, a hearing is necessary to determine whether the evidence of guilt is strong.

4. ID.; ID.; ID.; ID.; POLICE POWER CANNOT JUSTIFY DENYING A PERSON'S RIGHT TO PROVISIONAL LIBERTY; NEITHER THE NATURE OF THE ALLEGED CRIMES CAN JUSTIFY PETITIONER'S CONTINUED CONFINEMENT. — Police power cannot justify denying a person's right to provisional liberty. The Constitution provides that all persons, except those punished with *reclusion perpetua* whose evidence of guilt is strong, have a right to provisional

liberty. What justifies the accused's deprivation of liberty is the determination that the evidence of guilt is strong[.] x x x To use the nature of the alleged crimes to justify petitioners' continued confinement denies them not only of due process, but also of their right to be presumed innocent until proven guilty. As Justice Perlas-Bernabe states, "an accused cannot just be left to perish and die in the midst of a devastating global pandemic, without any recourse whatsoever." National security and public safety are no blanket excuses to violate the accused's constitutional rights. Thus, without the appropriate hearing in the trial courts, this Court should not conclude if petitioners are entitled to release on bail or recognizance based on the crimes charged against them.

5. ID.; ID.; 1987 CONSTITUTION *VIS-À-VIS* ANTI-TORTURE ACT (RA 9745); TORTURE AND OTHER CRUEL, INHUMAN, AND DEGRADING PUNISHMENT, DEFINED AND DISTINGUISHED; THE RIGHT AGAINST TORTURE AND CRUEL, INHUMAN, AND DEGRADING PUNISHMENT IS ABSOLUTE; IT IS PROTECTED EVEN IN TIMES OF WAR OR A PUBLIC EMERGENCY. — The 1987 Constitution guards against the infliction of any cruel, degrading, or inhuman punishment. x x x In *Alejano v. Cabuay*, this Court defined punishment as a chastisement that causes suffering through harm or incapacitation that is more severe than the discomfort of detention[.] x x x Despite a few statutes and rules promoting the rehabilitation of offenders, our criminal justice system is primarily punitive, seeking to deter and penalize felonies and crimes through imprisonment and fines. Thus, the Constitution does not prohibit retributive justice in itself. What it prohibits is cruel, degrading, or inhuman punishment. x x x With the enactment of the 1987 Constitution, the words "degrading or inhuman punishment" were added to the prohibition. x x x The adding of "inhuman" and "degrading" to the prohibited punishment reveals that these words are meant to be treated separately from cruel or unusual punishment, and meant to address different circumstances. In *People v. Dionisio*, this Court explained that punishment is cruel and unusual when the penalties imposed are inhuman, barbarous, and shocking to the conscience[.] x x x In *Maturan v. Commission on Elections*, this Court reiterated that it is the punishment's character, not its severity, that makes it cruel and inhuman. It would have to

be an infliction of "corporeal or psychological punishment that strips the individual of [their] humanity"[.] x x x The constitutional right thus necessarily ensures that all persons are protected against all forms of torture. Republic Act No. 9745, otherwise known as the Anti-Torture Act, outlines what constitutes torture and other types of cruel and degrading treatment or punishment: x x x (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter. x x x Cruel, inhuman, and degrading punishment involves causing suffering, gross humiliation, or debasement to a person in custody. Torture, on the other hand, generally involves intentionally causing severe mental or physical agony for a specific purpose or for any reason based on discrimination. The right against torture and cruel, inhuman, and degrading punishment is absolute. It is protected in all cases—even in times of war or a public emergency[.] x x x Accordingly, the law provides remedies for victims of torture or other cruel, degrading, and inhuman treatment or punishment x x x [I]t is clear that the State is meant to protect its people's right against cruel, degrading, and inhuman punishment.

6. ID.; ID.; 1987 CONSTITUTION IN RELATION TO INTERNATIONAL LAWS; RIGHT TO LIFE AND HEALTH; ESSENTIAL COMPONENTS OF RIGHT TO LIFE, EXPLAINED. — All persons enjoy the right to life. This is enshrined under Article III, Section I of the 1987 Constitution: SECTION 1. No person shall be deprived of life,

liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. In *Secretary of National Defense v. Manalo,* this Court granted the first petition for a writ of amparo, recognizing the right to life, liberty, and security of victims of enforced disappearances. It clarified that the right to life is not only a guarantee of the right to live, but to *live securely,* assured that the State will protect the security of one's life and property[.] x x x In the same case, this Court expounded that the right to security, as an adjunct of the right to life, is broken down to its essential components: (1) freedom from fear; (2) guarantee of "bodily and psychological integrity or security"; and (3) government protection of rights[.] x x x An essential component of the right to life, and equally fundamental, is the right to health. x x x The right to life and the right to health are guaranteed in our international laws. Article 25 of the Universal Declaration of Human Rights provides that everyone has a right to health, well-being, and medical care[.] x x x The International Covenant on Economic and Social and Cultural Rights also provides that everyone has the right to attain the highest standard of physical and mental health. To this end, state parties shall undertake all measures to prevent, treat, and control epidemics.

7. ID.; ID.; ID.; THE NELSON MANDELA RULES AND ITS PRECEDENTS, THE UNITED NATIONS MINIMUM STANDARD ON THE TREATMENT OF PRISONERS, AND RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY; NATURE AND BINDING EFFECT, ELABORATED. — [T]he Nelson Mandela Rules and its precedent, the United Nations Minimum Standard on the Treatment of Prisoners, cannot simply be disregarded as non-binding norms. The principles and fundamental rights on which these declarations are based—the right to life, the prohibition of torture, and the prohibition of cruel and unusual punishment—have attained a *jus cogens* status. These Rules have been adhered to and transformed into local legislation and incorporated in our penal institutions. To view a resolution adopted by the United Nations General Assembly as not being *jus cogens,* only being recommendatory, is limited. It fails to consider that a resolution of the United Nations General Assembly may be any of the following: (1) an articulation of a customary international norm; (2) a reiteration of existing treaty obligations; (3) a reflection

of emerging international norms and standards, or commonly referred to as "soft law"; or (4) a binding source of obligation that is judicially enforceable once acceded to by a member state. *First*, the Nelson Mandela Rules articulates customary international norms on the treatment of prisoners. These are based on one's fundamental dignity, including those under confinement. These are codified into several declarations and conventions that the Philippines have ratified. In *Razon v. Tagitis*, this Court recognized "resolutions relating to legal questions in the [United Nations] General Assembly" as material sources of international customs[.] x x x It is erroneous to dismiss the Nelson Mandela Rules just because the United Nations General Assembly resolutions are only recommendatory. The preambulatory clauses of Resolution No. 70/175, which adopted the Nelson Mandela Rules, state that the precedent United Nations Minimum Standard on the Treatment of Prisoners has already attained the status of a "universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence." *Second*, a resolution of the United Nations General Assembly may reiterate an existing treaty obligation, as in the preambulatory clause of Resolution No. 70/175[.] x x x Notably, the Philippines acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. x x x The Philippines also acceded to the Optional Protocol to the Convention against Torture. Among its objectives is to establish regular visits of detention places and prisons from international and domestic bodies to prevent torture and other cruel, inhuman, or degrading punishment or treatment. *Third*, the Nelson Mandela Rules reflects emerging intenational norms and standards, or commonly referred to as "soft law." It partakes of "new soft law standards" that function as a "significant normative reference for national legislators, courts, correctional administrators, and advocates on a range of prison conditions issues." In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, this Court held that a "soft law," while not necessarily binding, has great political influence[.] x x x *Finally*, the Nelson Mandela Rules could not be ignored, precisely because the Philippines adopted these standards through its express adherence to the established standards of the United Nations under Republic Act No. 10575, or the Bureau of Corrections Act of 2013. x x x While the law was enacted in 2013, prior to the adoption of the

Nelson Mandela Rules in 2015, its express wording refers to standards adopted by the United Nations.

8. ID.; ID.; ID.; AS THE FOUNDING PRINCIPLES OF INTERNATIONAL LAW, FUNDAMENTAL HUMAN RIGHTS, WHICH INCLUDE THE RIGHT TO LIFE, PROHIBITION FROM TORTURE, INHUMAN, AND DEGRADING TREATMENT, ARE AFFIRMED BY THE 1987 CONSTITUTION AS A STATE POLICY; NO EXTRA-ORDINARY CIRCUMSTANCE, NOT EVEN THE GLOBAL COVID-19 PANDEMIC, CAN JUSTIFY ACTIONS VIOLATING THESE FUNDAMENTAL RIGHTS. — It is not the Nelson Mandela Rules as written that should be in focus. What is relevant are the founding principles of international law on which the Nelson Mandela Rules are based. The first sentence of the Nelson Mandela Rules' preambulatory clause states that in its adoption, the United Nations General Assembly was guided by the "fundamental human rights, in the dignity and worth of the human person, without distinction of any kind." These fundamental human rights include the right to life and the prohibition against torture and other cruel, inhuman, or degrading punishment, both of which are anchored on one's inherent dignity. These principles are affirmed by the 1987 Constitution as a State policy. Thus, persons deprived of liberty must be treated with humanity and with respect for their inherent dignity. Furthermore, "provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation whatsoever, having acquired a *jus cogens* character." More important, the Philippines' compliance with the United Nations standards should be assessed based on how the country understood the implications of adherence to these standards. This is done by examining the texts of applicable local legislations and administrative issuances of penal institutions. These local and international rules and standards operationalize the State's duty on the safekeeping of its prisoners and affirm how the inherent dignity of a person is to be valued, even when deprived of liberty. As discussed at length earlier, our local laws and the international standards we have adhered to reveal that while our prisoners and detainees' right to liberty is restricted, their right to be treated humanely, including their right to reasonably safe, sanitary, and sufficient provisions and facilities, is not suspended and is not merely recommendatory. Thus, no extraordinary circumstance, not even

the global COVID-19 pandemic, can justify actions violating these fundamental rights.

9. ID.; ID.; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL POWER; THIS COURT HAS THE POWER TO COMPEL THE BUREAU OF CORRECTIONS TO IMPLEMENT SECTION 4 OF REPUBLIC ACT NO. 10575. — This Court has the power to compel the Bureau of Corrections to implement Section 4 of Republic Act No. 10575. Judicial action on the enforcement of a law is based on a cause of action, which is "the act or omission by which a party violates the right of another." x x x What determines judicial power is the existence of one's right and its violation by another person or entity. This power is not restricted by the vagueness of the words used in the law, or the absence of parameters as to what constitutes a violation of the right. Regardless, Section 4 of Republic Act No. 10575 clearly creates a right and indicates the standards by which that right is fleshed out. Petitioners assert a violation of that right. There is, thus, a cause of action that calls for the exercise of judicial power.

10. ID.; ID.; ID.; ID.; JUDICIAL REVIEW; VIOLATIONS OF CONSTITUTIONAL RIGHTS ARE JUSTICIABLE MATTERS AND THE COURTS HAVE THE POWER TO DEFINE WHAT CONSTITUTES VIOLATIONS OF FUNDAMENTAL CONSTITUTIONAL RIGHTS; IT IS PRECISELY WHY THIS COURT EXISTS. — Violations of the constitutional right against cruel, degrading, and inhuman punishment, the rights to life and health, the rights of prisoners and detainees under international law principles and conventions, and our own local laws, rules, and procedures are justiciable matters. x x x Under Article VIII, Section 1 of the 1987 Constitution, courts are given judicial power "to settle actual controversies involving *rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." The Bill of Rights is an enumeration of rights that are *legally demandable and enforceable.* Courts will hear and decide cases involving violations of these rights, or any statute providing standards to comply with these rights. This aspect of judicial review, to measure the constitutionality of a government act or inaction *vis-à-vis* an enumeration of an

individual or group right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1. Thus, with respect to actual controversies involving violations of fundamental constitutional rights, this Court is not powerless to ensure its respect and implementation. It is precisely why this Court exists. x x x [P]etitioners' cause of action calls for this Court's interpretation of constitutional text. When this Court interprets the Constitution and fleshes out its text, its decisions form part of the law of the land. The Judiciary's constitutional interpretations are guided not only by the Constitution itself, but by precedents that have construed the text and articulated its intent through particular circumstances. x x x Since petitioners anchor their cause of action on their constitutionally protected rights, courts have the power to settle the controversy, and to articulate and apply what the Constitution, statutes, and rules and regulations provide in relation to the right. Furthermore, the vagueness of the Bill of Rights' provisions does not detract from their enforceability. In fact, they were written so to leave room for future instances that can shed further light on how the provisions are to be interpreted. The Constitution is not meant to pertain to a specific moment that would restrict its application to a limited set of facts. Rather, it is meant to encapsulate circumstances that may go beyond what was initially imagined by its framers. Thus, when faced with a justiciable controversy, the Judiciary has the power to define what constitutes a violation of these provisions. x x x Bearing in mind its functions in constitutional interpretation, it cannot be said that the Judiciary is powerless in any capacity to address the subhuman conditions in our jails and prisons.

11. ID.; ID.; ID.; ID.; ID.; A PERSON DEPRIVED OF LIBERTY WHOSE CONSTITUTIONAL RIGHT HAS BEEN VIOLATED CAN FILE AN ACTION IN THE PROPER TRIAL COURT; REQUIREMENTS TO BE ENTITLED TO THE RELIEF, ENUMERATED; TESTS IN DETERMINING THE "INTENT TO PUNISH" FROM THE RESTRICTIONS AND CONDITIONS OF CONFINEMENT, CITED AND APPLIED. — Considering that the violation of constitutional rights is a justiciable matter, aggrieved persons deprived of liberty can file an action in the proper trial court. If yet to be convicted, such that the case is still on trial or on appeal, detainees should be able to file a motion for release invoking a violation of their

constitutional right. If already convicted with finality, a prisoner should be able to file for a writ of *habeas corpus*. This is in line with *Gumabon v. Director of the Bureau of Prisons*, where this Court allowed the release of prisoners after a finding that their detention violated their constitutional right to equal protection of the laws[.] x x x However, to be entitled to the reliefs mentioned, one must first allege and prove the following: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand on the relevant agencies of government; and (d) the intentional or persistent refusal or negligence on the part of the government agency or official to address the cruel conditions of the violation of the statutory or constitutional provisions. x x x [T]he guidelines in *Alejano v. Cabuay*, the same case where this Court discussed punishment, may be used in granting reliefs against violations of the right against cruel, degrading, and inhuman punishment, right to life, and right to health of persons deprived of liberty. x x x In *Alejano*, this Court adopted the tests in the United States case of *Bell v. Wolfish* in determining the "intent to punish" from the restrictions and conditions of confinement: (1) if these are arbitrary, purposeless, and do not satisfy a government interest; (2) assuming that there is an alternative government interest *(i.e.* facilities' operational concerns), if the conditions appear "excessive in relation to that purpose." Applying these tests, this Court held that the bar installation was not unduly restrictive, and intended to secure the detainees. Also, the illumination and ventilation were held to be "inherent in the fact of detention, and do not constitute punishments on the detainees." Moreover, this Court held that their overall conditions—their individual confinement, regular meals, clean and livable cells—were not inhuman, degrading, and cruel, as compared to the congested city and provincial jails. Thus, this Court did not infer an intent to punish in their case.

12. ID.; ID.; ID.; ID.; ID.; A PETITION FOR *HABEAS CORPUS* MAY ALSO BE A PROPER REMEDY TO QUESTION CONDITIONS OF CONFINEMENT; THE CAUSAL LINK BETWEEN NOTORIOUS JAIL CONDITIONS AND A PERSON DEPRIVED OF LIBERTY'S EXCLUSION FROM THE STANDARD OF CARE AVAILABLE TO A FREE PERSON MUST BE PROVEN FIRST. — I view that a petition

for *habeas corpus* may also be a proper remedy to question conditions of confinement. Thus, in allowing petitioners' temporary release, the ultimate issue to be resolved is whether or not the State has been maintaining their jail or detention facilities in compliance with the Constitution, local laws, and international standards on the rights of persons deprived of liberty. However, a mere allegation that constitutional rights have been violated is insufficient. I agree with Justice Caguioa that the causal link between notorious jail conditions and a person deprived of liberty's exclusion from the standard of care available to a free person must be proven first. This is necessary to sustain a cause of action anchored on the right against cruel and inhuman punishment and relevant international laws.

13. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; MATERIAL REQUISITES, REITERATED. — [T]his Court has summed up the requisites of judicial notice. In *State Prosecutors v. Muro*: Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.

14. ID.; ID.; ID.; THE COURT MAY TAKE JUDICIAL NOTICE OF THE STATE OF JAIL CONGESTION IN THE PHILIPPINES, THE NATURE OF TRANSMISSION OF COVID-19, AND ITS DEADLY EFFECTS; BUT THE COURT CANNOT GRANT A BLANKET RELEASE WITHOUT FIRST DETERMINING SEVERAL FACTS IN RELATION TO THE CONFINEMENT OF PETITIONERS OR ANY PERSON DEPRIVED OF LIBERTY SEEKING RELEASE. — [T]he nature of COVID-19 and the jail congestion in this country are matters that all courts may take judicial notice of. The fact of overcrowding in jails and the transmissibility of COVID-19 no longer need further proof. However, even if this Court takes judicial notice of these circumstances, there are several facts that must first be determined in relation to the confinement of petitioners or any other person deprived of liberty seeking release. This includes, among others, the latest data on

jail congestion and measures taken to address the chronic problem of jail overcapacity; the capabilities of the prison systems where petitioners are detained to prevent the spread of COVID-19; the demands made by petitioners to the detention facilities; any unjustified refusal or negligence on the part of the detention facilities to act on their concerns. Courts cannot grant a blanket release without determining these facts. Petitioners must establish the basis for their temporary release. To be released based on a violation of their constitutional rights, petitioners must still show the circumstances of their own detention and prove they are deprived of the basic and minimum standards of imprisonment. They should establish the individual conditions of their confinement which are not organic or consistent with the punishment imposed on them. They must invoke which constitutional rights are violated. They must show they have made a clear demand on the relevant government agencies, and that the latter intentionally or persistently refused or negligently failed to act on their concerns. They must ultimately show that the responsible government instrumentality has been compliant or negligent with constitutional, international, and local provisions and standards protecting their rights. x x x I suggest that before this Court make any finding, a full-blown hearing is necessary. Without it, it cannot be established that jail congestion and the general lack of adequate medical facilities preclude respondents from preventing the spread of COVID-19 in its facilities. Without it, the question of whether petitioners' constitutional rights were violated remains unanswered.

15. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; IN VIEW OF PERVASIVENESS OF CONGESTION IN JAILS, THIS COURT SHOULD DEVICE A REMEDY CALLED THE WRIT OF *KALAYAAN*; THIS WRIT SHOULD BE ISSUED WHEN ALL THE REQUIREMENTS TO ESTABLISH CRUEL, INHUMAN, AND DEGRADING PUNISHMENT ARE PRESENT. — In recognition of the pervasiveness of congestion in our jails, this Court should fashion a remedy called the writ of *kalayaan* similar to the writ of *kalikasan* or the writ of continuing *mandamus* in environmental cases. This Court is not without precedent in formulating rules to address pervasive and urgent violations of constitutional rights with transcendental effects. x x x This time, a writ of *kalayaan* should be issued

when all the requirements to establish cruel, inhuman, and degrading punishment are present. This is necessary considering that the continued and malicious congestion of our jails does not affect only one individual. Its issuance is grounded on this Court's rule-making authority and the extreme situation brought upon by the COVID-19 pandemic. As in *Metropolitan Manila Development Authority*, this Court is again being called to address a systemic problem that even the most basic health protocols to prevent the spread of the virus cannot address. Jail congestion is as virulent as COVID-19 itself, especially in the face of an unprecedented global pandemic. The writ of *kalayaan* may require a more constant supervision by an executive judge for the traditional or extraordinary releases of convicts or detainees. It should provide an order of precedence in order to bring the occupation of jails to a more humane level. Those whose penalties are the lowest and whose crimes are brought about, not by extreme malice, but by the indignities of poverty may be prioritized. x x x Persons deprived of liberty do not shed their humanity once they are taken into custody, yet the perennial congestion that plague our jails do not reflect this. Instead, they reveal our failure to respect the very fundamental rights that the State has guaranteed to protect. This wrong, which we have allowed to persist, is all the more pressing in the face of a highly contagious and deadly disease. Persons deprived of liberty are in need of more remedies to ensure that their detention do not prejudice their right to live. Jail congestion harms so many individuals—most of them poor, and therefore, invisible. The dawn of the COVID-19 pandemic has only made this a more urgent concern. We cannot just watch and sit idly by.

CAGUIOA, *J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE AND RECOGNIZANCE ACT OF 2012 (RA 10389); BAIL AND RECOGNIZANCE, DEFINED AND DISTINGUISHED; BAIL IS A MATTER OF RIGHT OR DISCRETION BEFORE CONVICTION; WHEN BAIL BECOMES A MATTER OF JUDICIAL DISCRETION, EXPLAINED. — Bail is the security required and given for the release of a person in custody of the law to guarantee his appearance before the court as may be required under specified

conditions. Recognizance, on the other hand, refers to "an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial." If a person in custody or detention is unable to post bail due to abject poverty, he may be released on recognizance to the custody of a qualified member of the *barangay*, city or municipality where the accused resides. Section 13, Article III of the Constitution states that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. As a corollary matter, Section 7, Rule 114 of the Rules of Court provides that regardless of the stage of the criminal prosecution, no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong. Further, Republic Act No. (R.A.) 10389 or the *Recognizance Act of 2012*, states that the release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is *not* punishable by death, *reclusion perpetua*, or life imprisonment. Thus, before conviction, bail is either a matter of right or discretion. It is a matter of right when the offense charged is punishable by any penalty lower than *reclusion perpetua*. However, bail becomes a matter of judicial discretion if the offense charged is punishable by death, *reclusion perpetua*, or life imprisonment. The court's discretion is, however, limited only to determining whether or not the evidence of guilt is strong. Consequently, bail is to be granted if evidence of guilt is not strong, and denied if evidence of guilt is strong. x x x In cases when bail is a matter of judicial discretion, the grant or denial thereof hinges on the singular issue of whether or not the evidence of guilt of the accused is strong. As observed in the Court's Decision, this necessarily requires the conduct of a bail hearing where the prosecution has the burden to prove that evidence of guilt is strong, subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal. The Court cannot perform the aforementioned bail hearing because of the well-entrenched principle that it is not a trier of facts. The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower courts. The discretion to grant or deny bail is

primarily lodged with the trial court judge who is mandated under the rules to: (1) conduct a summary hearing and receive the prosecution's evidence; and (2) provide, in its order granting or denying bail, a summary of the evidence for the prosecution and his own assessment thereof.

2. ID.; ID.; ID.; ID.; WHILE EQUITY JURISDICTION IS FOUND TO BE A SUFFICIENT JUSTIFICATION FOR THE RELAXATION OF RULES IN ORDER TO GIVE WAY TO SUBSTANTIAL MERIT OF THE CASE AND HIGHER INTEREST OF JUSTICE, THE LACK OF NECESSARY FACTUAL DETAILS BROUGHT ABOUT BY A PROPER BAIL HEARING PRECLUDES THIS COURT FROM A FULL CALIBRATION OF EACH PETITIONER'S ELIGIBILITY FOR EITHER BAIL OR RECOGNIZANCE. — In order to properly invoke the Court's equity jurisdiction, the controlling test is whether or not a court of law is unable to adapt its judgments to the special circumstances of a case as a result of the inflexibility of its statutory or legal jurisdiction. Its aim is to enable the Court to rule on the basis of substantial justice in an instance when the prescribed or customary forms of ordinary law prove inadequate. x x x **Ultimately, the Court's equity jurisdiction is found to be a sufficient justification for the relaxation of rules in order to give way to substantial merit of the case and the higher interest of justice.** Indeed, the peculiar nature of the instant petition prays for both prompt and blanket relief to be applied to differentiated cases of the individual petitioners. Thus, while I recognize their plea to resolve the instant petition based on compassion and humanitarian considerations, the want of necessary factual details brought about by a proper bail hearing precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

3. ID.; ID.; ID.; ID.; DESPITE THE INAPPLICABILITY OF *ENRILE* RULING IN THIS CASE, REFERRAL OF THE INSTANT PETITION TO THE CONCERNED TRIAL COURTS IS PROPER INSTEAD OF DISMISSING THE SAME OUTRIGHT. — [A] reading of the ruling in *Enrile* shows that there is no discernible standard for the courts to decide cases involving discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen, is that the grant of bail by the majority

in *Enrile* was a special accommodation for petitioner therein. Thus, at the risk of being repetitious, the ruling in *Enrile* should be considered as a stray decision and, echoing Justice Bernabe, must likewise be considered as *pro hac vice*. It should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations. Notably, under the Rules of Court, humanitarian considerations such as age and health are only taken into account in fixing the bail amount after a determination that evidence of guilt against the accused is not strong. However, the petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording the petitioners the appropriate reliefs within the bounds of law. In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh the petitioners' evidence at the first instance. Factual and evidentiary matters must first be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess the petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court. Thus, instead of dismissing the petition outright, I agree with the Court's ruling to refer this petition to the concerned trial courts. Exigency is better served if the trial courts where the criminal cases of the petitioners are respectively pending will hear their bail petitions and receive their evidence.

4. ID.; ID.; 1987 CONSTITUTION *VIS-À-VIS* INTERNATIONAL LAWS; RIGHT TO LIFE AND HEALTH, AND OTHER BASIC HUMAN RIGHTS OF PERSONS DEPRIVED OF LIBERTY ARE GUARANTEED BY OUR CONSTITUTION AND SEVERAL INTERNATIONAL LAWS. — All persons are guaranteed the right to life. This is constitutionally enshrined under Section 1, Article III of the Constitution[.] x x x More importantly, the right to life, being grounded on natural law is inherent and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men. Its protection is guaranteed notwithstanding one's status; neither is this right forfeited by detention or incarceration. Necessarily included in the right to

life are the State policies found in Sections 11 and 15, Article II of the Constitution, which state: SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights. xxx SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them. The above core principles in our Constitution mirror those found in several international laws, prominent of which is the Universal Declaration of Human Rights (UDHR)[.] x x x [T]he right to health is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which obliges state parties to recognize the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Philippines signed and ratified the ICESCR, which makes it a binding obligation on the part of the government. These rights do not discriminate between offenders and non-offenders as it is the declared policy of the State under the 1987 Constitution to value "every human person." Similarly, the UDHR recognizes that all persons are entitled to all the rights and freedoms set forth therein, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Thus, the notion that persons deprived of liberty (PDLs) are not entitled to the guarantee of basic human rights should be disabused. While they do not enjoy the same latitude of rights as certain restrictions on their liberty and property are imposed as a consequence of their detention or imprisonment, the foregoing international covenants and our own Constitution prove that PDLs do not shed their human rights once they are arrested, charged, placed under the custody of law, and subsequently convicted and incarcerated. The International Covenant on Civil and Political Rights (ICCPR), in particular, to which the Philippines is likewise a party, positively requires the treatment of PDLs "with humanity and with respect for the inherent dignity of the human person."

5. ID.; ID.; 1987 CONSTITUTION *VIS-À-VIS* CUSTODIAL INVESTIGATION LAW OF 1992 (RA 7438), ANTI-TORTURE ACT OF 2009 (RA 9745), NEW CIVIL CODE, AND INTERNATIONAL LAWS; PROSCRIBE THE INFLICTION OF CRUEL, DEGRADING, AND INHUMAN PUNISHMENT AGAINST ANY PRISONER OR DETAINEE. — R.A. 7438, otherwise known as the "Custodial

Investigation Law of 1992," was created pursuant to the State policy of valuing the "dignity of every human being" and guaranteeing "full respect for human rights." It defines the positive rights of all persons under custodial investigation, and outlines the concomitant duties of arresting, detaining or investigating officers to secure said rights, which include the detained person's right to be assisted by counsel. In addition, R.A. 9745, otherwise known as the "Anti-Torture Act of 2009" outlaws, foremost, any act that subjects people held in custody to any form of physical, psychological or mental harm, force, violence, threat or intimidation or any other act which degrades human dignity. Finally, Article 32 of the New Civil Code enumerates the rights and liberties of all persons, several of which pertain to the rights of the accused, and includes the freedom from excessive fines or cruel and unusual punishment. Article 32 further provides that the impeding or impairment of these rights shall be under pains of damages. When a person is detained or imprisoned, the person is afforded certain fundamental rights that affirmatively remain in effect throughout the entire period of incarceration. These rights spring from Section 19, Article III of the Bill of Rights of the Constitution, which proscribes the infliction of cruel, degrading or inhuman punishment and the employment of physical, psychological, or degrading punishment against any prisoner or detainee. It likewise affirms that the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law. Notably, both the UDHR and the ICCPR have similar prohibitions against the employment of cruel, degrading, or inhuman punishment.

6. ID.; ID.; 1987 CONSTITUTION *VIS-À-VIS NELSON MANDELA RULES* AND ITS PRECEDENTS; UNIVERSALLY ACKNOWLEDGED THE MINIMUM STANDARDS FOR THE MANAGEMENT OF PRISON FACILITIES AND TREATMENT OF PRISONERS; THESE LAWS, POLICIES, AND PRACTICES WERE CONCRETIZED IN OUR JURISDICTION THROUGH THE ENABLING STATUTES OF THE BUREAU OF CORRECTIONS (RA 10575) AND THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY (RA 6975). — [T]he Constitutional rights afforded to PDLs create corresponding duties on the part of the State to protect and promote them. In line with this, it is noteworthy that as early as 1955, the UN

adopted the Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), which constituted the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners. While these rules were merely recommendatory, they have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world. The UNSMRTP was subsequently revised in 2015 into what is now known as the *Nelson Mandela Rules*. The recent revision took into consideration the development of other international law instruments on human rights. The UNSMRTP and the *Nelson Mandela Rules* were concretized and situated within the sphere of the national experience mainly through the enabling laws of the two main agencies in charge of the country's prison system, namely the Bureau of Jail Management and Penology (BJMP) and the Bureau of Corrections (BuCor). These enabling laws contain the very corrective measures, as Commissioner Maambong adverted to during the deliberations, which seek to address the use of substandard or inadequate penal facilities under subhuman conditions. The BuCor's enabling statute, R.A. 10575, explicitly declares as a policy the promotion of the general welfare and the safeguarding of prisoners' rights in the national penitentiary. For this purpose, R.A. 10575 vests the BuCor with the mandate of safekeeping national inmates, by ensuring the "decent provision of quarters, food, water and clothing in compliance with established United Nations standards." Repeated references to the UNSMRTP are also made in its Revised Implementing Rules and Regulations (Revised IRR). Section 2 of said Revised IRR echoes the declaration of policy in the BuCor's enabling act, further stating that the basic rights of every prisoner should be safeguarded by, among other things, "creating an environment conducive to [the] rehabilitation [of prisoners] and compliant with the [UNSMRTP]." x x x The definition of safekeeping in the Revised IRR also expounded that the basic needs which PDLs must be provided with comprise of **"habitable quarters,** food, water, clothing, and **medical care,** in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights." It is likewise stated that the core objective of "according the dignity of man" to inmates while serving sentence[.] x x x The enabling statute of the BJMP, on the other hand, mandates a secure, clean, adequately equipped,

and sanitary jail in every district, city and municipality, for the custody and safekeeping of detainees. The mission of the BJMP is to enhance jail management by formulating policies and guidelines on **humane safekeeping** of inmates and ensuring their compliance in all district, city and municipal jails. One of its objectives is to ensure that the BJMP complies with the principles in the different international instruments relative to the humane treatment of inmates. The BJMP likewise endeavors to improve the living conditions of offenders in accordance with the accepted standards set by the United Nations. In the BJMP Operations Manual, what especially stands out are the provisions on the handling and safekeeping of inmates with special needs. Included herein are inmates who are pregnant, senior citizens, and infirm. Section 43 also significantly provides that emergency plans for both natural and man-made calamities and other forms of jail disturbances shall be formulated to suit the physical structure and other factors peculiar to every jail. An epidemic is among the enumerated examples of a natural calamity. These laws affirm the State's duty of safekeeping PDLs, as carried out by the BuCor and BJMP, in relation to the constitutional proscription against cruel and inhumane punishment, and substandard conditions for penal facilities. At the same time, what may not be divorced from this proscription is the duty to protect the health of PDLs while incarcerated, and ultimately, realize their right to life, both fundamental rights — as I have stressed previously — which PDLs do not forfeit upon arrest and detention. As it stands, therefore, the right to health, as a "component to the right to life," is inextricably linked with the guarantees under Section 19, Article III, of the Constitution, which are self-executing provisions and, as such, are judicially enforceable. Apart from the domestic laws earlier mentioned, the more relevant consideration is that the enabling statutes of the BuCor and the BJMP have expressly adopted the standards set by the UN for the safekeeping of PDLs. There is no question, therefore, that included herein are the universally accepted minimum standards set by the *Nelson Mandela Rules*. The BuCor's enabling law, in particular, has explicitly referred thereto. **Consequently, notwithstanding the non-binding and recommendatory nature of the *Nelson Mandela Rules*, they have effectively been transformed as part of the law of the land.**

7. ID.; ID.; ID.; ID.; PRINCIPLE OF "EQUIVALENCE OF CARE," EXPLAINED; PERSONS DEPRIVED OF LIBERTY (PDLs) ARE ENTITLED TO THE SAME STANDARD OF CARE NORMALLY AVAILABLE TO THOSE NOT INCARCERATED; OTHERWISE, IT MAY GIVE RISE TO AN ACTIONABLE CLAIM BASED ON CONSTITUTIONAL GROUNDS. — [F]lowing from the right to health guaranteed by ICESCR, PDLs cannot be discriminated upon when it comes to access to health facilities and services. They are entitled to receive the same standard of care normally available to those not incarcerated. This is referred to as the principle of "equivalence of care," initially adopted by the UN in General Assembly Resolution 37/194, which declared principles for the role of physicians in protecting PDLs against torture and cruel or degrading punishment[.] x x x This was further echoed in Rule 24 of the *Nelson Mandela Rules*[.] x x x It is interesting to note that under the BuCor Operating Manual, there is an evident adherence to the principle of equivalence and non-discrimination[.] x x x Guided by the principle of equivalence of care, the petitioners and all other PDLs are entitled to the same safeguards against illnesses that are available to those not incarcerated. But considering the present state of our penal facilities, and in light of the gravity of the present pandemic, the fulfillment of the minimum standards for the safekeeping and health of PDLs has taken on a new sense of urgency. x x x If the causal link between PDLs' poor health and exclusion from standards of care available to free individuals, on the one hand, and the fact of facility congestion on the other, are both sufficiently established, such may give rise to an actionable claim based on the violation of the proscription against cruel and inhuman punishment, and the State's commitment to various international law instruments. Such a claim may be demonstrably supported by a showing that within the present configuration of the prison systems, PDLs are deprived of the means to practice standard protocols to ensure their health, including even the simplest ones such as physical distancing and self-isolation.

8. ID.; ID.; ID.; ID.; JUST AS THE PETITIONERS' PRAYER TO BE GRANTED BAIL OR RECOGNIZANCE MUST BE BROUGHT BEFORE THE PROPER TRIAL COURT, SO SHOULD ANY CLAIM FOR VIOLATION OF THE

PROSCRIPTION AGAINST CRUEL AND INHUMAN PUNISHMENT AND SUBSTANDARD LIVING CONDITIONS; WHILE THE COURT HAS THE POWER TO PROVIDE RELIEF AGAINST THESE CONSTITUTIONAL VIOLATIONS, BUT IT MUST ACT ONLY WITHIN THE BOUNDS OF ITS JURISDICTION. — There is no valid reason to depart from this practice of the US Supreme Court, considering that claims for violations of a PDL's fundamental rights are replete with factual matters best threshed out in the trial courts. Justice Bernabe is of the same view, recommending that the petition be referred to the appropriate trial court for a full-blown hearing on the petitioners' respective situations, which should be examined using the "deliberate indifference" test. **As such, in the same manner that the prayer of the petitioners for themselves and for other similarly situated PDLs to be granted bail or recognizance must be brought before the proper trial court for hearings, so should any claim for violation under the proscription against cruel and inhuman punishment and substandard living conditions.** x x x In a proper action initiated at a more opportune time, courts may be taken to task to provide relief against the employment of physical, psychological, or degrading punishment or against the use of substandard or inadequate penal facilities with subhuman conditions. The Court, unfortunately, must move only within the bounds of its jurisdiction; nonetheless, it has taken the necessary measures within its power, in order to guarantee the rights of PDLs in the face of this global pandemic. Ultimately, however, the task of providing farsighted and enduring solutions to the problem of overcrowding in penal facilities is a policy question and formulation that is best within the powers of the Legislative and Executive branches.

LAZARO-JAVIER, *J., separate opinion:*

1. REMEDIAL LAW; COURTS; EQUITY JURISDICTION; CONCEPT AND ORIGIN, EXPLAINED; COURT OF COMMON LAW AND COURT OF EQUITY, DISTINGUISHED. — The **history** of our court system is **alien** to the **distinction** between a **court of common law** and **court of equity.** x x x The history of the court of common law and the court of equity began with the legal reforms of King Henry II after 1154. Administration of local courts became more

centralized. x x x **[T]he laws of England developed as "common-law" – the collection of judge-made decisions based on tradition, custom and precedent, as opposed to laws derived from statutes, a civil code or equity.** x x x Over time, procedure in the courts of common-law became **convoluted** and **ossified.** Litigants who felt they had been **cheated** or **had not been given justice** by courts of common-law petitioned the King in person. **From this developed** a **system of equity,** administered by the Lord Chancellor, in the Court of Chancery. x x x The legislation that merged courts of law and court of equity **conferred no new rights** but they **confirmed the rights** that previously existed in these courts. The law **merely gave** to the courts the **jurisdiction** previously exercised by both the courts of common law and the Court of Chancery. Thereafter, there was the **complete consolidation** of *equitable* and *legal* **jurisdiction** and **practice and procedure** for both *equitable* and *legal* remedies in the courts. **Equitable** and **legal remedies differ from each other.** Successful litigants are **entitled** to **legal remedies.** The principal legal remedy is damages. There is however **no entitlement** to **equitable remedies.** By the **very nature of equity,** they are **granted by** the **discretion** of the court and are **unlimited. Equitable remedies** are called ***such*** because they ***originated*** *from* the **court of equity.** However, through time, these once flexible **equitable remedies have** *themselves* **ossified into distinct rules** *like the common law remedies* they had meant to correct for being inflexible. Among the principal equitable remedies are declaratory judgments, injunctions, specific performance or contract modification, accounting, rescission, estoppel, proprietary remedies such as constructive trusts and tracing, subrogation, and equitable liens.

2. ID.; ID.; ID.; PETITIONERS COULD HAVE GROUNDED THEIR PRAYER UPON THE CIVIL CODE OR EXISTING JURISPRUDENCE WITHOUT HAVING TO INVOKE EQUITY OR HUMANITARIAN CONSIDERATION. — [I]t may be said that petitioners **have loosely used** the **concept of equity** to found their plea to be released on bail or recognizance when **allegedly** they are otherwise not allowed to. As we have said, we **never had that division** between a court of common law and a court of equity, and in reality, our legal system is **a hybrid** or **a cross** between the common and the civil law jurisdictions. As well, our jurisprudence **does not allow** equity

to supplant and contravene the provision of law clearly applicable to a case, and conversely, **cannot give** validity to an act that is prohibited by law or one that is against public policy. In this light, **respondents' objection** to the use of the word **"humanitarian"** in their Comment's prefatory may **appear to be justified** since petitioners **could have grounded** their prayer upon **established law** or **jurisprudence** without having to summon the **amorphous** and **value-laden adjectives** *humanitarian* or *equitable*. Verily, it is **not necessary** to invoke **equity** or **humanitarianism** so courts could have the **needed flexibility to do justice** in a particular case under specifically unique circumstances, or to be able to rely upon broad moral principles of reasonableness, fair dealing and good conscience in resolving issues. **Articles 9** and **10** of our ***Civil Code*** already provide the **legal bases** for doing so. And, as regards bail, our **jurisprudence** has already allowed **inroads** of **flexibility** and **broad moral principles** to justify what others have believed to be a **just outcome.**

3. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE; WHEN GRANT OF BAIL IS A MATTER OF DISCRETION; *ENRILE* RULING, REVISITED; IT PROVIDED A TWO-STEP TEST TO AUTHORIZE THE GRANT OF BAIL WHEN IT IS DISCRETIONARY TO DO SO; UNTIL OVERTURNED, *ENRILE* RULING MAY BE INVOKED AND SHOULD BE APPLIED WHENEVER CIRCUMSTANCES OF A CASE CALL FOR IT. — Bail is **not a matter of right** for an accused charged with a crime punishable by death, *reclusion perpetua*, or life imprisonment. This rule has been **interpreted** and **practiced** as requiring the detention of an accused until he or she has sought a bail hearing **and** the prosecution is **not** able to prove that the evidence of his or her guilt is strong. x x x The **availability of bail** to an accused charged with crimes punishable by death, life imprisonment or *reclusion perpetua*, however, has been **modified** to significant extents by our ruling in ***Enrile v. Sandiganbayan.*** In ***Enrile,*** despite the absence of a bail hearing where the prosecution could have proved that the evidence· of guilt is strong, the Court allowed Senator Enrile to post bail on account of his **exceptional circumstances** (*i.e.*, advanced age and ill health requiring special medical attention) and the bottom line

that **he was not a flight risk.** x x x ***Enrile*** has ingrained in jurisprudence a **two-step test** to authorize the grant of bail when it is **discretionary** to do so: **(a)** the detainee will not be a flight risk or a danger to the community; and **(b)** there exist special, humanitarian and compelling circumstances. This **test** involves the **balancing of factual and legal factors** before resolving to grant or deny the application for bail. x x x ***Enrile*** thus represents what has been said about **common law being itself flexible** and **accommodating of broad moral principles** without having to distinguish it from and summoning **equity.** We were able to **navigate through the established rules** on bail as a matter of discretion to **arrive at** a conclusion that we thought would **not** have been possible under established rules **but nonetheless consistent** with the **stability** and **predictability** valued in every legal system. x x x ***Enrile*** is a clear and categorical statement of **positive law** pursuant to the Court's constitutional and inherent power to "settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," and "to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts." For better or for worse, until overturned, our jurisprudence has to reckon with ***Enrile*** as a rule that may be invoked and should be applied whenever the circumstances of a case call for it.

4. ID.; ID.; 1987 CONSTITUTION; BILL OF RIGHTS; INFRINGEMENT OF MINIMUM STANDARDS ON THE TREATMENT OF PERSONS DEPRIVED OF LIBERTY (PDLs) DOES NOT RISE TO THE LEVEL OF CRUEL AND INHUMAN PUNISHMENT IN CASE AT BAR; RESPONDENTS CANNOT BE FAULTED FOR THE INCREASED RISKS TO LIFE, SECURITY, AND HEALTH BROUGHT ABOUT BY COVID-19 AMONG THE INMATES IN VIEW OF OVERCROWDED JAIL FACILITIES, FOR THEY HAVE NOT ENGAGED IN ANY POSITIVE STATE ACTION GIVING RISE TO SUCH CONDITION. — While the **minimum standards on the treatment of PDLs** are no doubt part and parcel of protecting, defending and promoting the dignity of PDLs, **their infringement** does **not** rise to the level of **what we have conceived** to be

cruel and inhuman punishment. The minimum standards have **nothing to do** with the **form, character,** or **method** of punishment, and though subpar PDL conditions may affect the **severity** of the punishment meted out, this is just **incidental** to the implementation of the punishment. It is true that **jail congestion** impacts more on the PDLs' right to life and its cognate rights under Section 1, Article III of the *Constitution* **amidst the pandemic** than during ordinary times. It is **equally true,** however, that if the right to life contemplates the existence only of **negative rights** or **rights of non-interference,** in order **to establish a breach of the right to life,** a claimant **must first show** that he or she **was deprived** of his or her right to life and its cognate rights, and **then must establish** that **the State caused such deprivation** without due process of law. **Active State interference** with one's life, security or health by way of some **affirmative, positive,** or **definitive** act will be **necessary** in order to engage the protection of this right. There will **also** be a **need to establish a causal link** between State action and harm alleged to have been suffered. This **requires** searching for a **causal nexus** tying the State to petitioners' inability to exercise their right to life. Such a **nexus** could only ever be established by pointing to a **positive state action giving rise to the aggrieved condition.** x x x Here, we **cannot fault respondents** for the **increased risks** to life, security and health brought about by COVID-19 **even among the inmates,** including petitioners, of our **overcrowded** jail facilities. In a manner of speaking, paraphrasing one classic song, respondents *did not light the fire* as it seemed *to have always been burning since the world has been turning.* They **have not engaged** in any **definitive, affirmative** or **positive State action** to cause such increased risks of deprivation.

5. ID.; ID.; ID.; ID.; PROVISIONAL LIBERTY CANNOT BE A RELIEF OR REMEDY FOR THE INFRINGEMENT OF PDLs' RIGHT AGAINST JAIL CONGESTION. — We may take **judicial notice** of the **pitfalls** in complying with the minimum standards of the treatment of PDLs. It is **factual** and **accurate** that there is **overcrowding** in most of our jails. However, **attributing** this setback **solely** to respondents is both unfair and inaccurate. We may take **judicial notice** of the publicly known fact that respondents **do not also want** this dire situation happening in their facilities. But what can they do? The

population and **facilities** in their holding centers are the **outcomes of so many variables** outside their control and competence. **Neither** will it be **correct** to **remediate** this concern by directing the **release of such number of PDLs** as would match the holding centers' respective capacities. To begin with, there is **no law** which **requires** this type of relief or remedy for an **innocent slip-up** or **non-compliance** with the minimum standards. **Neither** is it **beneficial, desirable** nor **practicable.** In fact, granting **this type** of relief or remedy will put the Court on the spot and in a **compromising slippery slope position** where **we would have to order the release** of a PDL each time a minimum standard is **not** met, simply because of the theory that these minimum standards as to safety, sanitary, and sufficient provisions and facilities *operationalize the right against cruel and inhuman punishment.* More, the present case is **not about** vindicating the rights of **all PDLs** to the minimum standards of treatment. The petition is about petitioners' concerns, and while petitioners and some of us may **want to extend** its beneficial effects **to other PDLs,** this **only rests on** and is **only due to** the **impact of the pandemic.**

6. ID.; ID.; ID.; ID.; THE RELEASE ON BAIL OF PDLs NOT QUALIFIED FOR RELEASE BUT FOR THE PERILS OF COVID-19 INVOLVES AN ACT OF DISCRETION FALLING UNDER THE *BAYANIHAN TO HEAL AS ONE ACT* (RA 11469), WHICH EXCLUSIVELY PERTAINS TO THE EXECUTIVE BRANCH. — Beyond the factors which the Court are competent to weigh in, we must, consider as well that COVID-l9 is *also a* **national health concern,** the **response** to which **impacts** on the **whole fabric** and **every strand** of our polity. Ultimately, it was for this reason that Congress passed RA 11469 (2020), *Bayanihan To Heal As One Act,* so that there will be a **united front** against this **common invisible enemy.** In this context, there will be **consequences to the plans** already laid down by the IATF if we are to release petitioners, and later, others similarly situated, on bail. **Resources** of the **Executive Branch** will be **diverted** and **used** simply **to monitor** petitioners' whereabouts and activities during the period of national health emergency. If granted, their release could become an **unnecessary distraction** to the current efforts to fight the virus and its disease. As respondents seem to assert in their Comment, petitioners are **better quarantined** at their present detention centers. x x x I am of the view that RA 11469 has **exclusively**

committed to the Executive Branch **actions** and **decisions** pertaining to the **courses of action** to meet the perils brought by COVID-19. The **release on bail** of pre-judgment PDLs not otherwise qualified for release **but for the perils** of the virus and the disease, **involves an act of discretion** falling under RA 11469. The country is in **actual standstill** because of COVID-19. Necessarily, **if the Court is to act because of the virus and its disease,** the Court **has to defer** to the **wisdom of the Executive Branch,** because our legal order **has exclusively tasked it** to combat the **very cause of and reason for** the action prayed for by petitioners.

7. ID.; ID.; ID.; ID.; *ENRILE* RULING APPLIES IN THE PRESENT CASE; PETITIONERS MAY BE RELEASED ON BAIL AS LONG AS THEY ARE ABLE TO MUSTER THE TWO-STEP TEST PROVIDED IN THE SAID RULING. — ***Enrile*** applies here, **not in the sense** that herein petitioners would also be entitled to be released on a bail plan, **but in the sense** that ***Enrile*** is a legally binding decision, a law, that must **apply equaIly to all** who are able to meet the standards that ***Enrile*** espouses. To conclude *otherwise* is to **institutionalize** the **forbidden thought** that ***some people are better treated in and under the law than others upon dubious grounds.*** Thus, herein petitioners are **correct in invoking *Enrile*** but **may still be not released** on bail for a specified amount or on recognizance **unless they are able to muster** the **two-step test** in ***Enrile:*** (a) the detainee will **not be a flight risk** or **a danger** to the community; and (b) **there exist special, humanitarian and compelling circumstances.** The **test** in ***Enrile*** has **nothing** to do with **assessing** whether or not the **evidence** of **petitioners' guilt** is **strong,** but on **other factors** as mentioned above.

8. ID.; ID.; ID.; ID.; JUST AS THE COURT HAS THE POWER TO PROMULGATE RULES FOR THE PROTECTION AND ENFORCEMENT OF CONSTITUTIONAL RIGHTS, WITH MORE REASON THE COURT CAN EXERCISE JURISDICTION PROTECTING THE BABY OF A PRE-JUDGMENT PDL. — [W]hile I **recognize** and **adhere to** the **primordial if not exclusive** role of the Executive Branch in the fight against COVID-19, I believe that we have **a role to play in protecting the baby** from adverse consequences that are **not of the baby's own doing.** After all, **her mother** is in

this state of panic **because** the **lower court** has **issued processes** for her preventive detention; further, she and her **co-petitioners** are invoking their entitlement to **bail under the circumstances;** and, lastly, the **health** of the **baby** is exposed to a **greater** risk of infection than those who are staying with their mothers outside the detention facilities. To use the hyperbole of **Human Rights Watch,** the baby's situation is **akin to** having a **death sentence** imposed upon it **by mere accident** or **as an innocent by-stander.** In ***Echegaray v. Secretary of Justice,*** the Court **affirmed** that the **power to save the life of a human being** is **not exclusive** to any of the three branches of government. The Court said poignantly: *"The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life."* Our jurisprudence has also **confirmed** that "the Court is, under the Constitution, empowered to promulgate rules for the protection and enforcement of constitutional rights," the most prominent being the **right to life.** With the Court's authority to promulgate formal rules for this purpose, with more reason **the Court can exercise** *and not resile from* the **jurisdiction** to put its two cents' worth whenever a **person's life** or **health** – in this case, that of the **baby** of a pre-judgment PDL – is **also at stake** from **circumstances not of her own making.** The **greater risks** that the present pandemic have caused are the **actual facts** that **fuel** the **present controversy** which makes it **justiciable.** Let me stress. There is **nothing advisory, nothing philosophical, nothing dreamy** about the COVID-19. We have been quarantined for almost half of this year already, our courts and others have lost the equivalent of about six-months, of man-hours, **all because of the REAL dangers** to life, health and overall wellbeing of the entire population of the Philippines and the entire world. I would like the Court to give relief to petitioner Nasino's baby **not because** of the ineptitude of respondents, but as a result of the **reality** of the **greater risks** facing **petitioner Nasino's baby** coming from **facts** about this **pandemic.**

LOPEZ*, J., concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE; BAIL IS EITHER A MATTER OF RIGHT OR

DISCRETION; THE GRANT OR DENIAL OF BAIL AS A MATTER OF DISCRETION HINGES ON WHETHER THE EVIDENCE OF GUILT IS STRONG, HENCE, HEARING IS REQUIRED. — The right to bail is enshrined in the 1987 Constitution. Section 1, Rule 114 of the Rules of Court defined bail as "*the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court x x x.*" Also, bail is either a matter of right or discretion depending on the penalty[.] x x x In this case, the PDLs failed to indicate whether the charges against them are bailable or not. The Solicitor General's comment later disclosed that except for one who is serving sentence, all the PDLs were charged with non-bailable offenses and their cases are pending trial. The PDLs admitted these facts in their reply. It is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with *reclusion perpetua* or life imprisonment. As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. The determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence. A hearing is likewise required for the trial court to consider the factors in fixing the amount of bail.

2. ID.; ID.; ID.; ID.; BAIL ON HUMANITARIAN GROUNDS IS A MATTER WITHIN THE SOUND DISCRETION OF THE COURTS; FACTORS CONSIDERED BY THE COURT WHEN IT ALLOWED BAIL FOR HUMANITARIAN REASONS, REITERATED. — In *Enrile v. Sandiganbayan*, this Court allowed bail for humanitarian reasons based on the following factors: (1) the principal purpose of bail, which is to guarantee the appearance of the accused at the trial or whenever so required by the court; (2) the Philippines' responsibility in the international community arising from the national commitment under the *Universal Declaration of Human Rights*, specifically, to uphold the fundamental human rights as well as value the worth and dignity of every person; (3) the petitioner's social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely; and (4) the fragile state of petitioner's health, as proven by the testimony of a physician presents another compelling justification for his admission to bail.

3. ID.; ID.; 1987 CONSTITUTION; POLITICAL QUESTION; TEMPORARY RELEASE OF PERSONS DEPRIVED OF LIBERTY (PDLs) ON EQUITABLE/HUMANITARIAN GROUNDS IS BEST LEFT TO THE CHIEF EXECUTIVE AND CONGRESS SINCE MATTERS RELATED TO PUBLIC HEALTH AND SAFETY ARE POLITICAL QUESTIONS. — [T]he matter of unilaterally ordering the temporary release of the PDLs solely on equitable grounds is, strictly speaking, not purely judicial in character. This Court must abstain from exercising such power lest it encroach on the prerogatives of the President and the Congress. The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in the framing of our Constitution. Each department has exclusive cognizance of matters placed within its jurisdiction and is supreme within its own sphere. It is not within the province of the judiciary to express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the Chief Executive or the Congress on matters purely political in nature. Otherwise, it may be considered as an interference or an attempt to influence the exercise of their powers. Hence, the temporary release of PDLs outside of bail, recognizance and other court processes is best left to the Chief Executive and Congress, especially since matters related to public health and safety are political questions.

4. ID.; ID.; ID.; BILL OF RIGHTS; PDLs CAN AVAIL OF ADEQUATE PROTECTION UNDER INTERNATIONAL AND DOMESTIC LAWS. — The overcrowding situation in jail facilities in the Philippines increases the risk of contracting any disease. This means that regardless of age or whether they have pre-existing medical condition, the PDLs are all vulnerable to contracting Covid-19 because of the congestion, along with inadequate nutrition and scarcity in health care. These are problems that need to be sufficiently addressed, not only on account of the pandemic, but more so because these rights are ought to be guaranteed to prisoners both under international and domestic laws.

PERLAS-BERNABE*, J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* RECOGNIZANCE ACT OF

2012 (RA 10389) AND CRIMINAL PROCEDURE; CONCEPT AND PURPOSE OF BAIL AND RECOGNIZANCE, DISTINGUISHED; INSTANCE WHEN BAIL OR RECOGNIZANCE BECOMES NOT A MATTER OF RIGHT, EXPLAINED. — [B]ail "acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial." Its purpose is "to guarantee the appearance of the accused at the trial, or whenever so required by the trial court." Similarly, "[r]ecognizance is a mode of securing the release of any person in custody or detention for the commission of an offense" but is made available to those who are "unable to post bail due to abject poverty." Our Constitution and statutes prescribe a legal framework in granting bail or recognizance to persons deprived of liberty (PDLs) pending final conviction. The Constitution denies bail, as a matter of right, to "those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong." In the same vein, Republic Act No. (RA) 10389, known as the "Recognizance Act of 2012," provides that recognizance is not a matter of right when the offense is punishable by "death, *reclusion perpetua*, or life imprisonment" and as per its implementing rules, "when the evidence of guilt is strong," consistent with the Constitution. When the accused is charged with an offense punishable by death, *reclusion perpetua*, or life imprisonment, the usual procedure is for the accused to apply for bail with notice to the prosecutor. Thereafter, the judge is mandated to conduct a hearing to primarily determine the existence of strong evidence of guilt or lack of it, against the accused. When the evidence of guilt is not strong, the judge is then tasked to fix the amount of bail taking into account the guidelines set forth in Section 9, Rule 114 of the Rules of Criminal Procedure.

2. ID.; ID.; ID.; ID.; ID.; THE COURT IS NOT A TRIER OF FACTS TO DETERMINE STRONG EVIDENCE OF GUILT; THE COURT WOULD BE BETRAYING ITS MANDATE TO APPLY THE LAW AND THE CONSTITUTION SHOULD IT PREMATURELY ORDER THE RELEASE OF PETITIONERS ON BAIL OR RECOGNIZANCE ABSENT THE REQUISITE HEARING TO DETERMINE WHETHER OR NOT THE EVIDENCE OF GUILT AGAINST THEM IS STRONG. – "Strong

evidence of guilt" entails the submission of evidence by the parties, and consequently, a circumspect factual determination. **The Court is not a trier of facts,** and hence, is not competent to engage itself in such a laborious endeavor. **Institutionally, the Court does not function like a trial court where hearings are conducted for the presentation of evidence by the litigants involved.** Accordingly, it is incapable of determining whether or not any of the petitioners may be released on bail or recognizance pursuant to the provisions of law and the Constitution. This notwithstanding, petitioners seek temporary liberty – specifically, through bail or recognizance – on humanitarian grounds, invoking this Court's equity jurisdiction. It is hornbook doctrine, however, that equity comes into play only in the absence of law. "Equity is justice outside legal provisions, and must be exercised in the absence of law, not against it." As mentioned, there is a prescribed legal framework in granting bail or recognizance to PDLs pending final conviction. Bail or recognizance cannot be granted to persons who are charged with capital offenses when the evidence of guilt against them is strong. **Hence, the Court would be betraying its mandate to apply the law and the Constitution should it prematurely order the release of petitioners on bail or recognizance *absent the requisite hearing to determine whether or not the evidence of guilt against them is strong*.** While it is noted that this was done in the past in the case of *Enrile v. Sandiganbayan (Enrile)*, the majority ruling in that case should be deemed as *"pro hac vice"* in light of the past Senator's "solid reputation in both his private and public lives" and "his fragile state of health" which deserved immediate medical attention.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; APPLICATION FOR BAIL OR RECOGNIZANCE; THE COURT MAY RELAX THE USUAL PROCEDURE AND TREAT THE INSTANT PETITION AS PETITIONERS' RESPECTIVE BAIL APPLICATIONS AND REFER THE SAME TO THE PROPER TRIAL COURTS. — Petitioners, however, should not be completely barren of any relief from this Court. **In the *interest of substantial justice,* and considering that the present petition is the first of its kind in the context of this novel public health situation, the Court may relax the usual procedure requiring that bail applications be first filed before the trial courts, and instead, treat the instant**

petition as petitioners' respective bail applications and refer the same to the proper trial courts. Thereafter, the trial courts having jurisdiction over petitioners' respective cases must determine the merits of the bail applications. **However, before proceeding, they must first ascertain whether or not previous bail applications have been filed by petitioners and their status.** x x x It deserves highlighting that there would be no harm in treating the petition as petitioners' respective bail applications, and referring them to the proper trial courts. **The procedure for referral as herein proposed is not some groundbreaking innovation; it is but analogous to remand directives which have been customarily done by the Court.** Needless to state, non-traditional procedures such as this are clearly within the powers of the Court and are permissible when there are compelling reasons to further the higher interests of substantial justice, as in this case. While this may not be the ordinary procedure, the circumstances so warrant the discretionary relaxation of our rules.

4. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; COURTS ARE NOT PROHIBITED FROM GRANTING AN ACCUSED PRACTICABLE ALTERNATIVE CONFINEMENT ARRANGEMENTS TO PROTECT HIS OR HER LIFE. — Our laws on bail or recognizance do not account for prison conditions as a ground for provisional liberty under these specific legal modes. Under our existing legal framework, the right to be released on bail or recognizance is anchored only on the nature of the charge and on whether or not there exists strong evidence of guilt against the accused. Nevertheless, nothing prevents an accused from seeking a different imprisonment arrangement if he or she is able to prove that his or her life is greatly prejudiced by his or her continued confinement. Neither are courts prohibited from granting an accused such practicable alternative confinement arrangements to protect his or her life, although not considered as bail or recognizance in the traditional sense of our laws. After all, our statutes command that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws," and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." As our current legal framework does not specify

the parameters for these reliefs, it is submitted that they be adjudged according to the deliberate indifference standard adopted in foreign jurisprudence.

5. ID.; ID.; ID.; ID.; COURTS ARE DUTY-BOUND TO RECOGNIZE A PERSON'S RIGHT TO LIFE AND GRANT PERMISSIBLE RELIEF DESPITE THE SILENCE, OBSCURITY, OR INSUFFICIENCY OF OUR LAWS. — There is no quibbling that courts are duty-bound to recognize a person's right to life, and grant permissible reliefs despite, and to reiterate, the silence, obscurity or insufficiency of our laws. This command is founded on none other than the fundamental law, particularly in our Bill of Rights enshrined in the Constitution. **A person's right to life – whether accused of a crime or not - is inalienable and does not take a back seat nor become dormant just because of the lack of necessary legislation to address our subhuman prison conditions.** When the right to life is at stake, the Bill of Rights operates; making a fair and just ruling to preserve the right to life is not entirely dependent on some unpassed legislation that directs the structural improvement of our jails or allocates budget to improve our penal institutions.

6. ID.; ID.; ID.; ID.; RECOGNITION OF THE NELSON MANDELA RULES IN OUR LOCAL LEGISLATION MAKES THE SAME ENFORCEABLE IN OUR JURISDICTION; ADJUDICATING BILL OF RIGHTS CONCERNS UPON A VALID CLAIM OF SERIOUS AND CRITICAL LIFE THREATS WHILE INCARCERATED IS WITHIN THE PROVINCE OF THIS COURT; THE COURT'S DUTY TO PROTECT OUR BILL OF RIGHTS IS CONSTANT. — Because of their recognition in our local legislation, they have been transformed as part of domestic law, or at the very least, having been contained in a resolution of the UN General Assembly, constitute "soft law" which the Court may enforce. x x x [I]t is therefore incorrect to say that the Nelson Mandela Rules are absolutely not judicially enforceable in our jurisdiction. By authority of our laws, courts may already recognize the effects of our subhuman prison conditions and grant proper reliefs based on the circumstances of the case. To be sure, the lack of laws allocating budget for the structural improvement of our jails in order to address subhuman conditions does not mean that our courts are powerless to grant permissible

reliefs which are grounded on the Bill of Rights of our Constitution. In this relation, it must be emphasized that when the court grants such reliefs, it does not venture in policy making or meddle in matters of implementation; *after all, it cannot compel – as petitioners do not even pray to compel – Congress to make laws or pass a budget for whatever purpose*. **Policy making towards improving our jail conditions is a separate and distinct function from adjudicating Bill of Rights concerns upon a valid claim of serious and critical life threats while incarcerated.** The former is within the province of Congress, the latter is within the Court's. x x x [N]owhere is it shown that the Framers intended to completely insulate the matter of subhuman jail conditions from judicial relief when a substantial relation to a person's right to life is convincingly made. **In my opinion, the right to life permutates to the prohibition against any form of cruel and unusual punishment against one's person. When serious and critical threats to one's life are adequately proven by virtue of one's conditions while incarcerated, the Court must fill in the void in the law and grant permissible reliefs.** Under extraordinary circumstances, temporary transfers or other confinement arrangements, when so proven to be practicable and warranted, may be therefore decreed by our courts if only to save the life of an accused, who is, after all, still accorded the presumption of innocence. Indeed, an accused cannot just be left to perish and die in jail in the midst of a devastating global pandemic, without any recourse whatsoever. At the risk of belaboring the point, the lack of laws addressing the subhuman conditions of our prison system does not mean that our courts are rendered powerless to grant permissible reliefs, especially to those who have yet to be finally convicted of the crimes they were charged with. **The Court's duty to protect our Bill of Rights is constant – respecting the right to life is constant.** To deny relief on the excuse that it is Congress' responsibility to institutionally improve our prison systems is tantamount to judicial abdication of this perpetual tenet.

7. ID.; ID.; ID.; ID.; DOCTRINE OF DELIBERATE INDIFFERENCE STANDARD IN RELATION TO ACCUSED'S RIGHT TO LIFE, EXPLAINED; ELEMENTS TO DETERMINE WHETHER OR NOT VIOLATION THEREOF EXISTS. — While, as recognized above, "preventing

danger to the community is a legitimate regulatory goal," an accused's right to life borne from critical subhuman conditions cannot be just sacrificed at the altar of police power if there are **practicable alternative solutions** to both ensure his or her continued detention, as well as his or her survival. Again, preventive imprisonment is not yet a penalty. To let an accused perish in jail because of **the deliberate indifference of the State** towards his or her medical conditions is even worse than a penalty because he or she has been effectively sentenced to death absent a final determination of his or her guilt. Surely, there must be some form of judicial relief to, at the very least, balance these various interests. The **deliberate indifference standard** is based on jurisprudence from the United States, where we have patterned the Bill of Rights of our own Constitution. As rationalized by SCOTUS, "when the State takes a person into its custody and holds him there against his will, [as in the case of prisoners,] the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." In the case of *Estelle v. Gamble (Estelle)*, the SCOTUS, however, qualified that it is the State's "deliberate indifference to serious medical needs of prisoners [which] constitutes the 'unnecessary and wanton infliction of pain' x x x proscribed by the Eighth Amendment." x x x Since the SCOTUS's promulgation of *Estelle*, the "deliberate indifference" standard has been used in succeeding cases in order to determine whether or not a supposed inadequacy in medical care received by an inmate may constitute a violation of the Eighth Amendment. This standard was further refined in *Helling v. McKinney (Helling)*, wherein the SCOTUS introduced two (2) elements that may help in determining whether there exists such violation, namely the objective and subjective factors. The existence of these factors must be proven with evidence showing that: (*a*) the prisoner was deprived of a basic human need or that he or she had an objectively serious medical condition (*objective factor*); and (*b*) the prison officials knew about the prisoner's need or condition, which they consciously disregarded by actions beyond mere negligence (*subjective factor*).

8. ID.; ID.; ID.; ID.; ID.; *OBJECTIVE FACTOR* AND *SUBJECTIVE FACTOR* TO DETERMINE THE EXISTENCE OF DELIBERATE INDIFFERENCE OF THE STATE, CLARIFIED. — [T]he *objective factor* should involve

a determination of **whether or not the inmate is exposed to a risk which seriously and critically threatens his or her right to life while incarcerated.** As stated in *Helling*, such determination requires more than a scientific and statistical inquiry into the seriousness of the potential harm and the likelihood that such injury to health will actually be caused by the inmate's exposure to such risk. It also requires the court to assess whether society considers the risk that the inmate complains of to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk. In other words, the prisoner must show that the risk of which he or she complains of is not one that today's society chooses to tolerate. On the other hand, the *subjective factor* should involve an inquiry of the prison authorities' attitude and conduct in dealing with the risk complained of by the inmate, *i.e.*, whether or not such attitude and conduct are tainted with deliberate indifference to the serious medical needs of the inmate. On this note, further US case law suggests that the existence of "deliberate indifference" on the part of prison authorities involves a "state-of-mind" inquiry on their part. Such deliberate indifference "can be evidenced by 'repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff' or it can be demonstrated by '**proving that there are such systematic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care**.'"

9. ID.; ID.; ID.; ID.; ID.; THE COURT MAY TREAT THE INSTANT PETITION AS PETITIONERS' MOTIONS FOR SUITABLE BUT PRACTICABLE CONFINEMENT ARRANGEMENTS, WHICH SHOULD BE ADJUDGED ACCORDING TO THE PARAMETERS OF DELIBERATE INDIFFERENCE. — While the relief portion of the instant petition prays for petitioners' temporary release on recognizance or in the alternative, bail, petitioners also ask this Court that they be released through "other non-custodial measures," asserting their right to life, and not to be subjected to cruel and unusual punishment based on the Bill of Rights of our Constitution. As implied by the *ponencia's* disposition, the Court has not turned a blind eye away from these pleas that are, after all, founded on our fundamental law. **Thus, similar to the referral of petitioners' applications for bail/**

recognizance, the Court has adopted the proposal to instead, treat the instant petition as petitioners' motions for suitable but practicable confinement arrangements. In my own view, I **submit that these motions should be adjudged according to the above-mentioned parameters of deliberate indifference.**

ZALAMEDA, *J.*, *separate opinion:*

1. REMEDIAL LAW; REVISED RULES ON CRIMINAL PROCEDURE *VIS-À-VIS* RECOGNIZANCE ACT (RA 10389); JURISDICTION OVER APPLICATIONS FOR BAIL OR RECOGNIZANCE LIES WITH THE TRIAL COURTS. — This Court is clearly not among those vested with jurisdiction over applications for bail or recognizance under the Rules and the law. The jurisdiction over both applications for bail and recognizance lies with the trial courts. To be sure, Rule 114 of the Revised Rules on Criminal Procedure governs applications for bail, while Republic Act (RA) No. 10389 governs applications for recognizance. Also, the issues raised by petitioners, particularly those that entail the determination of the due execution and authenticity of their submitted documents, involve a determination of facts best addressed to the sound discretion of the trial courts. **Indeed, petitioners ought to have submitted their applications for temporary release before the respective courts where their cases are pending.**

2. ID.; ID.; ID.; APPLICATION FOR TEMPORARY RELEASE THROUGH BAIL OR RECOGNIZANCE CANNOT BE GRANTED WITHOUT COMPLIANCE WITH THE ESTABLISHED REQUIREMENTS TAKING INTO ACCOUNT THE NATURE AND GRAVITY OF THE CRIMES CHARGED; HUMANITARIAN REASONS ALONE CANNOT JUSTIFY THE UTTER DISREGARD OF THE CONSTITUTION, THE LAW, AND THE RULES OF PROCEDURE. — In seeking for their temporary release through bail or recognizance, petitioners are primarily asking this Court to turn a blind eye to the established requirements which take into account the nature and gravity of the crimes charged. Petitioners ultimately want the Court to controvert Art. III, Section 13 of the 1987 Constitution, which provides that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released

on recognizance as may be provided by law. x x x" Most of the petitioners are incarcerated for non- bailable crimes and offenses. Even conceding the extraordinary backdrop of this case, humanitarian reasons alone cannot justify the utter disregard of the Constitution, the law, and the rules of procedures. If only to belabor the point, judicial policy dictates that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction. And since petitioners failed to show that they have exhausted the appropriate remedies before the lower courts, *i.e.*, by filing applications for bail and recognizance therein, or compelling circumstances have exempted them from disregarding the hierarchy of courts, the Petition must be denied.

3. POLITICAL LAW; INTERNATIONAL LAW; NELSON MANDELA RULES; THE COURT HAS UNDERTAKEN MEASURES FOR THE TEMPORARY AND PERMANENT RELEASE OF PERSONS DEPRIVED OF LIBERTY (PDLs) AND THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY (BJMP) AND THE BUREAU OF CORRECTIONS (BuCor) HAVE INTRODUCED PRACTICES AS PART OF THE COUNTRY'S COMPLIANCE WITH THE NELSON MANDELA RULES. — The Mandela Rules, x x x, must be read in their entirety and in the proper context. The Expert Group that formulated the Mandela Rules articulated the standard of adequate systems in penal institutions. It also recognized that the said Rules are not capable of wholesale application in all places because of the difference in the legal, social, economic, and geographical situations in each country. The preliminary observations which preface the Nelson Mandela Rules bear witness to this recognition[.] x x x These preliminary observations allow us to characterize the measures that this Court has undertaken for the temporary and permanent release of PDLs, as well as the practices introduced by the officials of the BJMP, under the Department of the Interior and Local Government (DILG), and the BuCor, under the DOJ, as part of our country's compliance with United Nations standards and as part of our country's response in catering to the needs of PDLs brought about by COVID-19. Section 4(a) of RA 10575, or The Bureau of

Corrections Act of 2013, expressly states that "the safekeeping of inmates shall include decent provision of quarters, food, water, and clothing in compliance with United Nations standards." The BJMP and the BuCor have prohibited jail visits since March 2020 to minimize PDLs' exposure to the COVID-19 virus. They have also implemented a "no *paabot*" policy prohibiting bringing food and other personal items into the detention facilities and penal institutions. Aside from information campaigns involving both personnel and PDLs, there have been activities such as distribution of vitamins to personnel and PDLs, production of face masks, and distribution of sanitation and disinfection materials. PDLs are also given the means for electronic money transfer and for video calls (*e-dalaw*).

DELOS SANTOS, *J., separate opinion:*

1. REMEDIAL LAW; HIERARCHY OF COURTS; WHILE THIS COURT IS GENERALLY NOT BOUND TO GIVE DUE COURSE TO UNSANCTIONED PETITIONS, THE MAGNITUDE OF THE PANDEMIC SERVES AS A COMPELLING JUSTIFICATION TO SUSPEND THE APPLICATION OF THE DOCTRINE OF HIERARCHY OF COURTS. — [T]he undersigned deems it imperative to clarify that **litigants may only file petitions and other pleadings sanctioned by the Constitution, law, or procedural rules promulgated by this Court.** In other words, this Court is generally not bound to entertain or to give due course to unsanctioned petitions. Nonetheless, the arguments put forth in the pleadings of both parties involve: (a) significant and far-reaching implications on disputes involving a collision of general welfare and individual rights; and (b) unprecedented and pressing concerns related to the COVID-19 pandemic currently affecting the whole nation. Considering the magnitude of the pandemic which affects all sectors of society, there is now a pressing need and compelling justification to suspend the application of the doctrine of hierarchy of courts and to take on its constitutional duty to settle controversies. However, such statement should not be interpreted to mean that litigants shall have an unbridled freedom to file unsanctioned pleadings directly before this Court. Hence, it should be emphasized that the *rarity* of the present occurrence (which is the present COVID-19 pandemic) is more than enough to indicate to the public that this act of giving due

course to the present petition shall not be abused as it is primarily based on observations regarding compelling matters raised by both parties as earlier mentioned.

2. POLITICAL LAW; INTERNATIONAL LAW, DEFINED; TWO SOURCES OF INTERNATIONAL LAW; PEREMPTORY AND NON-PEREMPTORY NORMS, DISTINGUISHED. — The term "international law" (or "public international law" according to other recognized authorities) generally refers to a body of rules which govern the relationship of states and international organizations which, in some instances like human rights concerns, include the treatment of natural persons. It is founded largely upon the principles of reciprocity, comity, independence, and equality of states. The sources of this "body of rules" are provided by Article 38 of the Statute of the International Court of Justice[.] x x x The aforementioned sources of international law have been traditionally categorized into peremptory and non-peremptory norms. On one hand, **peremptory norms** or *jus cogens* refers to those mandatory and non-derogable norms or principles which give rise to *erga omnes* obligations (even if no consensus exists on their substance) and which are modifiable only by general international norms of equivalent authority. On the other hand, **non-peremptory norms,** are those international principles or rules which do not have compelling or binding effect against a state.

3. ID.; 1987 CONSTITUTION *VIS-À-VIS* INTERNATIONAL LAW; INTERNATIONAL NORMS WHICH ARE CONSIDERED FORMING PART OF DOMESTIC LAWS MUST YIELD TO THE SUPREMACY OF THE CONSTITUTION; ONLY NORMS THAT ATTAINED A PEREMPTORY STATUS BY GENERAL ACCEPTANCE OR RECOGNITION BY THE COMMUNITY OF STATES CAN BE CONSIDERED AS PART OF THE LAW OF THE LAND BY INCORPORATION. — [T]he 1987 Philippine Constitution contains some provisions alluding to the practice of considering international norms and principles as part of domestic laws. However, it is settled that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. This long-standing doctrinal pronouncement, in relation to international law, is consistent with Articles 1 (2) and 55 of the UN Charter which espouses "the principle of equal

rights and self-determination of peoples." From a Philippine legal standpoint, international norms which are considered forming part of domestic laws must still yield to the supremacy of the Constitution. Consequently, both peremptory and non-peremptory norms may become part of the sphere of domestic law as provided under the present Constitution either by: (a) **transformation** — a method which requires an international law or principle to be converted to domestic law thru a constitutional *mechanism* such as enactment of an enabling legislation or ratification of a treaty; and (b) **incorporation** — a method where an international law or principle is deemed to have the force of domestic law thru a constitutional *declaration.* Of these methods, it is understood that international norms are either transformed or incorporated into domestic laws depending on which category they belong. Article 53 of the Vienna Convention on the Law of Treaties (Vienna Convention) states that "a peremptory norm of general international law is a norm **accepted** and **recognized** by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Since Section 2, Article II of the Constitution expressly states that the Philippines "adopts the **generally accepted** principles of international law as part of the law of the land," it is beyond question that only norms which have attained a **peremptory** status by general acceptance or recognition by the community of states can be considered as part of the law of the land by **incorporation.** Resultantly, all other norms ***not*** **contemplated** or **covered** in the **definition** of **"peremptory norm"** in Article 53 of the Vienna Convention have to undergo the method of **transformation** in order to have a binding effect as other domestic laws. Furthermore, transformation may be undertaken either of the following methods: (a) thru ratification of a treaty under Section 21, Article VII of the Constitution; or (b) thru enactment of an enabling law adopting a non-peremptory norm of international law.

4. ID.; ID.; THE NELSON MANDELA RULES CANNOT BE CONSIDERED AS A BINDING PEREMPTORY NORM OF INTERNATIONAL LAW FOR BEING MERELY RECOMMENDATORY; THE SAID RULES NEED TO BE TRANSFORMED INTO A DOMESTIC LAW THRU AN ENABLING ACT OF CONGRESS IN A CLEAR AND

UNEQUIVOCAL MANNER TO HAVE A LEGALLY BINDING FORCE. — The [Articles 10 to 14, Chapter IV of the United Nations (UN) Charter] clearly show that the UN Charter merely grants **recommendatory** powers to the UN General Assembly (composed of all member states *per* Article 9 of the same Charter) in terms of policy-making. As observed by Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen), UN General Assembly Resolutions such as the Nelson Mandela Rules may constitute "soft law" or **non-binding** norms, principles and practices that influence state behavior. Consequently, any resolution issued by the UN General Assembly does not carry with it the status of being a peremptory norm. Simply put, it has no binding effect on UN member states. Since the Nelson Mandela Rules gained an official international status thru the UN General Assembly's adoption of a Resolution on December 17, 2015, it stands to reason that the same Rules cannot be considered as a binding peremptory norm of international law for being merely recommendatory. A **contrary rule of interpretation** which will make every resolution of the UN General Assembly, like the Nelson Mandela Rules, automatically binding and part of the law of the land **would undermine and unduly restrict the sovereignty of the Republic of the Philippines.** It stifles the Republic's prerogative to interpret international laws thru the lenses of its own legal system or tradition. Therefore, the Nelson Mandela Rules needs to be transformed into a domestic law thru an enabling act of Congress in a clear and unequivocal manner to have a legally binding force.

5. ID.; ID.; NELSON MANDELA RULES *VIS-À-VIS* BUREAU OF CORRECTIONS ACT OF 2013 (RA 10575); THE IMPLIED REFERENCE OF THE MANDELA RULES IN SECTION 4, OF RA 10575 WAS THE CONGRESS' RESPONSE TO THE UN GENERAL ASSEMBLY'S ADOPTION OF THE SAID RULES; THE ENTIRE JUDICIAL BRANCH HAS NO POWER TO ISSUE WRITS OR ORDERS TO COMPEL IMPLEMENTATION THEREOF; REASONS, ELABORATED; ONLY CONGRESS HAS THE CONSTITUTIONAL POWER TO ADDRESS SUBHUMAN CONDITIONS IN OUR PENAL INSTITUTIONS. — In response to the UN General Assembly's adoption of the Nelson Mandela Rules, R.A. No. 10575 (Bureau

of Corrections Act) was enacted by Congress. It made an implied reference to the Nelson Mandela Rules [in Section 4.] At this juncture, there now arises a need to determine whether this Court or the entire Judicial branch is *constitutionally-empowered* to *issue writs or other orders* to *compel* the Bureau of Corrections and all the other public respondents to *implement* Section 4 of the Bureau of Corrections Act in some *particular manner*. The answer strongly points to the negative for the following reasons: ***First,*** the general import of the terms in Section 4 (a) of the Bureau of Corrections Act in relation to the Nelson Mandela Rules clearly shows that such provision (Section 4) is not judicially-enforceable. x x x The phrase "in compliance with established United Nations standards" in Section 4 (a) of the Bureau of Corrections Act is **so generic** that it clearly appears to be **silent regarding the manner of its implementation.** A thorough reading of the law will reveal that Section 23 of the same law merely delegates the task of jointly promulgating the necessary implementing rules and regulations to the Department of Justice (DOJ) in coordination with the Bureau of Corrections, the Civil Service Commission (CSC), the Department of Budget and Management (DBM), and the Department of Finance (DOF). The law is also silent as to the degree (moderate or strict). x x x ***Second,*** the implementation of the Bureau of Corrections Act is dependent on the available funds of the Bureau. x x x Yearly financial positions of the national government are mostly dependent on factors beyond its control. x x x A ***realistic*** **assessment** of the Philippine correctional system will show that the national government's financial position cannot possibly cope up with the standards of the Nelson Mandela Rules which even contemplates prisoners detained in "individual cells or rooms" for "each prisoner" to occupy "by himself or herself." x x x ***Third,*** the respondents' present *inability* to comply with the Nelson Mandela Rules or Section 4 of the Bureau of Corrections Act regarding the accommodation of all prisoners cannot be considered as a ground to release the petitioners pursuant to the constitutional prohibition against cruel, degrading or inhuman punishment. x x x [O]nly Congress has the constitutional power to address subhuman conditions that plague our penal institutions. The Court **cannot isolate** Section 19 (1) and **ignore** Section 19 (2) if it is expected to uphold the Constitution. The fact that Section 19 **(2),** Article III of the Philippine Constitution **has no counterpart** in the **US**

Constitution, patently shows that the framers of the Constitution had understood and realized the inherent and realistic financial limitation of congressional appropriation. x x x ***Last,*** courts are not constitutionally empowered to issue advisory opinions or promulgate rules, even thru adjudication, which amount to giving details as to the implementation of statutory provisions.

6. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION *VIS-À-VIS* CRIMINAL PROCEDURE AND RECOGNIZANCE ACT OF 2013 (RA 10389); THE COURT CANNOT ORDER THE RELEASE OF PETITIONERS EITHER ON BAIL OR RECOGNIZANCE ON THE GROUND OF EQUITY; REASONS, DISCUSSED. — [T]he petitioners ask this Court to exercise its "equity jurisdiction" and to: (a) order their release on bail or on recognizance on humanitarian reasons[.] x x x The undersigned maintains that this Court cannot grant their prayers due to the following reasons: ***First,*** this Court cannot allow the release of the petitioners on the ground of equity without violating the Constitution. x x x [T]here is ***no*** constitutional provision or law which ***automatically*** grants bail, releases on recognizance or allows other modes of temporary liberty to all accused or inmates who are clinically-vulnerable *(i.e.* sickly, elderly or pregnant). As it stands, courts concerned will still have to consider the x x x guidelines for bail in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure[.] x x x [T]he ground of "humanitarian reasons" raised by the petitioners *only concerns the fifth factor* — age and health of the accused. This means that, if this Court will make a pronouncement which automatically grants bail or recognizance thereby dispensing with the task of evaluating all the factors, such predetermination of an entitlement to provisional liberty will effectively **create a class** of prisoners **with a substantive right** for it is clear that inmates who are liberated are better off than those who are not. *Substantive law* is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which in turn give rise to a cause of action; that part of the law which courts are established to administer; as opposed to *adjective or remedial law,* which prescribes the method of enforcing rights or obtain redress for their invasions. Since the function of adjudication implies a determination of facts, dispensing with such function of evaluation will also have the effect of **creating a substantive right.** A judicial

pronouncement which predetermines an eligibility or entitlement does not anymore undergo a "method of enforcing rights or obtaining redress of their invasions" which is the very essence of being "adjective" or "remedial" thereby intruding into the sphere of substantive law. x x x ***Second,*** courts cannot take an unbridled approach of considering anything judicially-perceived to be "lacking" in the text of the law as "gaps" which instantaneously call for the application of equity because it violates the principle of separation of powers. x x x [P]etitioners' reliance on equity is misplaced for they are asking this Court to grant them a relief not supported by any provision of the Constitution or law. While the rules on bail appear to be inflexible on the petitioners' part, equity does not authorize courts to create substantive rights by way of "adjustment" and in the guise of interpretation. Granting provisional liberty to the petitioners may or may not be morally right depending on the personal belief of each individual person. However, what is "moral," "just," "fair," or "equitable" is highly subjective and relative; which is why a reasonable inference (such as the text of a law) is needed to minimize subjectivity and strengthen the impartiality of presiding magistrates and mitigate instances of grave abuse of discretion. x x x ***Third,*** equity is applied only in the absence — never in contravention — of statutory law. In this regard, the Recognizance Act provides for the statutory requirements for release on recognizance. x x x [W]hen the offense is punishable by *reclusion perpetua,* life imprisonment, or death, the accused's release on recognizance is no longer a matter of right — it becomes discretionary. x x x [Section 12 of RA 10389] prohibits any release on recognizance after a judgment has become final or when the accused has started serving his sentence. The only recognized exception pertains only to the release of those detainees who are entitled to the benefits of the Probation Law; but only if the application for probation is made before the convict starts serving the sentence imposed. x x x ***Fourth,*** the Court's ruling in ***Enrile v. Sandiganbayan, et al.*** is inapplicable in the instant case. x x x In ***Enrile,*** the Court emphasized that while the Philippines honors its "commitment to uphold the fundamental human rights as well as value the worth and dignity of every person," the grant of bail to those charged in criminal proceedings as well as extraditees must be based upon a **clear and convincing showing:** (a) that the detainee will ***not*** be a flight risk or a danger to the community; *and* (b) that there exist special,

humanitarian and compelling circumstances. Under the rules on syntax, the conjunctive word "and" denotes a "joinder or union" of words, phrases or clause. This means that "special, humanitarian and compelling circumstances" as a ground for granting bail does work in isolation — it has to be *accompanied* by *other* considerations. x x x **Fifth**, the grant or denial of bail applications is within the jurisdiction of the trial courts well-equipped to handle questions of fact. The Rules of Criminal Procedure **requires a hearing** before resolving a motion for bail by persons charged with offenses punishable by *reclusion perpetua* where the prosecution may discharge its burden of showing that the evidence of guilt is strong. This hearing, whether summary or otherwise, is mandatory and indispensable. x x x ***Sixth,*** the respondents have adequately shown that they have already undertaken efforts to address the COVID-19 concern. x x x In its Verified Report, the BJMP stated that it was adopting the following specific measures to prevent the spread of COVID-19 in detention facilities, to wit: (a) the suspension of inmate visitation as early as March 11, 2020; (b) continuous conduct of information dissemination on precautionary measures against COVID-19; (c) provision of facemasks and mandatory wearing of such among persons deprived of liberty (PDLs); (d) social distancing among PDLs; (e) regular exercise of PDLs to boost their immune system; (f) distribution of vitamins among PDLs; (g) medicines and special diets given to PDLs who have pre-existing medical conditions; (h) rigid disinfection of supplies and deliveries inside prison cells; (i) regular sanitation and disinfection of the whole jail perimeter including jail buildings and jail cells; j) improvised foot bath to prevent virus to be carried inside jail cells and; (k) special monitoring for PDLs with pre-existing conditions. x x x The Bureau of Corrections' Verified Report contains specific measures adopted throughout correctional facilities in the country, to wit: (1) general information drive about COVID-19; (2) no contact policy between inmates; (3) strict fourteen (14) days quarantine for newly committed PDLs; (4) proliferation and creation of isolation facilities to accommodate future COVID-19 patients; (5) no face mask, no entry policy; (6) the immediate deployment of manpower for the construction and renovation of facilities of PDLs and; (7) strict monitoring of ingress and egress of health personnel across jail buildings. x x x ***Seventh,*** the petitioners have ample remedies under existing laws and Supreme Court

issuances. Notably, the Court is certainly attuned to the extreme needs of decongesting detention facilities to promote social distancing during this critical time. Initially, this Court thru the Office of the Chief Justice (OCJ) had already taken the initiative of issuing the following Administrative Circulars to address the problem of jail congestion in this time of the COVID-19 pandemic, to wit: (a) Administrative Circular No. 38-2020; (b) Administrative Circular No. 37-2020; (c) Administrative Circular No. 33-2020. Likewise, the Office of the Court Administrator (OCA) also issued, the following circulars: (a) OCA Circular No. 93-2020; (b) OCA Circular No. 91-2020; and (c) OCA Circular No. 89-2020 — to implement the OCJ's administrative circulars. Both the OCJ and the OCA's circulars are intended to expedite the process of resolving bail applications currently pending especially those of indigents as well as providing guidelines for videoconferencing and electronic filing. All that the petitioners have to do is avail of the benefits under these issuances which are more than adequate to address their concerns on the COVID-19 pandemic — unless they are not so qualified or they failed to post the required bail amount, then they have to remain in detention and undergo trial to prove their innocence.

7. ID.; ID.; 1987 CONSTITUTION; IN UPHOLDING POLICE POWER MEASURES OVER CONSTITUTIONALLY-PROTECTED RIGHTS IN TIMES OF EMERGENCY, THE COURT LAID DOWN THE PARAMETERS THAT MUST BE FOLLOWED SHOULD THERE BE ANY ENCROACHMENT OF EITHER CONSTITUTIONAL OR STATUTORY RIGHTS. — [W]henever a conundrum arises ***in times of emergency*** when police power collides with constitutionally-protected freedoms or fundamental rights, the political question doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests. Such rule of interpretation is consistent with the basic principle instilled in ***Marcos, et al. v. Manglapus, et al.*** articulating that: "[i]t must be borne in mind that the Constitution, aside from being an allocation of power[,] is also a **social contract** whereby the people have **surrendered** their **sovereign powers** to the State **for** the **common good**." *However,* while public safety is the paramount and overriding concern of the State and, while it is also true that laws should be interpreted in favor of the greatest good of the

greatest number during emergencies, *individual freedoms also have to be respected.* As Justice Reyes describes, such duty entails the complex task of harmonizing fundamental interests of every individual, both free and deprived of liberty, and the general public and, while certain individual's plea for the application of the "humanity of law" may be considered in exceptional circumstances, public protection is equally paramount and thus, can never be discounted. Thus, in upholding police power measures over constitutional freedoms *in times of emergency,* the Court should subject any encroachment of either constitutional or statutory rights to the following interpretational parameters: (1) Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness; (2) Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment of its legitimate objectives consistent with general welfare; and (3) The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be *unnecessarily* oppressive on the minority.

8. ID.; ID.; ID.; ID.; THE STATE'S DECISION TO CONTINUALLY DETAIN PETITIONERS SATISFIES THE CRITERIA; REASONS, EXPLAINED. — The current choice of the State to continually detain the petitioners satisfies the aforementioned criteria for these reasons: ***First,*** the State's exercise of its prerogative to elect appropriate strategies under the present public health emergency situation branches have ample basis. "Public safety" involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters — it is an abstract term with no physical form with a boundless range, extent or scope. In the case at hand, there is wisdom in the continued detention of the petitioners as the nature of their respective charges is serious enough to justify their continued detention *until* bail hearings have been conducted and their applications have been acted upon favorably. Viewed in the context of the Executive department's vantage point, the release of the petitioners endangers national security. x x x ***Second,*** the State's measure of continually detaining the petitioners is reasonably related to its objective of maintaining public order and preserving public safety. While there is still no judicially declared terrorist

> organization in our jurisdiction pursuant to Section 17 of R.A. No. 9372 to date, the US and the European Union have both classified the CPP, NPA and *Abu Sayyaf* Group as foreign terrorist organizations. Obviously, this is a legitimate and vital concern to national security. x x x The last thing that this Court should do *in times of nationwide public health emergency* is to tip the scales of justice against public safety and against national security interests. This realization alone adequately *supports the reasonable link or relation* between the petitioners' continued detention and the objective of suppressing the COVID-19 pandemic. x x x ***Last,*** the petitioners' continued detention cannot be considered as an unnecessarily oppressive act of the State. Oppression has been defined as "an act of cruelty, severity, unlawful exaction, domination or excessive use of authority." Since the petitioners are allegedly members of the CPP-NPA-NDF, their continued detention is still deemed **necessary** until and unless they prove during the bail hearing that the evidence of their supposed guilt is not strong. Such unavoidable restraint of liberty is not "unnecessarily oppressive" as the petitioners have not shown that the State had been indifferent to their clinical needs.

APPEARANCES OF COUNSEL

Public Interest Law Center and *National Union of Peoples' Lawyers* for petitioners.

The Solicitor General for respondents.

D E C I S I O N

Antecedents

On April 6, 2020, Dionisio S. Almonte, Ireneo O. Atadero, Jr., Alexander Ramonita K. Birondo, Winona Marie O. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco Fernandez, Jr., Renante Gamara, Vicente P. Ladlad, Ediesel R. Legaspi, Cleofe Lagtapon, Ge-Ann Perez, Adelberto A. Silva, Alberto L. Villamor, Virginia B. Villamor, Oscar Belleza, Norberto A. Murillo, Reina Mae A. Nasino, Dario Tomada, Emmanuel Bacarra, Oliver B. Rosales, and Lilia Bucatcat (petitioners) filed a petition before this Court entitled "*In the Matter of the*

Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID[1]*-19 Pandemic*." Here, petitioners allege that they are prisoners and are among the elderly, sick, and pregnant population of inmates exposed to the danger of contracting COVID-19 where social distancing and self-isolation measures are purportedly impossible.[2] As such, they are invoking this Court's power to exercise "equity jurisdiction" and are seeking "temporary liberty on humanitarian grounds" either on recognizance or on bail.[3] Moreover, they are also asking the Court to order the creation of a "Prisoner Release Committee" similar to those set up in other countries to conduct a study and implement the release of prisoners in congested penal facilities. In seeking their provisional release on recognizance or bail, petitioners essentially argue that: (a) their continued confinement which poses a high risk of contracting COVID-19 is tantamount to cruel and unusual punishment proscribed under the Constitution;[4] (b) the United Nations (UN) standards, particularly the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), imposes a duty on the part of the State to protect the health and safety of prisoners consistent with the guarantees of the right to life;[5] (c) the government's response to the pandemic is not enough to protect the safety of the inmates;[6] (d) the government should take a cue from other countries which undertook measures to decongest their jails by releasing eligible prisoners;[7] (e) the Court may brush aside procedural rules and grant temporary liberty based on humanitarian reasons and equity jurisdiction;[8] and (f) it is not feasible for them to file petitions

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[1] Corona Virus Disease.

[2] *Rollo*, p. 14.

[3] *Id.* at 8.

[4] *Id.* at 7-8.

[5] *Id.* at 6-7, 42-54.

[6] *Id.* at 23-29, 42-59.

[7] *Id.* at 6.

[8] *Id.* at 8-10, 54-58.

for *certiorari* with the trial courts due to the Luzon-wide enhanced community quarantine (ECQ).[9]

For respondents' part who are represented by the Office of the Solicitor General, they filed their comment opposing petitioners' plea for their temporary release and for the creation of a Prisoner Release Committee and argued that: (a) petitioners are valuable members of the Communist Party of the Philippines — New People's Army-National Democratic Front (CPP-NPA-NDF) who have committed heinous crimes and are merely taking advantage of the current public health as well as the "fickle arena of public opinion" situation in seeking for their temporary release based on humanitarian reasons;[10] (b) the government has adequate medical facilities, personnel and measures to address the threat of COVID-19 in jails and other detention facilities;[11] (c) petitioners have ample remedies under this Court's several circulars which addressed the needs to decongest the jails in response to the COVID-19 pandemic;[12] (d) petitioners violated the doctrine of hierarchy of courts;[13] (e) the grant or denial of bail, the evaluation of petitioners' respective medical conditions, and the determination of whether or not the evidence of guilt is strong are questions of fact which should be determined by the trial courts;[14] (f) petitioners cannot be temporarily released on recognizance because they were charged with capital offenses;[15] (g) petitioners cannot be granted provisional liberty based on equity because governing laws exist;[16] (h) the doctrine espoused in ***Enrile v. Sandiganbayan***[17] is inapplicable because

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[9] *Id.* at 10.

[10] *Id.* at 225, 232.

[11] *Id.* at 225-226, 233-238, 256-259.

[12] *Id.* at 238, 263-265.

[13] *Id.* at 240-245.

[14] *Id.* at 242-245, 247-249, 256.

[15] *Id.* at 245-247.

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

[17] *Id.* at 250-251.

petitioners present a threat to public safety due to their supposed membership in the CPP-NPA-NDF;[18] (i) releasing petitioners violates the equal protection clause as there is no substantial difference between them and the rest of the detainees as everyone is equally vulnerable to COVID-19;[19] and (j) the Philippines is not bound to adopt the manner of decongesting jails undertaken by other countries as they operate under their own set of laws.[20]

Issues

-I-

Whether or not the instant petition filed directly before this Court may be given due course. . .

-II-

Whether or not the Nelson Mandela Rules are enforceable in Philippine courts. . .

-III-

Whether or not petitioners may be given provisional liberty on the ground of equity. . .

-IV-

Whether or not the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency. . .

Ruling

The Supreme Court is a collegiate judicial body whose rulings and binding opinions are the results of its members' collective and majoritarian consensus. The doctrines it establishes do not depend on the judgment or will of a sole magistrate as such is

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[18] *Id.* at 252-254.

[19] *Id.* at 252-256, 261.

[20] *Id.* at 259-263.

the spirit of collegiality. Thus, after initial deliberations and exchanges of ideas, it was collectively realized that the instant case presents several complex issues making the interaction of applicable principles ridden with far-reaching implications. Nonetheless, the members of this Court have unanimously arrived at the conclusion to treat the petition as petitioners' application for bail or recognizance, as well as their motions for other practicable and suitable confinement arrangements relative to the alleged serious threats to their health and lives.

At the outset, it is a settled rule that the Supreme Court is not a trier of facts.[21] Relatedly, a direct invocation of this Court's original jurisdiction is generally proscribed to prevent inordinate demands upon its time and attention which are better devoted to those matters within its exclusive jurisdiction as well as to prevent further over-crowding of its docket.[22]

Concomitantly, the Constitution guarantees the right to bail of all the accused except those charged with offenses punishable by *reclusion perpetua* when the evidence of guilt is strong.[23] However, in cases where the offense is punishable by *reclusion perpetua* and where the evidence of guilt is strong, bail is a matter of discretion.[24] Here, trial courts are granted the discretion to determine in bail applications whether there is strong evidence of guilt on the part of the accused.[25] A summary hearing is conducted merely for the purpose of determining the weight of evidence.[26] Only after weighing the pieces of evidence as

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[21] *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, et al.*, 810 Phil. 172, 177 (2017).

[22] *Rayos, et al. v. City of Manila*, 678 Phil. 952, 957 (2011). (Citations omitted)

[23] See: *Obosa v. Court of Appeals, et al.*, 334 Phil. 253, 270 (1997). (Citations omitted)

[24] See: *Leviste v. Court of Appeals, et al.*, 629 Phil. 587, 610-611 (2010). (Citations omitted)

[25] *Napoles v. Sandiganbayan*, 820 Phil. 506, 517 (2017).

[26] See: *Go v. Court of Appeals, et al.*, 293 Phil. 425, 447 (1993). (Citations omitted)

contained in the summary will the judge formulate his own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion.[27] Therefore, the entitlement to bail is a question of fact.

In this case, petitioners have been charged with offenses punishable by *reclusion perpetua*. As such, they are not entitled to bail as a matter of right. Consequently, there is a need to conduct summary hearings for the purpose of weighing the strength of the prosecution's evidence as to petitioners' guilt. This process entails a reception and an evaluation of evidence which the trial courts are competent to handle. The foregoing holds true with respect to the motions for other confinement arrangements which also necessitate reception and evaluation of evidence by a trial court. Hence, being a court of last resort, this Court ingeminates and reminds the Bench and the Bar that it is not the proper avenue or forum to ventilate factual questions especially if they are presented for adjudication on the first instance.

Like the case of ***Versoza v. People, et al.***[28] **and** ***Cruz, et al. v. Secretary of Environment and Natural Resources, et al.***,[29] the Court deems it fitting to have the other remaining issues threshed out in the separate opinions of its members that are attached to and made integral parts of this Decision.

WHEREFORE, in view of the foregoing reasons, the Court **TREATS** the present petition as petitioners' applications for bail or recognizance as well as their motions for other confinement arrangements, and **REFERS** the same to the respective trial courts where their criminal cases are pending, which courts are hereby **DIRECTED** to conduct the necessary proceedings and consequently, resolve these incidents with utmost dispatch. Accordingly, the proceedings before this Court are considered **CLOSED** and **TERMINATED**.

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[27] *People v. Tanes*, G.R. No. 240596, April 3, 2019. (Citations omitted)

[28] G.R. No. 184535, September 3, 2019.

[29] G.R. No. 135385, December 6, 2000, 400 Phil. 904, 931.

No pronouncement as to costs.

SO ORDERED.

Gesmundo, Reyes, Jr., Hernando, Carandang, Inting, Gaerlan, and *Baltazar-Padilla, JJ.,* concur.

Peralta, C.J., Leonen, Caguioa, Lazaro-Javier, and *Lopez, JJ.,* concur, see separate opinions.

Perlas-Bernabe, J., concurs in the result, see separate opinion.

Zalameda and *Delos Santos, JJ.,* dissent, see separate opinions.

SEPARATE OPINION

PERALTA, *C.J.*:

I join the majority in treating the instant petition as petitioners' application for bail or recognizance. I submit this opinion, however, in order to articulate my views on some salient points.

The instant Petition[1] calls for the release of prisoners on humanitarian grounds in the midst of the pandemic created by the 2019 Novel Corona Virus Disease (COVID-19) that now grips the world at the neck.

Petitioners, who deem themselves as political prisoners detained in various penal institutions in the country, profess that they are most vulnerable to COVID-19 as they are either elderly, pregnant, or afflicted with hypertension and/or diabetes. Believing that an outbreak of the disease in their respective places of confinement is not unlikely owing to what they perceive to be hellish conditions in highly-congested local prisons, they fear that they stand to be the most susceptible to infection if and when such outbreak does occur.[2]

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[1] *Rollo,* pp. 3-62.

[2] *Id.* at 14, 29, 34-36.

In support of this bid, petitioners cite a number of medical reports and abstracts tending to demonstrate that the elderly, sickly and those already afflicted with certain ailments, are the easiest victims of the novel disease.[3] Thus, they plead for their release from confinement either on bail or recognizance, as well as for the creation, by directive of the Court, of a Prisoner Release Committee with accompanying ground rules for the conditional release of similarly situated prisoners.[4] They invoke humanitarian considerations based on international law principles, specifically those embodied in the Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (*The Mandela Rule of 2015*) and Article 9.1 of the International Covenant on Civil and Political Rights (*ICCPR*).[5]

By way of Comment,[6] the Office of the Solicitor General (*OSG*) advocates for the dismissal of the petition based on outright violation of judicial hierarchy. It explains that the plea should be offered before the courts where petitioners' respective cases are being heard, and not directly with the High Court. It also calls attention to the fact that petitioners have all been charged and, except for one[7] who has already met conviction and is currently serving sentence, are under prosecution for non-bailable offenses in relation to their alleged membership in the CPP-NPA-NDF. More than half of them are in custody at Camp Bagong Diwa, Taguig City and none of them has yet been reported to exhibit signs of infection.

As said, the Petition must be treated as petitioners' application for bail or recognizance.

I

The release of petitioners on bail is restricted by twin fundamental provisions of the Constitution and the Rules of

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[3] *Id.* at 37-42.

[4] *Id.* at 59.

[5] *Id.* at 42-48.

[6] *Id.* at 224-266.

[7] *Id.* at 232.

Court. Section 7 of Rule 114 of the Rules of Court instructs that a person charged with a capital offense or with an offense punishable by *reclusion perpetua* or life imprisonment shall not be entitled to bail when the evidence of guilt is strong.[8] The rule echoes from Section 13, Article III of the Constitution which stresses that bail, while ordinarily a right of an accused, is not available to those charged of a capital offense or an offense punishable by life imprisonment or *reclusion perpetua* when the evidence of guilt is strong.[9]

Here, petitioners are all charged with crimes or offenses that are punishable by death, life imprisonment or *reclusion perpetua*. Worse, one of them was already convicted by the trial court. Hence, none of the petitioners can claim to be entitled to bail as a matter of right. Their entitlement to bail is a matter reposed to judicial discretion — particularly, to the discretion of the court where their cases are pending.

The question of whether petitioners are deserving of provisional liberty, much more of whether the evidence of guilt against them are strong, are certainly questions of fact. Resolving such questions in the first instance is not, and has never been, the province of this Court. It is not difficult to see the merit in the OSG's argument, therefore, that the instant petition suffers from infirmity — for the same not only ignores the doctrine of hierarchy of courts — but also implores this Court to act on a matter that lies outside its competence as it is not ordinarily legally equipped to evaluate evidence respecting the right to bail.

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[8] Section 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable*. — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

[9] Sec. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the Writ of *Habeas Corpus* is suspended. Excessive bail shall not be required.

Indeed, judicial discretion in granting bail may be exercised only after pertinent evidence is submitted to a court during a bail hearing after due notice to the prosecution.[10] The necessity, if not indispensability, of a bail hearing under the circumstances is all the more revealed if we consider that certain factors in the fixing of a bail bond — such as the nature and circumstances of the crime, character and reputation of the accused, the weight of the evidence against him, the probability of the accused appearing at the trial, whether or not the accused is a fugitive from justice, and whether or not the accused is under bond in other cases — unequivocally require the presentation of evidence and a reasonable opportunity for the prosecution to refute it.[11]

Yet, petitioners argue that it would be unreasonable to require them to follow the usual procedure in applying for bail given the threat of the COVID-19 pandemic and the fact that the whole Luzon has been placed under enhanced community quarantine.

The argument fails to convince.

We remind petitioners that neither the pandemic nor the executive declaration of a Luzon-wide lockdown has the effect of suspending our laws and rules, much less of shutting down the Judiciary.

Contrary to petitioners' insinuation, applying for bail before trial courts has not been rendered infeasible even amidst the COVID-19 pandemic and the Luzon-wide lockdown. In Administrative Circular (*AC*) No. 31-2020, issued on March 16, 2020, this Court explicitly assured that court hearings on urgent matters — including that of "*petitions, motions or pleadings related to bail*" — will continue during the entire period of the community quarantine.

In addition, the Court has issued several circulars specifically aimed at facilitating and expediting the release of certain

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[10] *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

[11] See *People v. Judge Dacudao*, 252 Phil. 507, 513 (1989).

persons deprived of liberty (*PDL*) at the height of the present COVID-19 pandemic. Thus:

> 1.) In AC No. 33-2020,[12] the Court specifically allowed the electronic filing of applications for bail and granted trial court judges a wider latitude of discretion for a lowered bail amount effective during the period of the present public health emergency. The Circular also sanctioned the electronic transmission of bail application approvals and directed the consequent release order to be issued within the same day to the proper law enforcement authority or detention facility to enable the release of the accused.
>
> 2.) In AC No. 34-2020,[13] on the other hand, the Court expanded the efficacy of electronic filing of criminal complaints and informations, together with bail applications, to keep up with the executive determination of the need to extend the period of the enhanced community quarantine in critical regions of the country.
>
> 3.) In AC No. 37-2020,[14] the Court ordered the pilot-testing of videoconference hearings on urgent matters in criminal cases, including bail applications, in critical regions where the risk of viral transmission is high.
>
> 4.) Finally, in AC No. 38-2020,[15] the Court authorized the grant of reduced bail and recognizance to indigent PDLs pending the continuation of the proceedings and the resolution of their cases.

These issuances, accompanied by pertinent circulars[16] emanating from the Office of the Court Administrator (*OCA*),

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[12] Dated March 31, 2020.

[13] Dated April 8, 2020.

[14] Dated April 27, 2020.

[15] Dated April 30, 2020.

[16] Namely, OCA Circular Nos. 89-2020, 91-2020, 93-2020, 94-2020, 96-2020, 98-2020.

had, in fact, facilitated the gradual and incremental release of 33,790 detention prisoners from March 17 to June 22, 2020 as follows:[17]

Period	Number of PDLs Released Nationwide
March 17 to April 29	9,731
April 30 to May 8	4,683
May 9 to May 15	3,941
May 16 to May 22	4,167
May 23 to May 29	2,927
May 30 to June 5	2,149
June 6 to June 11	2,924
June 12 to June 22	3,268
Total PDLs released from March 17 to June 22, 2020	**33,790**

II

An examination of the substance of the instant Petition would further reveal its inaptness.

Invoking equity considerations, petitioners allude to the doctrines in *Enrile v. Sandiganbayan, et al.*[18] and *De la Rama v. The People's Court*[19] where the accused were allowed temporary liberty on account of proven medical condition as their continued incarceration was shown to be further injurious to their health and would endanger their lives.[20] The OSG, on the other hand, rebuffs this allusion by positing that *Enrile*

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[17] Figures from the Office of the Court Administrator.

[18] 767 Phil. 147 (2015).

[19] 77 Phil. 461 (1946).

[20] *Rollo*, pp. 55-57.

cannot be relied upon as a precedent because it is a *pro hac vice* ruling.

While I believe that petitioners' invocation of *Enrile* is misplaced, I take exception to the OSG's characterization of the ruling in that case as *pro hac vice*.

Pro hac vice is a Latin term meaning "*for this one particular occasion*."[21] Similarly, a *pro hac vice* ruling is one "***expressly qualified as x x x cannot be relied upon as a precedent to govern other cases***."[22] The Court never expressly qualified the Enrile ruling as having only a *pro hac vice* application. In fact, the Court, even if it minded to, could not have validly made such qualification, considering that the promulgation of *pro hac vice* decisions has already been declared as illegal in our jurisdiction. In the 2017 *en banc* case of *Knights of Rizal v. DMCI Homes, Inc.*,[23] we held:

> *Pro hac vice* means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. **A *pro hac vice* decision violates statutory law — Article 8 of the Civil Code — which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."** The decision of the Court in this case cannot be *pro hac vice* because by mandate of the law every decision of the Court forms part of the legal system of the Philippines. **If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution.** (Emphasis supplied)

Petitioners err in their invocation of *Enrile* simply because the circumstances in that case are different from the circumstances herein.

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[21] *Partido ng Manggagawa (PM) v. COMELEC*, 519 Phil. 644, 671 (2006).

[22] *Id.* (Emphasis ours)

[23] G.R. No. 213948, April 18, 2017.

First, the petitioner in *Enrile* — the Senator Juan Ponce Enrile — underwent bail hearing with the *Sandiganbayan* prior to his resort to this Court. What Senator Enrile assailed before this Court then was the Sandiganbayan's denial of his *Motion to Fix Bail* and its *Motion for Reconsideration*. In the instant case, however, petitioners are asking the Court to grant their provisional liberty by way of bail or recognizance without filing a motion before the trial courts having jurisdiction over their respective cases.

Second, in his bail hearing for the *Sandiganbayan*, Senator Enrile was able to present evidence of his current fragile state of health. Based on that, the Court was able to infer that Senator Enrile's advanced age and ill health required special medical attention. On the other hand, to prove their medical conditions, petitioners herein attached medical certificates and other documents in their petition. However, the Court cannot simply take judicial notice of petitioners' age and health conditions. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support.[24] Age and health conditions necessitate the presentation of evidence. This further emphasizes the need to conduct a bail hearing.

Lastly, Senator Enrile's medical condition was not the only consideration why he was afforded the benefit of bail. In *Enrile*, the Court affirmed the right to bail because Senator Enrile was likewise not shown to be a danger to the community and his risk of flight was nil — a conclusion that was impelled not only by his social and political standing, but also by his voluntary surrender to the authorities. Thus —

> In our view, his social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly

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[24] *CLT Realty Development Corp. v. Hi-Grade Feeds Corp., et al.*, 768 Phil. 149, 163 (2015).

unlikely. His personal disposition from the onset of his indictment for plunder, formal or otherwise, has demonstrated his utter respect for the legal processes of this country. We also do not ignore that at an earlier time many years ago when he had been charged with rebellion with murder and multiple frustrated murder, he already evinced a similar personal disposition of respect for the legal processes, and was granted bail during the pendency of his trial because he was not seen as a flight risk. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail.[25] (Citations omitted)

The Court is mindful that a contagion within the country's penal institutions is neither unlikely nor impossible. Yet, we take judicial notice of the fact that following the executive declaration of a public health emergency in March, the Bureau of Jail Management and Penology (*BJMP*) and the Bureau of Corrections, under a joint mandate to protect the health and safety of all PDLs and detention prisoners, have implemented preventive and precautionary measures against a potential COVID-19 outbreak in detention and correctional facilities. The measures include the total lockdown of penal institutions, the designation of isolation facilities within premises, the procurement of personal protective equipment, as well as nutrition and on-site education campaigns. Only recently, the Bureau of Corrections has also put in place necessary infrastructure to provide inmates facility for online visits/video conference with their relatives.

Be that as it may, petitioners would now have the Court follow the global trend of late, whereby various governments have taken swift unprecedented measures in decongesting prison facilities by allowing an exodus of prisoners on conditional or temporary liberty to mitigate the effects of an on-site community transmission of COVID-19 or otherwise curb that possibility. It bears to stress, however, that these initiatives were based on laws and rules prevailing in those jurisdictions. For instance, the directive for the release of prisoners in the territories of

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[25] *Enrile v. Sandiganbayan, et al., supra* note 18, at 173.

India applies only to those convicted or charged with offenses punishable with less than seven years of jail term.[26]

At any rate, the Philippines did not lag behind in this respect. As I have already pointed out, this Court — mindful of the circumstantial vulnerabilities present in detention and correctional facilities across the country, as well as of the limits of its own power and competence — has already caused, through its various issuances in response to the pandemic, the seamless release of 33,790[27] detention prisoners in a most expeditious way but in line with existing fundamental laws, rules and legal processes. Such issuances, in turn, complement on-going efforts by executive agencies to expedite the release of PDLs *via* parole, pardon and executive clemency. Indeed, the latest figures from the Department of Justice indicate that, as a direct result of implementing its *Interim Rules on Parole and Executive Clemency*[28] which took effect last May 15, 2020, the Board of Pardons and Parole (*BPP*) was already ble to grant parole to 221 PDLs, recommend the release on conditional pardon of 56 others, and endorse the commutation of sentence of 56 more from May 18, 2020 to June 10, 2020—a period of only less than a month.[29] These, in addition to the earlier reported release by the BJMP of some 4,188 PDLs from March 17 to April 30, 2020.[30] Undeniably, such parallel efforts by the Judiciary and executive show the government's commitment in maximizing, nay, in exhausting, every available legal means in order to decongest the country's detention and correction facilities amidst the current national health crisis.

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[26] https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india. Last visited May 27, 2020.

[27] Figure as of June 22, 2020. See note 17.

[28] BPP Resolution No. OT-04-05-2020.

[29] Letter of Secretary Menardo Guevarra to the Chief Justice dated June 15, 2020.

[30] https://tribune.net.ph/index.php/2020/05/12/4188-prisoners-freed-to-decongest-jails/. Last visited on May 31, 2020.

III

At this juncture, we stress that unless there is clear showing that petitioners are actually suffering from a medical condition that requires immediate and specialized attention outside of their current confinement – as, for instance, an actual and proven exposure to or infection with the novel coronavirus – they must remain in custody and isolation incidental to the crimes with which they were charged, or for which they are being tried or serving sentence. Only then can there be an actual controversy and a proper invocation of humanitarian and equity considerations that is ripe for this Court to determine.

We come to the conclusion that petitioners are probably seeking administrative – not judicial – remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than to: (a) treat the instant petition as petitioners' application for bail or recognizance, (b) refer the same to the respective trial courts where their criminal cases are pending for resolution and (c) direct said courts to resolve such incidents with deliberate dispatch. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As they hereby complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing it is that same exact fear which looms outside of prison walls.

WHEREFORE, I vote to: (a) **TREAT** the instant petition as petitioners' application for bail or recognizance, (b) **REFER** the same to the respective trial courts where their criminal cases are pending for resolution and (c) **DIRECT** said courts to resolve such incidents with deliberate dispatch.

SEPARATE OPINION

LEONEN, *J.*:

Our country's perennial jail congestion has made persons deprived of liberty all the more vulnerable to the most virulent of infectious diseases, including COVID-19. Thus, in view of the Petition's factual assertions and broad arguments, I concur with the unanimous decision of this Court to refer this case to the trial courts to determine, upon the parties' proper motion or petition, whether there are factual bases to support their temporary release.

Nonetheless, consistent with our constitutional duty to recognize the intrinsic value of every human being, as well as our power to provide guidance to the Bench and Bar, we should clarify the following:

First, the traditional mode of securing the release of any accused on trial or on appeal is through bail or recognizance. As Chief Justice Diosdado Peralta (Chief Justice Peralta) said, trial courts should conscientiously and consistently implement all of this Court's applicable guidelines on fixing the amount of bail to plea bargaining.[1] I reiterate my opinion in *Enrile v. Sandiganbayan*[2] that a release on bail or recognizance should comply with the Constitution, laws, and rules and regulations. Any release contrary to these cannot be countenanced. Thus, in seeking release on bail or recognizance, petitioners should go to the trial courts to determine the facts that would entitle them to the relief.

Second, persons deprived of liberty should be able to file an action for violations of their constitutional right against cruel, inhuman, and degrading punishment, and their rights to life,

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[1] *C.J.* Peralta, Separate Opinion, p. 8.

[2] 767 Phil. 147 (2015) [Per *J.* Bersamin, *En Banc*].

health, and security. As proposed by Senior Associate Justice Estela Perlas-Bernabe (Justice Perlas-Bernabe), we should not diminish the possibility that they may avail of these rights.[3] This Court is not powerless to ensure that these fundamental rights are respected and implemented. It is why this Court exists. This aspect of judicial review, to measure the constitutionality of a government act or inaction *vis-à-vis* a legal right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1 of the 1987 Constitution.

Thus, I opine that Article III, Section 19 of the Bill of Rights, which addresses the conditions of detention and service of sentence, may be invoked by a detainee or a convict through either mode: (1) a motion for release when the case is still on trial or on appeal; or (2) a petition for *habeas corpus* as a post-conviction remedy, consistent with *Gumabon v. Director of Prisons*.[4]

Nonetheless, mere invocation of the violation of constitutional rights is not enough for the courts to afford relief. One must allege and provide factual basis showing: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable statutory or constitutional provision, including those which may refer to judicially discernable international standards adopted in this jurisdiction; (c) a clear demand on the relevant agencies of government to address the grievance; and (d) the intentional or persistent refusal or negligence on the part of the government agency—whether the warden, director of prisons, local government unit, or Congress—to address the proven situation and statutory or constitutional provisions.

We should emphasize that all provisions in the Bill of Rights are justiciable. However, in deference to the other constitutional organs, a violation of the constitutional rights of persons deprived of liberty anchored on existing jail or health conditions should

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[3] *J.* Perlas-Bernabe, Separate Opinion, p. 10.

[4] 147 Phil. 362 (1971) [Per *J.* Fernando, First Division].

first be addressed by the executive and legislative branches. Thus, before a court may give due course to such a cause of action, there must be a showing that the movant or petitioner has made a clear demand on the relevant agencies, and that there has been a denial or unreasonable negligence on their part.

Finally, as a distinguishing initiative of the Peralta Court, I suggest a measure that is grounded on social justice: a writ of *kalayaan*. This will be similar to the writ of *kalikasan* or the writ of continuing *mandamus* in environmental cases, but geared toward addressing jail congestion. It shall be issued when all the requirements to establish cruel, inhuman, and degrading punishment are present. It shall also provide an order of precedence to bring the occupation of jails to a more humane level. Upon constant supervision by an executive judge, the order of release will prioritize those whose penalties are the lowest and whose crimes are brought about not by extreme malice but by the indignities of poverty.

Jail congestion affects so many individuals, most of them poor and invisible. The dawn of the COVID-19 pandemic has made this a more urgent concern. It is time that we, as the Supreme Court, address this through the clearest guidance to our lower courts.

Indeed, this case is unprecedented, for we are given the opportunity to define the limitations of the expanded executive power during a pandemic, as well as to address jail congestion —a longstanding problem that has pervaded our justice system. The issues involved here bear upon not only the role of the Judiciary, but also our collective humanity, as we adapt to the unique circumstances brought upon by the pandemic.

In this case, petitioners are detainees who pray for their temporary release on recognizance or on bail, invoking humanitarian considerations on account of their advanced age and compromised health conditions, as well as the spread of COVID-19 in congested jails. They ask that their release be allowed while the country is in the state of public health

emergency, national calamity, lockdown, and community quarantine. They also pray for the creation of a "prisoner release committee" that shall issue ground rules and implement the release of all those similarly situated.[5]

With many of them sick, elderly, and pregnant—those most vulnerable to the disease—petitioners maintain that their continuing detention threatens their life and health. This, they assert, transgresses their right against cruel, degrading, and inhuman punishment under Article III, Section 1 of the 1987 Constitution.[6]

Petitioners likewise invoke their rights under international law principles and conventions, including: (1) the International Covenant on Civil and Political Rights; (2) the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; (3) the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);[7] (4) the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and (5) the United Nations Principles for Older Persons.[8]

Petitioners also point out that the United Nations High Commissioner for Human Rights has recommended the decongestion of jails by releasing the most vulnerable prisoners. They point out how the governments of Ethiopia, Sudan, Germany, Canada, India, Iran, Afghanistan, Turkey, Australia, and New Jersey in the United States have begun releasing prisoners upon acknowledging the gravity of the pandemic.[9]

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[5] Petition, p. 57.

[6] *Id.* at 5-6 and 34.

[7] Petitioners assert these are recognized in the Philippines as they are referred in Republic Act No. 10575 or the Bureau of Corrections Act and the Jail Manual of Operations.

[8] Petition, pp. 40-52.

[9] *Id.* at 48-52.

As such, petitioners pray that this Court apply equity in their situation. They assert that their release will not prejudice the State or the prosecution, and will lessen state costs and health risks to jail personnel. They insist that they are not flight risks, citing the quarantine and their advanced age, physical conditions, and lack of resources to avoid trial.[10] They further point out that they are not hardened criminals, as the charges against them are due to political beliefs.[11] They likewise stress that they have not yet been convicted, and are thus presumed innocent.[12]

Furthermore, petitioners cite the Implementing Rules and Regulations of Republic Act No. 10575, which states that this Court may order the release or transfer of any inmate, especially if not yet convicted.[13]

Petitioners maintain prisoners' vulnerability to COVID-19.[14] They point out that social distancing is impossible in jails, with some housing up to 534% capacity.[15] They assert that the national government has not provided adequate health measures in detention facilities.[16] While recognizing some measures set up in jails, they insist that these are not sufficient to prevent the disease's spread.[17] They also raise mental health issues, their contact with the outside world having been more limited.[18]

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[10] *Id.* at 11 and 54.

[11] *Id.* at 55.

[12] *Id.* at 41.

[13] *Id.* at 42. The Petition states "Republic Act No. 10375."

[14] *Id.* at 40.

[15] *Id.* at 3, 27 and 30.

[16] *Id.* at 27.

[17] *Id.* at 56.

[18] *Id.*

Finally, petitioners assert that this Court has allowed bail on humanitarian grounds in *Enrile v. Sandiganbayan*[19] and *Dela Rama v. People*,[20] after accounting for the petitioners' health conditions.[21]

In an April 17, 2020 Resolution, this Court required respondents to submit their comment and their verified reports on the necessary interim preventive measures in response to the COVID-19 pandemic.

For their part, respondents pray that the Petition be outright dismissed for petitioners' failure to comply with the doctrine of hierarchy of courts. They maintain that petitioners should have gone to the court where their criminal cases are pending.[22] Moreover, respondents argue that the Petition raises questions of facts which only the lower courts may determine. Humanitarian grounds and the COVID-19 pandemic are allegedly not compelling reasons to seek direct recourse to this Court.[23]

Respondents also claim that petitioners cannot be temporarily released on recognizance or on bail. They say recognizance cannot be granted as petitioners have all been charged with offenses punishable by *reclusion perpetua*.[24] Specifically, petitioners are allegedly members of the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF), which has been identified as a terrorist organization in 2017.[25] As to bail, respondents point out that it is a matter of discretion which requires notice and hearing, in line with due process.[26]

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[19] 767 Phil. 147 (2015) [Per J. Bersamin, *En Banc*].

[20] 77 Phil. 461 (1946) [Per J. Feria, *En Banc*].

[21] Petition, pp. 53-54.

[22] Comment, pp. 17-18.

[23] *Id.* at 20-22.

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

[25] *Id.* at 10.

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

Respondents maintain that petitioners cannot rely on *Enrile* because it is a *pro hac vice* ruling. It does not apply to petitioners who are all high-ranking leaders of CPP-NPA-NDF, a terrorist organization. Moreover, since petitioners had previously violated the terms of their provisional release, respondents say they are flight risks and not entitled to temporary release.[27]

Respondents assert that petitioners invoke preferential treatment. They claim that granting the Petition will violate the equal protection clause, there being no substantial difference between petitioners and the other prisoners who are also languishing in jail despite the threat of COVID-19.[28] They characterize the Petition as a tool of deception used by the CPP-NPA-NDF by taking advantage of the pandemic to justify the release of its high-profile members.[29]

Finally, respondents allege that the government has taken several health and protection measures to ensure the safety of persons deprived of liberty.[30] They assert that the Philippines is not required to follow suit with foreign governments.[31] The provisions on release of prisoners and prison congestion, they maintain, is not one of the grounds for release.[32]

In reply, petitioners justify their direct recourse to this Court because of the novel question of law brought about by the COVID-19 pandemic. While they admit that their medical conditions are questions of facts, they maintain that this Court may resolve the legality of releasing the elderly, sickly, and those in critical conditions based on humanitarian considerations.[33] They allege that this Court, exercising its equity

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[27] *Id.* at 27-29.

[28] *Id.* at 29-33.

[29] *Id.* at 38.

[30] *Id.* at 33-36.

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

[32] *Id.* at 40.

[33] Reply, pp. 4-5.

jurisdiction, may grant their provisional release because of the lack of speedy and adequate remedies in the lower courts, as with the ravaging effects of the COVID-19 pandemic in highly congested jail systems.[34]

Petitioners argue that a substantial distinction exists for this Court to allow them provisional liberty because of their status as detainees yet to be convicted, their advanced ages, and existing medical conditions. They plead that such classification of detainees be applied to others similarly situated who must also be allowed temporary release for the duration of the COVID-19 pandemic.[35]

Petitioners claim that respondents failed to curtail the spread of COVID-19 in several of its institutions, as the issue of physical distancing, a key measure to prevent a COVID-19 outbreak in prisons, remains unaddressed. Petitioners pray for this Court to take judicial notice of the overcrowding and subhuman conditions in correctional facilities in the Philippines, and to rule that prison systems are not equipped with medical and health care facilities to address the COVID-19 pandemic.[36]

I join this Court in referring this matter to the appropriate trial courts, which will determine whether there are factual bases to support petitioners' temporary release. In the trial courts, petitioners may pray for their provisional release by: (a) applying for bail or recognizance; or (b) filing an action for a violation of their constitutional rights.[37]

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[34] *Id.* at 5-11.

[35] *Id.* at 12-16.

[36] *Id.* at 50-56.

[37] Should they avail of the second remedy, a detainee whose conviction is not yet final should file a motion for release, while a convicted prisoner may file a petition for a writ of *habeas corpus*. The movant or petitioner must show: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand made on the relevant agencies of government; (d) the intentional or persistent refusal or negligence on the part of the relevant

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The traditional mode of securing provisional release of an accused pending trial or appeal is through bail or recognizance.

Article III, Section 13 of the 1987 Constitution provides:

SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

Under the Revised Rules of Criminal Procedure, bail is the security given by or on behalf of a person in custody so that they may be provisionally released. It is meant to ensure their appearance before any court.[38]

Generally, all persons are entitled to the right to be released on bail.[39] However, the grant of bail is subject to several conditions,[40]

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agencies of government to address the cruel conditions of the violation of the statutory or constitutional provisions.

[38] Rules of Court, Rule 114, Sec. 1.

[39] RULES OF COURT, Rule 114, Sec. 4 provides:

SECTION 4. *Bail, a Matter of Right; Exception.* — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

[40] RULES OF COURT, Rule 114, Sec. 2 provides:

SECTION 2. *Conditions of the Bail; Requirements*. — All kinds of bail are subject to the following conditions:

(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

(b) The accused shall appear before the proper court whenever required by the court or these Rules;

requirements,[41] procedures,[42] and qualifications.[43] Likewise,

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(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in *absentia*; and

(d) The bondsman shall surrender the accused to the court for execution of the final judgment.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail. (2a)

[41] RULES OF COURT, Rule 114, Sec. 17 provides:

SECTION 17. *Bail, Where Filed*. — (a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or appeal.

(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held. (17a)

[42] RULES OF COURT, Rule 114, Secs. 8 and 18 provide:

SECTION 8. *Burden of Proof in Bail Application*. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

SECTION 18. *Notice of Application to Prosecutor*. — In the application for bail under Section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)

[43] RULES OF COURT, Rule 114, Sec. 5 provides:

SECTION 5. *Bail, When Discretionary*. — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or

there are circumstances when release on bail shall not be granted.[44]

In *People v. Escobar*,[45] this Court explained that the right to bail is premised on the presumption of innocence:

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life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

[44] RULES OF COURT, Rule 114, Sec. 7 provides:

SECTION 7. *Capital Offense or an Offense Punishable by Reclusion Perpetua or Life Imprisonment, not Bailable*. — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

[45] 814 Phil. 840 (2017) [Per *J.* Leonen, Second Division].

Bail is the security given for the temporary release of a person who has been arrested and detained but "whose guilt has *not* yet been proven" in court beyond reasonable doubt. The right to bail is cognate to the fundamental right to be presumed innocent. In *People v. Fitzgerald:*

> The right to bail emanates from the [accused's constitutional] right to be presumed innocent. It is accorded to a person in the custody of the law who may, by reason of the presumption of innocence he [or she] enjoys, be allowed provisional liberty upon filing of a security to guarantee his [or her] appearance before any court, as required under specified conditions. . . . (Citations omitted)

Bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion perpetua* or life imprisonment" before conviction by the Regional Trial Court. However, if the accused is charged with an offense the penalty of which is death, *reclusion perpetua*, or life imprisonment — "regardless of the stage of the criminal prosecution" — *and* when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.[46] (Citations omitted)

There are instances when posting bail is no longer required, but these must be provided in the law or in the Rules of Court. Rule 114, Section 16 of the Rules of Court provides such instances:

> When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.
>
> A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court. (16a)

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[46] *Id.* at 884.

In 2014, this Court, through A.M. No. 12-11-2-SC, issued guidelines to enforce the accused's rights to bail and speedy trial to decongest holding jails and to humanize the conditions of detainees.[47] Section 5 provides:

> SECTION 5. *Release After Service of Minimum Imposable Penalty*. — The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, motu proprio or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him. [Sec. 16, Rule 114 of the Rules of Court and Sec. 5(b) of R.A. 10389]

Meanwhile, release on recognizance is generally allowed if it is provided by law or the Rules of Court.[48] Rule 114, Section 15 of the Revised Rules of Criminal Procedure states:

> SECTION 15. *Recognizance*. — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person.

In *People v. Abner*,[49] this Court defined recognizance as a record entered in court allowing for the release of an accused subject to the condition that they will appear for trial:

> Section 1, Rule 110, of the Rules of Court, provides that "bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." Under this, there are two methods of taking bail: (1) by bail bond and (2) by recognizance. A bail bond is an obligation given by the accused with one or more sureties, with the condition

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[47] A.M. No. 12-11-2-SC (2014), Third Whereas Clause. Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial.

[48] Rules of Court, Rule 114, Sec. 15 provides:

> SECTION 15. *Recognizance*. — Whenever allowed by law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person. (15a)

[49] 87 Phil. 566 (1950) [Per *J.* Paras, *En Banc*].

to be void upon the performance by the accused of such acts as he may legally be required to perform. *A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial*. (Moran, Comments on the Rules of Court, 2d ed., Vol. II, page 592.) In *U.S. vs. Sunico, et al.*, 48 Phil. 826, 834, this court, citing *Lamphire vs. State*, 73 N. H., 462; 62 Atl., 786; 6 Am. & Eng. Ann. Cas., 615, defined a recognizance as "a contract between the sureties and the State for the production of the principal at the required time."[50] (Emphasis supplied)

Under Republic Act No. 10389, or the Recognizance Act of 2012, release on recognizance is allowed if any person in custody or detention "is unable to post bail due to abject poverty."[51] It is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment, so long as the application is timely filed.[52]

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[50] *Id.* at 569-570.

[51] Republic Act No. 10389 (2013), Sec. 3.

[52] Republic Act No. 10389 (2013), Sec. 5 provides:

SECTION 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution*. — The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment: *Provided*, That the accused or any person on behalf of the accused files the application for such:

(a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

(b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

Republic Act No. 10389 further enumerates the procedure, requirements, and disqualifications for release on recognizance.[53]

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[53] Republic Act No. 10389 (2013), Secs. 6 and 7 provide:

SECTION 6. *Requirements*. — The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: *Provided*, That all of the following requirements are complied with:

(a) A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;

(b) A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;

(c) The person in custody has been arraigned;

(d) The court has notified the city or municipal *sanggunian* where the accused resides of the application for recognizance. The *sanggunian* shall include in its agenda the notice from the court upon receipt and act on the request for comments or opposition to the application within ten (10) days from receipt of the notice. The action of the *sanggunian* shall be in the form of a resolution, and shall be duly approved by the mayor, and subject to the following conditions:

. . . . . .

(e) The accused shall be properly documented, through such processes as, but not limited to, photographic image reproduction of all sides of the face and fingerprinting: Provided, That the costs involved for the purpose of this subsection shall be shouldered by the municipality or city that sought the release of the accused as provided herein, chargeable to the mandatory five percent (5%) calamity fund in its budget or to any other available fund in its treasury; and

(f) The court shall notify the public prosecutor of the date of hearing therefor within twenty-four (24) hours from the filing of the application for release on recognizance in favor of the accused: *Provided*, That such hearing shall be held not earlier than twenty-four (24) hours nor later than forty-eight (48) hours from the receipt of notice by the prosecutor: *Provided, further*, That during said hearing, the prosecutor shall be ready to submit the recommendations regarding the application made under this Act, wherein no motion for postponement shall be entertained.

SECTION 7. *Disqualifications for Release on Recognizance*. — Any of the following circumstances shall be a valid ground for the court to disqualify an accused from availing of the benefits provided herein:

(a) The accused had made untruthful statements in his/her sworn affidavit prescribed under Section 5 (a);

(b) The accused is a recidivist, quasi-recidivist, habitual delinquent, or has committed a crime aggravated by the circumstance of reiteration;

In *Espiritu v. Jovellanos*,[54] this Court enumerated the instances when release on recognizance is allowed under Rule 114 of the Revised Rules of Criminal Procedure:

> Under Rule 114, §15 of the Rules of Court, the release on recognizance of any person under detention may be ordered only by a court and only in the following cases: (a) when the offense charged is for violation of an ordinance, a light felony, or a criminal offense, the imposable penalty for which does not exceed 6 months imprisonment and/or ₱2,000 fine, under the circumstances provided in R.A. No. 6036; (b) where a person has been in custody for a period equal to or more than the minimum of the imposable principal penalty, without application of the Indeterminate Sentence Law or any modifying circumstance, in which case the court, in its discretion, may allow his release on his own recognizance; (c) where the accused has applied for probation, pending resolution of the case but no bail was filed or the accused is incapable of filing one; and (d) in case of a youthful offender held for physical and mental examination, trial, or appeal, if he is unable to furnish bail and under the circumstances envisaged in P.D. No. 603, as amended (Art. 191).[55] (Citation omitted)

The other modes of release are reflected in the Bureau of Corrections Operating Manual, which provides the following:

> SECTION 1. *Basis for Release of an Inmate*. — An inmate may be released from prison:
>
> a. upon the expiration of his sentence;
> b. by order of the Court or of competent authority; or
> c. after being granted parole, pardon or amnesty.

(c) The accused had been found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of bail or release on recognizance without valid justification;
(d) The accused had previously committed a crime while on probation, parole or under conditional pardon;
(e) The personal circumstances of the accused or nature of the facts surrounding his/her case indicate the probability of flight if released on recognizance;
(f) There is a great risk that the accused may commit another crime during the pendency of the case; and
(g) The accused has a pending criminal case which has the same or higher penalty to the new crime he/she is being accused of.

[54] 345 Phil. 823 (1997) [Per *J.* Mendoza, *En Banc*].

[55] *Id.* at 832-833.

SECTION 2. *Who May Authorize Release*. — The following are authorized to order or approve the release of inmates:

a. the Supreme Court or lower courts, in cases of acquittal or grant of bail;
b. the President of the Philippines, in cases of executive clemency or amnesty;
c. the Board of Pardons and Parole, in parole cases; and
d. the Director, upon the expiration of the sentence of the inmate.

Similarly, the Revised Bureau of Jail Management and Penology Comprehensive Operations Manual provides the modes and guidelines for the release of inmates. Section 31 states in part:

SECTION 31. *Modes and Guidelines for Release*. — The following modes and guidelines shall be observed when inmates are to be released from detention:

1. An inmate may be released through:
    a. Service of sentence;
    b. Order of the Court;
    c. Parole;
    d. Pardon; and
    e. Amnesty.

. . . . . .

3. No inmate shall be released on a mere verbal order or an order relayed via telephone. The release of an inmate by reason of acquittal, dismissal of case, payment of fines and/or indemnity, or filing of bond, shall take effect only upon receipt of the release order served by the court process server. The court order shall bear the full name of the inmate, the crime he/she was charged with, the criminal case number and such other details that will enable the officer in charge to properly identify the inmate to be released;

4. Upon proper verification from the court of the authenticity of the order, an inmate shall be released promptly and without unreasonable delay.

Incidentally, alternative custodial arrangements are in place for specific instances. Case in point, temporary leave from jail for serious illness is allowed; however, this leave is *not* a release on bail, but a hospitalization leave that requires court approval:

SECTION 65. *Leave from Jail.* — Leave from jail shall be allowed in very meritorious cases, like the following:

1. Death or serious illness of spouse, father, mother, brother, sister, or children.

2. Inmates who are seriously ill or injured may, under proper escort, be allowed hospitalization leave or medical attendance. However, such leave shall require prior approval of the Courts having jurisdiction over them.

Provided, however, that in life and death cases where immediate medical attention is imperative, the warden, at his/her own discretion, may allow an inmate to be hospitalized or moved out of jail for medical treatment; Provided further, that when the emergency has ceased as certified by the attending physician, the warden shall cause the inmate's immediate transfer back to the jail, except when there is a court order directing him to continue the inmates confinement in a hospital until his/her recovery or upon order of the Court for his/her immediate return to the jail.[56]

In *Trillanes v. Pimentel*,[57] this Court acknowledged that prisoners may be granted temporary leaves from imprisonment upon a court order. However, a prisoner must first establish an emergency or compelling reason.

Here, petitioners pray for their temporary release on recognizance or on bail, invoking humanitarian considerations and this Court's exercise of its equity jurisdiction, on account of their advanced age, compromised health conditions, the nature of COVID-19, and our current jail conditions.

However, there are no legal provisions that provide for the release of detainees based on humanitarian grounds. Neither does the Constitution nor any statute allow for the automatic grant of bail or release on recognizance for inmates who are of vulnerable health.

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[56] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, Sec. 65.

[57] 578 Phil. 1002 (2008) [Per *J.* Carpio Morales, *En Banc*].

Petitioners know this. They themselves concede that humanitarian considerations are *not* grounds for bail.[58] This is precisely why they invoke this Court's discretion on the ground of compassion,[59] filing their Petition as an exception to the rules on bail or recognizance.[60] They pray that this Court exercise its equity jurisdiction on account of a gap in the law that it can legitimately remedy.[61] Petitioners rely on *Enrile v. Sandiganbayan*,[62] where the majority of this Court allowed the petitioner's bail for humanitarian considerations.[63]

In his opinion, Justice Delos Santos points out that courts cannot grant reliefs, invent remedies, or recognize implied rights without a law providing for it.[64] He holds that to allow petitioners' release will intrude into the powers of the legislature, and is contrary to the civil law tradition of deciding cases based on express provisions of law.

He and Justice Jose Reyes, Jr. (Justice Reyes) both opine that this Court cannot grant the release of petitioners on the ground of equity, especially if it contravenes law. They add that the case presents several questions of facts that must be lodged with the trial courts. To allow the automatic release of detainees on a single factor, without evaluating other factors, will create a substantive right and predetermine an entitlement to a provisional liberty, which courts have no power to do.[65] Justice Reyes also notes that petitioners' allegations are not sufficient to justify a direct recourse to this Court.[66]

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[58] Petition, p. 8.

[59] *Id.* at 6.

[60] *Id.* at 7.

[61] *Id.*

[62] 767 Phil. 147 (2015) [Per *J.* Bersamin, *En Banc*].

[63] Petition, pp. 53-55.

[64] *J.* Delos Santos, Separate Opinion, pp. 41-43.

[65] *Id.* at 56, 59, and 66-67; *J.* Reyes, Separate Opinion, pp. 3-4.

[66] *J.* Reyes, Separate Opinion, p. 3.

I agree with my colleagues that this Court cannot exercise its equity jurisdiction to supplant the express provisions on bail and recognizance.

A court's exercise of equity jurisdiction often comes into play when special circumstances reveal an inflexibility in its statutory or legal jurisdiction, or an inadequacy in available laws, such that it is unable to render substantive justice. In *Reyes v. Lim*:[67]

> Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[68] (Citations omitted)

Equity jurisdiction finds basis in Article 9 of the Civil Code, which states that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws."[69] Essentially, equity "fills the open spaces in the law."[70]

This Court's equity jurisdiction has been exercised in cases where the absence or insufficiency of an express provision or procedural rule will result in unjust enrichment or prevent rightful restitution.[71] It has also been applied where a strict application of procedural rules will overrule "strong considerations of substantial justice[.]"[72] In *Orata v. Intermediate Appellate Court*,[73] this Court held:

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[67] 456 Phil. 1 (2003) [Per *J.* Carpio, First Division]. See also *Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75 (2016) [Per *J.* Brion, Second Division].

[68] *Id.* at 10.

[69] *Reyes v. Lim*, 456 Phil. 1 (2003) [Per *J.* Carpio, First Division].

[70] *Id.* at 10.

[71] *Id.* See also *Regulus Development, Inc. v. Dela Cruz*, 779 Phil. 75 (2016) [Per *J.* Brion, Second Division].

[72] *Orata v. Intermediate Appellate Court*, 263 Phil. 846, 852 (1990) [Per *J.* Paras, Second Division].

[73] 263 Phil. 846 (1990) [Per *J.* Paras, Second Division].

Be that as it may, this Court has in a number of cases, in the exercise of equity jurisdiction decided to disregard technicalities in order to resolve the case on its merits based on the evidence.

Furthermore, it is well settled that litigations should, as much as possible, be decided on their merits and not on technicalities; that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his case, free from unacceptable plea of technicalities. This Court has ruled further that being a few days late in the filing of the petition for review does not merit automatic dismissal thereof. And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, this Court may relax the stringent application of technical rules in the exercise of its equity jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies justifying circumstances which warrant Our heeding the petitioner's cry for justice, inspite of the earlier negligence of counsel.[74] (Citations omitted)

However, this Court has repeatedly clarified that equity only applies when there is an *absence* in the law. It cannot overrule, infringe, or disregard express provisions of law. In *Heirs of Soriano v. Court of Appeals*:[75]

As often held by this Court, equity is available only in the absence of law and not as its replacement. All abstract arguments based only on equity should yield to positive rules, (judicial rules of procedure) which pre-empt and prevail over such persuasions. Moreover, a court acting without jurisdiction cannot justify its assumption thereof by invoking its equity jurisdiction.[76] (Citations omitted)

In *Samedra v. Court of Appeals*:[77]

This Court, while aware of its equity jurisdiction, is first and foremost, a court of law. Hence, while equity might tilt on the side

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[74] *Id.* at 851-852.

[75] 275 Phil. 597 (1991) [Per *J.* Medialdea, First Division].

[76] *Id.* at 604.

[77] 330 Phil. 1074 (1996) [Per *J.* Padilla, First Division].

of the petitioners, the same cannot be enforced so as to overrule a positive provision of law in favor of private respondents.[78]

In *Antioquia Development Corporation v. Rabacal*:[79]

> We stress that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*. For all its conceded merit, equity is available only in the absence of law and not as its replacement. . .[80] (Citations omitted)

The law has positive provisions on bail and recognizance. This Court cannot supplant such provisions on the sole basis of its equity jurisdiction. These grounds, processes, and requirements are provided under the Constitution, laws, and Rules of Court, and must still earn respect.

This is precisely why I dissented in *Enrile*.

I (A)

Justice Delos Santos holds that *Enrile* does not apply here because petitioners are charged with heinous crimes related to national security and are also members of the CPP-NPA-NDF and its affiliates.[81] He notes of a possibility of endangering the community: a person with deteriorating health may still conspire to commit rebellion, and given modern technology, strategize anti-government measures or give aid to active comrades by providing intelligence reports.[82]

To Justice Delos Santos, unlike in *Enrile*, petitioners here failed to show that they filed their respective bail applications,[83]

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[78] *Id.* at 1081.

[79] 694 Phil. 223 (2012) [Per *J.* Villarama, Jr., First Division].

[80] *Id.* at 224-225.

[81] *J.* Delos Santos, Separate Opinion, pp. 79-81.

[82] *Id.* at 81.

[83] *Id.* at 83.

leaving this Court with no way of knowing whether the evidence of guilt is strong. He points out that petitioners likewise did not provide the pertinent information such as the crimes against them, the status of their cases, or medical records, among others.[84] In any case, he maintains that the determination of such information should still be lodged with the trial courts.[85]

Chief Justice Peralta states that petitioners cannot rely on *Enrile* because they have not filed their respective motions for bail in the lower courts.[86] Further, this Court cannot take judicial notice of their respective health and medical conditions. Finally, he opines that the petitioner in *Enrile* has proven that he was neither a danger to the community nor a flight risk.

I agree that *Enrile* does not apply in this case. However, my reasons differ from those of Chief Justice Peralta and Justice Delos Santos.

In *Enrile v. Sandiganbayan*,[87] the petitioner, then Senator Juan Ponce Enrile (Enrile), was charged with plunder, punished by *reclusion perpetua*. Later, when a warrant for his arrest was served, he proceeded to the Criminal Investigation and Detection Group of the Philippine National Police and filed a Motion to Fix Bail. He asserted that his voluntary surrender and age were extenuating circumstances that would lower the imposable penalty to *reclusion temporal*. He also argued that he was not a flight risk because of his age and physical condition.

While his Motion was pending, Enrile filed a Motion for Detention at the Philippine National Police General Hospital or in another medical facility, "arguing that 'his advanced age and frail medical condition' merited hospital arrest."[88] This

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[84] *Id.*

[85] *Id.* at 84.

[86] *C.J.* Peralta, Separate Opinion, p. 5.

[87] 767 Phil. 147 (2015) [Per *J.* Bersamin, *En Banc*].

[88] *J.* Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan*, 767 Phil. 147, 183 (2015) [Per *J.* Bersamin, *En Banc*].

was granted until further orders from the Sandiganbayan. Later, the Sandiganbayan denied Enrile's Motion to Fix Bail for being premature, stating that he has not applied for bail and, thus, no bail hearing had been had.

When the case was brought to this Court, the majority allowed Enrile to post bail on account of his fragile health and advanced age. I dissented, for several reasons.

First, the laws, rules, and doctrines on bail clearly require a hearing.[89] Contrary to Chief Justice Peralta's opinion, there was no bail hearing in *Enrile*. As aptly pointed out by Justice Perlas-Bernabe, the absence of a bail hearing was precisely why the Sandiganbayan rejected the Motion to Fix Bail for being premature.[90]

Furthermore, I opined that medical conditions requiring special treatment should be pleaded and heard in the bail hearing, because: (1) these are questions of fact which must be proven and authenticated; and (2) the prosecution should have the right to due process by being given an opportunity to rebut or verify the allegations. In that case, Enrile's medical condition, or any other humanitarian reason, was not raised as a ground for bail in any of his pleadings. Yet, the majority still granted his bail by taking judicial notice of a doctor's certification.

Second, I opined that bail for humanitarian considerations is not found in the Constitution, or in any law or rule of procedure. There is likewise no specific international law that compels the release of an accused on account of his medical condition.

Thus, I discussed that the release of detainees on humanitarian grounds needs clear legal basis and guidelines. Otherwise, it will simply be based on the court's discretion — "unpredictable,

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[89] If the crime charged is punishable by *reclusion perpetua* or life imprisonment, the court having jurisdiction must determine if the evidence of guilt is strong. Otherwise, the mandatory hearing is only for determining the amount of bail.

[90] *J.* Perlas-Bernabe, Separate Opinion, pp. 6-7.

partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote."[91] Thus, bail cannot be granted solely by invoking a human right principle. Constitutional rights apply to all, but it should not be upheld by disregarding or suspending the rule of law.

Still, Justice Lazaro-Javier asserts that the standards applied in *Enrile* were clear-cut. She opines that *Enrile* provided a two-step test to authorize the grant of discretionary bail: "(1) the detainee will not be a flight risk or danger to the community; (2) there are special, humanitarian, and compelling circumstances."[92]

I disagree. In fact, Enrile's release raised several questions that reveal the lack of clear guidelines: Is his release because of his advanced age? Is it because he suffers from medical conditions or because those conditions were aggravated by incarceration? Is it due to a medical emergency? Can the release on bail be shortened once the medical emergency has been addressed? What medical conditions allow for the release on bail? Does it apply only to those on trial for plunder, or to others with crimes punished by *reclusion perpetua* or life imprisonment? Does it apply only to senators or those of similar stature? Incidentally, these are the very questions that the Petition now before this Court seeks to test.

Third, I noted that, when hospital treatment is necessary, courts usually do not grant bail, but only modify the conditions for one's detention. The accused's release should also not be longer than the time needed to address the medical condition. Yet, the majority in *Enrile* granted bail even if the Sandiganbayan did not find Enrile suffering from a unique and debilitating disease. The majority even permitted him to undergo hospital arrest.

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[91] *Id.* at 181.

[92] *J.* Lazaro-Javier, Separate Opinion, p. 8.

Finally, I discussed that alternative custodial arrangements should not favor only wealthy, powerful, and networked detainees. The right to liberty applies to all individuals. Special privileges should be granted only under clear, transparent, and reasoned circumstances. The majority's grant of bail was clearly a special accommodation for Enrile. It lacked neutrality and impartiality as it found a better argument for the petitioner, at the expense of the prosecution.

I note Chief Justice Peralta's opinion that the ruling in *Enrile* is not a *pro hac vice* ruling since *pro hac vice* rulings have been declared illegal in *Knights of Rizal v. DMCI Homes, Inc*.[93] I also note Justice Lazaro-Javier's opinion that *Enrile* forms part of the law of the land as a legally binding decision, and her refusal to treat it as *pro hac vice* ruling to avoid the notion that this Court lays down doctrines that solely serve the powerful and privileged.[94]

I, however, join Justices Caguioa and Perlas-Bernabe in reaffirming that *Enrile* is a *pro hac vice* ruling, applicable only to the unique considerations accorded to Enrile.[95] I agree that the ruling in *Enrile* does not support the Constitution, the rules, and jurisprudence. It is a stray decision[96] that cannot be a binding precedent, because there was no hearing to determine whether the evidence of his guilt was not strong.

I maintain my opinion in *Enrile* here. Release on bail for humanitarian considerations or medical conditions is not found in the Constitution, in any local or international law, or in any rule of procedure. While petitioners enjoy the constitutional rights to life and health, these rights do not result in the automatic grant of bail for those who are of advanced age and frail health.

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[93] 809 Phil. 453 (2017) [Per *J*. Carpio, *En Banc*].

[94] *J*. Lazaro-Javier, Separate Opinion, p. 12.

[95] *J*. Caguioa, Separate Opinion, p. 8; *J*. Perlas-Bernabe, Separate Opinion, p. 5.

[96] *Id.* at 10.

Detainees cannot be allowed temporary release without following the law. If petitioners or any other detainees seek to be released on bail, a hearing is necessary to determine the amount of bail. If they are charged with a crime punishable by *reclusion perpetua* or life imprisonment, a hearing is necessary to determine whether the evidence of guilt is strong.

Should a new ground for temporary release be allowed or an alternative custodial arrangement be provided, the rule must be clear as to who are qualified: What age? What medical conditions or health concerns? What crimes? For how long? In any case, the right to equal protection of the laws must always be kept in mind, so that no special privilege or accommodation would be extended to anyone else, as what happened in *Enrile*. Alternative custodial arrangements should be granted only under clear, transparent, and reasoned circumstances. They must always bow to the relevant laws and rules of procedure, subject to continuous review by the trial court.

Thus, this Petition should be referred to the proper trial courts to determine whether there is basis for their release on bail or recognizance. Before petitioners may be released, they must first establish before the trial courts the facts, circumstances, and qualifications that will warrant their release on bail or recognizance.

I (B)

Justices Perlas-Bernabe and Delos Santos both hold that there is wisdom in depriving the accused of liberty pending trial. Their continued detention ensures the court's jurisdiction over them, secures their participation in the proceedings, and prevents them from committing another crime.[97]

However, Justice Delos Santos concludes that detaining the criminally accused pending the determination of their guilt is part of police power.[98] I qualify his conclusion.

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[97] *J.* Perlas-Bernabe, Separate Opinion, pp. 14-15; *J.* Delos Santos, Separate Opinion, p. 96.

[98] *J.* Delos Santos, Separate Opinion, p. 96.

The State's "capacity to prosecute and punish crimes" is part of its police power. In *Tawahig v. Hon. Lapinid*:[99]

> A crime is "an offense against society." It "is a breach of the security and peace of the people at large[.]"
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> A criminal action, where "the State prosecutes a person for an act or omission punishable by law," is thus pursued "to maintain social order." It "punish[es] the offender in order to deter him [or her] and others from committing the same or similar offense, . . . isolate[s] him [or her] from society, reform[s] and rehabilitate[s] him [or her]." One who commits a crime commits an offense against all the citizens of the state penalizing a given act or omission: "a criminal offense is an outrage to the very sovereignty of the State[.]" Accordingly, a criminal action is prosecuted in the name of the "People" as plaintiff. Likewise, a representative of the State, the public prosecutor, "direct[s] and control[s] the prosecution of [an] offense." As such, a public prosecutor is:
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> > [T]he representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.
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> *The capacity to prosecute and punish crimes is an attribute of the State's police power*. It inheres in "the sovereign power instinctively charged by the common will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen and the guaranty of the exercise of his rights."[100] (Emphasis supplied, citations omitted)

Police power cannot justify denying a person's right to provisional liberty. The Constitution provides that all persons,

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[99] G.R. No. 221139, March 20, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> [Per *J.* Leonen, Third Division].

[100] *Id.*

except those punished with *reclusion perpetua* whose evidence of guilt is strong, have a right to provisional liberty.[101] What justifies the accused's deprivation of liberty is the determination that the evidence of guilt is strong:

> In the present case, it is uncontroverted that petitioner's application for bail and for release on recognizance was denied. *The determination that the evidence of guilt is strong, whether ascertained in a hearing of an application for bail or imported from a trial court's judgment of conviction, justifies the detention of an accused as a valid curtailment of his right to provisional liberty*. This accentuates the proviso that the denial of the right to bail in such cases is "regardless of the stage of the criminal action." *Such justification for confinement with its underlying rationale of public self defense applies equally to detention prisoners like petitioner or convicted prisoners* appellants like Jalosjos. As the Court observed in *Alejano v. Cabuay*, it is impractical to draw a line between convicted prisoners and pre-trial detainees for the purpose of maintaining jail security; and *while pre-trial detainees do not forfeit their constitutional rights upon confinement, the fact of their detention makes their rights more limited than those of the public. The Court was more emphatic in People v. Hon. Maceda*:
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> > As a matter of law, when a person indicted for an offense is arrested, he is deemed placed under the custody of the law. *He is placed in actual restraint of liberty in jail so that he may be bound to answer for the commission of the offense*. He must be detained in jail during the pendency of the case against him unless he is authorized by the court to be released on bail or on recognizance. Let it be stressed that all prisoners whether under preventive detention or serving final sentence cannot practice their profession nor engage in any business or occupation, or hold office, elective or appointive, while in detention. This is a necessary consequence of arrest and detention.

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[101] CONST., Art. 3, Sec. 13 states:

SECTION 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

These inherent limitations, however, must be taken into account only to the extent that confinement restrains the power of locomotion or actual physical movement. It bears noting that in Jalosjos, which was decided *en banc* one month after Maceda, the Court recognized that the accused could somehow accomplish legislative results. The trial court thus correctly concluded that the presumption of innocence does not carry with it the full enjoyment of civil and political rights.[102] (Emphasis supplied)

Justice Delos Santos even advances the following parameters in determining whether the State's police power should be exercised during an emergency:

(1) Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness;

(2) Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment of its legitimate objectives consistent with general welfare; and

(3) The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be unnecessarily oppressive on the minority.[103]

Thus, Justice Delos Santos justifies petitioners' continued detention by invoking public safety. He claims that the serious nature of the crimes charged against them, being related to their alleged membership in the CPP-NPA-NDF, makes their continued confinement "a legitimate and vital concern of national security."[104]

He is ready to make a pronouncement on petitioners' participation as alleged key members of CPP-NPA-NDF and declare them as terrorists,[105] albeit limited to determining "a

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[102] *Trillanes v. Pimentel*, 578 Phil. 1014-1015 (2008) [Per *J.* Carpio Morales, *En Banc*] citing *People v. Hon. Maceda*, 380 Phil. 1 (2000) [Per *J.* Pardo, Third Division].

[103] *J.* Delos Santos, Separate Opinion, p. 97.

[104] *Id.* at 98.

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

reasonable link or relation between the assailed government measures or concerns and the legitimate objectives regarding general welfare in times of emergency."[106] From this, he infers that petitioners' continued detention is justified because releasing them without bail hearings would endanger national security.

I cannot find the reasonable link that Justice Delos Santos claims to exist between the continued detention of petitioners as alleged members of CPP-NPA-NDF and the State's objective of suppressing the pandemic. We cannot take judicial notice of the news reports of alleged armed attacks against the military and police distributing relief goods.[107] Simply, these are not proper matters of judicial notice, whether mandatory or discretionary.

Rather, as Justice Reyes notes, this Court must refrain from making conclusions on the merits of petitioners' pending cases,[108] as it is premature to make pronouncements based on unverified information.[109] Both he and Justice Lazaro-Javier share the opinion that petitioners' membership in the CPP-NPA-NDF is an allegation that is still being litigated.[110]

I echo their sentiments. There being no bail hearings, the evidence of petitioners' guilt has not yet been established.

To use the nature of the alleged crimes to justify petitioners' continued confinement denies them not only of due process, but also of their right to be presumed innocent until proven guilty. As Justice Perlas-Bernabe states, "an accused cannot just be left to perish and die in the midst of a devastating global pandemic, without any recourse whatsoever."[111] National security

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[106] *Id.* at 99.

[107] *Id.* at 58.

[108] *J.* Reyes, Separate Opinion, p. 7.

[109] *Id.* at 6.

[110] *Id.* at 6; *J.* Lazaro-Javier, Separate Opinion, p. 32.

[111] *J.* Perlas-Bernabe, Separate Opinion, p. 14.

and public safety are no blanket excuses to violate the accused's constitutional rights.

Thus, without the appropriate hearing in the trial courts, this Court should not conclude if petitioners are entitled to release on bail or recognizance based on the crimes charged against them.

II

Persons deprived of liberty ought to be able to file a case for violations of their right against cruel, inhuman, and degrading punishment and other related constitutional rights.

In keeping with our constitutional duty to recognize the intrinsic value of every human being, as well as our power to provide guidance to Bench and Bar, I discuss the following causes of action submitted by petitioners: (1) the right against cruel, degrading, and inhuman punishment; (2) the right to life and health; and (3) the rights of prisoners and detainees under international law principles and conventions and our own local laws, rules, and procedures.

II (A)

The 1987 Constitution guards against the infliction of any cruel, degrading, or inhuman punishment. Its Article III, Section 19 states:

> SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.
>
> (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

In *Alejano v. Cabuay*,[112] this Court defined punishment as a chastisement that causes suffering through harm or incapacitation that is more severe than the discomfort of detention:

> An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate. Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.[113] (Citations omitted)

Despite a few statutes and rules promoting the rehabilitation of offenders, our criminal justice system is primarily punitive, seeking to deter and penalize felonies and crimes through imprisonment and fines. Thus, the Constitution does not prohibit retributive justice in itself. What it prohibits is cruel, degrading, or inhuman punishment.

The previous constitutions did not include punishment that is "degrading or inhuman." Both the 1935 and 1973 Constitutions respectively read:

> SECTION 1 (19). Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.[114]

> SECTION 21. Excessive fines shall not be imposed nor cruel or unusual punishment inflicted.[115]

With the enactment of the 1987 Constitution, the words "degrading or inhuman punishment" were added to the prohibition.

In *David v. Senate Electoral Tribunal*,[116] this Court discussed that interpreting the text of the Constitution involves reviewing

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[112] 505 Phil. 298 (2005) [Per *J.* Carpio, *En Banc*] citing *Fisher v. Winter*, 564 F Supp. 281 (1983).

[113] *Id.* at 315.

[114] 1935 CONST., Art. I, Sec. 1 (19).

[115] 1973 CONST., Art. IV, Sec. 1.

[116] 795 Phil. 529 (2016) [Per *J.* Leonen, *En Banc*].

how the text has evolved from its previous iterations. The formulation of provisions usually involves a reassessment of old ones in order to better address any shortcomings the old rules failed to account for:

> Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.
>
> One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.[117]

The adding of "inhuman" and "degrading" to the prohibited punishment reveals that these words are meant to be treated separately from cruel or unusual punishment, and meant to address different circumstances.

In *People v. Dionisio*,[118] this Court explained that punishment is cruel and unusual when the penalties imposed are inhuman, barbarous, and shocking to the conscience:

> Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience and fines or imprisonment are definitely not in this category.
>
> Nor does mere severity constitute cruel and unusual punishment. In *People vs. Estoista*, 93 Phil. 655, this Court ruled:

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[117] *Id.* at 572-573.

[118] 131 Phil. 408 (1968) [Per *J.* J.B.L. Reyes, *En Banc*].

> "It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. 'The fact that the punishment authorized by the statute is severe does not make it cruel and unusual.' Expressed in other terms, it has been held that to come under the ban, the punishment must be 'flagrantly and plainly oppressive,' 'wholly disproportionate to the nature of the offense as to shock the moral sense of the community.' (Idem.) Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience. It is of interest to note that the validity on constitutional grounds of the Act in question was contested neither at the trial nor in the elaborate printed brief for the appellant; it was raised for the first time in the course of the oral argument in the Court of Appeals. It is also noteworthy, as possible gauge of popular and judicial reaction the duration of the imprisonment stipulated in the statute, that some members of the court at first expressed opposition to any recommendation for executive clemency for the appellant, believing that he deserved imprisonment within the prescribed range."[119] (Citations omitted)

In *Maturan v. Commission on Elections*,[120] this Court reiterated that it is the punishment's character, not its severity, that makes it cruel and inhuman. It would have to be an infliction of "corporeal or psychological punishment that strips the individual of [their] humanity":

> We have already settled that the constitutional proscription under the Bill of Rights extends only to situations of extreme corporeal or psychological punishment that strips the individual of his humanity. The proscription is aimed more at the form or character of the punishment rather than at its severity, as the Court has elucidated in *Lim v. People*, to wit:

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[119] *Id.* at 411.

[120] 808 Phil. 86 (2017) [Per *J.* Bersamin, *En Banc*].

> Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. **It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution.** Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.
>
> In *People vs. Tongko*, this Court held that **the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman**.[121]
> (Emphasis in the original, citation omitted)

The constitutional right thus necessarily ensures that all persons are protected against all forms of torture. Republic Act No. 9745,[122] otherwise known as the Anti-Torture Act, outlines what constitutes torture and other types of cruel and degrading treatment or punishment:

> SECTION 3. *Definitions*. — For purposes of this Act, the following terms shall mean:
>
> (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on

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[121] *Id.* at 94.

[122] Republic Act No. 9745 (2009), the Anti-Torture Act of 2009.

discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

(b) "Other cruel, inhuman and degrading treatment or punishment" refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter.[123]

. . . . . .

SECTION 4. *Acts of Torture*. — For purposes of this Act, torture shall include, but not be limited to, the following:

(a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1) Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;

(2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;

(3) Electric shock;

(4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);

(5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;

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[123] These definitions of torture and other cruel, inhuman, and degrading treatment or punishment under Republic Act No. 9745 were adopted from the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Philippines ratified on June 18, 1986.

(6) Being tied or forced to assume fixed and stressful bodily position;

(7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;

(8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;

(9) Dental torture or the forced extraction of the teeth;

(10) Pulling out of fingernails;

(11) Harmful exposure to the elements such as sunlight and extreme cold;

(12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;

(13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:

(i) The administration of drugs to induce confession and/or reduce mental competency; or
(ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and

(14) Other analogous acts of physical torture; and

(b) "Mental/Psychological Torture" refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:

(1) Blindfolding;

(2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;

(3) Confinement in solitary cells or secret detention places;

(4) Prolonged interrogation;

(5) Preparing a prisoner for a "show trial," public display or public humiliation of a detainee or prisoner;

(6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;

(7) Maltreating a member/s of a person's family;

(8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;

(9) Denial of sleep/rest;

(10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;

(11) Deliberately prohibiting the victim to communicate with any member of his/her family; and

(12) Other analogous acts of mental/psychological torture.

SECTION 5. *Other Cruel, Inhuman and Degrading Treatment or Punishment*. — Other cruel, inhuman or degrading treatment or punishment refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against another person in custody, which attains a level of severity sufficient to cause suffering, gross humiliation or debasement to the latter. The assessment of the level of severity shall depend on all the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim.[124]

Cruel, inhuman, and degrading punishment involves causing suffering, gross humiliation, or debasement to a person in custody. Torture, on the other hand, generally involves intentionally causing severe mental or physical agony for a specific purpose or for any reason based on discrimination.

The right against torture and cruel, inhuman, and degrading punishment is absolute. It is protected in all cases — even in times of war or a public emergency:

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[124] Republic Act No. 9745 (2009), Secs. 3-5.

SECTION 6. *Freedom from Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, an Absolute Right.* — Torture and other cruel, inhuman and degrading treatment or punishment as criminal acts shall apply to all circumstances. A state of war or a threat of war, internal political instability, or any other public emergency, or a document or any determination comprising an "order of battle" shall not and can never be invoked as a justification for torture and other cruel, inhuman and degrading treatment or punishment.

Accordingly, the law provides remedies for victims of torture or other cruel, degrading, and inhuman treatment or punishment:

SECTION 9. *Institutional Protection of Torture Victims and Other Persons Involved*. — A victim of torture shall have the following rights in the institution of a criminal complaint for torture:

(a) To have a prompt and an impartial investigation by the CHR and by agencies of government concerned such as the Department of Justice (DOJ), the Public Attorney's Office (PAO), the PNP, the National Bureau of Investigation (NBI) and the AFP. A prompt investigation shall mean a maximum period of sixty (60) working days from the time a complaint for torture is filed within which an investigation report and/or resolution shall be completed and made available. An appeal whenever available shall be resolved within the same period prescribed herein;

(b) To have sufficient government protection against all forms of harassment, threat and/or intimidation as a consequence of the filing of said complaint or the presentation of evidence therefor. In which case, the State through its appropriate agencies shall afford security in order to ensure his/her safety and all other persons involved in the investigation and prosecution such as, but not limited to, his/her lawyer, witnesses and relatives; and

(c) To be accorded sufficient protection in the manner by which he/she testifies and presents evidence in any *fora* in order to avoid further trauma.

SECTION 10. *Disposition of Writs of Habeas Corpus, Amparo and Habeas Data Proceedings and Compliance with a Judicial Order*. — A *writ of habeas corpus or writ of amparo* or *writ of habeas data* proceeding, if any, filed on behalf of the victim of torture or other cruel, degrading and inhuman treatment or punishment shall be disposed of expeditiously and any order of release by virtue thereof, or other

appropriate order of a court relative thereto, shall be executed or complied with immediately.

SECTION 11. *Assistance in Filing a Complaint*. — The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.

The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BHRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).[125]

From these provisions alone, it is clear that the State is meant to protect its people's right against cruel, degrading, and inhuman punishment.

II (B)

Petitioners likewise invoke their rights to life and health, which they claim are being threatened by the COVID-19 pandemic. They allege that by being detained in inhumane prison conditions, their lives are at risk of catching the disease.

All persons enjoy the right to life. This is enshrined under Article III, Section I of the 1987 Constitution:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In *Secretary of National Defense v. Manalo*,[126] this Court granted the first petition for a writ of amparo, recognizing the right to life, liberty, and security of victims of enforced disappearances. It clarified that the right to life is not only a guarantee of the right to live, but to *live securely*, assured that the State will protect the security of one's life and property:

While the right to life under Article III, Section 1 guarantees essentially the right to be alive — upon which the enjoyment of all

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[125] Republic Act No. 9745 (2009), Secs. 9-11.

[126] 589 Phil. 1 (2008) [Per *J*. Puno, *En Banc*].

other rights is preconditioned — the right to security of person is a guarantee of the secure quality of this life, *viz.*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. *Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property*. The ideal of security in life and property. . . pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, *the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation*. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual."[127] (Emphasis supplied, citations omitted)

In the same case, this Court expounded that the right to security, as an adjunct of the right to life, is broken down to its essential components: (1) freedom from fear; (2) guarantee of "bodily and psychological integrity or security"; and (3) government protection of rights:

> A closer look at the right to security of person would yield various permutations of the exercise of this right.
>
> *First, the right to security of person is "freedom from fear."* In its "whereas" clauses, the Universal Declaration of Human Rights (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people." Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. *It is the "right to security of person" as the word "security" itself means "freedom from fear."* Article 3 of the UDHR provides, *viz.*:
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> Everyone has the right to life, liberty and security of person.

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[127] *Id.* at 50.

In furtherance of this right declared in the UDHR, Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) also provides for the right to security of person, *viz*.:

> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The Philippines is a signatory to both the UDHR and the ICCPR.

. . . . . .

Second, the right to security of person is a guarantee of bodily and psychological integrity or security. Article III, Section II of the 1987 Constitution guarantees that, as a general rule, one's body cannot be searched or invaded without a search warrant. Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment, physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person.

Physical torture, force, and violence are a severe invasion of bodily integrity. When employed to vitiate the free will such as to force the victim to admit, reveal or fabricate incriminating information, it constitutes an invasion of both bodily and psychological integrity as the dignity of the human person includes the exercise of free will. Article III, Section 12 of the 1987 Constitution more specifically proscribes bodily and psychological invasion, viz.:

> (2) No torture, force, violence, threat or intimidation, or any other means which vitiate the free will shall be used against him (any person under investigation for the commission of an offense). Secret detention places, solitary, incommunicado or other similar forms of detention are prohibited.

Parenthetically, under this provision, threat and intimidation that vitiate the free will—although not involving invasion of bodily integrity—nevertheless constitute a violation of the right to security in the sense of "freedom from threat" as afore-discussed.

Article III, Section 12 guarantees freedom from dehumanizing abuses of persons under investigation for the commission of an offense. Victims

of enforced disappearances who are not even under such investigation should all the more be protected from these degradations.

An overture to an interpretation of the right to security of person as a right against torture was made by the European Court of Human Rights (ECHR) in the recent case of Popov v. Russia. In this case, the claimant, who was lawfully detained, alleged that the state authorities had physically abused him in prison, thereby violating his right to security of person. Article 5 (1) of the European Convention on Human Rights provides, viz.: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law . . ." (emphases supplied) Article 3, on the other hand, provides that "(n)o one shall be subjected to torture or to inhuman or degrading treatment or punishment." Although the application failed on the facts as the alleged ill-treatment was found baseless, the ECHR relied heavily on the concept of security in holding, viz.:

> . . . the applicant did not bring his allegations to the attention of domestic authorities at the time when they could reasonably have been expected to take measures in order to ensure his security and to investigate the circumstances in question.
>
> . . . . . .
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> . . . the authorities failed to ensure his security in custody or to comply with the procedural obligation under Art. 3 to conduct an effective investigation into his allegations.

The U.N. Committee on the Elimination of Discrimination against Women has also made a statement that the protection of the bodily integrity of women may also be related to the right to security and liberty, viz.:

> . . . gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of the Convention (on the Elimination of All Forms of Discrimination Against Women). These rights and freedoms include . . . the right to liberty and security of person.

Third, the right to security of person is a guarantee of protection of one's rights by the government. In the context of the writ of amparo, this right is built into the guarantees of the right to life and liberty

under Article III, Section 1 of the 1987 Constitution and the right to security of person (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. The Inter-American Court of Human Rights stressed the importance of investigation in the *Velasquez Rodriguez Case*, viz.:

> (The duty to investigate) must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.[128] (Emphasis supplied, citations omitted)

In his separate opinion in *People v. Echegaray*,[129] Justice Artemio V. Panganiban discussed that the right to life includes the right to enjoy it with dignity and honor:

So too, all our previous Constitutions, including the first one ordained at Malolos, guarantee that "(n)o person shall be deprived of life, liberty or property without due process of law." This primary right of the people to enjoy life — life at its fullest, life in dignity and honor — is not only reiterated by the 1987 Charter but is in fact fortified by its other pro-life and pro-human rights provisions. *Hence, the Constitution values the dignity of every human person and guarantees full respect for human rights, expressly prohibits any form of torture which is arguably a lesser penalty than death,* emphasizes the individual right to life by giving protection to the life of the mother and the

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[128] *Id.* at 50-55.

[129] 335 Phil. 343 (1999) [*Per Curiam, En Banc*].

unborn from the moment of conception and establishes the people's rights to health, a balanced ecology and education.

This Constitutional explosion of concern for man more than property, for people more than the state, and for life more than mere existence augurs well for the strict application of the constitutional limits against the revival of death penalty as the final and irreversible exaction of society against its perceived enemies.

Indeed, volumes have been written about individual rights to free speech, assembly and even religion. But the most basic and most important of these rights is the right to life. Without life, the other rights cease in their enjoyment, utility and expression.[130] (Emphasis supplied)

An essential component of the right to life, and equally fundamental, is the right to health. In *Spouses Imbong v. Ochoa, Jr.*:[131]

A component to the right to life is the constitutional right to health. In this regard, the Constitution is replete with provisions protecting and promoting the right to health.

Section 15, Article II of the Constitution provides:

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

A portion of Article XIII also specifically provides for the States' duty to provide for the health of the people, viz.:

HEALTH

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

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[130] *J.* Panganiban, Separate Opinion in *People v. Echegaray*, 335 Phil. 343, 407 (1999) [*Per Curiam, En Banc*].

[131] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.

Section 13. The State shall establish a special agency for disabled persons for their rehabilitation, self-development, and self-reliance, and their integration into the mainstream of society.[132]

The right to life and the right to health are guaranteed in our international laws. Article 25 of the Universal Declaration of Human Rights provides that everyone has a right to health, well-being, and medical care:

(1) *Everyone has the right to a standard of living adequate for the health and well-being of himself* and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. (Emphasis supplied)

The International Covenant on Economic and Social and Cultural Rights also provides that everyone has the right to attain the highest standard of physical and mental health. To this end, state parties shall undertake all measures to prevent, treat, and control epidemics. Article 12 states:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

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[132] *Id.* at 156.

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases*;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. (Emphasis supplied)

II (C)

These rights—the right against torture, cruel, degrading, and inhuman punishment; and the rights to life and health—are all anchored on the State's policy to value human dignity and to guarantee full respect for human rights.[133]

Reiterating the State's policy, the Anti-Torture Act[134] extends these rights to all persons, including those detained, jailed, imprisoned, or held under custody:

SECTION 2. *Statement of Policy*. — It is hereby declared the policy of the State:

(a) To value the dignity of every human person and guarantee full respect for human rights;

(b) To ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or, agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity;

(c) To ensure that secret detention places, solitary, *incommunicado* or other similar forms of detention, where torture may be carried out with impunity, are prohibited; and

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[133] CONST., Art. II, Sec. 11.

[134] Republic Act No. 9745 (2009).

> (d) To fully adhere to the principles and standards on the absolute condemnation and prohibition of torture as provided for in the 1987 Philippine Constitution; various international instruments to which the Philippines is a State party such as, but not limited to, the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and all other relevant international human rights instruments to which the Philippines is a signatory.[135]

This State policy is likewise found in the laws and rules governing the two (2) agencies tasked with the safekeeping and reformation of inmates and detainees: (1) the Bureau of Corrections; and (2) the Bureau of Jail Management and Penology.

Created under Republic Act No. 10575, the Bureau of Corrections is in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three years.[136] It is a line bureau and a constituent unit of the Department of Justice, which has supervisory powers over its regulatory and quasi-judicial functions.[137]

Section 2 of the law declares that every prisoner's basic rights should be safeguarded and their general welfare promoted:

> SECTION 2. *Declaration of Policy*. — It is the policy of the State to promote the general welfare and safeguard the basic rights of every

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[135] Republic Act No. 9745 (2009), Sec. 2.

[136] Republic Act No. 10575 (2013), Bureau of Corrections Act of 2013.

[137] Republic Act No. 10575 (2013), Sec. 8 provides:

> SECTION 8. *Supervision of the Bureau of Corrections*. — The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.

Towards this end, the State shall provide for the modernization, professionalization and restructuring of the Bureau of Corrections (BuCor) by upgrading its facilities, increasing the number of its personnel, upgrading the level of qualifications of their personnel and standardizing their base pay, retirement and other benefits, making it at par with that of the Bureau of Jail Management and Penology (BJMP).

Under Section 3 of the law, the Bureau of Corrections is duty bound to provide the inmates' basic needs and to take measures for their reformation and reintegration into society:

> SECTION 3. *Definition of Terms*. —
>
> (a) *Safekeeping*, which is the custodial component of the BuCor's present corrections system, shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.
>
> (b) *Reformation*, which is the rehabilitation component of the BuCor's present corrections system, shall refer to the acts which ensure the public (including families of inmates and their victims) that released national inmates are no longer harmful to the community by becoming reformed individuals prepared to live a normal and productive life upon reintegration to the mainstream society.

As provided in Section 4, the inmates' basic needs include "decent provision of quarters, food, water and clothing in compliance with established United Nations standards." The Bureau of Corrections shall likewise institute several reformation programs, as follows:

SECTION 4. *The Mandates of the Bureau of Corrections*. — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.

(b) Reformation of National Inmates — The reformation programs, which will be instituted by the BuCor for the inmates, shall be the following:

(1) Moral and Spiritual Program;
(2) Education and Training Program;
(3) Work and Livelihood Program;
(4) Sports and Recreation Program;
(5) Health and Welfare Program; and
(6) Behavior Modification Program, to include Therapeutic Community.

The rights and privileges of inmates and detainees[138] are further specified in the Bureau of Corrections Operating Manual. Its

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[138] Bureau of Corrections Operating Manual (2000), Book I, Part III, Ch. 1, Secs. 1-3 provide:

SECTION 1. *Rights of an Inmate*. — An inmate shall have the following basic rights:

a. to receive compensation for labor he performs;
b. to be credited with time allowances for good conduct and loyalty;
c. to send and receive mail matter;
d. to practice his religion or observe his faith;
e. to receive authorized visitors;
f. to ventilate his grievances through proper channels; and
g. to receive death benefits and pecuniary aid for injuries.

SECTION 2. *Privileges of an Inmate*. — The following privileges shall also be extended to an inmate:

a. Attend or participate in any entertainment or athletic activity within the prison reservation;
b. Read books and other reading materials in the library;

Book I, Part II, Chapter 4, Section 4 includes provisions for standards of prison accommodation:

> SECTION 4. *Prison Accommodation Standards*. —
>
> a. All accommodations for the use of inmates shall meet requirements of sanitation and hygiene with emphasis on adequate ventilation, living space and lighting.
>
> b. Bathrooms and washing areas shall be provided in every prison facility.
>
> c. All areas regularly used by inmates shall be properly maintained and kept clean at all times.
>
> d. Beds and clothing shall be neatly made up in a uniform manner at all times. Beds and buildings occupied by inmates shall be thoroughly disinfected at least once a month.
>
> e. Cleanliness shall be maintained at all times in all dormitories or cells specially toilet and baths.
>
> f. As often as it is necessary, an inmate shall send his dirty clothes to the laundry.
>
> g. Every Sunday and holiday, if weather permits, inmates will expose their clothes, beds, bedding and so forth in the sunshine in an area designated for the purpose. Cleanliness of the premises of the dormitories and their surroundings shall be strictly enforced. Littering is prohibited.
>
> h. Inmates shall be served meals three (3) times a day. Breakfast shall be served not more than fourteen (14) hours after the previous day's dinner.

Book I, Part IV, Chapter 2, Section 3 further provides the inmates protection from institutional abuse:

> c. Smoke cigar and cigarettes, except in prohibited places;
>
> d. Participate in civic, religious and other activities authorized by prison authorities; and
>
> e. Receive gifts and prepared food from visitors subject to inspection.

SECTION 3. *Rights of a Detainee*. — A detainee may, aside from the rights and privileges enjoyed by a finally convicted inmate, wear civilian clothes and to grow his hair in his customary style.

SECTION 3. *Protection of Inmate from Institutional Abuse*. — An inmate shall be treated with respect and fairness by prisons employees.

He shall be protected against the following:

a. the imposition of any cruel, unusual or degrading act as a form of disciplinary punishment;

b. corporal punishment;

c. the use of physical force by correctional officers, except in cases where the latter act in self-defense, to protect another person from imminent physical attack, or to prevent a riot or escape;

d. deprivation of clothing, bed and bedding, light, ventilation, exercise, food or hygienic facilities; and

e. forced labor.

On the other hand, the Bureau of Jail Management and Penology was created under Republic Act No. 6975, a line bureau of the Department of the Interior and Local Government.[139] Its primary function is to exercise control and supervision over all district, city, and municipal jails that detain "any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person . . . pending the transfer to a medical institution."[140]

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[139] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, Sec. 1:

Section 1. MANDATE. – The Bureau of Jail Management and Penology was created on January 2, 1991 pursuant to Republic Act 6975, replacing its forerunner, the Jail Management and Penology Service of the defunct Philippine Constabulary-Integrated National Police. The BJMP exercises administrative and operational jurisdiction over all district, city and municipal jails. It is a line bureau of the Department of the Interior and Local Government (DILG).

[140] Republic Act No. 6975 (1990), Sec. 63 provides:

SECTION 63. Establishment of District, City or Municipal Jail. — There shall be established and maintained in every district, city and municipality a secured, clean adequately equipped and sanitary jail for the custody and

The Bureau of Jail Management and Penology classifies persons deprived of liberty as either a prisoner or a detainee. A prisoner is a person convicted by a final judgment.[141] Prisoners are further classified depending on their prison sentence:

CLASSIFICATION OF PRISONER	PRISON SENTENCE
Insular prisoner	three (3) years and one (1) day to reclusion perpetua or life imprisonment;
Provincial prisoner	six (6) months and one (1) day to three (3) years;
City prisoner	one (1) day to three (3) years;
Municipal prisoner	(1) day to six (6) months.[142]

On the other hand, a detainee is a person undergoing investigation, trial, or awaiting final judgment from a court.[143]

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safekeeping of city and municipal prisoners, any fugitive from justice, or person detained awaiting investigation or trial and/or transfer to the national penitentiary, and/or violent mentally ill person who endangers himself or the safety of others, duly certified as such by the proper medical or health officer, pending the transfer to a medical institution.

The municipal or city jail service shall preferably be headed by a graduate of a four (4)-year course in psychology, psychiatry, sociology, nursing, social work or criminology who shall assist in the immediate rehabilitation of individuals or detention of prisoners. Great care must be exercised so that the human rights of this prisoners are respected and protected, and their spiritual and physical well-being are properly and promptly attended to.

[141] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, Sec. 16.

[142] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, Sec. 17.

[143] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule II, Sec. 16.

In any case, the Bureau of Jail Management and Penology is tasked with supervising and controlling all district, city, and municipal jails, guided by the principle of humane treatment in the safekeeping and development of persons deprived of liberty. Thus, it shall provide their basic needs, conduct rehabilitation activities, and improve jail facilities and conditions. It shall ensure adequately equipped sanitary facilities and quality services for their custody, safekeeping, rehabilitation, and development.[144]

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[144] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, Secs. 2, 3, 4, 5, 10, and 11 provide:

SECTION 2. *Vision*. — The BJMP envisions itself as a dynamic institution highly regarded for its sustained humane safekeeping and development of inmates.

SECTION 3. *Mission*. — The Bureau aims to enhance public safety by providing humane safekeeping and development of inmates in all district, city and municipal jails.

SECTION 4. *Powers*. — The BJMP exercises supervision and control over all district, city and municipal jails. As such, it shall ensure the establishment of secure, clean, adequately equipped sanitary facilities; and ensure the provision of quality services for the custody, safekeeping, rehabilitation and development of district, city and municipal inmates, any fugitive from justice, or person detained awaiting or undergoing investigation or trial and/or transfer to the National Penitentiary, and/or violent mentally ill person who endangers him/herself or the safety of others as certified by the proper medical or health officer, pending transfer to a mental institution.

SECTION 5. *Functions*. — In line with its mission, the Bureau endeavors to perform the following functions:

a. to enhance and upgrade organizational capability on a regular basis; thus, making all BJMP personnel updated on all advancements in law enforcement eventually resulting in greater crime solution efficiency and decreased inmate population;

b. to implement strong security measures for the control of inmates;

c. to provide for the basic needs of inmates;

d. to conduct activities for the rehabilitation and development of inmates; and

e. to improve jail facilities and conditions.

. . . . . .

SECTION 10. *Objectives*. — The broad objectives of the Bureau are the following:

All persons deprived of liberty under the custody of the Bureau of Jail Management and Penology likewise have specific rights and privileges. These include the rights to be treated as human beings; to not be subjected to corporal punishment; to adequate food, space and ventilation, rest and recreation; to avail themselves of medical, dental, and other health services. They likewise have the privilege of being visited and treated anytime by a doctor of their choice, or treated in a government or private hospital if necessary and allowed by the rules.[145]

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a. To improve the living conditions of offenders in accordance with the accepted standards set by the United Nations;

b. To enhance the safekeeping, rehabilitation and development of offenders in preparation for their eventual reintegration into the mainstream of society upon their release; and

c. To professionalize jail services.

SECTION 11. *Principles*. — The following principles shall be observed in the implementation of the preceding sections:

a. Humane treatment of inmates;

b. Observance of professionalism in the performance of duties; and

c. Multi-sectoral approach in the safekeeping and development of inmates can be strengthened through active partnership with other members of the criminal justice system and global advocates of corrections.

[145] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule VIII, Secs. 63 and 64 provide:

Section 63. RIGHTS OF INMATES. — Although the purpose for committing a person to jail is to deprive him/her of liberty in order to protect society against crime, such person is still entitled to certain rights even while in detention. These rights are:

1. *The right to be treated as a human being, and not to be subjected to corporal punishment*;

2. The right to be informed of the regulations governing the detention center;

3. *The right to adequate food, space and ventilation, rest and recreation*;

4. *The right to avail himself/herself of medical, dental and other health services*;

5. The right to be visited anytime by his/her counsel, immediate family members, medical doctor or priest or religious minister chosen by him or by his immediate family or by his counsel;

6. The right to practice his/her religious beliefs and moral precepts;

7. The right to vote unless disqualified by law;

Moreover, under the same Manual, the Bureau of Jail Management and Penology shall aim to "improve the living conditions of offenders in accordance with the accepted standards set by the United Nations."[146]

The Manual expressly references the United Nations Standard Minimum Rules for the Treatment of Prisoners,[147] or the Nelson

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8. The right to separate detention facilities or cells particularly for women inmates; and
9. If a foreigner, the right to communicate with his/her embassy or consulate. (Emphasis supplied)

SECTION 64. *Privileges Allowed the Inmates*. — Detainees may enjoy the following privileges:

A. To wear their own clothes while in confinement;
B. To write letters, subject to reasonable censorship, provided that expenses for such correspondence shall be borne by them;
C. To receive visitors during visiting hours. However, visiting privileges may be denied in accordance with the rules and whenever public safety so requires;
D. To receive books, letters, magazines, newspapers and other periodicals that the jail authorities may allow;
E. To be treated by their own doctor and dentist at their own expense upon proper request from and approval by appropriate authorities;
F. To be treated in a government or private hospital, provided it is deemed necessary and allowed by the rules;
G. To request free legal aid, if available;
H. To short hair in their customary style, provided it is decent and allowed by the jail rules;
I. To receive fruits and prepared food, subject to inspection and approval by jail officials;
J. To read books and other reading materials available in the library, if any;
K. To maintain cleanliness in their cells and brigades or jail premises and perform other work as may be necessary for hygienic and sanitary purposes;
L. To be entitled to Good Conduct Time Allowance (GCTA) as provided by law; and
M. To be utilized as jail aides as designated by the warden himself, with the CONSENT OF THE INMATE/INMATES or upon the recommendation of the personnel.

[146] Bureau of Jail Management and Penology Operations Manual Revised (2015), Rule I, Sec. 10.

[147] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

Mandela Rules, on the rule on segregation of prisoners and the treatment of prisoners with special needs, which include senior citizens, infirm inmates with contagious diseases, pregnant women, and female inmates with infants. Rule IV, Section 34 provides the following guidelines:

SECTION 34. Handling Inmates with Special Needs. — The following guidelines shall be observed in handling inmates with special needs:

. . . . . .

11. Senior Citizen Inmates

a. Senior citizen inmates should be segregated and close supervised to protect them from maltreatment and other forms of abuse by other inmates;

b. Individual case management strategies should be developed and adopted to respond to the special needs of elderly inmates;

c. Collaboration with other government agencies and community-based senior citizen organizations should be done to ensure that the services due the senior citizen inmates are provided; and

d. Senior citizen inmates should be made to do tasks deemed fit and appropriate, their age, capability, and physical condition considered.

12. Infirm Inmates

a. Inmates with contagious diseases must be segregated to prevent the spread of said contagious diseases;

b. Infirm inmates should be referred to the jail physician or nurse for evaluation and management; and

c. Infirm inmates must be closely monitored and provide with appropriate medication and utmost care.

13. Pregnant Inmates/Female Inmates with Infants

a. Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;

b. They should be given tasks that are deemed fit and proper, their physical limitations, considered;

c. During active labor, pregnant inmates should be transferred nearest government hospital;

d. Treatment of mother and her infant/s shall be in accordance with the BJMP Policy (Refer to DIWD Manual); and

e. Female inmates with infants shall be provided with ample privacy during breastfeeding activity.

III

The constitutional rights to life and health, the prohibition against torture and cruel, inhuman, and degrading treatment, and the State policy to guarantee full respect for human dignity are affirmed in the international laws and standards that bind us. These fundamental rights, anchored on the recognition of the inherent dignity of every human being, have acquired the status of universal application as *jus cogens*, or 'compelling law.'[148]

The Universal Declaration of Human Rights prohibits "cruel, inhuman or degrading treatment or punishment"[149] and declares that every human being is entitled to "the right to life, liberty, and security of persons."[150]

Moreover, the International Covenant on Civil and Political Rights[151] expressly provides that persons deprived of liberty do not shed their "inherent dignity." Article 10 states:

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[148] *J.* Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 486-487 (2014) [Per Sereno, *En Banc*].

[149] United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), Art. 5.

[150] United Nations Universal Declaration of Human Rights, UNGA Res 217 III(A) (1948), Art. 3.

[151] International Covenant on Civil and Political Rights, A/RES/21/2200 (1966).

The Philippines is a signatory of the International Covenant on Civil and Political Rights. The Philippines signed it on December 19, 1966 and ratified it on October 23, 1986. See *UN Treaty Body Database*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E> (last visited on July 6, 2020).

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the *inherent dignity of the human person*.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. (Emphasis supplied)

The inherent dignity of persons deprived of liberty as human beings, as with their humane treatment, is a "fundamental and universally applicable rule."[152] It applies without any distinction, and does not depend on the available material resources of a state party.

The Basic Principles for the Treatment of Prisoners[153] provides that all prisoners retain all their rights under the Universal Declaration of Human Rights and other international covenants where a state is a member party:

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

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[152] General Comment No. 21, Article 10 (Humane treatment of persons deprived of their liberty), HRI/GEN/1/Rev.9 (Vol. I) (1992), par. 4.

[153] A/RES/45/111 (1990).

Furthermore, on December 9, 1975, the United Nations General Assembly declared that no state may permit torture or other cruel, inhuman, or degrading punishment.[154] Not even exceptional circumstances such as war, internal political instability, and other public emergency can justify any of these prohibited acts.[155]

On December 9, 1988, the United Nations General Assembly also adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[156] which upholds the human rights of persons under any form of detention or imprisonment:

> Principle 3
>
> There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

On May 13, 1977, the United Nations Economic and Social Council adopted the Standard Minimum Rules for the Treatment of Prisoners, which set the universally accepted minimum

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[154] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/30/3452 (1975).

[155] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/30/3452 (1975), Art. 3 provides:

> Article 3. No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

[156] A/RES/43/173 (1988).

standards for prisoner treatment and prison management.[157] These rules are "generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions."[158]

Recently, on December 17, 2015, the United Nations General Assembly revised the rules to reflect the changes in international law and the advances in correctional science and good management practices in correctional institutions. From then on, the revised rules were called *the Nelson Mandela Rules*, which contains provisions for minimum standards in prison accommodations, personal hygiene, food and nutrition, access to health care services, among others.[159]

Incidentally, Justice Delos Santos states that Article 38 of the Statute of the International Court of Justice provides the sources of international law, which are traditionally characterized as either peremptory or non-peremptory in nature.[160] He discusses that in order to have domestic application, these norms will have to either be incorporated or transformed into domestic law. Citing the UN Charter, he proceeds to characterize the Nelson Mandela Rules as merely recommendatory, with no binding effect.

I disagree.

The peremptoriness of a norm is not a mere categorization of international law.[161] *Jus cogens*, or peremptory norms, are the "highest category of customary international law."[162] A

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[157] Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

[158] Standard Minimum Rules for the Treatment of Prisoners, E/RES/2076(LXII) (1977), Preliminary Observations No. 1.

[159] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[160] *J.* Delos Santos, Separate Opinion, pp. 24-25.

[161] *Id.* at 24.

[162] Karen Parker, *Jus Cogens*: *Compelling the Law of Human Rights*, 12 HASTINGS INT'L. & COMP. L. REV. 411, 414 (1989).

prominent modern definition is that "(t)he rules of *jus cogens* [are] those rules which derive from principles that the legal conscience of [hu]mankind deem[s] absolutely essential to coexistence in the international community."[163]

These definitions have been incorporated in *Bayan Muna v. Romulo*:[164]

> "The term '*jus cogens*' means the 'compelling law.'" Corollary, "a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles." As a result, *jus cogens* norms are deemed "peremptory and non-derogable." When applied to international crimes, "*jus cogens* crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement."
>
> These *jus cogens* crimes relate to the principle of universal jurisdiction, i.e., "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community" and thus granting every State jurisdiction over the crime.[165] (Citations omitted)

Among the fundamental rights established as *jus cogens* are the right to life and the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment.[166] These non-derogable international customary norms have been reiterated in several conventions that the Philippines signed and ratified, as previously discussed.

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[163] *Id.* at 415 citing U.N. Conference on the Law of Treaties, 1st and 2nd Sess. Vienna Mar. 26-May 24, 1968, U.N. Doe. A/CONF./39/11/Add. 2 (1971), and Statement of Mr. Eduardo Suarez (Mexico) at 294 during the 52nd meeting on May 4, 1968.

[164] 656 Phil. 246 (2011) [Per *J.* Velasco, *En Banc*].

[165] *Id.* at 303-304.

[166] See Karen Parker, *Jus Cogens*: *Compelling the Law of Human Rights*, 12 HASTINGS INT'L. & COMP. L. REV. 411 (1989).

In any case, the non-derogable international laws are not the only rules governing the international community. For instance, a treaty creating the World Trade Organization, or a Security Council Resolution defining a terrorist organization, are non-peremptory in that accession is optional; yet, they still have significant effects on the international community. As elegantly captured in Justice Antonio Carpio's dissent in *Bayan Muna*:

> Some customary international laws have been affirmed and embodied in treaties and conventions. A treaty constitutes evidence of customary law if it is declaratory of customary law, or if it is intended to codify customary law. In such a case, even a State not party to the treaty would be bound thereby. A treaty which is merely a formal expression of customary international law is enforceable on all States because of their membership in the family of nations. For instance, the Vienna Convention on Consular Relations is binding even on non-party States because the provisions of the Convention are mostly codified rules of customary international law binding on all States even before their codification into the Vienna Convention. Another example is the Law of the Sea, which consists mostly of codified rules of customary international law, which have been universally observed even before the Law of the Sea was ratified by participating States.
>
> Corollarily, treaties may become the basis of customary international law. While States which are not parties to treaties or international agreements are not bound thereby, such agreements, if widely accepted for years by many States, may transform into customary international laws, in which case, they bind even non-signatory States.[167] (Citations omitted)

Therefore, the Nelson Mandela Rules and its precedent, the United Nations Minimum Standard on the Treatment of Prisoners, cannot simply be disregarded as non-binding norms. The principles and fundamental rights on which these declarations are based—the right to life, the prohibition of torture, and the prohibition of cruel and unusual punishment—have attained a *jus cogens* status. These Rules have been adhered to

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[167] *J.* Carpio, Dissenting Opinion in *Bayan Muna v. Romulo*, 656 Phil. 246, 326-327 (2011) [Per *J.* Velasco, *En Banc*].

and transformed into local legislation and incorporated in our penal institutions.

To view a resolution adopted by the United Nations General Assembly as not being *jus cogens*, only being recommendatory, is limited. It fails to consider that a resolution of the United Nations General Assembly may be any of the following: (1) an articulation of a customary international norm; (2) a reiteration of existing treaty obligations; (3) a reflection of emerging international norms and standards, or commonly referred to as "soft law"; or (4) a binding source of obligation that is judicially enforceable once acceded to by a member state.

First, the Nelson Mandela Rules articulates customary international norms on the treatment of prisoners. These are based on one's fundamental dignity, including those under confinement. These are codified into several declarations and conventions that the Philippines have ratified.

In *Razon v. Tagitis*,[168] this Court recognized "resolutions relating to legal questions in the [United Nations] General Assembly" as material sources of international customs:

> The most widely accepted statement of sources of international law today is Article 38 (1) of the Statute of the International Court of Justice, which provides that the Court shall apply "international custom, as evidence of a general practice accepted as law." The material sources of custom include State practice, State legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the UN General Assembly. Sometimes referred to as "evidence" of international law, these sources identify the substance and content of the obligations of States and are indicative of the "State practice" and "*opinio juris*" requirements of international law.[169] (Citations omitted)

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[168] 621 Phil. 536 (2009) [Per *J.* Brion, *En Banc*].

[169] *Id.* at 600-601.

It is erroneous to dismiss the Nelson Mandela Rules just because the United Nations General Assembly resolutions are only recommendatory. The preambulatory clauses of Resolution No. 70/175,[170] which adopted the Nelson Mandela Rules, state that the precedent United Nations Minimum Standard on the Treatment of Prisoners has already attained the status of a "universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence."[171]

Second, a resolution of the United Nations General Assembly may reiterate an existing treaty obligation, as in the preambulatory clause of Resolution No. 70/175:

> Taking into account the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto[.]

Notably, the Philippines acceded[172] to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[173] This embraces the following obligations:

Article 2

1. *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

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[170] Adopted by the UN General Assembly on December 17, 2015.

[171] *United Nations Standard Minimum Rules on the Treatment of Prisoners* (*the Nelson Mandela Rules*), A/RES/70/175 (2015).

[172] *UN Treaty Body Database*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=E> (last visited on July 6, 2020).

[173] A/RES/39/46 (1984).

2. ***No exceptional circumstances whatsoever,*** whether a state of war or a threat of war, internal political instability ***or any other public emergency, may be invoked as a justification of torture.***

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

. . . . . .

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

. . . . . .

Article 16

1. *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1*, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion. (Emphasis supplied)

The Philippines also acceded to the Optional Protocol to the Convention against Torture.[174] Among its objectives is to establish regular visits of detention places and prisons from international and domestic bodies to prevent torture and other cruel, inhuman, or degrading punishment or treatment.

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[174] A/RES/57/199 (2002). Acceded on April 17, 2012.

Third, the Nelson Mandela Rules reflects emerging international norms and standards, or commonly referred to as "soft law." It partakes of "new soft law standards" that function as a "significant normative reference for national legislators, courts, correctional administrators, and advocates on a range of prison conditions issues."[175]

In *Pharmaceutical and Health Care Association of the Philippines v. Duque III*,[176] this Court held that a "soft law," while not necessarily binding, has great political influence:

> "Soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. Certain declarations and resolutions of the UN General Assembly fall under this category. The most notable is the UN Declaration of Human Rights, which this Court has enforced in various cases, specifically, *Government of Hongkong Special Administrative Region v. Olalia, Mejoff v. Director of Prisons, Mijares v. Rañada and Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*
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> The World Intellectual Property Organization (WIPO), a specialized agency attached to the UN with the mandate to promote and protect intellectual property worldwide, has resorted to soft law as a rapid means of norm creation, in order "to reflect and respond to the changing needs and demands of its constituents." Other international organizations which have resorted to soft law include the International Labor Organization and the Food and Agriculture Organization (in the form of the *Codex Alimentarius*).
>
> WHO has resorted to soft law. This was most evident at the time of the Severe Acute Respiratory Syndrome (SARS) and Avian flu outbreaks.

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[175] Jennifer Pierce, *Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards*, 43 QUEEN'S L.J. 263 (2018).

[176] 561 Phil. 386 (2007) [Per *J.* Austria-Martinez, *En Banc*].

Although the IHR Resolution does not create new international law binding on WHO member states, it provides an excellent example of the power of "soft law" in international relations. International lawyers typically distinguish binding rules of international law-"hard law"-from non-binding norms, principles, and practices that influence state behavior-"soft law." WHO has during its existence generated many soft law norms, creating a "soft law regime" in international governance for public health.

The "soft law" SARS and IHR Resolutions represent significant steps in laying the political groundwork for improved international cooperation on infectious diseases. These resolutions clearly define WHO member states' normative duty to cooperate fully with other countries and with WHO in connection with infectious disease surveillance and response to outbreaks.

This duty is neither binding nor enforceable, but, in the wake of the SARS epidemic, the duty is powerful politically for two reasons. First, the SARS outbreak has taught the lesson that participating in, and enhancing, international cooperation on infectious disease controls is in a country's self interest . . . if this warning is heeded, the "soft law" in the SARS and IHR Resolution could inform the development of general and consistent state practice on infectious disease surveillance and outbreak response, perhaps crystallizing eventually into customary international law on infectious disease prevention and control.[177] (Citations omitted)

Finally, the Nelson Mandela Rules could not be ignored, precisely because the Philippines adopted these standards through its express adherence to the established standards of the United Nations under Republic Act No. 10575, or the Bureau of Corrections Act of 2013. Section 4 states:

SECTION 4. The Mandates of the Bureau of Corrections. — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing

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[177] *Id.* at 406-407.

in ***compliance with established United Nations standards***. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.

. . . . . .

SECTION 5. Operations of the Bureau of Corrections. — (a) The BuCor shall operate with a directorial structure. It shall undertake reception of inmates through its Directorate for Reception and Diagnostics (DRD), formerly Reception and Diagnostic Center (RDC), provide basic needs and security through its Security and Operations Directorates, administer reformation programs through its Reformation Directorates, and prepare inmates for reintegration to mainstream society through its Directorate for External Relations (DER), formerly External Relations Division (ERD).

. . . . . .

(c) Aside from those borne of the provisions under Rule 8, Part I, Rules of General Application of the ***United Nations Standard Minimum Rules for the Treatment of Prisoners*** and that of the existing regulation of the BuCor on security classification (i.e., maximum, medium and minimum security risk), inmates shall also be internally classified by the DRD and segregated according to crimes committed based on the related penal codes such as Crimes Against Persons, Crimes Against Properties, Crimes Against Chastity, so on and so forth, as well as by other related Special Laws, Custom and Immigration Laws. (Emphasis supplied)

While the law was enacted in 2013, prior to the adoption of the Nelson Mandela Rules in 2015, its express wording refers to standards adopted by the United Nations.

Yet, Justice Delos Santos opines that with the sorry state of our penal institutions, we can only dream of complying with the Nelson Mandela Rules.[178] Thus, while he recognizes that the Philippines adhered to the United Nations standards in

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[178] *J.* Delos Santos, Separate Opinion, p. 34 states:

"However, for the Philippines which has been reportedly afflicted with persisting issues of overcrowding, the instance of 'temporary overcrowding' is colloquially 'the stuff of dreams.'"

safekeeping its prisoners under Section 4, he notes that these standards cannot be judicially enforced.[179]

As such, he declares[180] that this Court is not empowered to compel the Bureau of Corrections to implement Section 4(a), which requires safekeeping of persons deprived of liberty that complies "with established United Nations standards." He finds this provision not self-executing, as it confers no rights that can be judicially enforced, being "so generic" and silent as to its implementation. He states that the provision simply provides guidelines for executive action as to how inmates will be accommodated.[181]

Justice Delos Santos further discusses that the words used in the Nelson Mandela Rules are so vague that the ministerial duty sought to be enforced through an injunctive writ cannot be determined.[182] He asserts that a court cannot simply invent parameters for what constitutes "reasonable" or "special" accommodations, or adjust any implementing rule or regulation on equitable considerations.[183]

I disagree. This Court has the power to compel the Bureau of Corrections to implement Section 4 of Republic Act No. 10575.

Judicial action on the enforcement of a law is based on a cause of action, which is "the act or omission by which a party violates the right of another."[184] Article VIII, Section 1 of the 1987 Constitution states:

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

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

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

[182] *Id.* at 31.

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

[184] RULES OF COURT, Rule 2, Sec. 2.

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving *rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

What determines judicial power is the existence of one's right and its violation by another person or entity. This power is not restricted by the vagueness of the words used in the law, or the absence of parameters as to what constitutes a violation of the right.

Regardless, Section 4 of Republic Act No. 10575 clearly creates a right and indicates the standards by which that right is fleshed out. Petitioners assert a violation of that right. There is, thus, a cause of action that calls for the exercise of judicial power.

I oppose creating a distinction between self-executing provisions and not self-executing provisions in statutes. I had previously maintained that this should not be made in any of the constitutional provisions, as it "creates false second-order constitutional provisions":

I do not agree, however, in making distinctions between self-executing and non-self-executing provisions.

A self-executing provision of the Constitution is one "complete in itself and becomes operative without the aid of supplementary or enabling legislation." It "supplies [a] sufficient rule by means of which the right it grants may be enjoyed or protected." "[I]f the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action," the provision is self-executing.

On the other hand, if the provision "lays down a general principle," or an enabling legislation is needed to implement the provision, it is not self-executing.

To my mind, the distinction creates false second-order constitutional provisions. It gives the impression that only self-executing provisions are imperative.

All constitutional provisions, even those providing general standards, must be followed. Statements of general principles and policies in the Constitution are frameworks within which branches of the government are to operate. The key is to examine if the provision contains a prestation and to which branch of the government it is directed. If addressed either to the legislature or the executive, the obligation is not for this Court to fulfill.

. . . . . .

There are no second-order provisions in the Constitution. We create this category when we classify the provisions as "self-executing" and "non-self executing." Rather, the value of each provision is implicit in their normative content.[185] (Citations omitted)

The same can be said of all statutes. Mandatory provisions should be deemed as imperative, and their authoritative or operative effect should not be diminished on account of their "vagueness" or the lack of parameters. It cannot be assumed that a statute is not meant to be complied with. To do so is to nullify the mandatory language of the provision and render legislative power useless.

Compliance with legal provisions cannot solely depend on the presence of specific implementing rules and regulations. Justice Delos Santos recognized this himself when he discussed that the implementing rules and regulations—containing matters related to the standards under the Nelson Mandela Rules—is subordinate legislation, which is not a source of substantive rights and obligations.[186]

As Justice Lazaro-Javier says, laws that use general terms, like the Nelson Mandela Rules, do not make them any less

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[185] *J.* Leonen, Concurring Opinion in *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 591-592 (2017) [Per *J.* Carpio, *En Banc*].

[186] *J.* Delos Santos, Separate Opinion, p. 32.

judicially enforceable.[187] Even if a certain law lacks a degree of specificity, the executive branch must still comply with its mandate. Similarly, courts should not shy away from interpreting what constitutes compliance with the law using the rules on statutory construction. Courts are not meant to create new parameters, but to interpret statutes. We can neither shirk from this duty nor excuse the other government branches' failure to comply with their legal mandates.

I also agree with Justice Lazaro-Javier's position that budgetary restrictions, while it may be a factor in implementation, do not determine the existence and enforceability of a right.[188] As she aptly points, this Court should not be restricted by the State's budget concerns in determining the existence and enforcement of a right.[189]

It is not the Nelson Mandela Rules as written that should be in focus. What is relevant are the founding principles of international law on which the Nelson Mandela Rules are based. The first sentence of the Nelson Mandela Rules' preambulatory clause states that in its adoption, the United Nations General Assembly was guided by the "fundamental human rights, in the dignity and worth of the human person, without distinction of any kind."[190] These fundamental human rights include the right to life and the prohibition against torture and other cruel, inhuman, or degrading punishment, both of which are anchored on one's inherent dignity.[191]

These principles are affirmed by the 1987 Constitution as a State policy.[192] Thus, persons deprived of liberty must be treated

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[187] *J.* Lazaro-Javier, Separate Opinion, p. 26.

[188] *Id.* at 27.

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

[190] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175 (2015).

[191] International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), Art. 10.

[192] CONST., Art. II, Sec. 11.

with humanity and with respect for their inherent dignity. Furthermore, "provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation whatsoever, having acquired a *jus cogens* character."[193]

More important, the Philippines' compliance with the United Nations standards should be assessed based on how the country understood the implications of adherence to these standards. This is done by examining the texts of applicable local legislations and administrative issuances of penal institutions. These local and international rules and standards operationalize the State's duty on the safekeeping of its prisoners and affirm how the inherent dignity of a person is to be valued, even when deprived of liberty.

As discussed at length earlier, our local laws and the international standards we have adhered to reveal that while our prisoners and detainees' right to liberty is restricted, their right to be treated humanely, including their right to reasonably safe, sanitary, and sufficient provisions and facilities, is not suspended and is not merely recommendatory. Thus, no extraordinary circumstance, not even the global COVID-19 pandemic, can justify actions violating these fundamental rights.

IV

Considering the various sources of rights of persons deprived of liberty, incarcerated individuals may file an appropriate action based on a violation of these rights.

Violations of the constitutional right against cruel, degrading, and inhuman punishment, the rights to life and health, the rights of prisoners and detainees under international law principles and conventions, and our own local laws, rules, and procedures are justiciable matters.

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[193] *J.* Leonen, Dissenting Opinion in *Ocampo v. Abando*, 726 Phil. 441, 488 (2014) [Per Sereno, *En Banc*] citing INGRID DETTER, *THE LAW OF WAR* 162 (2nd ed., 2000) citing International Covenant on Civil and Political Rights, A/RES/21/2200 (1966), Arts. 6, 7, and 8.

I agree with Justice Perlas-Bernabe that we should not diminish the possibility that persons deprived of liberty may avail of their rights as listed in the Bill of Rights, including their right to be protected against cruel, inhuman, and degrading punishment.[194]

Under Article VIII, Section 1 of the 1987 Constitution, courts are given judicial power "to settle actual controversies involving *rights which are legally demandable and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[195]

The Bill of Rights is an enumeration of rights that are *legally demandable and enforceable*. Courts will hear and decide cases involving violations of these rights, or any statute providing standards to comply with these rights. This aspect of judicial review, to measure the constitutionality of a government act or inaction *vis-à-vis* an enumeration of an individual or group right, is even more established than the expanded jurisdiction now contained in Article VIII, Section 1.

Thus, with respect to actual controversies involving violations of fundamental constitutional rights, this Court is not powerless to ensure its respect and implementation. It is precisely why this Court exists.

I thus disagree with Justice Delos Santos' statement that "only Congress has the constitutional power to address subhuman conditions that plague our penal institutions."[196] He would have this Court "defer to the political branches as regards the matter of selecting the most appropriate strategy to maintain public order and preserve public safety."[197] Such position reduces the Judiciary's role in relation to the Constitution, especially the Bill of Rights.

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[194] *J.* Perlas-Bernabe, Separate Opinion, pp. 5 and 7.

[195] CONST., Art. VIII, Sec. 1.

[196] *J.* Delos Santos, Separate Opinion, p. 54.

[197] *Id.* at 98.

First, petitioners' cause of action calls for this Court's interpretation of constitutional text. When this Court interprets the Constitution and fleshes out its text, its decisions form part of the law of the land. The Judiciary's constitutional interpretations are guided not only by the Constitution itself, but by precedents that have construed the text and articulated its intent through particular circumstances. In *David v. Senate Electoral Tribunal*:[198]

> Reading a certain text includes a consideration of jurisprudence that has previously considered that exact same text, if any. Our legal system is founded on the basic principle that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of [our] legal system." Jurisprudence is not an independent source of law. Nevertheless, judicial interpretation is deemed part of or written into the text itself as of the date that it was originally passed. This is because judicial construction articulates the contemporaneous intent that the text brings to effect. Nevertheless, one must not fall into the temptation of considering prior interpretation as immutable.[199] (Citations omitted)

Since petitioners anchor their cause of action on their constitutionally protected rights, courts have the power to settle the controversy, and to articulate and apply what the Constitution, statutes, and rules and regulations provide in relation to the right.

Furthermore, the vagueness of the Bill of Rights' provisions does not detract from their enforceability. In fact, they were written so to leave room for future instances that can shed further light on how the provisions are to be interpreted. The Constitution is not meant to pertain to a specific moment that would restrict its application to a limited set of facts. Rather, it is meant to encapsulate circumstances that may go beyond what was initially imagined by its framers. Thus, when faced with a justiciable controversy, the Judiciary has the power to define what constitutes a violation of these provisions.

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[198] 795 Phil. 529 (2016) [Per *J.* Leonen, *En Banc*].

[199] *Id.* at 572.

In *J. M. Tuason & Company, Inc. v. Land Tenure Administration*:[200]

> It could thus be said of our Constitution as of the United States Constitution, to borrow from Chief Justice Marshall's pronouncement in *M'Culloch v. Maryland* that it is "intended to endure for ages to come and consequently, to be adapted to the various crisis of human affairs." It cannot be looked upon as other than, in the language of another American jurist, Chief Justice Stone, "a continuing instrument of government." Its framers were not visionaries, toying with speculations or theories, but men of affairs, at home in statecraft, laying down the foundations of a government which can make effective and operative all the powers conferred or assumed, with the corresponding restrictions to secure individual rights and, anticipating, subject to the limitations of human foresight, the problems that events to come in the distant days ahead will bring. Thus a constitution, to quote from Justice Cardozo, "states or ought to state not rules for the passing hour, but principles for an expanding future."
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> To that primordial intent, all else is subordinated. Our Constitution, any constitution, is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form, but are organic living institutions, the significance of which is vital nor formal. There must be an awareness, as with Justice Brandeis, not only of what has been, but of what may be. The words employed by it are not to be construed to yield fixed and rigid answers but as impressed with the necessary attributes of flexibility and accommodation to enable them to meet adequately whatever problems the future has in store. It is not, in brief, a printed finality but a dynamic process.[201] (Citations omitted)

In *Secretary of Justice v. Lantion*:[202]

> The due process clauses in the American and Philippine Constitutions are not only worded in exactly identical language and terminology,

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[200] G.R. No. L-21064, February 18, 1970, 31 SCRA 413 [Per *J.* Fernando, Second Division].

[201] *Id.* at 426-427.

[202] 379 Phil. 165 (2000) [Per *J.* Melo, *En Banc*].

but more importantly, they are alike in what their respective Supreme Courts have expounded as the spirit with which the provisions are informed and impressed, the elasticity in their interpretation, their dynamic and resilient character which make them capable of meeting every modern problem, and their having been designed from earliest time to the present to meet the exigencies of an undefined and expanding future. The requirements of due process are interpreted in both the United States and the Philippines as not denying to the law the capacity for progress and improvement. Toward this effect and in order to avoid the confines of a legal straitjacket, the courts instead prefer to have the meaning of the due process clause "gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise" (Twining vs. New Jersey, 211 U.S. 78). Capsulized, it refers to "the embodiment of the sporting idea of fair play" (Ermita-Malate Hotel and Motel Owner's Association vs. City Mayor of Manila, 20 SCRA 849 [1967]). It relates to certain immutable principles of justice which inhere in the very idea of free government (Holden vs. Hardy, 169 U.S. 366).[203]

Thus, in my separate opinion in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[204] I emphasized that the right to life and liberty under the Bill of Rights evolves and expands to our current realities:

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves — expanding liberty — alongside the contemporaneous reality in which the Constitution operates. *People v. Hernandez* illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

> [T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of Section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said Section (1) to the protection of several aspects of freedom.

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[203] *Id.* at 202.

[204] 815 Phil. 1067 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

While the extent of the constitutional protection of life and liberty is dynamic, evolving, and expanding with contemporaneous realities, the mechanism for preserving life and liberty is immutable: any intrusion into it must be with due process of law and must not run afoul of the equal protection of the laws.[205] (Citations omitted)

In *Social Weather Stations, Inc. v. Commission on Elections*,[206] this Court discussed that judicial interpretation entails a holistic approach—considering both the history and the contemporary, the realities and the ideals, as effected by the Constitution and statutes:

Interestingly, both COMELEC and petitioners appeal to what they (respectively) construe to be plainly evident from Section 5.2(a)'s text: on the part of COMELEC, that the use of the words "paid for" evinces no distinction between direct purchasers and those who purchase via subscription schemes; and, on the part of petitioners, that Section 5.2(a)'s desistance from actually using the word "subscriber" means that subscribers are beyond its contemplation. The variance in the parties' positions, considering that they are both banking on what they claim to be the Fair Election Act's plain meaning, is the best evidence of an extant ambiguity.

Second, statutory construction cannot lend itself to pedantic rigor that foments absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.

Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the

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[205] *Id.* at 1144-1146.

[206] 757 Phil. 483 (2015) [Per *J.* Leonen, *En Banc*].

historical, the contemporary, and even the envisioned. *Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — saligan — demonstrates this imperative of constitutional primacy*.

Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, *i.e.*, the statute of which it is a part, that is aimed at realizing the ideal of fair elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.[207] (Emphasis supplied, citations omitted)

Bearing in mind its functions in constitutional interpretation, it cannot be said that the Judiciary is powerless in any capacity to address the subhuman conditions in our jails and prisons.

Still, Justice Delos Santos argues that only Congress has the power to address the state of our penal institutions. He cites the constitutional deliberations in discussing that it is the legislature that determines what constitutes a violation of the right against cruel and inhuman punishment.[208]

In *David*,[209] this Court discussed that a resort to these deliberations should be the last option, as doing so would be prone to "subjective interpretation" and "the greatest errors":

In the hierarchy of the means for constitutional interpretation, inferring meaning from the supposed intent of the framers or fathoming the original understanding of the individuals who adopted the basic document is the weakest approach.

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[207] *Id.* at 520-522.

[208] *J.* Delos Santos, Separate Opinion, p. 53.

[209] *David v. Senate Electoral Tribunal*, 795 Phil. 529 (2016) [Per *J.* Leonen, *En Banc*].

These methods leave the greatest room for subjective interpretation. Moreover, they allow for the greatest errors. The alleged intent of the framers is not necessarily encompassed or exhaustively articulated in the records of deliberations. Those that have been otherwise silent and have not actively engaged in interpellation and debate may have voted for or against a proposition for reasons entirely their own and not necessarily in complete agreement with those articulated by the more vocal. It is even possible that the beliefs that motivated them were based on entirely erroneous premises. Fathoming original understanding can also misrepresent history as it compels a comprehension of actions made within specific historical episodes through detached, and not necessarily better-guided, modern lenses.[210]

Moreover, the original intent of the Constitution's framers is not always uniform with the original understanding of the people who ratified it. In *Civil Liberties Union v. Executive Secretary*:[211]

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." *The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof*.[212] (Emphasis supplied, citations omitted)

Thus, it cannot be assumed that violations of the petitioners' constitutional right against cruel, unusual, and degrading punishment is solely left for Congress to address.

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[210] *Id.* at 576.

[211] 272 Phil. 147 (1991) [Per *J.* Fernan, *En Banc*].

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

V

Considering that the violation of constitutional rights is a justiciable matter, aggrieved persons deprived of liberty can file an action in the proper trial court.[213]

If yet to be convicted, such that the case is still on trial or on appeal, detainees should be able to file a motion for release invoking a violation of their constitutional right. If already convicted with finality, a prisoner should be able to file for a writ of *habeas corpus*. This is in line with *Gumabon v. Director of the Bureau of Prisons*,[214] where this Court allowed the release of prisoners after a finding that their detention violated their constitutional right to equal protection of the laws:

> 1. The fundamental issue, to repeat, is the availability of the writ of *habeas corpus* under the circumstances disclosed. Its latitudinarian scope to assure that illegality of restraint and detention be avoided is one of the truisms of the law. It is not known as the writ of liberty for nothing. The writ imposes on judges the grave responsibility of ascertaining whether there is any legal justification for a deprivation of physical freedom. Unless there be such a showing, the confinement must thereby cease. If there be a valid sentence it cannot, even for a moment, be extended beyond the period provided for by law. Any deviation from the legal norms call for the termination of the imprisonment.
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> . . . . . .
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> 2. Where, however, the detention complained of finds its origin in what has been judicially ordained, the range of inquiry in a *habeas corpus* proceeding is considerably narrowed. For if "the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order," the writ does not lie. That principle dates back to 1902, when this Court announced that *habeas corpus* was unavailing where the person detained

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[213] 147 Phil. 362 (1971) [Per *J.* Fernando, First Division].

[214] 147 Phil. 362 (1971) [Per *J.* Fernando, First Division].

was in the custody of an officer under process issued by a court or magistrate. That is understandable, as during the time the Philippines was under American rule, there was necessarily an adherence to authoritative doctrines of constitutional law there followed.

One such principle is the requirement that there be a finding of jurisdictional defect. As summarized by Justice Bradley in *Ex parte* Siebold, an 1880 decision: "The only ground on which this court, or any court, without some special statute authorizing it, will give relief on *habeas corpus* to a prisoner under conviction and sentence of another court is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and *habeas corpus* is the appropriate remedy to assail the legality of the detention.

3. Petitioners precisely assert a deprivation of a constitutional right, namely, the denial of equal protection. According to their petition: "In the case at bar, the petitioners were convicted by Courts of First Instance for the very same rebellion for which Hernandez, Geronimo, and others were convicted. The law under which they were convicted is the very same law under which the latter were convicted. It had not and has not been changed. For the same crime, committed under the same law, how can we, in conscience, allow petitioners to suffer life imprisonment, while others can suffer only *prision mayor*?"

They would thus stress that, contrary to the mandate of equal protection, people similarly situated were not similarly dealt with. What is required under this constitutional guarantee is the uniform operation of legal norms so that all persons under similar circumstances would be accorded the same treatment both in the privileges conferred and the liabilities imposed. As was noted in a recent decision: "Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."

The argument of petitioners thus possesses a persuasive ring. The continued incarceration after the twelve-year period when such is the maximum length of imprisonment in accordance with our controlling doctrine, when others similarly convicted have been freed, is fraught with implications at war with equal protection. That is not to give it life. On the contrary, it would render it nugatory. Otherwise, what would happen is that for an identical offense, the only distinction lying in the finality of the conviction of one being before the Hernandez ruling and the other after, a person duly sentenced for the same crime would be made to suffer different penalties. Moreover, as noted in the petition before us, after our ruling in *People v. Lava*, petitioners who were mere followers would be made to languish in jail for perhaps the rest of their natural lives when the leaders had been duly considered as having paid their penalty to society, and freed. Such a deplorable result is to be avoided.[215] (Citations omitted)

However, to be entitled to the reliefs mentioned, one must first allege and prove the following: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a clear demand on the relevant agencies of government; and (d) the intentional or persistent refusal or negligence on the part of the government agency or official to address the cruel conditions of the violation of the statutory or constitutional provisions.

Justice Perlas-Bernabe finds that our laws addressing jail congestion are lacking, and the rules on release on bail or recognizance do not expressly consider the conditions of confinement.[216] Thus, she and Justice Caguioa borrow the "deliberate indifference standard"

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[215] *Id.* at 365-371.

[216] *J.* Perlas-Bernabe, Separate Opinion, p. 14.

used in the United States cases of *Estelle v. Gamble*[217] and *Helling v. McKinney*.[218]

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[217] 429 U.S. 97 (1976). In *Estelle*, a prisoner was injured while unloading a bale of cotton from a truck. He filed a civil action for deprivation of rights against the Director of the Department of Corrections, the warden of the prison, and its medical doctors, alleging that the inadequate medical treatment subjected him to cruel and inhuman punishment.

The U.S. Supreme Court recognized the government's responsibility to provide medical care for its prisoners. Failure to do so may constitute a cause of action for cruel and inhuman punishment. First, however, the prisoner must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs," which constitutes "unnecessary and wanton infliction of pain" and in worst cases, "physical torture or a lingering death." Moreover, this deliberate indifference to a prisoner's serious medical needs must be of such nature that offends the contemporary standards of decency as expressed in prison regulations. This means that not every accident or medical malpractice is sufficient. There must be a deliberate disregard of a prisoner's serious medical condition, delay, or complete denial of access to treatment, or intentional interference to a prescribed treatment.

[218] 509 U.S. 25 (1993). In *Helling*, the deliberate indifference test was dissected into its subjective and objective components. The prisoner filed a civil action for damages and injunction against various prison officials. Roomed with another prisoner who daily smoked five packs of cigarettes sold by the prison store, he raised health damage that constituted cruel and unusual punishment.

The U.S. Supreme Court held that the conditions of confinement are included in the scope of the right against cruel and unusual punishment. The reason is that in depriving liberty, the State renders prisoners unable to care for themselves. In a series of cases, the Court had categorically held that the protection against cruel and unusual punishment extends to "sufficiently imminent dangers" such that a "remedy for unsafe conditions need not await a tragic event."

While the Court affirmed that a cause of action exists under cruel and unusual punishment, the case was remanded to the trial courts to prove the objective and subjective components of such right. The objective factor consists of the prisoner's exposure to a grave risk that is not tolerated in the modern society. Moreover, the prisoner's exposure is of the nature that violates contemporary standards of decency. On the other hand, the subjective factor pertains to prison management showing deliberate indifference of the detention officers to the risks and exposure of the prisoner.

While I agree that those cases may be relevant to this case, these are only persuasive to this Court.[219] Rather, the guidelines in *Alejano v. Cabuay*,[220] the same case where this Court discussed punishment, may be used in granting reliefs against violations of the right against cruel, degrading, and inhuman punishment, right to life, and right to health of persons deprived of liberty.

In the 2005 case of *Alejano*, junior military officers staged a mutiny against the then President and took control of Oakwood Premier Luxury Apartments. After a failed attempt, they voluntarily surrendered and were taken in custody. Later, they filed a petition for *habeas corpus*, alleging that their confinement conditions violated their right against cruel and unusual punishment. They specifically cry afoul on the bars that separated them from their visitors and the iron grills and plywood in their individual cells.

This Court dismissed the petition, as the petitioners failed to convince the court to infer punishment from the inherent restrictions of confinement:

> Petitioners further argue that the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood amount to unusual and excessive punishment. This argument fails to impress us. *Bell v. Wolfish* pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law, detention inevitably interferes with a detainee's desire to live comfortably. ***The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the***

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[219] *Ejercito v. Commission on Elections*, 748 Phil. 205 (2014) [Per J. Peralta, *En Banc*] citing *Republic of the Philippines v. Manila Electric Company*, 449 Phil. 118 (2003) [J. Puno, Third Division] and *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [J. Puno, *En Banc*].

[220] 505 Phil. 298 (2005) [Per J. Carpio, *En Banc*] citing *Fisher v. Winter*, 564 F Supp. 281 (1983).

restriction appears excessive in relation to that purpose. Jail officials are thus not required to use the least restrictive security measure. They must only refrain from implementing a restriction that appears excessive to the purpose it serves.

We quote *Bell v. Wolfish*:

> One further point requires discussion. The petitioners assert, and respondents concede, that the "essential objective of pretrial confinement is to insure the detainees' presence at trial." While this interest undoubtedly justifies the original decision to confine an individual in some manner, we do not accept respondents' argument that the Government's interest in ensuring a detainee's presence at trial is the only objective that may justify restraints and conditions once the decision is lawfully made to confine a person. "If the government could confine or otherwise infringe the liberty of detainees only to the extent necessary to ensure their presence at trial, house arrest would in the end be the only constitutionally justified form of detention." The Government also has legitimate interests that stem from its need to manage the facility in which the individual is detained. These legitimate operational concerns may require administrative measures that go beyond those that are, strictly speaking, necessary to ensure that the detainee shows up at trial. For example, the Government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach detainees. Restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial. We need not here attempt to detail the precise extent of the legitimate governmental interests that may justify conditions or restrictions of pretrial detention. It is enough simply to recognize that in addition to ensuring the detainees' presence at trial, the effective management of the detention facility once the individual is confined is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment.

An action constitutes a punishment when (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose

of the action is to punish the inmate. Punishment also requires that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.

Block v. Rutherford, which reiterated *Bell v. Wolfish*, upheld the blanket restriction on contact visits as this practice was reasonably related to maintaining security. The safety of innocent individuals will be jeopardized if they are exposed to detainees who while not yet convicted are awaiting trial for serious, violent offenses and may have prior criminal conviction. Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes. Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband. The restriction on contact visits was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons. The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees.

Block v. Rutherford held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security. This case reaffirmed the "handsoff" doctrine enunciated in *Bell v. Wolfish*, a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise.

In the present case, we cannot infer punishment from the separation of the detainees from their visitors by iron bars, which is merely a limitation on contact visits. The iron bars separating the detainees from their visitors prevent direct physical contact but still allow the detainees to have visual, verbal, non-verbal and limited physical contact with their visitors. The arrangement is not unduly restrictive. In fact, it is not even a strict noncontact visitation regulation like in *Block v. Rutherford*. The limitation on the detainees' physical contacts with visitors is a reasonable, non-punitive response to valid security concerns.

The boarding of the iron grills is for the furtherance of security within the ISAFP Detention Center. This measure intends to fortify the individual cells and to prevent the detainees from passing on contraband and weapons from one cell to another. The boarded grills ensure security and prevent disorder and crime within the facility. The diminished illumination and ventilation are but discomforts inherent in the fact of detention, and do not constitute punishments on the detainees.

We accord respect to the finding of the Court of Appeals that the conditions in the ISAFP Detention Center are not inhuman, degrading

and cruel. Each detainee, except for Capt. Nicanor Faeldon and Capt. Gerardo Gambala, is confined in separate cells, unlike ordinary cramped detention cells. The detainees are treated well and given regular meals. The Court of Appeals noted that the cells are relatively clean and livable compared to the conditions now prevailing in the city and provincial jails, which are congested with detainees. The Court of Appeals found the assailed measures to be reasonable considering that the ISAFP Detention Center is a high-risk detention facility. Apart from the soldiers, a suspected New People's Army ("NPA") member and two suspected Abu Sayyaf members are detained in the ISAFP Detention Center.[221] (Emphasis supplied, citations omitted)

In *Alejano*, this Court adopted the tests in the United States case of *Bell v. Wolfish*[222] in determining the "intent to punish" from the restrictions and conditions of confinement: (1) if these are arbitrary, purposeless, and do not satisfy a government interest; (2) assuming that there is an alternative government interest (*i.e.*, facilities' operational concerns), if the conditions appear "excessive in relation to that purpose."

Applying these tests, this Court held that the bar installation was not unduly restrictive, and intended to secure the detainees. Also, the illumination and ventilation were held to be "inherent in the fact of detention, and do not constitute punishments on the detainees." Moreover, this Court held that their overall conditions—their individual confinement, regular meals, clean and livable cells—were not inhuman, degrading, and cruel, as compared to the congested city and provincial jails. Thus, this Court did not infer an intent to punish in their case.

I maintain that persons deprived of liberty have a cause of action for violation of the right against cruel, degrading, and inhuman punishment if their current state of detention is no longer organic to the fact of their detention. As Justice Caguioa pointed out,[223] *Alejano* affirmed that the violations of the

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[221] *Id.* at 313-317.

[222] 441 U.S. 520 (1979).

[223] *J.* Caguioa, Separate Opinion, p. 23.

constitutional rights of persons deprived of liberty are within the court's power of review. In *Alejano*:

> The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, *habeas corpus* is not the proper mode to question conditions of confinement. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement. (Citations omitted)[224]

Contrary to *Alejano*, however, I view that a petition for *habeas corpus* may also be a proper remedy to question conditions of confinement.

Thus, in allowing petitioners' temporary release, the ultimate issue to be resolved is whether or not the State has been maintaining their jail or detention facilities in compliance with the Constitution, local laws, and international standards on the rights of persons deprived of liberty.

However, a mere allegation that constitutional rights have been violated is insufficient. I agree with Justice Caguioa that the causal link between notorious jail conditions and a person deprived of liberty's exclusion from the standard of care available to a free person must be proven first. This is necessary to sustain a cause of action anchored on the right against cruel and inhuman punishment and relevant international laws.[225]

Thus, to reiterate, petitioners must be able to satisfy the following requisites: (a) the existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the violation of a clear, enforceable constitutional provision or a local or international law; (c) a

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[224] *Alejano v. Cabuay*, 505 Phil. 298, 323 (2005) [Per *J.* Carpio, *En Banc*].

[225] *J.* Caguioa, Separate Opinion, pp. 19-20.

clear demand on the relevant government agency; and (d) the government agency's intentional or persistent refusal or negligence to address the cruel conditions of the violation of the statutory or constitutional provisions.

I emphasize the third and fourth requisites: before the court can conclude a violation of constitutional rights, there must have been a clear demand on the relevant government agency, and in turn, a wanton denial or unreasonable negligence on the agency's part. This is in keeping with the doctrine of separation of powers. As Justice Caguioa correctly puts it, addressing jail congestion is a "policy question and formulation" under the jurisdiction of the executive and legislative branches of government.[226] Thus, the courts must first defer to the capabilities of the other constitutional organs.

VI

In this case, the claims of petitioners in relation to these standards clearly require the presentation of evidence in the trial court. Several factual determinations must be made before a ruling can be had on whether there is a violation of their constitutional rights.

It is correct that this Court may take judicial notice of the nature of COVID-19 and the longstanding jail congestion which has plagued the Philippine jails. This unresolved crisis is a significant threat to the right to life, health, and security of persons in congested penal facilities, whose conditions make social distancing impossible.

While factual allegations must be proven by evidence, courts may take judicial notice of particular circumstances. Rule 129, Sections 1 to 3 of the Rules of Court state:

SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the

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[226] *Id.* at 23.

admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, *the official acts of the legislative, executive and judicial departments of the Philippines*, the laws of nature, the measure of time, and the geographical divisions.

SECTION 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of *public knowledge*, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

SECTION 3. Judicial *notice, when hearing necessary*. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (Emphasis supplied)

From these, this Court has summed up the requisites of judicial notice. In *State Prosecutors v. Muro*:[227]

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.[228] (Citations omitted)

Thus, this Court may take judicial notice of the state of jail congestion in the Philippines, the nature of transmission of COVID-19, and its deadly effects.

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[227] 306 Phil. 519 (1994) [*Per Curiam, En Banc*].

[228] *Id.* at 537-538.

VI (A)

The available government data on prisons and jails reveal the appalling state of congestion and overcapacity in the Philippines.

The Bureau of Corrections' statistics show that as of January 2020, all prison facilities within its jurisdiction are overcrowded:

Prison Facilities	PDL Population	Capacity	Occupancy Rate	Congestion Rate
New Bilibid Prison	29,173	6,435	453%	353%
CIW-Mandaluyong	3,422	1,008	340%	240%
Iwahig Prison & Penal Farm	2,783	675	412%	312%
Davao Prison & Penal Farm	6,607	1,354	488%	388%
CIW-Mindanao	579	102	567%	467%
San Ramon Prison & Penal Farm	2,329	733	318%	218%
Sablayan Prison & Penal Farm	2,646	994	266%	166%
Leyte Regional Prison	2,045	679	301%	201%[229]

The occupancy rate is obtained through dividing the number of detainees by 4.7 square meters, which is the ideal habitable floor area per inmate, according to the Bureau of Jail Management and Penology's Revised Manual on Habitat, Water,

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[229] *Bureau of Corrections Statistic on Prison Congestion as of January 2020*, BUREAU OF CORRECTIONS, available at <http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf> (last accessed on July 6, 2020).

Sanitation and Kitchen in Jails.[230] If the quotient is above 100, it means the jail is congested.[231]

Meanwhile, the Bureau of Jail Management and Penology has neither published its data on jail congestion nor included it in the Verified Report it submitted to this Court. Nonetheless, based on the Commission on Audit's annual review on the Bureau's facilities, as of December 31, 2018, the total occupancy rate is at 439.48%. It is broken down as follows:[232]

Office/RO	Jail Population	Total Ideal Capacity	Variance	Congestion Rate
NCR	36,035	5,237	30,799	588%
CAR	1,214	423	791	187%
R.O. I	4,364	1,085	3,279	302%
R.O. II	2,771	656	2,115	323%
R.O. III	10,035	1,548	8,487	548%
R.O. IV-A	21,128	2,925	18,203	622%
R.O. IV-B	1,627	504	1,123	223%
R.O. V	2,882	785	2,097	267%
R.O. VI	9,056	4,231	4,825	114%
R.O. VII	19,751	2,665	17,086	641%

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[230] BJMP Manual Habitat, Water, Sanitation and Kitchen in Jails (2012), p. 7.

[231] *Id.* at 5.

[232] *Commission on Audit Annual Audit Report of the Bureau of Jail Management and Penology*, COMMISSION ON AUDIT, available at <https://www.coa.gov.ph/index.php/national-government-agencies/2018/category/7502-department-of-the-interior-and-local-government> 55 (last accessed on July 6, 2020).

R.O. VIII	2,804	551	2,253	409%
R.O. IX	5,709	766	4,943	645%
R.O. X	4,633	950	3,683	387%
R.O. XI	6,253	1,069	5,184	485%
R.O. XII	5,064	910	4,154	457%
R.O. XIII	2,845	860	1,985	231%
ARMM	143	103	40	39%
Total	**136,314**	**25,268**	**111,046**	**439.48%**

The Commission on Audit found that the jail populations increased because of the increase in drug-related cases, pendency of cases, and non-release on bail due to poverty.[233] It noted that this congestion results in unhealthy living conditions of inmates, which goes against the requirements of its governing Manual and the United Nations standards.[234]

Based on its findings, the Commission on Audit recommended the following actions for the Bureau of Jail Management and Penology:

We recommended that Management:

(a) continue its efforts in making representations with concerned government agencies in addressing the congestion problems in all jail facilities;

(b) prioritize acquisition of lots and construction programs and projects aimed at improving the jail facilities;

(c) require the Regional Bids and Awards Committee to ensure timely completion of all procurement activities pertaining to the construction and/or improvement of all jail facilities in order to decongest overcrowded jails; and

(d) enhance and intensify the GCTA process and give more emphasis on the Recognizance Act for detainees early release without necessarily

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[233] *Id.* at 55.

[234] *Id.*

completing their sentence which could significantly reduce jail population and congestion.[235]

According to the World Prison Brief, the Philippines' occupancy level is at 463.6%, the second highest among all the prisons in the world.[236]

In 2012, the United Nations Committee Against Torture alerted the Philippines to provide information on measures undertaken to address overcrowding in penitentiary institutions.[237] In 2016, it raised its concern against the deplorable living conditions in jails, detention centers, and police lock-up cells, which may qualify as ill treatment or torture:

> Conditions of detention
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> 27. *The Committee is concerned at the persistence of appalling conditions of detention prevailing in the State party, both in police lock-up cells and the jails and detention facilities run by the Bureau of Jail Management and Penology, which do not meet minimum international standards and may constitute ill-treatment or torture.* It is particularly concerned at the persistence of critical and chronic overcrowding in all detention facilities, some of which may be operating at 380 percent of capacity. Conditions in all places of deprivation of liberty include dilapidated and small cells, in some of which detainees are forced to sleep while sitting or standing, unsanitary conditions, inadequate amounts of food, poor nutrition, insufficient natural and artificial lighting and poor ventilation, which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis, the incidence of which is extremely high. The Committee is particularly alarmed at information that tuberculosis eradication programmes were

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[235] *Id.*

[236] *Highest to Lowest – Prison Population Total*, WORLD PRISON BRIEF, available at <https://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All> (last accessed on July 6, 2020). The World Prison Brief is a unique database that provides free access to information about prison systems throughout the world, compiled by the Institute for Crime and Justice Policy Research based in the School of Law of Birkbeck, University of London.

[237] List of issues prepared by the Committee prior to the submission of the third periodic report of the Philippines, CAT/C/PHL/Q/3 (2012).

not a priority in the past because they were seen as irrelevant to the maintenance of security. The Committee is concerned about sexual violence against detained persons and about the treatment of detainees belonging to minorities (Arts. 2, 11 and 16).[238] (Emphasis supplied)

VI (B)

COVID-19 is an infectious disease caused by a new type of coronavirus called severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Generally, coronaviruses cause respiratory infections to humans, which range from mild to severe. The Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome, both viral outbreaks that had swept the Philippines years ago, were both caused by coronaviruses.

COVID-19 was first encountered in Wuhan, China last December 2019.[239] On January 9, 2020, its first death was publicly recorded.[240]

The common symptoms of this disease include fever, dry cough, and tiredness. Some manifestations include aches and pains, nasal congestion, sore throat, diarrhea, *anosmia* (loss of smell), and *dysgeusia* (loss of taste).[241]

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[238] United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee Against Torture, Concluding observations on the third periodic report of the Philippines, Part C, Recommendation No. 27, available at <https://www.refworld.org/publisher,CAT,PHL,57a99b194,0.html> (last accessed on July 6, 2020).

[239] Timeline of WHO's response to COVID-19, WORLD HEALTH ORGANIZATION, <https://www.who.int/news-room/detail/29-06-2020-covidtimeline> (last accessed on July 6, 2020).

[240] *Timeline*: *How the new coronavirus spread*, AL JAZEERA, April 23, 2020, available at <https://www.aljazeera.com/news/2020/01/timeline-china-coronavirus-spread-200126061554884.html> (last accessed on July 6, 2020).

[241] Carol H. Yan MD, Farhoud Faraji MD PhD, Divya P. Prajapati BS, Christine E. Boone MD PhD, and Adam S. DeConde MD (2020), *Association of chemosensory dysfunction and Covid-19 in patients presenting with influenze-like symptoms*, 10 ALLERGY RHINOLOGY 806 (2020), available at <https://onlinelibrary.wiley.com/doi/full/10.1002/alr.22579> (last accessed on July 6, 2020).

These signs begin mildly and may gradually progress.[242]

According to the World Health Organization, 80% of infected persons recover from COVID-19 without needing hospital treatment. However, one of every five people becomes seriously ill and develops difficulty breathing. Any person can be seriously ill, but those who are of advanced age, and those with underlying medical problems such as high blood pressure, heart and lung problems, diabetes, cancer, or immunosuppression have a higher chance of worsening conditions.[243]

COVID-19 is highly contagious.[244] Some get infected but do not develop any symptoms or feel unwell; some only experience mild symptoms. However, even those with zero to very mild symptoms can transmit the virus if they carry it.[245] In fact, COVID-19 has since spread worldwide, prompting the World Health Organization to declare it a pandemic—the first one caused by a coronavirus.[246]

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[242] World Health Organization, *Q&A* on *coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

[243] World Health Organization, *Q&A on coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

[244] Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian Ke, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus* 2, 26 EMERGING INFECTIOUS DISEASES JOURNAL (2020), available at <https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article> (last accessed on July 6, 2020).

Mapping the Coronavirus Outbreak Across the World, BLOOMBERG, available at <https://www.bloomberg.com/graphics/2020-coronavirus-cases-world-map/> (last accessed on July 6, 2020).

[245] World Health Organization, *Q&A on coronaviruses* (COVID-19), WORLD HEALTH ORGANIZATION, available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last accessed on July 6, 2020).

[246] WHO, Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020, available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-

The World Health Organization had initially found that the virus spreads when a COVID-19-positive person expels small droplets from the nose or mouth through speaking, coughing, or sneezing. People can catch COVID-19 "if they breathe in these droplets," or if they touched objects or surfaces on which the droplets are expelled and then they touched their eyes, nose, or mouth. It later noted that "airborne transmission of the virus can occur in health care settings where specific medical procedures, called aerosol generating procedures, generate very small droplets called aerosols." It also reported that some outbreaks in indoor crowded spaces suggested the possibility of combined aerosol and droplet transmission, citing examples such as during choir practice, in restaurants or in fitness classes.[247]

Thus, the World Health Organization lists several recommendations to prevent transmission. These include frequent hand hygiene, physical distancing, respiratory etiquette, avoiding "crowded places, close-contact settings and confined and enclosed spaces with poor ventilation," wearing fabric masks, and "good environmental ventilation in all closed settings and appropriate environmental cleaning and disinfection."[248]

As of now, there is no vaccine against the SARS-CoV-2 virus, and no proven cure for COVID-19.[249]

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covid-19—11-march-2020> (last accessed on July 6, 2020). See also *Transcript of virtual press conference with Gregory Hartl, WHO Spokesperson for Epidemic and Pandemic Diseases and Dr. Keiji Fukuda, Assistant Director-General ad Interim for Health Security and Environment*, WORLD HEALTH ORGANIZATION, available at <https://www.who.int/mediacentre/influenzaAH1N1_presstranscript_20090526.pdf> (last accessed on July 6, 2020).

[247] *Transmission of SARS-CoV-2*: *implications for infection prevention precautions: Scientific Brief*, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last accessed on July 26, 2020).

[248] *Id.* See also COMMUNICATING: PROTECT VULNERABLE & HIGH RISK GROUPS, WORLD HEALTH ORGANIZATION, available at <https://www.who.int/westernpacific/emergencies/covid-19/information/high-risk-groups> (last accessed on July 6, 2020).

[249] Ali Rismanbaf, *Potential Treatments for COVID-19; a Narrative Literature Review*, 8 ARCHIVES OF ACADEMIC EMERGENCY MEDICINE

All these factors have caused the entire world to undergo extraordinary changes to cope with the situation.

In the Philippines, where the first case of COVID-19 was reported on January 30, 2020,[250] the Department of Health has recommended measures to slow its spread, including personal hygiene, social distancing, environmental cleanliness, and food safety.[251] It also advised against public events and gatherings.[252]

The government has imposed travel bans,[253] raised the COVID-19 Alert to Code Red sublevel 2—the highest level of

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1 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7085862/pdf/aaem-8-e29.pdf> (last accessed on July 6, 2020). See also Feng He, Yu Deng, and Weina Li, *Coronavirus disease 2019: What we know?*, 92 JOURNAL OF MEDICAL VIROLOGY 719 (2020), available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/jmv.25766> (last accessed on July 6, 2020).

[250] Kristine Sabillo, *Philippines confirms first case of new coronavirus*, ABS-CBN NEWS, January 30, 2020, available at <https://news.abs-cbn.com/news/01/30/20/philippines-confirms-first-case-of-new-coronavirus> (last accessed on July 6, 2020).

Claire Jiao and Derek Wallbank, *Coronavirus Death in Philippines Is First Fatality Outside China*, BLOOMBERG, February 2, 2020, available at <https://www.bloomberg.com/news/articles/2020-02-02/first-person-outside-of-china-dies-from-virus-in-philippines> (last accessed on July 6, 2020).

Coronavirus: First death outside China reported in Philippines, BBC, February 2, 2020, available at <https://www.bbc.com/news/world-asia-51345855> (last accessed on July 6, 2020).

[251] *Covid-19 Interim Guidelines*, DEPARTMENT OF HEALTH, available at <https://www.doh.gov.ph/2019-nCov/interim-guidelines> (last accessed on July 6, 2020).

[252] *COVID Advisory No. 7*, DEPARTMENT OF HEALTH, February 7, 2020, available at <https://www.doh.gov.ph/sites/default/files/health-update/COVID-19-Advisory-No7.pdf> (last accessed on July 6, 2020).

[253] Erwin Colcol, *Duterte orders temporary travel ban on tourists from mainland China, Hong Kong, Macau*, GMA NEWS ONLINE, February 2, 2020, available at <https://www.gmanetwork.com/news/news/nation/724475/duterte-orders-temporary-travel-ban-on-tourists-from-mainland-china-hong-kong-macau/story/> (last accessed on July 6, 2020).

national response management[254]—announced a state of calamity throughout the country for six months,[255] and declared a national emergency. President Rodrigo Duterte was also given emergency powers to address the state of public health emergency.[256]

Several levels of community quarantine measures—general, enhanced, to extreme enhanced along with their modified versions—were imposed all over the country, depending on each locality's situation. Notably, work was suspended in the executive branch, and the other branches were encouraged to follow suit. Private enterprises made flexible work arrangements.

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[254] DOH Backs 11th IATF Resolutions; Reports 12 New Covid-19 Cases in PH, DEPARTMENT OF HEALTH, March 13, 2020, available at <https://www.doh.gov.ph/doh-press-release/doh-back-11th-iatf-resolutions-reports-12-new-covid-19-cases-in-ph> (last accessed on July 6, 2020).

[255] Proclamation No. 929 (2020).

[256] See Republic Act No. 11469 (2020).

See IMPLEMENTING RULES AND REGULATIONS FOR SECTION 4 (AA) OF REPUBLIC ACT NO. 11469, available at <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200401-IRR-RA-11469-RRD.pdf> (last accessed on July 6, 2020).

Joint Memorandum Circular No. 01 (2020), Special Guidelines on the Provision of Social Amelioration Measures by the Department of Social Welfare and Development, Department of Labor and Employment, Department of Trade and Industry, Department of Agriculture, Department of Finance, Department of Budget and Management, and Department of the Interior and Local Government to the Most Affected Residents of the Areas under Enhanced Community Quarantine, available at <https://www.COVID-19.gov.ph/wp-content/uploads/2020/04/DSDW-JOINT-MEMO-CIRC.pdf> (last accessed on July 6, 2020).

Department of Budget and Management Local Budget Circular No. 124 (2020), Policy Guidelines on the Provision of Funds by Local Government Units for Programs, Projects, and Activities to Address the Corona Virus Disease 2019 (COVID-19) Situation, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DBM-LOC-BUDGET-CIRC.pdf> (last accessed on July 6, 2020).

Joint Memorandum Circular No. 01 (2020), Emergency Procurement by the Government during a State of Public Health Emergency Arising from the Coronavirus Disease 2019 (COVID-19), available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/COA-GPPB-JOIN-MEMO-CIRC.pdf> (last accessed on July 6, 2020).

Land, domestic air, and domestic sea travel to and from Metro Manila were suspended.[257] Local governments started imposing curfews, implementing quarantine passes, providing support to health workers, and distributing relief goods.[258]

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[257] Inter-Agency Task Force for the Management of Emerging Infectious Diseases Resolution No. 12, March 13, 2020, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/IATF-RESO-12.pdf> (last accessed on July 6, 2020). See also Resolution No. 12 (2020) available at <https://www.doh.gov.ph/sites/default/files/health-update/IATF-RESO-12.pdf> (last accessed on July 6, 2020).

[258] Evolution of LGU involvement: DILG Memorandum Circular 2020-018, January 31, 2020, Guides to Action Against Coronavirus, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MEMO-CIR-2020-018.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-061, March 21, 2020, Ensuring that the Food Relief Operations to be Distributed to Muslim Communities are Halal Compliant During the Period of Enhanced Community Quarantine, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MC-No-2020-061.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-062, March 21, 2020, Suppletory LGU Guidelines on the Implementation of Enhanced Community Quarantine in Luzon, and State of Public Health Emergency in other parts of the Country due to the COVID-19 Threat, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/03/DILG-MC-No-2020-062.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-063, March 27, 2020, Interim Guidelines on the Management of Human Remains for Patient Under Investigation (PUI) and Confirmed Coronavirus Disease 2019 (COVID-19) Cases, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-063.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-064, March 29, 2020, Provincial/City/Municipal Special Care Facilities and Isolation Units Amid the COVID-19 Pandemic, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-064.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-065, March 30, 2020, Guidelines for Local Government Units in the Provision of Social Amelioration Measures by the National Government to the Most Affected Residents of the Areas under Enhanced Community Quarantine, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-065.pdf> (last accessed on July 6, 2020).

Quarantine was extended several times,[259] and was subsequently modified based on the locality after consideration of the developments of the COVID-19 epidemiological curve, health capacity, and economic, security, and social factors.

DILG Memorandum Circular 2020-066, March 31, 2020, Guidelines on Providing Proper Welfare of Persons with Disabilities During the Enhanced Community Quarantine Due to the Coronavirus 2019 (COVID-19) Pandemic, <https://www.covid19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-066.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-067, April 2, 2020, Additional Guidelines on Quarantine and Isolation Measures Relative to the COVID-19 Situation, available at <https://www.COVID-19.gov.ph/wp-content/uploads/2020/04/DILG-Memorandum-Circular-No.-2020-067.pdf> last accessed on July 6, 2020).

DILG Memorandum Circular 2020-071, April 9, 2020, Mandatory Wearing of Face Masks or Other Protective Equipment in Public Areas, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-202049_cfaebca293.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-072, April 11, 2020, Temporary Shelter/ Accommodation for the Safety and Protection Against Discrimination of Health Workers in Provincial/City Hospitals and Other Public Health Facilities Catering to COVID-19 Patients, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020412_d09896ea9c.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-073, April 13, 2020, Guidelines for the Conduct of the Expanded Testing Procedures for COVID-19, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020414_6237b314e6.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-074, April 14, 2020, Realignment and Augmentation of SK Budgets to Provide Funds for Programs, Projects, and Activities (PPAs) Related to Coronavirus Disease 2019 (COVID-19), available at<https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020414_a10aee3325.pdf> (last accessed on July 6, 2020).

DILG Memorandum Circular 2020-075, April 23, 2020, Establishment of DILG Overseas Filipino Workers' (OFW) Desk and Designation of DILG-OFW Desk Officer at the Region, Province, Highly Urbanized City (HUC) and Independent Component City (ICC), available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/dilg-memocircular-2020423_4de6b7f780.pdf> (last accessed on July 6, 2020).

[259] Memorandum from the Executive Secretary, April 7, 2020, available at <https://www.covid19.gov.ph/wp-content/uploads/2020/04/20200407-Memorandum.pdf> (last accessed on July 6, 2020).

Yet, based on publicly available Department of Health data, the total number of cases continues to rise. In particular, Moreover, several news reports announced positive cases of and deaths related to COVID-19 in jails.[260]

While the Bureau of Corrections and the Bureau of Jail Management and Penology submitted Verified Reports on the measures taken to address the disease, they admit that social distancing is necessary to disrupt the spread of the virus. They also concede that this is unachievable in all of the penal facilities in the Philippines.[261] Petitioners invoke the general absence of adequate medical and healthcare facilities to respond to basic needs of prisoners.[262]

Clearly, the nature of COVID-19 and the jail congestion in this country are matters that all courts may take judicial notice of. The fact of overcrowding in jails and the transmissibility of COVID-19 no longer need further proof. However, even if this Court takes judicial notice of these circumstances, there are several facts that must first be determined in relation to the confinement of petitioners or any other person deprived of liberty seeking release.

This includes, among others, the latest data on jail congestion and measures taken to address the chronic problem of jail overcapacity; the capabilities of the prison systems where petitioners are detained to prevent the spread of COVID-19; the demands made by petitioners to the detention facilities; any unjustified refusal or negligence on the part of the detention facilities to act on their concerns.

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[260] *9 inmates in Quezon City jail, 9 BJMP personnel contract COVID-19*, CNN PHILIPPINES, April 17, 2020, available at <https://www.cnnphilippines.com/news/2020/4/17/coronavirus-positive-quezon-city-jail.html> (last accessed on July 6, 2020).

517 prisoners contract COVID-19 in jails, May 25, 2020, available at <https://cnnphilippines.com/news/2020/5/25/prisoners-COVID-19-jails-Philippines.html?fbclid=IwAR3pviour2EQ9G1pF_YCAt3QYQr-Dbk1J2jBgKtpheUyAR01Wx_3kdDgDgo> (last accessed on July 6, 2020).

[261] Comment, pp. 31-32.

[262] Reply, p. 7.

Courts cannot grant a blanket release without determining these facts. Petitioners must establish the basis for their temporary release. To be released based on a violation of their constitutional rights, petitioners must still show the circumstances of their own detention and prove they are deprived of the basic and minimum standards of imprisonment. They should establish the individual conditions of their confinement which are not organic or consistent with the punishment imposed on them. They must invoke which constitutional rights are violated. They must show they have made a clear demand on the relevant government agencies, and that the latter intentionally or persistently refused or negligently failed to act on their concerns. They must ultimately show that the responsible government instrumentality has been compliant or negligent with constitutional, international, and local provisions and standards protecting their rights.

Justice Lazaro-Javier opines that while this Court may take judicial notice of jail congestion,[263] the infringement of the minimum standards required under the law do not constitute cruel and inhuman punishment. To her, while it affects the severity of the punishment, it is merely incidental to the punishment.[264]

She also agrees that jail congestion has a bigger impact on petitioners' right to life during the pandemic.[265] However, she finds that it cannot be said that the increased risks caused by COVID-19 on their right to life, security and health are the fault of respondents, such that the violation can be attributed to them. She holds that respondents committed no positive act to increase petitioners' risks or worsen the situation.[266] Neither are they guilty of inaction or idleness since they have taken positive measures to minimize the spread of the virus and

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[263] *J.* Lazaro-Javier, Separate Opinion, p. 13.

[264] *Id.* at 14.

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

[266] *Id.* at 15.

infection among the prisoners. Even assuming their measures were not sufficient, the inadequacy is attributable to other factors beyond the control and authority of respondents, including the unpredictability of the pandemic.[267]

Similarly, without trial on the merits, Justice Delos Santos is ready to conclude that petitioners' continued detention is not unnecessarily oppressive because they failed to show that the State has been "indifferent to their clinical needs."[268]

These are already factual conclusions that may only be determined in a proper hearing in the trial courts. I suggest that before this Court make any finding, a full-blown hearing is necessary. Without it, it cannot be established that jail congestion and the general lack of adequate medical facilities preclude respondents from preventing the spread of COVID-19 in its facilities. Without it, the question of whether petitioners' constitutional rights were violated remains unanswered.

VII

Finally, I suggest a measure grounded on social justice: that this Court provide a remedy called the writ of *kalayaan*.

I recognize the many efforts and feats of this Court under Chief Justice Peralta's leadership to facilitate the release of qualified persons deprived of liberty.[269]

However, I urge this Court to move even further. In recognition of the pervasiveness of congestion in our jails, this Court should fashion a remedy called the writ of *kalayaan* similar to the writ of *kalikasan* or the writ of continuing *mandamus* in environmental cases.

This Court is not without precedent in formulating rules to address pervasive and urgent violations of constitutional rights with transcendental effects. In *Metropolitan Manila Development*

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[267] *Id.* at 16.

[268] *Id.* at 100.

[269] *C.J.* Peralta, Separate Opinion, pp. 3-4.

Authority v. Concerned Residents of Manila Bay,[270] this Court issued, for the first time, a writ of continuing *mandamus* ordering various administrative agencies to fulfill their respective mandates to clean up and restore Manila Bay. Having appreciated the extraordinary circumstances, the urgency of the situation, and the extreme environmental degradation of Manila Bay, this Court upheld the right to a balanced and healthful ecology through the writ.

This Court likewise recognized that it needed to formulate special rules of procedure to enforce environmental laws and finally address the continuing violations of these laws. On April 10, 2010, it promulgated the Rules of Procedure for Environmental Cases for the enforcement or violations of environmental and other related rules.[271] The Rules provide the procedure for the issuance of a writ of *kalikasan*,[272] an "extraordinary remedy that covers environmental damages the magnitude of which transcends both political and territorial boundaries."[273] The Rules also provide the issuance of a continuing *mandamus*,[274] a "distinct procedure than that of

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[270] 595 Phil. 305 (2008) [Per *J.* Velasco, *En Banc*].

[271] A.M. No. 09-6-8-SC (2010), Sec. 2.

[272] A.M. No. 09-6-8-SC (2010), Rule 7, Sec. 1 provides:

Section 1. Nature of the Writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

[273] *Abogado v. Department of Environment and Natural Resources*, G.R. No. 246209, September 3, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65756> [Per *J.* Leonen, *En Banc*].

[274] A.M. No. 09-6-8-SC (2010), Rule 8, Sec. 1 provides:

Section 1. Petition for Continuing *Mandamus*. — When any agency or instrumentality of the government or officer thereof unlawfully neglects

ordinary civil actions for the enforcement/violation of environmental laws."[275]

This time, a writ of *kalayaan* should be issued when all the requirements to establish cruel, inhuman, and degrading punishment are present. This is necessary considering that the continued and malicious congestion of our jails does not affect only one individual. Its issuance is grounded on this Court's rule-making authority and the extreme situation brought upon by the COVID-19 pandemic. As in *Metropolitan Manila Development Authority*, this Court is again being called to address a systemic problem that even the most basic health protocols to prevent the spread of the virus cannot address. Jail congestion is as virulent as COVID-19 itself, especially in the face of an unprecedented global pandemic.

The writ of *kalayaan* may require a more constant supervision by an executive judge for the traditional or extraordinary releases of convicts or detainees. It should provide an order of precedence in order to bring the occupation of jails to a more humane level. Those whose penalties are the lowest and whose crimes are brought about, not by extreme malice, but by the indignities of poverty may be prioritized.

Certainly, the writ of *kalayaan* will be the distinguishing initiative of the Peralta Court—a measure that is grounded on social justice.

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the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

[275] *Dolot v. Paje*, 716 Phil. 458, 471 (2013) [Per *J.* Reyes, *En Banc*].

Persons deprived of liberty do not shed their humanity once they are taken into custody, yet the perennial congestion that plague our jails do not reflect this. Instead, they reveal our failure to respect the very fundamental rights that the State has guaranteed to protect. This wrong, which we have allowed to persist, is all the more pressing in the face of a highly contagious and deadly disease. Persons deprived of liberty are in need of more remedies to ensure that their detention do not prejudice their right to live.

Jail congestion harms so many individuals—most of them poor, and therefore, invisible. The dawn of the COVID-19 pandemic has only made this a more urgent concern. We cannot just watch and sit idly by.

ACCORDINGLY, I vote that the Petition be referred to the appropriate trial courts to determine, upon proper motion or petition of the parties, whether there are factual bases supporting the temporary release of petitioners on the following grounds:

First, they are entitled to release on bail or recognizance, if still applicable; or

Second, there is a violation of their constitutional right against cruel, inhuman, and degrading punishment or other related constitutional rights, such that they may file either: (1) a motion for release if the case is still on trial or on appeal; or (2) petition a writ of *habeas corpus* as a post-conviction remedy. The grant of these remedies is subject to the establishment of the following requisites: (a) existing inhuman, degrading, or cruel conditions not organic or consistent with the statutory punishment imposed; (b) the conditions violate clear, enforceable statutory or constitutional provisions including judicially discernable international standards adopted in this jurisdiction; (c) a clear demand on the relevant government agency to address their grievance; and (d) the conditions are the result of intentional or persistent refusal or negligence on the part of the government agency, be it the warden, director of prisons, local government unit, or Congress.

I also vote that this Court *En Banc* create a subcommittee under the Committee on Rules to immediately draft a proposal for a writ of *kalayaan* to set the clearest guidance for the lower courts in adjudicating proven violations of the right against cruel, inhuman, and degrading punishment as a result of continuous congestion of detention centers or jails.

SEPARATE OPINION

> "It is evident that the incredible overcrowding of the prison cells, that taxed facilities beyond measure and the starvation allowance of ten centavos per meal for each prisoner, must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence to seize from their owners the meager supplies from outsider in order to take out their miserable existence. All this led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of the prisoners, abetted by the inability of the outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions. Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death."[1]

CAGUIOA, *J.*:

I concur.

The dystopian picture above that the Court refused to turn its gaze from was drawn over five decades ago, and yet the insufferable state of affairs in the penitentiary persists even today. So that although we, as a society, may have made dizzying

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[1] *People v. De los Santos*, 122 Phil. 55, 65-66 (1965).

advances in fields we consider of great consequence, because the least of us have continued to groan in unspeakable living conditions, and our detention facilities are constantly breaking at the seams, one must wonder how far we have truly come. Surely, we must have asked at one point if perhaps more than the deficient fiscal scaffolding and authoritative say-so, our institutions suffer the more destructive lack of empathy.

This long-standing problem has been brought to the foreground by the current exigencies the country is facing, and the Court's decision to refer the instant petition to the concerned trial courts for the conduct of bail hearings and other proceedings is agreeably the better approach to take under the circumstances.[2]

While I agree that the Court cannot grant the petitioners' prayer for temporary release in the absence of a proper bail hearing, I also remain unconvinced that the Court, on its own, is powerless to protect the most vulnerable among us, especially those who cannot help themselves. Certainly in this case, the Court's mandate as the final and ultimate dispenser of justice must be more real than mere rhetoric. As proof of the Court's capacities, I write this Opinion to highlight the steps that the Court has already swiftly undertaken in response to the current pandemic. I also submit this Opinion to elaborate on my position and to expound on several issues raised by the petitioners, particularly the Court's equity jurisdiction, the propriety of using humanitarian considerations as a ground for the allowance of bail, and the invocation of the petitioners' rights under domestic and international law. This Opinion imagines that there may be no more opportune time for all material institutions to revisit their powers and awaken perceived apathies than now, with both historical underpinnings and the current crisis taking us all to task, by exposing once more that the unbearable conditions of persons deprived of liberty (PDLs) in our country is neither truly noticed nor new.

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[2] Decision, p. 7.

I.

The instant *Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic* directly filed before this Court is essentially an application for bail or recognizance.[3] The petitioners, who are allegedly political prisoners charged with crimes punishable by *reclusion perpetua* and life imprisonment, seek their provisional release on bail or recognizance on the basis of humanitarian grounds. Citing *Enrile v. Sandiganbayan*[4] (*Enrile*), the petitioners plead that the Court exercise its equity jurisdiction and grant them temporary liberty as their health conditions and continued incarceration make them highly vulnerable to COVID-19.[5]

On the requirements for bail

Bail is the security required and given for the release of a person in custody of the law to guarantee his appearance before the court as may be required under specified conditions.[6] Recognizance, on the other hand, refers to "an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial."[7] If a person in custody or detention is unable to post bail due to abject poverty, he may be released on recognizance to the custody of a qualified member of the *barangay*, city or municipality where the accused resides.[8]

Section 13, Article III of the Constitution states that all persons, except those charged with offenses punishable by

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[3] *Id.*

[4] 767 Phil. 147 (2015).

[5] Decision, pp. 3-4.

[6] *Heirs of Delgado v. Gonzalez*, G.R. Nos. 184337 & 184507, December 17, 2008 (Unsigned Resolution).

[7] *People v. Abner*, 87 Phil. 566, 569 (1950).

[8] R.A. 10389, Sec. 3.

reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. As a corollary matter, Section 7, Rule 114 of the Rules of Court provides that regardless of the stage of the criminal prosecution, no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong. Further, Republic Act No. (R.A.) 10389[9] or the *Recognizance Act of 2012*, states that the release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is *not* punishable by death, *reclusion perpetua*, or life imprisonment.[10]

Thus, before conviction, bail is either a matter of right or discretion. It is a matter of right when the offense charged is punishable by any penalty lower than *reclusion perpetua*. However, bail becomes a matter of judicial discretion if the offense charged is punishable by death, *reclusion perpetua*, or life imprisonment.[11] The court's discretion is, however, limited only to determining whether or not the evidence of guilt is strong. Consequently, bail is to be granted if evidence of guilt is not strong, and denied if evidence of guilt is strong.[12]

In *Obosa v. Court of Appeals*,[13] the Court reiterated its pronouncement in *De la Camara v. Enage*,[14] on the purpose of bail and the rationale for denying the said relief to persons charged with capital offenses when the evidence of guilt is strong:

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[9] AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES, approved on March 14, 2013.

[10] R.A. 10389, Sec. 5.

[11] *People v. Tanes*, G.R. No. 240596, April 3, 2019.

[12] *Tanog v. Balindong*, 773 Phil. 542, 555 (2015).

[13] 334 Phil. 253 (1997).

[14] 148-B Phil. 502, 506-507 (1971).

x x x Before conviction, every person is bailable except if charged with capital offenses when the evidence of guilt is strong. Such a right flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt. Thereby a regime of liberty is honored in the observance and not in the breach. It is not beyond the realm of probability, however, that a person charged with a crime, especially so where his defense is weak, would just simply make himself scarce and thus frustrate the hearing of his case. A bail is intended as a guarantee that such an intent would be thwarted. It is, in the language of Cooley, a 'mode short of confinement which would, with reasonable certainty, insure the attendance of the accused' for the subsequent trial. Nor is there anything unreasonable in denying this right to one charged with a capital offense when evidence of guilt is strong, as the likelihood is, rather than await the outcome of the proceeding against him with a death sentence, an ever-present threat, temptation to flee the jurisdiction would be too great to be resisted. x x x[15] (Italics omitted)

In cases when bail is a matter of judicial discretion, the grant or denial thereof hinges on the singular issue of whether or not the evidence of guilt of the accused is strong.[16] As observed in the Court's Decision,[17] this necessarily requires the conduct of a bail hearing where the prosecution has the burden to prove that evidence of guilt is strong, subject to the right of the defense to cross-examine witnesses and introduce evidence in its own rebuttal.[18] The Court cannot perform the aforementioned bail hearing because of the well-entrenched principle that it is not a trier of facts. The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower courts.[19]

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[15] *Obosa v. Court of Appeals*, *supra* note 13, at 269.

[16] *Heirs of Delgado v. Gonzalez*, *supra* note 6.

[17] Decision, pp. 6-7.

[18] See *People v. Tanes*, *supra* note 11; *Revilla, Jr. v. Sandiganbayan* (*First Division*), G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.

[19] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).

The discretion to grant or deny bail is primarily lodged with the trial court judge who is mandated under the rules to: (1) conduct a summary hearing and receive the prosecution's evidence; and (2) provide, in its order granting or denying bail, a summary of the evidence for the prosecution and his own assessment thereof.[20]

As mentioned, the petitioners are all charged with offenses that are punishable by *reclusion perpetua* or life imprisonment. Thus, their entitlement to bail is clearly a matter of judicial discretion. However, there is no showing that any of them had applied for bail or that bail hearings were conducted to determine whether the evidence of guilt against them is strong. Nevertheless, aware of such absence of bail application or hearing, the petitioners have nonetheless proceeded directly to the Court praying for it to grant them temporary liberty through bail or recognizance based on humanitarian grounds, invoking the Court's equity jurisdiction. The petitioners cite the ruling of the Court in *Enrile* to support their cause.

On the invocation of the Court's equity jurisdiction

In order to properly invoke the Court's equity jurisdiction, the controlling test is whether or not a court of law is unable to adapt its judgments to the special circumstances of a case as a result of the inflexibility of its statutory or legal jurisdiction.[21] Its aim is to enable the Court to rule on the basis of substantial justice in an instance when the prescribed or customary forms of ordinary law prove inadequate.[22]

In a number of cases, the Court has found equity jurisdiction as sufficient justification for the relaxation of rules in order to give way to substantial merit and justice. In the early case of

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[20] See *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

[21] *Reyes v. Lim*, 456 Phil. 1, 10 (2003).

[22] *Id.* at 10.

Catigbac v. Leyesa,[23] equity jurisdiction was invoked in affording a litigant with a remedy through an action that did not exist in the Code of Civil Procedure. The Court ruled that although the existing body of rules no longer provided for such an ancient action, such was deemed to have subsisted by virtue of a substantive right granted under Article 384 of the Civil Code. The Court there held that where there is a right, there is also a remedy, and equity jurisdiction steps in to scaffold the gap between the substantive right granted and a remedy that ensures that right.[24]

In the 1973 case of *De los Reyes v. Ramolete*,[25] involving the question of ownership over a disputed land between *bona fide* possessors on the one hand, and valid patent holders on the other, the Court found that equity jurisdiction could be used to "set matters right." Still, in the succeeding case of *Serrano v. Court of Appeals*,[26] which concerned the true nature of a purported contract of sale, the Court iterated that procedural rules are not to be applied rigidly at the expense of merit.

Apart from cases of restitution, equity jurisdiction has also been invoked in criminal cases. In *Curammeng v. People*,[27] which involved an erroneous mode of appeal from a conviction, the Court ruled:

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[23] 44 Phil. 221 (1922).

[24] The case provides: "The remedy here sought is the old action of *deslinde y amojonamiento*. Though this action is not specifically provided for in the Code of Civil Procedure, there can be no doubt that it still exists. The substantive right upon which it is based is granted by Article 384 of the Civil Code, and where there is a right there is also a remedy; the issuing of commissions to establish boundaries is an ancient branch of equity jurisdiction and this power no doubt still resides in our courts of general jurisdiction." (*Catigbac v. Leyesa*, *id.* at 223.)

[25] 207 Phil. 574 (1983).

[26] 223 Phil. 391 (1985).

[27] 799 Phil. 575 (2016).

Nevertheless, if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice in light of 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. x x x[28]

Further, in *Daan v. Hon. Sandiganbayan* (*Fourth Division*),[29] where the accused therein was allowed to enter a plea bargain proposal pursuant to the higher interest of justice and fair play, the Court discussed the concept of equity as follows:

Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.[30]

Even in extradition cases, the equity jurisdiction of the Court was invoked, as seen in *Secretary of Justice v. Lantion*:[31]

We have ruled time and again that this Court's equity jurisdiction, which is aptly described as "justice outside legality," may be availed of only in the absence of, and never against, statutory law or judicial pronouncements (*Smith Bell & Co., Inc. vs. Court of Appeals*, 267 SCRA 530 [1997]; *David-Chan vs. Court of Appeals*, 268 SCRA 677 [1997]). The constitutional issue in the case at bar does not even call for "justice outside legality," since private respondent's due process rights, although not guaranteed by statute or by treaty, are protected by constitutional guarantees. We would not be true to the organic law of the land if we choose strict construction over guarantees against the deprivation of liberty. That would not be in keeping with the principles of democracy on which our Constitution is premised.

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[28] *Id.* at 581.

[29] 573 Phil. 368 (2008).

[30] *Id.* at 378-379.

[31] 379 Phil. 165 (2000).

Verily, as one traverses treacherous waters of conflicting and opposing currents of liberty and government authority, he must ever hold the oar of freedom in the stronger arm, lest an errant and wayward course be laid.[32]

Ultimately, the Court's equity jurisdiction is found to be a sufficient justification for the relaxation of rules in order to give way to substantial merit of the case and the higher interest of justice.

Indeed, the peculiar nature of the instant petition prays for both prompt and blanket relief to be applied to differentiated cases of the individual petitioners. Thus, while I recognize their plea to resolve the instant petition based on compassion and humanitarian considerations, the want of necessary factual details brought about by a proper bail hearing precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

On the applicability of the ruling in Enrile

In this regard, I agree with the position of some of my colleagues that the case of *Enrile* is inapplicable to the instant petition, though my reasoning differs.[33]

To recall, the Court in *Enrile* allowed therein petitioner to post bail on account of his advanced age and frail health — despite the fact that petitioner was charged with plunder and the absence of a proper hearing to determine whether the evidence of guilt against him is strong. This is inconsistent with the unambiguous Constitutional provision, which provides that a person shall not be entitled to bail if s/he is charged with an offense punishable by *reclusion perpetua* when evidence of

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[32] *Id.* at 216-217.

[33] Concurring Opinion of Chief Justice Diosdado M. Peralta, pp. 5-6; Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6; Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 18; Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 79.

guilt is strong.[34] Moreover, the same is contrary to established rules[35] and settled jurisprudence[36] on the necessity of a hearing for bail application when bail is discretionary. I was not yet part of the Court when the case was decided in 2015. Upon motion for its reconsideration however, being already a member of the Court, I voted to grant the motion and joined the dissent of Associate Justice Marvic M.V.F. Leonen.[37]

Consistent with my dissent therein, it is my position that *Enrile* should not be considered as having set a precedent inasmuch as it has not since found favor in subsequent decisions by the Court,[38] and the ruling by the majority therein does not

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[34] CONSTITUTION, Art. III, Sec. 13 provides: "All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required."

[35] RULE 114. *BAIL*.

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SEC. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable*. — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

SEC. 8. *Burden of proof in bail application*. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (8a)

[36] The necessity of a bail hearing when the charge is a capital offense has been settled in jurisprudence as early as 1945 in the case of *Herras Teehankee v. Rovira*, 75 Phil. 634 (1945).

[37] *Enrile v. Sandiganbayan* (*Third Division*), 789 Phil. 679 (2016).

[38] *N.B. Padua v. People* (G.R. 220913, February 4, 2019) cites only the Separate Opinion of Associate Justice Arturo D. Brion in *Enrile* and not the *ponencia* itself.

find support in the Constitution and well-established rules and jurisprudence on bail proceedings. Hence, I agree with the position of Senior Associate Justice Estela M. Perlas-Bernabe that the ruling in *Enrile* should be viewed as *pro hac vice* in light of the special and unique considerations accorded to petitioner therein.[39]

For the same reason above, I disagree with the suggestion during deliberations that *Enrile* laid down a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances.[40] The ruling in *Enrile* deviates from entrenched legal principles concerning bail and it cannot be used to create doctrine for subsequent cases. To reiterate, petitioner therein was allowed to post bail even though he was charged with an offense punishable by *reclusion perpetua*, without any showing through a hearing that the evidence of his guilt is not strong. Having skirted the minimum requirements under the Constitution regarding bail, the ruling in *Enrile* should not be used to set precedent for cases involving discretionary bail.

Moreover, the grant of bail in *Enrile* on the basis of petitioner's age and health rests on shaky ground as the circumstances therein were quite peculiar. As illustrated in Justice Leonen's Dissenting Opinion therein:

> Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.

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[39] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.

[40] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 81; see also Separate Opinion of Associate Justice Amy C. Lazaro-Javier, p. 8.

The grant of bail, therefore, by the majority is a special accommodation for petitioner. It is based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court. The Sandiganbayan should not be faulted for not shedding their neutrality and impartiality. It is not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people they represent.

The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross-examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

Furthermore, the majority's opinion—other than the invocation of a general human rights principle—does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case leaves this court open to a justifiable criticism of granting a privilege ad hoc: only for one person—petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by *reclusion perpetua* or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for certiorari to be filed before

this court. This will usher in an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.[41]

Ergo, a reading of the ruling in *Enrile* shows that there is no discernible standard for the courts to decide cases involving discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen,[42] is that the grant of bail by the majority in *Enrile* was a special accommodation for petitioner therein. Thus, at the risk of being repetitious, the ruling in *Enrile* should be considered as a stray decision and, echoing Justice Bernabe,[43] must likewise be considered as *pro hac vice*. It should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations. Notably, under the Rules of Court, humanitarian considerations such as age and health are only taken into account in fixing the bail amount after a determination that evidence of guilt against the accused is not strong.[44]

However, the petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording the petitioners the appropriate reliefs within the bounds of law.

In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh the petitioners' evidence at the first instance. Factual and evidentiary matters must first

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[41] *J.* Leonen, Dissenting Opinion in *Enrile v. Sandiganbayan*, *supra* note 4, at 180-181.

[42] Separate Opinion of Associate Justice Marvic M.V.F. Leonen, p. 20.

[43] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 5-6.

[44] RULES OF COURT, Rule 114, Sec. 9(e).

be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess the petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court.

Thus, instead of dismissing the petition outright, I agree with the Court's ruling to refer this petition to the concerned trial courts.[45] Exigency is better served if the trial courts where the criminal cases of the petitioners are respectively pending will hear their bail petitions and receive their evidence.

II.

All persons are guaranteed the right to life. This is constitutionally enshrined under Section 1, Article III of the Constitution, *to wit*:

> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

More importantly, the right to life, being grounded on natural law, is inherent[46] and, therefore, not a creation of, or dependent upon a particular law, custom, or belief. It precedes and transcends any authority or the laws of men.[47] Its protection is guaranteed notwithstanding one's status; neither is this right forfeited by detention or incarceration.

Necessarily included in the right to life are the State policies found in Sections 11 and 15, Article II of the Constitution, which state:

> SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

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[45] Decision, p. 7.

[46] *International Covenant on Civil and Political Rights* (ICCPR), Article 6(1).

[47] *Sps. Imbong v. Ochoa, Jr.*, 732 Phil. 1, 135 (2014).

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SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

The above core principles in our Constitution mirror those found in several international laws, prominent of which is the Universal Declaration of Human Rights[48] (UDHR) stating that:

Article 1. All human beings are born free and equal in dignity and rights. x x x

x x x x x x x x x

Article 3. Everyone has the right to life, liberty and security of person.

x x x x x x x x x

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Meanwhile, the right to health is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR),[49] which obliges state parties to recognize the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[50] The Philippines signed and ratified the ICESCR,[51] which makes it a binding obligation on the part of the government.

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[48] See *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

[49] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, United Nations, Treaty Series, Vol. 993, p. 3, available at <https://www.refworld.org/docid/3ae6b36c0.html> (last accessed June 14, 2020).

[50] ICESCR, Article 12(1).

[51] UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

These rights do not discriminate between offenders and non-offenders as it is the declared policy of the State under the 1987 Constitution to value "every human person."[52] Similarly, the UDHR recognizes that all persons are entitled to all the rights and freedoms set forth therein, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[53]

Thus, the notion that persons deprived of liberty (PDLs) are not entitled to the guarantee of basic human rights should be disabused. While they do not enjoy the same latitude of rights as certain restrictions on their liberty and property are imposed as a consequence of their detention or imprisonment, the foregoing international covenants and our own Constitution prove that PDLs do not shed their human rights once they are arrested, charged, placed under the custody of law, and subsequently convicted and incarcerated. The International Covenant on Civil and Political Rights (ICCPR),[54] in particular, to which the Philippines is likewise a party,[55] positively requires the treatment of PDLs "with humanity and with respect for the inherent dignity of the human person."[56]

Our laws governing arrest and custodial investigation also do not deviate from the above principles. R.A. 7438,[57] otherwise

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[52] CONSTITUTION, Art. II, Sec. 11.

[53] UDHR, Article 2.

[54] UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, Vol. 999, p. 171, available at <https://www.refworld.org/docid/3ae6b3aa0.html> (last accessed June 14, 2020).

[55] UN Human Rights, Office of the High Commissioner, UN Treaty Body Database, Ratification Status for Philippines, available at <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN> (last accessed June 14, 2020).

[56] ICCPR, Article 10(1).

[57] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING

known as the "Custodial Investigation Law of 1992," was created pursuant to the State policy of valuing the "dignity of every human being"[58] and guaranteeing "full respect for human rights."[59] It defines the positive rights of all persons under custodial investigation, and outlines the concomitant duties of arresting, detaining or investigating officers to secure said rights, which include the detained person's right to be assisted by counsel. In addition, R.A. 9745,[60] otherwise known as the "Anti-Torture Act of 2009" outlaws, foremost, any act that subjects people held in custody to any form of physical, psychological or mental harm, force, violence, threat or intimidation or any other act which degrades human dignity.[61] Finally, Article 32 of the New Civil Code enumerates the rights and liberties of all persons, several of which pertain to the rights of the accused, and includes the freedom from excessive fines or cruel and unusual punishment.[62] Article 32 further provides that the impeding or impairment of these rights shall be under pains of damages.

When a person is detained or imprisoned, the person is afforded certain fundamental rights that affirmatively remain in effect throughout the entire period of incarceration. These rights spring from Section 19, Article III of the Bill of Rights of the Constitution, which proscribes the infliction of cruel,

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OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, approved on April 27, 1992.

[58] R.A. 7438, Sec. 1.

[59] *Id.*

[60] AN ACT PENALIZING TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT AND PRESCRIBING PENALTIES THEREFOR, approved on November 10, 2009.

[61] R.A. 9745, Sec. 2(b).

[62] CIVIL CODE OF THE PHILIPPINES, Art. 32(18); In the early case of *People v. Dionisio*, 131 Phil. 408, 411 (1968), the Court clarified that the constitutional stricture referred to in the use of "cruel or unusual punishment" has been interpreted as penalties that are inhuman and barbarous, or shocking to the conscience.

degrading or inhuman punishment and the employment of physical, psychological, or degrading punishment against any prisoner or detainee. It likewise affirms that the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law. Notably, both the UDHR[63] and the ICCPR[64] have similar prohibitions against the employment of cruel, degrading, or inhuman punishment.

Associate Justice Edgardo L. Delos Santos, however, opines that the Constitutional proscription against cruel, degrading or inhuman punishment is limited in application and may only be invoked to invalidate a law that imposes such penalty, but "not to recognize a substantive right."[65] Furthermore, he surmises from the deliberations that, as Section 19, Article III is currently worded, it is only the legislature that has the authority to deal with substandard or inadequate penal facilities.[66] I respectfully differ.

Preliminarily, while I agree with how Justice Delos Santos presented the evolution of Section 19, Article III, showing how the deliberations of the 1986 Constitutional Commission manifested an original intention to only protect against "law[s] which [impose] a penalty that is cruel, degrading or inhuman,"[67] it is clear from the exchanges that this original intention was expanded.

In particular, Commissioner Teodulo C. Natividad passionately argued that the provision should contemplate the abatement of inhuman conditions in prison facilities. The following exchanges, likewise quoted in Justice Delos Santos'

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[63] UDHR, Article 5.

[64] ICCPR, Article 7.

[65] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 38.

[66] *Id.* at 53.

[67] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 703 (1986).

opinion,[68] demonstrate the accommodation of Commissioner Natividad's proposition that the gross inadequacy of the prison facilities constitutes an impairment of this constitutional right:

> MR. NATIVIDAD. May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.
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> Here in the cities, 85 percent are detention prisoners and only 15 percent are convicted prisoners. But if we visit the jails, they are so crowded and the conditions are so subhuman that one-half of the inmates lie down on the cold cement floor which is usually wet, even in summer. One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: *Halt v. Sarver, Jackson v. Bishop, Jackson v. Handrick, Jordan v. Fitzharris and Rockly v. Stanley* — stated that subhuman conditions in a prison is an unconstitutional imposition of cruel and unusual punishment.

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[68] Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 35-38.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails and for the judiciary to act because the judiciary in *habeas corpus* proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. **If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.**

I submit, Mr. Presiding Officer.

FR. BERNAS. Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The purpose of Section 22 is to provide a norm for invalidating a penalty that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper, even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD. The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for *habeas corpus* or for injunction. This is revealed in a proper petition.

FR. BERNAS. I agree with the Commissioner, but as I said, the purpose of Section 22 is to invalidate the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD. My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison

is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS. **We would await the formulation of the Commissioner's amendment.**

MR. NATIVIDAD. **So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment**. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered.

FR. BERNAS. **Mr. Presiding Officer, as I said, we have no quarrel whatsoever with the objective. We will await the formulation of the amendment.**

MR. NATIVIDAD. Thank you.[69] (Emphasis supplied)

When Commissioner Regalado E. Maambong posed the same concern as Commissioner Natividad, Fr. Joaquin G. Bernas again agreed that the formulation of the provision may be amended to integrate the protection being sought, *viz.*:

MR. MAAMBONG. Yes, so that I do not have to waste the time of the body and the Committee, considering that the Committee has understood our purpose, perhaps the Committee could help by giving us just one section to be inserted there or one sentence or one phrase

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[69] I RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 702-703 (1986).

which would satisfy the requirements that we have presented, **considering that in the United States, circumstances of this nature which happen inside the jail are considered under the provisions and jurisprudence of the United States as cruel and unusual punishment. Probably, we can have a parallel provision along that line and I hope the Committee will help.** Would that be all right?

FR. BERNAS. **Yes. And I thought the Gentleman already has the formula which we can discuss.**

THE PRESIDING OFFICER (Mr. Bengzon). The Floor Leader is recognized.

MR. MAAMBONG. So, we reserve our right to insert something here in coordination with the Committee.

Thank you very much.[70] (Emphasis supplied)

During the period of amendments, several points were raised, including letting the legislature define the concept of substandard or inadequate facilities:

FR. BERNAS. **This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.**

x x x x x x x x x

FR. BERNAS. If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO. How do we determine what is substandard?

FR. BERNAS. We leave that to the legislature. What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it."

MR. REGALADO. Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models, but it may be sufficient for us?

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[70] *Id.* at 779.

FR. BERNAS. I do not think we should go into great details on this. We are not legislating . . .

MR. REGALADO. So, the sponsor's position is that we just leave it to the legislature to have a legislative standard of their own in the form of an ordinary legislation?

FR. BERNAS. Yes.

x x x x x x x x x

MR. RODRIGO. I would like to call attention to the fact that the word "DEGRADING" is already in the first sentence of this section: "Excessive fine shall not be imposed nor cruel, degrading or inhuman punishment inflicted." So, why repeat the word "DEGRADING"?

FR. BERNAS. Precisely, Madam President, yesterday, we said that the provision we have in the present Constitution has reference to the punishment that is prescribed by the law itself; whereas what we are dealing with here is the punishment or condition which is actually being practised. In other words, we are, in the present Constitution, talking about punishment which, if imposed by the law, renders the law invalid.

In this paragraph, we are describing conditions of detainees who may be held under valid laws but are being treated in a manner that is subhuman or degrading.

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MR. FOZ. May I just ask one question of the proponent of the amendment. I get it that the law shall provide penalties for the conditions described by his amendment.

MR. MAAMBONG. In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. **What could happen is that the law could provide for some reliefs other than penalties.**

In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.

MR. FOZ. In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment

but in the case of the second part with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and insanitary or subhuman conditions, on whom should such sanctions be applied?

MR. MAAMBONG. It would have to be applied on the administrators of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.

MR. FOZ. I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because we know very well the conditions in our jails, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government.

Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

MR. MAAMBONG. No, Madam President. **What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it.**

MR. FOZ. Thank you, Madam President.

FR. BERNAS. **Madam President, we are not telling the legislature what to do; we are just telling them that they should do something about it.**

MR. DE CASTRO. Madam President.

THE PRESIDENT. Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

The provision which says: "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against ANY PRISONER OR DETAINEE SHALL be dealt with BY LAW" is already provided for by our present laws. We already have laws against third-degree punishments or even psychological punishments. Do we still need this provision?

Thank you. Madam President.

MR. MAAMBONG. **As I was saying, Madam President, the law need not penalize; the law may only put in corrective measures as a remedy.**

MR. REGALADO. Madam President.

THE PRESIDENT. Commissioner Regalado is recognized.

MR. REGALADO. May I just rejoin the statement of Commissioner de Castro that we have laws already covering situations like this. The law we have on that in the Revised Penal Code is maltreatment of prisoners which comes from the original text *maltratos de los encarcerados*. That presupposes that the prisoner is incarcerated.

The proposed legislation sought here will apply not only to incarcerated prisoners, but also to other detainees who, although not incarcerated, are nevertheless kept, their liberty of movement is controlled before incarceration. So, this is for the legislature to fill that void in the law.[71] (Emphasis supplied)

The foregoing exchanges, in my view, belie a restrictive interpretation that severely limits the application of Section 19, Article III. What is apparent instead is that the Framers reached a consensus on three important points: *first*, that the use of substandard or inadequate penal facilities under subhuman conditions constitutes cruel, degrading or inhuman punishment and shall be dealt with by legislation; *second*, that the said subhuman conditions during detention may be appreciated for **both** PDLs under preventive detention, and PDLs who are detained after conviction; and *third*, the State has the positive duty to undertake measures for the improvement of these conditions.

Justice Delos Santos makes much of the fact that the second paragraph of Section 19, Article III contains the phrase "shall be dealt with by law," thus advancing the view that the Framers intended to leave to Congress the authority of determining the conditions for substandard or inhuman prison facilities and of

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[71] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23-26 (1986).

providing penalties therefor.[72] It bears emphasis, however, that both Commissioners Natividad and Maambong referred to the United States (US) Supreme Court's interpretation of the Eighth Amendment[73] in their Constitution, which similarly proscribes the infliction of cruel and inhuman punishment.

Indeed, the US Supreme Court ruled in *Estelle v. Gamble*[74] (*Estelle*) that the Eighth Amendment, which traditionally proscribes physically barbarous punishments, should extend to the provision of adequate medical care to PDLs. The US Supreme Court, in effect, acknowledged the positive obligation of the State over PDLs in its custody, *to wit*:

> Our more recent cases, however, have held that the Amendment proscribes more than physically barbarous punishments. x x x The Amendment embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ," x x x against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with "the evolving standards of decency that mark the progress of a maturing society," x x x.
>
> **These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," x x x the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. x x x The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common law view that "it is but just that the public be required to care for the prisoner, who**

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[72] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 54-55.

[73] "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[74] 429 U.S. 97 (1976).

cannot by reason of the deprivation of his liberty, care for himself."[75] (Emphasis supplied; citations omitted)

Thus, while torture is the ordinary and usual contemplation of cruel and inhuman punishment, the deliberations of the 1986 Constitutional Commission reveal the explicit intention of the Framers to depart from or expand the understanding of this convention. For this reason, the Framers clearly agreed to extend the guarantee in Section 19, Article III for the protection against the employment of substandard prison facilities. That this "shall be dealt with by law" is an exhortation to the government — not only the legislature — to create or otherwise ensure humane conditions for PDLs during their incarceration. It is not a condition for Section 19 to operate.[76]

In this regard, if the penal institutions are so grossly inadequate, there is a culpable omission on the part of the State to observe an affirmative obligation under the Constitution. Section 19, Article III may therefore be invoked to grant reliefs not only when, as suggested by some members, there is "flagrant or intentional infliction of pain or suffering,"[77] **but also when the conditions of incarceration are neglected to such a degree that the punishment becomes cruel and excessive**.

It is also worth repeating, as cited by Justice Delos Santos, that as early as 1986, the Framers had wrestled with the means with which this deplorable situation of PDLs can be redressed.

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

[76] FR. BERNAS. This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

x x x x x x x x x

MR. MAAMBONG. No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it. [II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 23, 25 (1986).]

[77] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 57.

Over three decades ago, there was already an acute sense of failure of the detention system of the country, with one soberly recognizing that our detention facilities were "penological monstrosities"[78] and another calling for an uplifting of the detention conditions to a "level of constitutional tolerability."[79]

The above discussion only goes to show that the Framers neither intended to preclude individuals, such as the petitioners, from invoking the right under Section 19, Article III to obtain redress for their grievances, nor designed to foreclose any complementary action on the part of the Court or the Executive. In fact, a more circumspect consideration of the material deliberations draws a conceptualization of Section 19, Article III that is far from static, but is instead dynamic, and constantly attuned to the moral moorings and convictions of the times. In *Echegaray v. Secretary of Justice*,[80] which Justice Delos Santos likewise cites positively, the Court significantly held that "[w]hat is cruel and unusual 'is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice' and 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.'"[81]

Against this backdrop, therefore, it is most difficult to surmise that during the Framers' deliberations, Section 19, Article III was conceived with the idea of minimizing its enforceability, or confining its remedial curative measures only to the Executive and the Legislative branches. If at all, it is perhaps even reasonably discernible that the appreciation of the severity of the condition in the detention facilities tilted the arc of the provision towards enabling **all three branches of the**

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[78] Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 36, quoting Commissioner Natividad.

[79] *Id.* at 39, quoting Commissioner Maambong.

[80] 358 Phil. 410 (1998), quoted in Separate Opinion of Associate Justice Edgardo L. Delos Santos, p. 35.

[81] *Id.* at 436.

government to be able to move within its powers to remedy the appalling conditions suffered by PDLs under custody.

Of equal import, Commissioner Maambong remarked that "the law need not penalize; the law may only put in corrective measures as a remedy."[82] As I have already mentioned, there are laws, already in place to protect the rights of PDLs against the employment of cruel, degrading, and inhuman punishment, from the moment of custodial investigation until the service of their sentence. R.A. 7438 and R.A. 9745 provide for penalties, while Article 32 of the Civil Code grants PDLs a recourse to collect damages in cases of violations of their rights.

Verily, the Constitutional rights afforded to PDLs create corresponding duties on the part of the State to protect and promote them. In line with this, it is noteworthy that as early as 1955, the UN adopted the Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), which constituted the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners.[83] While these rules were merely recommendatory, they have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.[84] The UNSMRTP was subsequently revised in 2015 into what is now known as the *Nelson Mandela Rules*. The recent revision took into consideration the development of other international law instruments on human rights.[85]

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[82] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, p. 26 (1986).

[83] United Nations, Nelson Mandela Rules available at <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> (last accessed on June 14, 2020).

[84] *Id.*

[85] The Whereas Clauses of the Nelson Mandela Rules explicitly took into account "the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the [ICCPR], the [ICESCR] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto."

The UNSMRTP and the *Nelson Mandela Rules* were concretized and situated within the sphere of the national experience mainly through the enabling laws of the two main agencies in charge of the country's prison system, namely the Bureau of Jail Management and Penology (BJMP) and the Bureau of Corrections (BuCor). These enabling laws contain the very corrective measures, as Commissioner Maambong adverted to during the deliberations, which seek to address the use of substandard or inadequate penal facilities under subhuman conditions.

The BuCor's enabling statute, R.A. 10575,[86] explicitly declares as a policy the promotion of the general welfare and the safeguarding of prisoners' rights in the national penitentiary.[87] For this purpose, R.A. 10575 vests the BuCor with the mandate of safekeeping national inmates, by ensuring the "decent provision of quarters, food, water and clothing in compliance with established United Nations standards."[88] Repeated references to the UNSMRTP are also made in its Revised Implementing Rules and Regulations (Revised IRR). Section 2 of said Revised IRR echoes the declaration of policy in the BuCor's enabling act, further stating that the basic rights of every prisoner should be safeguarded by, among other things, "creating an environment conducive to [the] rehabilitation [of prisoners] and compliant with the [UNSMRTP]." This section quotes the concept of imprisonment, in particular, as stated in Rule 57 of the UNSMRTP,[89] *to wit*:

> Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore **the prison system shall not, except as**

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[86] AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR, approved on May 24, 2013.

[87] R.A. 10575, Sec. 2.

[88] *Id.*, Sec. 4(a). Underscoring supplied.

[89] Now found in Rule 3 of the *Nelson Mandela Rules*.

incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. (Emphasis supplied)

The definition of safekeeping in the Revised IRR also expounded that the basic needs which PDLs must be provided with comprise of "**habitable quarters**, food, water, clothing, and **medical care**, in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights."[90] It is likewise stated that the core objective of "according the dignity of man" to inmates while serving sentence is in accordance with the following provisions of the UNSMRTP:[91]

60. (1) **The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.**

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.[92] (Emphasis supplied)

The enabling statute of the BJMP,[93] on the other hand, mandates a secure, clean, adequately equipped, and sanitary jail in every district, city and municipality, for the custody

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[90] Revised IRR of R.A. 10575, Sec. 3(ee). Emphasis and underscoring supplied.

[91] *Id.*, Sec. 4.

[92] Now found in Rule 5(1) and Rule 87 of the *Nelson Mandela Rules*.

[93] R.A. 6975, AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES, approved on December 13, 1990, Sec. 6.

and safekeeping of detainees.[94] The mission of the BJMP is to enhance jail management by formulating policies and guidelines on **humane safekeeping** of inmates and ensuring their compliance in all district, city and municipal jails.[95] One of its objectives is to ensure that the BJMP complies with the principles in the different international instruments relative to the humane treatment of inmates.[96] The BJMP likewise endeavors to improve the living conditions of offenders in accordance with the accepted standards set by the United Nations.[97]

In the BJMP Operations Manual, what especially stands out are the provisions on the handling and safekeeping of inmates with special needs. Included herein are inmates who are pregnant,[98] senior citizens,[99] and

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[94] *Id.*, Sec. 63; RULES AND REGULATIONS IMPLEMENTING THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT ACT OF 1990, Sec. 62.

[95] BJMP COMPREHENSIVE OPERATIONS MANUAL, 2015 Edition, Sec. 6(b).

[96] *Id.*, Sec. 6(c).

[97] *Id.*, Sec. 10(a).

[98] Section 34. HANDLING INMATES WITH SPECIAL NEEDS. — The following guidelines shall be observed in handling inmates with special needs:

x x x x x x x x x

13. Pregnant Inmates/Female Inmates with Infants

a. Pregnant inmates must be referred to jail physician or nurse for pre-natal examination;
b. They should be given tasks that are deemed fit and proper, their physical limitations, considered;
c. During active labor, pregnant inmates should be transferred to nearest government hospital;

x x x x x x x x x

[99] Section 34. x x x

x x x x x x x x x

11. Senior Citizen Inmates

infirm.[100] Section 43 also significantly provides that emergency plans for both natural and man-made calamities and other forms of jail disturbances shall be formulated to suit the physical structure and other factors peculiar to every jail. An epidemic is among the enumerated examples of a natural calamity.

These laws affirm the State's duty of safekeeping PDLs, as carried out by the BuCor and BJMP, in relation to the constitutional proscription against cruel and inhumane punishment, and substandard conditions for penal facilities. At the same time, what may not be divorced from this proscription is the duty to protect the health of PDLs while incarcerated, and ultimately, realize their right to life,[101] both fundamental rights — as I have stressed previously — which PDLs do not forfeit upon arrest and detention.

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a. Senior citizen inmates should be segregated and close supervised to protect them from maltreatment and other forms of abuse by other inmates;
b. Individual case management strategies should be developed and adopted to respond to the special needs of elderly inmates;
c. Collaboration with other government agencies and community-based senior citizen organizations should be done to ensure that the services due the senior citizen inmates are provided; and
d. Senior citizen inmates should be made to do tasks deemed fit and appropriate, their age, capability, and physical condition considered.

[100] Section 34. x x x

x x x x x x x x x

12. Infirm Inmates

a. Inmates with contagious diseases must be segregated to prevent the spread of said contagious diseases;
b. Infirm inmates should be referred to the jail physician or nurse for evaluation and management; and
c. Infirm inmates must be closely monitored and provide with appropriate medication and utmost care.

[101] See Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Document E/C.12/2000/4, par. 3, available at <https://www.refworld.org/pdfid/4538838d0.pdf> (last accessed June 14, 2020).

As it stands, therefore, the right to health, as a "component to the right to life,"[102] is inextricably linked with the guarantees under Section 19, Article III, of the Constitution, which are self-executing provisions and, as such, are judicially enforceable.

Apart from the domestic laws earlier mentioned, the more relevant consideration is that the enabling statutes of the BuCor and the BJMP have expressly adopted the standards set by the UN for the safekeeping of PDLs. There is no question, therefore, that included herein are the universally accepted minimum standards set by the *Nelson Mandela Rules*. The BuCor's enabling law, in particular, has explicitly referred thereto. **Consequently, notwithstanding the non-binding and recommendatory nature of the *Nelson Mandela Rules*, they have effectively been transformed as part of the law of the land.**

Furthermore, flowing from the right to health guaranteed by ICESCR, PDLs cannot be discriminated upon when it comes to access to health facilities and services.[103] They are entitled to receive the same standard of care normally available to those not incarcerated. This is referred to as the principle of "equivalence of care,"[104] initially adopted by the UN in General Assembly Resolution 37/194, which declared principles for the role of physicians in protecting PDLs against torture and cruel or degrading punishment:

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease

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[102] *Sps. Imbong v. Ochoa, Jr.*, *supra* note 47, at 156.

[103] See Committee on Economic, Social and Cultural Rights, General Comment 14, *supra* note 101, par. 43 (a).

[104] Gen Sander and Rick Lines, HIV, Hepatitis C, TB, Harm Reduction, and Persons Deprived of Liberty: What Standards Does International Human Rights Law Establish? 18 (2) Health and Human Rights Journal 171 (December 2016).

of **the same quality and standard as is afforded to those who are not imprisoned or detained**.[105] (Emphasis supplied)

This was further echoed in Rule 24 of the *Nelson Mandela Rules*, which states that:

1. The provision of health care for prisoners is a State responsibility. **Prisoners should enjoy the same standards of health care that are available in the community**, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence. (Emphasis supplied)

It is interesting to note that under the BuCor Operating Manual, there is an evident adherence to the principle of equivalence and non-discrimination, which is apparent in the following provision:

Part V

Rehabilitation and Treatment of Inmates

x x x x x x x x x

Chapter 2

Inmate Services

x x x x x x x x x

SECTION 2. *Health Services*. — Health care and services shall be given to inmates **similar to those available in the free community** and subject to prison regulations. A prison shall have at least one qualified medical doctor and a dentist. (Emphasis supplied)

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[105] United Nations, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Resolution 37/194, Principle 1 (December 18, 1982).

Guided by the principle of equivalence of care, the petitioners and all other PDLs are entitled to the same safeguards against illnesses that are available to those not incarcerated. But considering the present state of our penal facilities, and in light of the gravity of the present pandemic, the fulfillment of the minimum standards for the safekeeping and health of PDLs has taken on a new sense of urgency.

The problem with congestion within our penal facilities is no longer a disputable matter. The New Bilibid Prison alone reportedly has a 353% congestion rate.[106] The acuteness of the consequences of overcrowded jails and prisons, however, has been sharpened by the highly infectious nature of COVID-19. The Court can take judicial notice of the precautions published by the World Health Organization on the import of social distancing and self-isolation as effective measures to prevent the spread of COVID-19.[107] But given the notorious conditions within prison walls, these recommended measures intended for the protection of the health and safety of PDLs may well be unattainable. The respondents themselves, in their Comment, admitted to the near impossibility of adhering to these measures.[108] In the context of the present global pandemic, therefore, the interwoven rights of PDLs run the risk of being impaired. And, while it might be true that respondents have taken steps to address and contain the spread of COVID-19 among the inmates, these measures may be easily negated by the congestion of prison facilities, which render PDLs vulnerable to the risk of contracting the virus.

If the causal link between PDLs' poor health and exclusion from standards of care available to free individuals, on the one

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[106] BuCor Statistics on Prison Congestion, available at <http://www.bucor.gov.ph/inmate-profile/Congestion-04062020.pdf> (last accessed June 14, 2020).

[107] World Health Organization, Coronavirus Disease (COVID-19) Advice for the Public, at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> (last accessed June 14, 2020).

[108] OSG Comment, p. 31.

hand, and the fact of facility congestion on the other, are both sufficiently established, such may give rise to an actionable claim based on the violation of the proscription against cruel and inhuman punishment, and the State's commitment to various international law instruments. Such a claim may be demonstrably supported by a showing that within the present configuration of the prison systems, PDLs are deprived of the means to practice standard protocols to ensure their health, including even the simplest ones such as physical distancing and self-isolation.

In the case of *Helling v. McKinney*[109] (*Helling*), the US Supreme Court was confronted with the question of whether a prison inmate's health risk as a result of involuntary exposure to environmental tobacco smoke in the Nevada State prison was a proper basis for a claim under the Eighth Amendment. The US Supreme Court held that denial of a remedy for such health risk exposure was tantamount to deliberate indifference in the contemplation of *Estelle* and further rejected the proposition that only deliberate indifference to serious health problems was actionable, *viz.*:

> We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement **that is sure or very likely to cause serious illness and needless suffering the next week or month or year**. In *Hutto v. Finney*, 437 U. S. 678, 682 (1978), we noted that inmates in punitive isolation were crowded into cells and that some of them had infectious maladies such as hepatitis and venereal disease. This was one of the prison conditions for which the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed. We would think that a prison inmate also could successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery. Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current symptoms.

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[109] 509 U.S. 25 (1993).

That the Eighth Amendment protects against future harm to inmates is not a novel proposition. The Amendment, as we have said, requires that inmates be furnished with the basic human needs, one of which is "reasonable safety." *DeShaney*, *supra*, at 200. **It is "cruel and unusual punishment to hold convicted criminals in unsafe conditions."** *Youngberg v. Romeo*, 457 U. S. 307, 315-316 (1982). It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them. x x x[110] (Emphasis and underscoring supplied)

Again, quite notably, the US Supreme Court proclaimed in *Helling* that there need not be an actual infection or affliction on the part of the inmate before the protection of the Eighth Amendment can apply. As applied to petitioners' situation, it is unnecessary to require them to submit to a physical examination, or to first show symptoms of COVID-19 before recognizing a violation or threatened violation of their rights. Such a proposition may be evidence of indifference to the toll that substandard living conditions in our prison systems exact until it may be too late. Perhaps that premise has been rejected not in the least because it may well result in an exercise in futility, where the grave and possibly irreversible consequences on the right to health of PDLs must precede a proper recognition of such a right to begin with. I thus respectfully express my reservations to the proposition of some of my colleagues that absent a clear showing of the petitioners' health status, or that they are "actually suffering from a medical condition [requiring] immediate and specialized attention,"[111] the actual risk for the petitioners to contract COVID-19 in their respective penal facilities is speculative.[112]

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[110] *Id.* at 33.

[111] Concurring Opinion of Chief Justice Diosdado M. Peralta, p. 7.

[112] Separate Opinion of Associate Justice Rodil V. Zalameda, p. 7.

In the later case of *Brown, et al. v. Plata, et al.*[113] involving a protracted violation of inmates' rights in a California prison through substandard and unsafe conditions of detainment, the US Supreme Court held that a court-mandated decongestion of the prison facilities, as authorized by the Prison Litigation Reform Act of 1995, was crucial in providing a remedy to these violations, and steps taken to that end should only be affirmed, *to wit*:

> Yet so too is the continuing injury and harm resulting from these serious constitutional violations. For years the medical and mental health care provided by California's prisons has fallen short of minimum constitutional requirements and has failed to meet prisoners' basic health needs. Needless suffering and death have been the well-documented result. Over the whole course of years during which this litigation has been pending, no other remedies have been found to be sufficient. **Efforts to remedy the violation have been frustrated by severe overcrowding in California's prison system.** Short term gains in the provision of care have been eroded by the long-term effects of severe and pervasive overcrowding.
>
> **Overcrowding has overtaken the limited resources of prison staff; imposed demands well beyond the capacity of medical and mental health facilities; and created unsanitary and unsafe conditions that make progress in the provision of care difficult or impossible to achieve.** The overcrowding is the "primary cause of the violation of a Federal right," 18 U. S. C. §3626(a)(3)(E)(i), specifically the severe and unlawful mistreatment of prisoners through grossly inadequate provision of medical and mental health care.[114] (Emphasis supplied)

Further echoing the ruling in *Estelle*, the US Supreme Court brought to the fore the positive duty on the part of the State to ensure the basic dignity of the human lives that it detains, premised on the fact that the detainees, by virtue of their detention, are severely limited in their capacity to ensure such dignity themselves, *viz.*:

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[113] 563 U.S. 493 (2011).

[114] *Id.*

As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. **Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. "'The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.'"** *Atkins v. Virginia*, 536 U. S. 304, 311 (2002) (quoting *Trop v. Dulles*, 356 U. S. 86, 100 (1958) (plurality opinion)).

To incarcerate, society takes from prisoners the means to provide for their own needs. Prisoners are dependent on the State for food, clothing, and necessary medical care. **A prison's failure to provide sustenance for inmates "may actually produce physical 'torture or a lingering death.'"** *Estelle v. Gamble*, 429 U. S. 97, 103 (1976) (quoting *In re Kemmler*, 136 U. S. 436, 447 (1890)); see generally A. Elsner, Gates of Injustice: The Crisis in America's Prisons (2004). Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. **A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.**[115] (Emphasis supplied)

It bears emphasis, however, that in these cases, the US Supreme Court only ruled on the existence of causes of actions or possible claims under the Eighth Amendment, **but left it to the trial courts to try and hear said claims**, aided by the subjective and objective elements that plaintiffs would need to prove to establish an Eighth Amendment violation.

There is no valid reason to depart from this practice of the US Supreme Court, considering that claims for violations of a PDL's fundamental rights are replete with factual matters best threshed out in the trial courts. Justice Bernabe is of the same view, recommending that the petition be referred to the appropriate trial court for a full-blown hearing on the petitioners' respective situations, which should be examined using the "deliberate indifference" test.[116] **As such, in the same manner**

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[115] *Id.*

[116] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 17-18.

that the prayer of the petitioners for themselves and for other similarly situated PDLs to be granted bail or recognizance must be brought before the proper trial court for hearings, so should any claim for violation under the proscription against cruel and inhuman punishment and substandard living conditions.

The Court, on a previous occasion, has affirmed its power to review alleged violations of the constitutional rights of PDLs. In *In the Matter of Petition for Habeas Corpus of Alejano v. Caubay*,[117] it held:

x x x Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions.[118]

At this juncture, I return to the elephant in the room: the causal link between the congestion within prison walls and the exclusion of PDLs from the standard of care that should be made available to them.

The Court should be mindful of the fact that the remedies of bail and recognizance are not available for every PDL. To be more precise, these remedies are not extended to PDLs who have already started serving their sentence. There should be no reason, however, to ignore their plight in the midst of this global pandemic, lest there arise a cause of action under the Constitution. It is important to note that the US cases referred to earlier were decided outside the circumstances of a global pandemic. It is with more reason that, in light of the current situation, the State should recognize and acknowledge the possible impairment of every PDL's basic right to life and human dignity.

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[117] 505 Phil. 298 (2005).

[118] *Id.* at 323.

In a proper action initiated at a more opportune time, courts may be taken to task to provide relief against the employment of physical, psychological, or degrading punishment or against the use of substandard or inadequate penal facilities with subhuman conditions. The Court, unfortunately, must move only within the bounds of its jurisdiction; nonetheless, it has taken the necessary measures within its power, in order to guarantee the rights of PDLs in the face of this global pandemic. Ultimately, however, the task of providing farsighted and enduring solutions to the problem of overcrowding in penal facilities is a policy question and formulation that is best within the powers of the Legislative and Executive branches.

All told, pursuant to the significant body of laws both within and outside our borders that affirms the positive rights of PDLs, I submit that it remains incumbent upon the State to organize and utilize its whole apparatus so that these human rights are safeguarded.[119] In other words, any attendant limitation may not excuse a slackening of efforts, but on the contrary serve as compulsion for the State to exhaust all measures available to it to ensure that these fundamental rights of PDLs are appreciated as such.

III.

For its part, in the exercise of its mandate to promulgate rules concerning the protection and enforcement of constitutional rights[120] and its power of supervision over all persons in custody for purposes of eliminating unnecessary detention,[121] the Court has been implementing systems in promoting rehabilitative and restorative criminal justice.

One such measure is Administrative Matter (A.M.) No. 12-11-2-SC, or the *Guidelines for Decongesting Holding Jails by*

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[119] Supreme Court Annotation on the Writ of Amparo, citing decision of the Inter-American Court of Human Rights.

[120] CONSTITUTION, Art. VIII, Sec. 5(5).

[121] RULES OF COURT, Rule 114, Sec. 25.

Enforcing the Rights of Accused Persons to Bail and to Speedy Trial. With the current public health emergency, these measures are supplemented by various Court issuances aimed at ensuring easy access to PDLs of the different modes of securing provisional liberty. Taken together, laws and regulations in place have created a framework, essential facets of which are as follows:

1. For PDLs currently in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he or she shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal, as the case may be;[122]

2. For PDLs detained for a period of at least equal to the minimum of the penalty for the offense charged against him, he or she shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him,[123] subject further to the guidelines set forth in Administrative Circular (A.C.) No. 33-2020,[124] as implemented by OCA Circular No. 89-2020,[125] on online bail proceedings and electronic transmission of release orders;

3. For PDLs who qualify for provisional dismissal pursuant to A.M. No. 12-11-2-SC, Section 10,[126] they may secure their

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[122] *Id.*, Rule 114, Sec. 16.

[123] *Id.*; A.M. No. 12-11-2-SC "Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial" dated March 18, 2014, Sec. 5; R.A. No. 10389, Sec. 5(b).

[124] Re: Online Filing of Complaint or Information and Posting of Bail Due to the Rising Cases of COVID-19 Infection, dated March 31, 2020.

[125] Re: Implementation of Supreme Court Administrative Circular No. 33-2020 on the Electronic Filing of Criminal Complaints and Informations, and Posting of Bails, dated April 3, 2020.

[126] Sec. 10. *Provisional dismissal*. — (a) When the delays are due to the absence of an essential witness whose whereabouts are unknown or cannot be determined and, therefore, are subject to exclusion in determining compliance with the prescribed time limits which caused the trial to exceed

release pursuant to said guidelines. For this purpose, judges for the first and second level courts are directed to immediately conduct an inventory of their pending criminal cases to determine cases eligible for provisional dismissal.[127]

4. For all other PDLs who do not meet the above criteria, they may apply for bail. Special considerations are given for indigent PDLs who may post bail at a reduced amount or be released on recognizance:

a. All PDLs may still avail of their rights to bail pursuant to the provisions of Rule 114 of the Revised Rules of Criminal Procedure.

b. In promoting social and restorative justice especially in this period of public health emergency, indigent PDLs may avail of the reduced bail and recognizance under A.C. No. 38-2020:[128]

The amounts of bail for indigent PDLs are reduced following the schedule below:

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one hundred eighty (180) days, the court shall provisionally dismiss the action with the express consent of the detained accused.

(b) When the delays are due to the absence of an essential witness whose presence cannot be obtained by due diligence though his whereabouts are known, the court shall provisionally dismiss the action with the express consent of the detained accused provided:

(1) the hearing in the case has been previously twice postponed due to the non-appearance of the essential witness and both witness and the offended party, if they are two different persons, have been given notice of the setting of the case for third hearing, which notice contains a warning that the case would be dismissed if the essential witness continues to be absent; and

(2) there is proof of service of the pertinent notices of hearings or subpoenas upon the essential witness and offended party at their last known postal or e-mail addresses or mobile phone numbers.

[127] See OCA Circular No. 91-2020, Re: Release of Qualified Persons Deprived of Liberty, dated April 20, 2020.

[128] Re: Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty during this Period of Public Health Emergency, Pending Resolution of Their Cases, dated April 30, 2020.

Penalty of Crime Charged	***Computation of Reduced Bail***
Maximum period of *reclusion temporal* or twelve (12) years and one (1) day to twenty (20) years	Medium period of the penalty of the crime charged multiplied by ₱3,000.00 for every year of imprisonment
Maximum period of *prision mayor* or six (6) years and one (1) day to twelve (12) years	Medium period of the penalty of the crime charged multiplied by ₱2,000.00 for every year of imprisonment
Maximum period of *prision correccional* or six (6) months and one (1) day to six (6) years	Medium period of the penalty of the crime charged multiplied by ₱1,000.00 for every year of imprisonment

For indigent PDLs charged with crimes punishable by *arresto mayor* or one (1) month and one (1) day to six (6) months, and *arresto menor* or one (1) day to thirty (30) days, they may be released on their own recognizance.

For indigent PDLs who meet the criteria set forth in R.A. 10389, specifically Sections 5, 6, and 7 thereof, they shall be released on recognizance pursuant to the provisions therein.

In further implementation of these rights, and considering the exigencies of the situation brought about by the current public health crisis, courts have introduced new capacities and accessible processes:

1. Proceedings concerning the right of the accused to bail[129] and proceedings on provisional dismissal[130] are classified as urgent matters that are immediately heard and resolved by courts during the public health emergency;

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[129] See A.C. No. 32-2020.

[130] See OCA Circular No. 91-2020.

2. A.C. No. 33-2020 further provides that motions for bail as a matter of right, in accordance with Rule 114, Section 4 of the Revised Rules of Criminal Procedure,[131] and proceedings on provisional dismissal[132] are applied for and argued electronically, as implemented by OCA Circular No. 89-2020.

3. Approval of the bail and the consequent release order shall likewise be electronically transmitted by the Judge on duty to the Executive Judge who in turn shall electronically transmit the same within the same day to the proper law enforcement authority or detention facility to enable the release of the accused. The electronically transmitted approval of bail and release order by the Executive Judge shall be sufficient to cause the release of PDL concerned.[133]

In light of the imposition of modified community quarantine in certain areas and the transition into general community quarantine for the rest of the country, the courts implemented hearings through videoconferencing in a number of pilot courts through A.C. No. 37-2020,[134] as implemented by OCA Circular No. 93-2020,[135] which will cover all PDLs and may apply to all stages of newly-filed and pending criminal cases including, but not limited to, arraignment, pre-trial, bail hearings, trial proper, and promulgation.

It is hoped that these measures are sufficient to address the exigencies brought about by the current pandemic for the benefit of PDLs, including the petitioners herein.

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[131] A.C. No. 33-2020, No. 4.

[132] OCA Circular No. 91-2020.

[133] A.C. No. 33-2020, No. 5.

[134] Re: Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated April 27, 2020.

[135] Re: Implementation of Supreme Court Administrative Circular No. 37-2020 on the Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing, dated May 4, 2020.

IV.

In sum, the Court acknowledges the petitioners' and all other PDLs' current predicament in the face of this pandemic. Thus, prudence and exigency dictate that instead of denying the petition outright, the better course of action is to refer the petition to the respective trial courts for the conduct of bail proceedings. In the process, it is my view that the respective trial courts should also look into the petitioners' claims for violations of their rights under domestic and international laws to ensure that they are not subjected to arbitrary and inhumane conditions in their confinement.

Indeed, the Court is not unmindful of the current situation faced by PDLs. The COVID-19 pandemic has become an unprecedented public health crisis, and the sickness and death it leaves in its wake have forced all of us to a reckoning. The incredible scale of the present problem has perhaps even begun to tug at the seams of the familiar limits of institutional jurisdictions. In the clamor to quell the spread of the virus on the one hand and address competing public concerns on the other, government institutions are hard-pressed at confronting issues that fall within the respective provinces of their agencies.

It is also pivotal that all material institutions acknowledge that the issue of congestion in our prison systems, along with the manner by which it has been brought before the unforgiving light of this global pandemic, finds its root in an interplay of system failures, over which the penal system is not the sole author. **The sheer expanse of this crisis requires the synergized response that must outlive the present emergency, from all three branches of government and all relevant stakeholders.** Any measure that is less than farsighted and all-inclusive is a mere stop-gap that is myopic and wasteful at a time such as this.

For its part, the Court, as the ultimate dispenser of justice, has taken concrete steps to address the matter at hand in ways allowed by law, as seen from the previous enumeration of issuances. To my mind, these circulars afford the petitioners sufficient reliefs for the protection of their rights.

Verily, the Court has the unenviable role of balancing the scales of justice. In this exceptional time, justice compels the Court to exercise compassion and humanity but only within the parameters granted to it by law. The same spirit that moves the Court to address the concerns of PDLs also constrains it not to overstep its bounds.

It is in this light that I **CONCUR** in the Court's disposition to **refer** the present bail and recognizance applications to the respective trial courts where the petitioners' criminal cases are pending, without prejudice to any relief available to the parties under the circumstances, and to **direct** the aforesaid trial courts to act on the petitioners' cases with *utmost dispatch*.

SEPARATE OPINION

LAZARO-JAVIER, *J.*:

Prefatory

Petitioners allege a **common denominator** – they are **most vulnerable** to catching the SARS-COV-2 and getting infected with COVID-19.[1] They are detention prisoners or pre-judgment persons deprived of liberty (PDLs) who fall into two (2) categories, either **sickly older people** (afflicted with severe medical conditions) or **pregnant women**, who because of the crimes charged have **no access to bail as a matter of right**.

They seek **provisional liberty** either on bail for a specified amount or on recognizance for themselves and others similarly situated as may be determined by a Prisoner Release Committee.

Petitioners approach their grievance in a rather **novel** fashion. They claim that their plea **does not fall** into any of the **remedies in the ordinary course of law**. While they assert **rights** which

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[1] World Health Organization at https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it (last accessed April 9, 2020). I refer to both SARS-COV-2 and COVID-19 as COVID-19.

they say they **should already be enjoying as PDLs**, an allegation that in **ordinary times** would **found a cause of action** for an **action**, they make the assertion in this case **only** in support of their call for the exercise of our **equity** jurisdiction, *specifically humanitarian considerations in light of our current state of public health emergency*.[2]

They invoke the ruling in ***Enrile v. Sandiganbayan***[3] and the **relief** or **remedy** for the **infringement** of **petitioners' rights** as **PDLs** that **increases** the **risks** they each face as detainees from COVID-19.

Petitioners are **not alone** in their quest for remedial measures in this time of the pandemic.

As they assert, justice systems of **other** countries have **re-engineered** their **approach to detaining persons** accused of committing offenses because of the present pandemic.[4]

Respondents, through the Office of the Solicitor General (OSG), reduce the issue here to "whether the State can provide medical care to the petitioners while maintaining their confinement *vis-à-vis* the threat of COVID-19." They then enumerate the collective efforts of the justice sector at curbing the threat of COVID-19 among PDLs, which according to the OSG eliminate the need to grant temporary liberty to petitioners on bail for a specified amount or under recognizance.

Indeed, the world has undergone a **swift transformation** through the rise of COVID-19. The **criminal justice system** is **not immune** from the changes being forced upon everyone living through this time. The **electronic filing** of the present petition and the physical closure of our courts nationwide, for example, were just months ago **unimaginable**. Since then,

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[2] Proclamation No. 922, series of March 8, 2020 at https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf (last accessed April 9, 2020).

[3] G.R. No. 213847, August 18, 2015.

[4] See pp. 17-19.

prospects of our return to normalcy has inevitably been prefaced with the cautious caveat of a **new normal**. How this **new normal** would evolve and ultimately impact on the **administration of justice** and the **practice of law** remains to be seen.

Equity jurisdiction — what is it and is it necessary?

The **history** of our court system is **alien** to the **distinction** between a **court of common law** and **court of equity**. In a manner of speaking, we simply woke up one day having a court system that **did not have** these two sides of the same coin. Nonetheless, our *Civil Code* **has demanded of us judges** that *"[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws,"* and *"[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."*[5]

The history of the court of common law and the court of equity began with the legal reforms of King Henry II after 1154.[6] Administration of local courts became more centralized.[7] Thus:

> Henry II created a unified system of law "common" to the country as whole. This was in part the result of his practice of sending judges from his own central court to hear disputes throughout the country. Disputes were resolved on an ad hoc basis according to what the customs were interpreted to be. The king's judges then returned to the court, discussed their cases with other judges in a manner that permitted and required them to be used for the interpretation and application of the law in future cases. **In this way, the laws of England developed as "common-law" – the collection of judge-made decisions based on tradition, custom and precedent, as opposed to laws derived from statutes, a civil code or equity.**[8]

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[5] Civil Code, Articles 9 and 10.

[6] *Geophysical Service, Inc. v. Sable Mary Seismic, Inc.*, 2008 NSSC 79 (CanLII), <http://canlii.ca/t/1wgvc>, retrieved on 2020-04-08.

[7] *Ibid.*

[8] *Ibid.*

By 1215, a court system was created:

> The Court of Exchequer was developed to hear disputes where the Crown sought money it claimed it was owed and answered claims for money said to be owed by the Crown. The Court of Common Plea developed as a local court for civil trials between individuals. The Court of King's Bench developed as a court for more serious disputes and for the hearing of criminal cases. . . .[9]

Over time, procedure in the courts of common-law became **convoluted** and **ossified**.[10] Litigants who felt they had been **cheated** or **had not been given justice** by courts of common-law petitioned the King in person.[11] **From this developed a system of equity**, administered by the Lord Chancellor, in the Court of Chancery.[12]

It was observed that:

> [51] The **basis for decision-making** in the Court of Chancery was **equity**. It was a **court of conscience** and not **a court of rules or laws**. An important distinction between court of equity (Chancery) and courts of law was that a jury had no role in interpreting the law or in matters of conscience. Only a judge could dispense equity.
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> [52] In courts of law, the opposite was the case. The jury answered questions of fact, originally by its own investigation and later solely from the evidence produced during a trial. **Equity and law were frequently in conflict,** and **litigation could continue for years as courts of law countermanded courts of equity** and **vice versa.** This was so even though, by the 17th century, it was established that equity should prevail over the common law.
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> [53] By the mid-19th century, **disputes between**, and **conflicting orders issued by, the courts of law** and **the courts of equity** had **led to** a **breakdown of the English legal system** – as reflected in Charles Dickens' Bleak House – and the **merger of the courts of**

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[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.*

law and **the courts of equity by legislation** in 1873 and 1875. While the **principles of law and of equity remained distinct** for a time after merger, **legislation created** a **unified court system**.

[54] Various statutes, both in England and in those common-law countries which derive their legal system from England, have **modified the practices and procedures by which courts determine matters of law and of equity**. For the most part they are based on the practices that pre-existed the English Judicature Act of 1873.[13]

The legislation that merged courts of law and court of equity **conferred no new rights** but they **confirmed the rights** that previously existed in these courts. The law **merely gave** to the courts the **jurisdiction** previously exercised by both the courts of common law and the Court of Chancery.[14] Thereafter, there was the **complete consolidation** of *equitable* and *legal* **jurisdiction** and **practice and procedure** for both *equitable* and *legal* remedies in the courts.[15]

Equitable and **legal remedies differ from each other**. Successful litigants are **entitled** to **legal remedies**.[16] The principal legal remedy is damages.[17] There is however **no entitlement** to **equitable remedies**.[18] By the **very nature of equity**, they are **granted by** the **discretion** of the court and are **unlimited**.

Equitable remedies are called ***such*** because they ***originated*** *from* the **court of equity**. However, through time, these once flexible **equitable remedies have** *themselves* **ossified into distinct rules** *like the common law remedies* they had meant to correct for being inflexible. Among the principal equitable remedies are declaratory judgments, injunctions, specific

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[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

performance or contract modification, accounting, rescission, estoppel, proprietary remedies such as constructive trusts and tracing, subrogation, and equitable liens.

In the Philippines, it **does not make sense** to distinguish between common law and equitable jurisdictions and remedies except for historical purposes. This is because our jurisprudence has evolved and developed remedies fairly independently of their historical roots and has treated remedies **without** such distinctions. Thus, the Court does **not** have to refer to its supposed equity jurisdiction when it provides purportedly equitable remedies, and neither does the Court dispense supposed equitable remedies only through its purported equity jurisdiction.

The **evolution** of equitable remedies into **distinct rules** themselves demonstrates that **equity** is **far from** being a **willy-nilly** justice system. **Flexible principles** arising from the **exercise of equitable jurisdiction** and **their constant application** have developed a **juridical experience** that **crystallized** these **principles** into **defined rules**. In the words of a North American judge:

> In recent years, there has been a **marked trend away from strict rules and towards flexibility** and **importing into the law** what can be described as **broad moral principles of reasonableness, fair dealing** and **good conscience**. These **principles point the judge deciding a case in a certain way, but they lack the precision and certainty of black letter rules** of law. Most of these doctrines **spring from** the tradition of **equity**. Historically, the **common law** was **characterized by its relatively rigid rule-based approach**, while **equity, the "court of conscience,"** came along to **relieve against the rigours** of the common law. But it was **never quite as simple as** that because the **common law method of developing rules in a case by case fashion has an inherent flexibility**. The **common law has gone through periods** characterized by **strict adherence to black letter doctrine and rigid application of rules**, while at **other times**, it has **emphasized** the need for **flexibility, growth** and renewal. **Equity** as well has **moved back and forth along the continuum**. In its **origins**, **equity** was based on **broad principles of morality and good conscience, but as experience was gained with the application** of those principles, they **tended to crystallize into rules** and **equity**

itself **became rigid**. By the late nineteenth century and early twentieth century, both the common law and equity appear to have reached this point . . . In the latter part of the twentieth century, there has been something of a resurgence of the spirit of equity. . . . **Reliance on broad statements of principle** rather than strict rules arises not only from the desire for **flexibility** and the **need to ensure justice** in the particular case. It is **also characteristic of the first step in a fundamental change in the law**. When a **new doctrine** emerges, it may only be possible to sketch out in **general terms**. **Over time, cases are decided, gaps are filled and there develops a body of doctrine.** The good neighbour duty of care principle in negligence law pronounced by Lord Atkin in Donohue v. Stephenson provides an example of common law rule which began as a broad statement of principle . . . I would suggest that the modern principles relating to fiduciary, unjust enrichment and constructive trust fall into a similar category.[19]

In this sense, it may be said that petitioners **have loosely used** the **concept of equity** to found their plea to be released on bail or recognizance when **allegedly** they are otherwise not allowed to. As we have said, we **never had that division** between a court of common law and a court of equity, and in reality, our legal system is **a hybrid** or **a cross** between the common and the civil law jurisdictions. As well, our jurisprudence **does not allow** equity to supplant and contravene the provision of law clearly applicable to a case, and conversely, **cannot give** validity to an act that is prohibited by law or one that is against public policy.

In this light, **respondents' objection** to the use of the word **"humanitarian"** in their Comment's prefatory may **appear to be justified** since petitioners **could have grounded** their prayer upon **established law** or **jurisprudence** without having to summon the **amorphous** and **value-laden adjectives** *humanitarian* or *equitable*.

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[19] *Ibid.*, quoting Ontario Court of Appeals Justice Robert J. Sharpe's address on October 1st, 1997 to a National Judicial Institute Conference of Justices of the Ontario Superior Court of Justice on the application and impact of judicial discretion in commercial litigation.

Verily, it is **not necessary** to invoke **equity** or **humanitarianism** so courts could have the **needed flexibility to do justice** in a particular case under specifically unique circumstances, or to be able to rely upon broad moral principles of reasonableness, fair dealing and good conscience in resolving issues. **Articles 9**[20] and **10**[21] of our ***Civil Code*** already provide the **legal bases** for doing so. And, as regards bail, our **jurisprudence** has already allowed **inroads** of **flexibility** and **broad moral principles** to justify what others have believed to be a **just outcome**.

Bail rules — is it feasible to navigate through and accommodate flexibility and broad moral principles?

Bail is **not a matter of right** for an accused charged with a crime punishable by death, *reclusion perpetua*, or life imprisonment. This rule has been **interpreted** and **practiced** as requiring the detention of an accused until he or she has sought a bail hearing **and** the prosecution is **not** able to prove that the evidence of his or her guilt is strong.[22]

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[20] Article 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws. (6)

[21] Article 10. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

[22] By way of an aside, I see this interpretation and practice to be skewed for being clearly inconsistent with texts of the constitutional provision and the Rules of Court and the effect of the allocation of the burden of proof. As written:

Constitution, Article III, Section 13. All persons, **except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong**, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. . . .

Rules of Court, Rule 114, Section 7. Capital offense or an offense punishable by *reclusion perpetua* or life imprisonment, not bailable. — **No person** charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, **shall be admitted to bail when evidence of guilt is strong**, regardless of the stage of the criminal prosecution.

The Enrile two-step test for provisional liberty.

The **availability of bail** to an accused charged with crimes punishable by death, life imprisonment or *reclusion perpetua*, however, has been **modified** to significant extents by our ruling in ***Enrile v. Sandiganbayan***.[23]

In ***Enrile***, despite the absence of a bail hearing where the prosecution could have proved that the evidence of guilt is strong, the Court allowed Senator Enrile to post bail on account of his **exceptional circumstances** (*i.e.*, advanced age and ill health requiring special medical attention) and the bottom line that **he was not a flight risk**. Despite the vigorous and well-reasoned **Opinion** of Justice Leonen, the Court made room for **flexibility** and **broad moral principles**, as we **re-stated** the rule from ***Dela Rama v. The People's Court***[24] as follows:

> Bail for the provisional liberty of the accused, regardless of the crime charged, should be allowed independently of the merits of the charge, **provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life**. Indeed, **denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration** during the trial. . . . It is relevant to observe that granting provisional liberty to Enrile will then **enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice**. This will not only aid in his adequate

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The texts say that bail is to be denied when the evidence of guilt is strong. There is a precursor to the denial of bail. More, the burden is on the prosecution to establish that precursor. The burden signifies that a court is not to presume that the evidence of guilt is strong. The prosecution has to actually discharge its burden by proving that the evidence of guilt is strong. Prior to satisfying this standard of proof, it cannot be the case that bail is already denied, because bail can be denied only after the prosecution has already discharged its burden by proving that the evidence of guilt is strong. Prior to satisfying this standard of proof, the default is the availability of bail as a matter of right. This, however, is just my irreverent opinion about this aside.

[23] G.R. No. 213847, August 18, 2015.

[24] 77 Phil. 461 (October 2, 1946).

preparation of his defense but, more importantly, will **guarantee his appearance in court for the trial**.

Enrile has ingrained in jurisprudence a **two-step test** to authorize the grant of bail when it is **discretionary** to do so: **(a)** the detainee will not be a flight risk or a danger to the community; and **(b)** there exist special, humanitarian and compelling circumstances. This **test** involves the **balancing of factual and legal factors** before resolving to grant or deny the application for bail.

Through ***Enrile***, our jurisprudence **has thus incorporated** the **degree of flexibility** and the **broad moral principles** to the **black-letter law on bail as a matter of discretion** to the **extent necessary** to serve complete justice in particular situations, first, in ***Dela Rama***, and later, in ***Enrile***.

Rather than an exercise of equitable jurisdiction in its strict historical sense, the **reasoning** and **disposition** in *Enrile* is an **illustration** of the *Civil Code* provisions that *"[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws," and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."*

In ***Enrile***, the Court **did not reference** equitable principles in the **strict historical sense** of a body of rules as a counterpoint to those established among courts of common law. Perhaps in the **loose sense** of equity being the equivalent of flexibility and broad moral principles, ***Enrile*** stands for this proposition **and more**.

Enrile was **expressly conscious to build on earlier case law** to serve complete justice to Senator Enrile's circumstances. It is **not** a **random** or a **cowboy sense of justice** that it was serving, but one **anchored on rules founded a long time ago**.

Enrile thus represents what has been said about **common law being itself flexible** and **accommodating of broad moral principles** without having to distinguish it from and summoning **equity**. We were able to **navigate through the established rules** on bail as a matter of discretion to **arrive at** a conclusion

that we thought would **not** have been possible under established rules **but nonetheless consistent** with the **stability** and **predictability** valued in every legal system.

The learned Justice Leonen reiterates his **principled stand** to dissent from the doctrine set forth in ***Enrile*** and therefore to refuse applying its ruling in subsequent cases. I deeply admire his consistency in this regard. But we have to ask ourselves, what are we to do with this *En Banc Decision*?

Article 8 of the *Civil Code* states that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Enrile is a clear and categorical statement of **positive law** pursuant to the Court's constitutional and inherent power to "settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,"[25] and "to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts."

For better or for worse, until overturned, our jurisprudence has to reckon with ***Enrile*** as a rule that may be invoked and should be applied whenever the circumstances of a case call for it.

As judges, we are "the visible representation of the law, and more importantly, of justice. It is from [the judge] that the people draw their will and awareness to obey the law. For the judge to return that regard, [the judge] must be the first to abide by the law and weave an example for others to follow. Consequently, the last person to refuse to adhere to the directives of the Court . . . is the judge himself."[26]

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[25] Constitution, Article VIII, Section 1 and Section 5 (5).

[26] *Imbang v. Del Rosario*, A.M. No. MTJ-03-1515, February 3, 2004.

On the other hand, my learned senior brethren, Justice Caguioa, specifically referred to my opinion on ***Enrile*** as follows:

> x x x. For the same reason above, I disagree with the position that *Enrile* has ingrained in jurisprudence a two-step test to authorize the grant of bail when it is discretionary to do so: (a) the detainee will not be a flight risk or a danger to the community; and (b) there exist special, humanitarian and compelling circumstances. **The ruling in *Enrile* deviates from entrenched legal principles concerning bail and it cannot be used to create doctrine for subsequent cases.** To reiterate, petitioner therein was allowed to post bail even though he was charged with an offense punishable by *reclusion perpetua*, without any showing through a hearing that the evidence of his guilt is not strong. **Having skirted the minimum requirements under the Constitution regarding bail, the ruling in *Enrile* should not be used to set precedent for cases involving discretionary bail.**
>
> Moreover, **the grant of bail in *Enrile* on the basis of petitioner's age and health rests on shaky ground** as the circumstances therein were quite peculiar. As illustrated in Justice Leonen's Dissenting Opinion therein:
>
> > Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.
> >
> > **The grant of bail, therefore, by the majority is a special accommodation for petitioner.** It is **based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court.** The Sandiganbayan should not be faulted for not shedding their neutrality and impartiality. It is **not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people** they represent.
> >
> > The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross

examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

Furthermore, **the majority's opinion** — other than the invocation of a general human rights principle — **does not provide clear legal basis for the grant of bail on humanitarian grounds**. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case **leaves this court open** to a **justifiable criticism** of granting a **privilege ad hoc: only for one person** — petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by *reclusion perpetua* or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for *certiorari* to be filed before this court. This will usher in **an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on** the presence or absence of **human compassion on the day** that justices of this court deliberate and vote.

Ergo, a **reading of the ruling in *Enrile* shows that there is no discernible standard** for the courts to decide cases involving

discretionary bail on the basis of humanitarian considerations. The ineluctable conclusion, as opined by Justice Leonen, is that **the grant of bail by the majority in *Enrile* was a special accommodation for petitioner therein**. Thus, at the risk of being repetitious, **the ruling in *Enrile* should be considered as a stray decision** and, echoing Justice Bernabe, must likewise be **considered as *pro hac vice***. It **should not be used as the benchmark in deciding cases involving the question on whether bail may be allowed on the basis of humanitarian considerations**. Notably, **under the Rules of Court, humanitarian considerations** such as age and health **are only taken into account in fixing the bail amount** after a determination that evidence of guilt against the accused is not strong.

However, petitioners are not left without any other recourse that is legally permissible. Despite the inapplicability of *Enrile* and in view of the novel nature of this case, the Court should not be precluded from affording petitioners the appropriate reliefs within the bounds of law.

In this regard, a proper bail hearing before the trial court should first be conducted to determine whether the evidence of guilt against the petitioners is strong. This Court, not being a trier of facts, cannot receive and weigh petitioners' evidence at the first instance. Factual and evidentiary matters must first be threshed out in a proper bail hearing, which may only be done in the lower courts. Trial courts are better equipped to assess petitioners' entitlement to bail or recognizance based on the provisions of the Constitution, the relevant laws, and the Rules of Court.

Thus, instead of dismissing the petition outright, I join Justice Bernabe's recommendation **to refer or remand this petition to the concerned trial courts.**

Exigency is better served if the trial courts **where the criminal cases of petitioners are respectively pending will hear their bail petitions and receive their evidence.**

With all due respect, I truly cannot read ***Enrile*** through Justice Leonen's eagle eyes because his reading is simply **not** the Supreme Court's decision. Justice Leonen was very emphatic about the Court's favorable treatment of Senator Enrile, but the Majority chose **not** to side with him and **to** believe otherwise.

The Majority did **not** describe ***Enrile*** as a ruling for the **sole** and **exclusive benefit** of Senator Enrile. The Majority

could not have said that ***Enrile*** was ***pro hac vice*** because that would have **only validated** what Justice Leonen has long been articulating about the decision – **that we have a justice system for the powerful and another justice system for the powerless**. Any reading of ***Enrile*** will **never** elicit that admission.

The Majority, I am sure, especially then Chief Justice Lucas P. Bersamin, will **never** admit enunciating a **ground-breaking doctrine** only to favor and pander to "Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by *reclusion perpetua* or life imprisonment. . . . those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country."

Admittedly, the present *En Banc* has the authority to reject and set aside the doctrine laid down by the Court *En Banc* in ***Enrile***[27] by characterizing it as ***pro hac vice***. **But** this ruling will just be a **euphemism** for what Justice Leonen has been dissenting about — that the Court lays down doctrines to pamper the powerful, to grant a "privilege *ad hoc*: only for one person," that ***Enrile*** applies only to Senator Enrile because of who and what he is.

Another **unfortunate** consequence of characterizing Senator Enrile's eponymous hit ruling as ***pro hac vice*** is **to apply** the **rejection** of the ***Enrile*** doctrine **retroactively**.[28] **During this**

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[27] Article VIII, Section 4 (3) of the 1987 Constitution provides: "(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

[28] *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007 ruled "It is a settled precept that decisions of the Supreme Court can

pandemic, an **exceptional** circumstance, it **at once** denies petitioners at least their **right to invoke** the ***Enrile*** doctrine to their cause, for the simple reason that it was crafted and **especially tailored-fit solely** for Senator Enrile's benefit.

I am **not** willing to travel this extent of unfairness. It **was the Court** that put the doctrine out there. If the Court is to pull it back, at least **allow those who have already invoked it** the benefit of the doubt no matter how marginalized and uninfluential they are. And only thereafter, may the Court set the doctrine aside because the Court supposedly just wants to favor Senator Enrile.

Going forward, I **completely disagree** with the opinions expressed that ***Enrile*** does *not* provide for clear-cut standards to justify release on bail for a specified amount or on recognizance. As stated, ***Enrile*** enunciates a **two-step test** that is more than clear and determinable. The ***Enrile*** test **can even accommodate** Senior Justice Perlas-Bernabe's reference to the **"deliberate indifference" test** as a standard for justifying other forms of custodial arrangements.

Provisional liberty as a relief or remedy for the infringement of every PDL's right against jail congestion.

Ruminations on Justice Leonen's Separate Opinion

A true scholar, Justice Leonen carefully dissects the international and local laws to determine the rights of PDLs as PDLs, and the problematic implementation of these rights. He then narrows down the problem areas among the plethora of these rights to that specific matter which is of public knowledge, or is capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions – the problem of congestion in our holding centers. Thus:

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only be applied prospectively as they may prejudice vested rights if applied retroactively."

> The Court may take judicial notice of the nature of COVID-19 and the long standing jail congestion which has plagued the Philippine jails and how this unresolved crisis is a significant threat to the right to life, health, and security of persons detained in such conditions.

I agree with Justice Leonen that the Court may take judicial notice of jail congestion. This problem has long hounded our holding centers that the Court has once mandated judges to conduct jail visitations in an effort to decrease inmate population and proffer suggestions for better management of these facilities.

I also agree with Justice Leonen that the Philippines has incorporated the minimum standards on the treatment of PDLs in international law into our local laws, and as a result, the minimum standards may be judicially enforced.

I respectfully disagree, however, with the argument that an infringement of these minimum standards, such as the overcrowding in jails, is tantamount to cruel and inhuman punishment, because these minimum standards "operationalize the right against cruel and inhuman punishment."

Our jurisprudence has taken a conservative approach to the constitutional proscription against cruel and inhuman punishment.

Maturan v. Commission on Elections[29] reiterated its conceptualization as extending only to situations of **extreme** corporal or psychological **form** or **character** of the **punishment** rather than its **severity** in respect of its *duration* or *amount*, and —

> . . . applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.

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[29] G.R. No. 227155, March 28, 2017.

Echegaray v. Secretary of Justice[30] *excluded* from the meaning of cruel and inhuman punishment the infliction of pain or distress that is **merely incidental** in **carrying out** the punishment. It *rejected* cruelty as the mere infliction of pain or suffering, because if it were, no one would ever be punished at all. ***Echegaray*** held that "[t]he cruelty against which the Constitution protects a convicted man is **cruelty inherent in the method** of punishment, **not the necessary suffering involved in any method** employed to extinguish life humanely."

While the **minimum standards on the treatment of PDLs** are no doubt part and parcel of protecting, defending and promoting the dignity of PDLs, **their infringement** does **not** rise to the level of **what we have conceived** to be **cruel and inhuman punishment**. The minimum standards have **nothing to do** with the **form**, **character**, or **method** of punishment, and though subpar PDL conditions may affect the **severity** of the punishment meted out, this is just **incidental** to the implementation of the punishment.

It is true that **jail congestion** impacts more on the PDLs' right to life and its cognate rights under Section 1, Article III of the *Constitution* **amidst the pandemic** than during ordinary times.

It is **equally true**, however, that if the right to life contemplates the existence only of **negative rights** or **rights of non-interference**, in order **to establish a breach of the right to life**, a claimant **must first show** that he or she **was deprived** of his or her right to life and its cognate rights, and **then must establish** that **the State caused such deprivation** without due process of law. **Active State interference** with one's life, security or health by way of some **affirmative**, **positive**, or **definitive** act will be **necessary** in order to engage the protection of this right. There will **also** be a **need to establish a causal link** between State action and harm alleged to have been suffered. This **requires** searching for a **causal nexus** tying the State to

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[30] G.R. No. 132601, October 12, 1998.

petitioners' inability to exercise their right to life. Such a **nexus** could only ever be established by pointing to a **positive state action giving rise to the aggrieved condition**.

The Court has thus held:

> The legitimacy of a government is established and its functions delineated in the Constitution. From the Constitution flows all the powers of government in the same manner that it sets the limits for their proper exercise. In particular, **the Bill of Rights functions primarily as a deterrent to any display of arbitrariness on the part of the government or any of its instrumentalities**. It serves as the general safeguard, as is apparent in its first section which states, "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." Specifically, **due process is a requirement for the validity of any governmental action amounting to deprivation** of liberty or property. It is a **restraint on state action** not only in terms of what it amounts to but how it is accomplished. Its range thus covers both the ends sought to be achieved by officialdom as well as the means for their realization.[31]

Here, we **cannot fault respondents** for the **increased risks** to life, security and health brought about by COVID-19 **even among the inmates**, including petitioners, of our **overcrowded** jail facilities. In a manner of speaking, paraphrasing one classic song, respondents *did not light the fire* as it seemed *to have always been burning since the world has been turning*. They **have not engaged** in any **definitive**, **affirmative** or **positive State action** to cause such increased risks of deprivation.

Nevertheless, **even if** the right to life does **not** contemplate the existence **only** of **negative rights** (*i.e.*, to identify some **definitive**, **affirmative** or **positive** act, **in contrast** to **mere inaction**, on the part of the State which could be said to constitute an interference with this right and consequently ground the claim of a violation) and has **positive rights dimension** (*i.e.*, whether the right to life **imposes on the State a duty to act**

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[31] *Serrano v. National Labor Relations Commission*, G.R. No. 117040, January 27, 2000.

where it has not done so), I would have **reached the same conclusion** that respondents **did not breach** petitioners' or any other PDL's right to life **amidst the increased dangers** to life, security and health **caused by** the **pandemic**.

If the right to life includes a **positive dimension**, such that it is **not merely** a **right of non-interference but also** a **right of performance**, then it is **violable** even by **mere inaction** or **failure** by the State **to actively provide the conditions necessary** for its fulfilment, or to **alleviate petitioners' condition**, and **not** on whether the State can be **held causally responsible** for the aggrieved's condition in the first place.

Here, respondents **have taken positive measures** to minimize the spread of COVID-19 within holding centers and the infection of petitioners and other PDLs of this disease. They have **not** remained idle and inactive to simply let the PDLs be afflicted. They have **actively endeavoured to block** the conditions necessary for the virus' contagion and to **alleviate petitioners' increased risks** to this viral infection.

While these measures may **not** be enough, their **inadequacy** is **attributable** to so **many varied factors**. These **factors** are **beyond respondents' control** and **levels of authority and responsibility**, and include the **unpredictable** nature of the pandemic and, should there be finger-pointing at this time, the **collective and systemic inadequacies not only** of **all** the institutions and stakeholders in our criminal justice system, **but also** of the entire State machinery responsible for the allocation of limited resources.

We may take **judicial notice** of the **pitfalls** in complying with the minimum standards of the treatment of PDLs. It is **factual** and **accurate** that there is **overcrowding** in most of our jails.

However, **attributing** this setback **solely** to respondents is both unfair and inaccurate. We may take **judicial notice** of the publicly known fact that respondents **do not also want** this dire situation happening in their facilities. But what can they do? The **population** and **facilities** in their holding centers

are the **outcomes of so many variables** outside their control and competence.

Neither will it be **correct** to **remediate** this concern by directing the **release of such number of PDLs** as would match the holding centers' respective capacities.

To begin with, there is **no law** which **requires** this type of relief or remedy for an **innocent slip-up** or **non-compliance** with the minimum standards. **Neither** is it **beneficial**, **desirable** nor **practicable**. In fact, granting **this type** of relief or remedy will put the Court on the spot and in a **compromising slippery slope position** where **we would have to order the release** of a PDL each time a minimum standard is **not** met, simply because of the theory that these minimum standards as to safety, sanitary, and sufficient provisions and facilities *operationalize the right against cruel and inhuman punishment*.

More, the present case is **not about** vindicating the rights of **all PDLs** to the minimum standards of treatment. The petition is about petitioners' concerns, and while petitioners and some of us may **want to extend** its beneficial effects **to other PDLs**, this **only rests on** and is **only due to** the **impact of the pandemic**.

In any event, since the case here is **not** *per se* about the enforcement of the minimum standards, it would **not** be fair and wise **to deal with** the forms of **relief** or **remedy** for the alleged infringement thereof **without** hearing from respondents. **Before crafting the relief or remedy**, respondents **must first be heard to shed light** on the infringement, if any, and its nature and impact, and their justifications for such state of affairs.

Ruminations on Senior Associate Justice Perlas-Bernabe's Separate Opinion

A rock of integrity and competence, Senior Associate Justice Perlas-Bernabe provides a solid legal anchor to the views I have expressed above. While it has not been shown that respondents are responsible for any infringement of the minimum

standards, petitioners must have the opportunity to prove their claims against respondents. Senior Associate Justice Perlas-Bernabe has outlined the framework of the **deliberate indifference test** by which petitioners could proceed for this purpose.

Bail in the time of COVID-19 — quo vadis, whither goest thou?

Petitioners seek bail for a designated amount or upon recognizance as a counter-measure to prevent their COVID-19 infection.

Prisons and justice officials worldwide respond . . . – an overview.

Petitioners are **not** the only ones seeking urgent ameliorative measures at detention facilities.

As the petition has poignantly stressed, which the Court can take judicial notice of, **several other countries** have reacted **swiftly** to beat, or at least so their leaders thought, COVID-19 to the draw. We rely on **online news feeds** to validate petitioners' claims that detainees or prisoners **have indeed been released** in other countries as one of the countermeasures against the virus and its disease. We **cannot vouch** however for the **circumstances** of their detainees' or prisoners' release and the **issues** and the **decision-making process** that went with this **countermeasure**, if it were the result of a **political**, **administrative**, or **judicial** decision.

The **World Health Organization (WHO)** has published an interim guidance on how to deal with the virus and its disease in prisons and other places of detention, entitled "Preparedness, prevention and control of COVID-19 in prisons and other places of detention." **WHO** describes the material and its rationale, as follows:

The guidance **provides useful information** to staff and health care providers working in prisons, and to prison authorities. It **explains**

how to prevent and address a potential disease outbreak and stresses important human rights elements that must be respected in the response to COVID-19 in prisons and other places of detention. Access to information and adequate health care provision, including for mental disorders, are essential aspects in preserving human rights in such places.

Controlling the spread of infection in these settings is essential for preventing large outbreaks of COVID-19. The guidance aims **to protect the health and well-being of all those who live, work in and visit these settings** and **the general population at large**. People deprived of their liberty, and those living or working in enclosed environments in their close proximity, are likely to be more vulnerable to the COVID-19 disease than the general population. Moreover, **correctional facilities may amplify and enhance COVID-19 transmission beyond their walls**. According to the newly published WHO guidance, the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons.[32]

Indonesia has released nearly 23,000 prisoners out of the projected release of 30,000 prisoners who have served two-thirds of their respective sentences.[33] This is meant to reduce inmate population and prevent the rapid spread of the virus.[34]

In the **United States**, prisoners serving sentences have been targeted for early release, subject to certain criteria:

In response, officials have begun to take action. On the federal level, Attorney General William Barr released a memo last week that ordered the Federal Bureau of Prisons to identify "at-risk inmates

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[32] Preventing COVID-19 outbreak in prisons: a challenging but essential task for authorities, at http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2020/3/preventing-covid-19-outbreak-in-prisons-a-challenging-but-essential-task-for-authorities (last accessed April 10, 2020).

[33] Indonesia releases 22,000 prisoners over COVID-19 fears: Government set to release total of 30,000 prisoners over a week, official says, at https://www.aa.com.tr/en/asia-pacific/indonesia-releases-22-000-prisoners-over-covid-19-fears/1791209 (last accessed April 10, 2020).

[34] *Ibid.*

who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement." His plan, however, has been criticized because these inmates will be identified by an algorithm that the Marshall Project reports is biased toward white people.

And realistically, it's state officials that need to take bolder action: There are only about 226,000 people locked up in federal facilities compared to the nearly 1.3 million in state prisons, according to the Prison Policy Institute. Some have begun to release the incarcerated. Most recently, California announced that it would let out 3,500 nonviolent inmates in the next 60 days — the most drastic measure taken by states so far. New York City Mayor Bill de Blasio also announced the city had released 900 people as of March 31.[35]

In the **Islamic Republic of Iran**, some 85,000 inmates have been temporarily freed, mostly non-violent offenders serving short sentences and some political prisoners.[36]

Afghanistan has taken the same precautionary measure, involving mostly women, young offenders and sickly inmates.[37]

In **Canada**, there has been a clarion call to limit the number of people in detention facilities, encourage the attorneys-general and the provinces, territories, and federally, to persuade police officers, prosecutors, and judges to exercise their discretion

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[35] Why people are being released from jails and prisons during the pandemic, https:www.vox.com/2020/4/3/21200832/jail-prison-early-release-coronavirus-covid-19-incarcerated (last accessed April 10, 2020); see also US jails begin releasing prisoners to stem COVID-19 infections, https://www.bbc.com/news/world-us-canada-51947802 (last accessed April 10, 2020).

[36] Iran has released 85,000 prisoners in an emergency bid to stop the spread of the coronavirus, https://www.businessinsider.com/coronavirus-covid-19-iran-releases-eighty-five-thousand-prisoners-2020-3 (last accessed April 10, 2020).

[37] Afghanistan to release up to 10,000 prisoners to slow coronavirus spread, https://www.thejakartapost.com/news/2020/03/26/afghanistan-to-release-up-to-10000-prisoners-to-slow-coronavirus-spread.html (last accessed April 10, 2020).

and not jail people **if it is not required by public safety**.[38] As a result, it has been observed that "[a] flurry of court decisions suggest that even those accused of violent crimes are winning release. As one judge wrote, the pandemic had '**reordered** the **usual calculus**."'[39]

Indeed, COVID-19 has **taken its toll** on the **normative**, *what we must or ought to do*, and have **altered the narrative** to a **passive reactive new normal**, *what has been done to us, and in response, what must be done by us*.

Our reply . . . — balancing varied interests.

Here, I take petitioners' assertions **very seriously**. Not only for their sakes, but for the sake of the general population, including us. This is because as **WHO** has confirmed, "correctional facilities may amplify and enhance COVID-19 transmission beyond their walls."

We **can take judicial notice** of **materials suggesting** that the COVID-19 situation is **under control in our jails**, and that **prison officials have established isolation facilities** for PDLs who may exhibit even the mildest symptoms of the virus[40] infection as well as **procedures restricting family visits and strict querying protocols** upon admission for signs of this virus.

We may **accept as evidence** the laudable efforts of our jail wardens to curtail or even withdraw altogether the few niceties

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[38] Release or isolate: The debate on how to help people inside Canada's prisons and jails during COVID-19, https:/aptnnews.ca/2020/04/07/release-or-isolate-the-debate-on-how-to-help-people-inside-canadas-prisons-and-jails-during-covid-19/ (last accessed April 10, 2020).

[39] Judges release growing number accused of violent crimes due to COVID-19 fears, https://globalnews.ca/news/6788223/coronavirus-prisons-inmates-released/ (last accessed April 10, 2020).

[40] BJMP puts up coronavirus isolation facility for inmates, at https://news.abs-cbn.com/news/04/09/20/bjmp-puts-up-coronavirus-isolation-facility-for-inmates (last accessed April 9, 2020).

that pre-judgment PDLs had available to them previously, such as religious services. Viewed strictly in the context of COVID-19, that is welcome news.

We may even **take judicial notice** of respondents' **concrete earnest efforts** to **prevent** the **transmission of the SARS-CoV-2 virus** and the **infection of PDLs**, including petitioners, **with COVID-19**, as painstakingly specified in their Comment. We may further **accept** as evidence respondents' claim that MMDJ-4 at Camp Bagong Diwa, Taguig City, the Taguig City Jail-Female Dormitory, Manila City Jail-Female Dorm, and the Manila City Jail-Male Dormitory have **no confirmed cases** of COVID-19.

But we do **not** live in a bubble. We, too, may **take judicial notice** of the fact that this virus is **contagious** even before a person demonstrates signs of infection. Persons can be asymptomatic yet be highly contagious. These **facts are well known in the community** given the proliferation of formal and informal media coverage on COVID-19. We note **how rapidly events have changed** from day to day, with a corresponding rise in the numbers of individuals who are infected, who die, and fortunately, who are cured of this abominable menace.

We may likewise **take judicial notice** of the fact that **recommended physical distancing** and **frequent hand washing** which are required as protection against COVID-19 are **not readily available** while a person is in custody at our facilities. This is **not a criticism** of our facilities much less their administrators. It is **merely a statement of the fact** that our pre-judgment PDLs **cannot adequately physically isolate** or **wash their hands** with frequency in the facilities.

Just **because petitioners have been deprived of their liberty** and **are stuck in jails** in Luzon, they are **already vulnerable** to an **increased risk** of contracting the disease brought about by the virus. We need **not require** petitioners to satisfy the Court that they have **some subjective personal characteristics** for us to accept that each of them is at an **increased** risk of infection. We **do not need evidence** to accept this proposition.

At most, petitioners' alleged **pre-existing medical conditions** render each of them just **even more prone** to infection by this virus and contracting its disease. Their pre-existing medical conditions **make the risk of infection riskier**. *But the absence of these conditions does not remove altogether the risk* that have been heightened as a result of their being in jails. At any rate, from my end, I can **accept as fact** that they each have **pre-existing medical conditions** that put each of them at a **higher than normal risk of infections** generally. I have **no evidence to contradict** their assertions on this point, and I **accept** them.

In view of the **life-changing impact** of COVID-19 upon the totality of our social and economic well-being, the administration of our government, the dispensation of justice, and our individual lifestyles, I am of the view that this **pandemic** constitutes **exceptional and material change of circumstances** that permits us **to look closely** and **with urgency** into petitioners' plea.

The reasoning in ***Enrile*** will **help us resolve** this case.

In ***Enrile***, the Court found that the **greatly elevated health risk** posed to Senator Enrile as a PDL than when he is on bail or under another form of custodial arrangement, is **a factor that must be considered** in evaluating whether to grant discretionary bail. ***Enrile*** posed a **two-step test**: (a) that the detainee will **not be a flight risk** or **a danger** to the community; and (b) that **there exist special, humanitarian and compelling circumstances**.

Here, in the same manner, the **threat** that the **virus** poses to every PDL is **one factor** to be considered in the **balancing of the interests** attending the pre-judgment detention of an accused. It is a **special**, **humanitarian** and **compelling** circumstance that fulfils the **second step** of the test.

It **bears emphasis though** that the existence **and** contagious nature of COVID-19 while **highly relevant** is **not solely determinative**. It is **just one of the factors** that the Court must assess. There are **other concerns**, which specifically deal with **first step**.

As in ***Enrile***, a **factor** in the **first step** is the **flight risk of** the pre-judgment PDL, or in this case, the **PDLs** – *will he or she or they attend court hearings?* Note that there are **so many of them directly seeking the Court's intervention**, which **makes a whole lot of a difference** than when the Court is **dealing with only a single individual** whose court attendance must be secured.

I also articulate **some of the other factors** we must consider:

(i) Is there a **substantial likelihood** or **substantial risk** that the pre-judgment PDL or PDLs would be **committing the same or another crime**, using as contexts the circumstances of the offense with which the pre-judgment PDL or the PDLs is or are charged and their individual personality or personalities?

(ii) Will the grant of bail for a specified amount or upon recognizance **maintain the peoples' trust and confidence in our system of administering justice**, having regard to the pre-judgment PDLs' respective situations, including the apparent strength of the prosecution's case, the gravity of the crime *per se*, the hideous or attenuating circumstances surrounding its commission and the potential for a lengthy term of imprisonment and other criminal penalties?

(iii) Are there **custodial arrangements** by which respondents **could reduce** the **greatly elevated health risk** posed to petitioners as pre-judgment PDLs with pre-existing medical conditions by the COVID-19 disease?

(iv) Will petitioners' **release on bail** be **actually beneficial to them**, that is, will each of them be **actually inoculated** from COVID-19 through such means as physically distancing, protective gears, frequent handwashing, and others that may be required hereafter?

(v) With the **enactment of RA 11469 (2020)**, *Bayanihan To Heal As One Act*, will the Court **not trudge on questions of policy** that are **better left to** the Executive Branch, specifically the *Inter-Agency Task Force for*

> *the Management of Emerging Infectious Diseases in the Philippines (IATF)* under EO 168 (2014) as amended, **to address** under the **doctrines of authentic political question and primary jurisdiction**?

As respondents have clarified, **petitioners' respective offenses** are **serious** and **violent**. Respondents also emphasized that a number of them **failed to report** to their respective courts **after their safe conduct passes** to attend the peace talks abroad were revoked by the Philippine Government. Petitioners were **subsequently arrested** on the basis of warrants of arrest issued against each of them. Respondents also **detailed** each of the detention center's **efforts to combat** the spread and transmission of COVID-19 not only among petitioners but the other PDLs as well.

Beyond the factors which the Court are competent to weigh in, we must consider as well that COVID-19 is *also a* **national health concern**, the **response** to which **impacts** on the **whole fabric** and **every strand** of our polity. Ultimately, it was for this reason that Congress passed RA 11469 (2020), *Bayanihan To Heal As One Act*, so that there will be a **united front** against this **common invisible enemy**.

In this context, there will be **consequences to the plans** already laid down by the IATF if we are to release petitioners, and later, others similarly situated, on bail. **Resources** of the **Executive Branch** will be **diverted** and **used** simply **to monitor** petitioners' whereabouts and activities during the period of national health emergency. If granted, their release could become an **unnecessary distraction** to the current efforts to fight the virus and its disease. As respondents seem to assert in their Comment, petitioners are **better quarantined** at their present detention centers.

The doctrine of political question states:

> Baker v. Cart remains the starting point for analysis under the political question doctrine. There the US Supreme Court explained that:

. . . Prominent on the surface of any case held to involve a political question is found **a textually demonstrable constitutional commitment of the issue to a coordinate political department** or a **lack of judicially discoverable and manageable standards for resolving it,** or the **impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;** or **the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;** or an **unusual need for unquestioning adherence to a political decision already made;** or the **potentiality of embarrassment from multifarious pronouncements by various departments on question**.

In Tañada v. Cuenco, we held that **political questions refer** "to **those questions which, under the Constitution, are to be decided by the people in their sovereign capacity**, or in regard to which **full discretionary authority has been delegated to the legislative or executive branch of the government**. It is concerned with **issues dependent upon the wisdom, not legality of a particular measure**."[41]

I am of the view that RA 11469 has **exclusively committed** to the Executive Branch **actions** and **decisions** pertaining to the **courses of action** to meet the perils brought by COVID-19.

The **release on bail** of pre-judgment PDLs not otherwise qualified for release **but for the perils** of the virus and the disease, **involves an act of discretion** falling under RA 11469. The country is in **actual standstill** because of COVID-19. Necessarily, **if the Court is to act because of the virus and its disease**, the Court **has to defer** to the **wisdom of the Executive Branch**, because our legal order **has exclusively tasked it** to combat the **very cause of and reason for** the action prayed for by petitioners.

In the ultimate analysis, even the **issues that we can decide on our own** as an institution, *i.e.*, whether petitioners would again commit a crime or would be available for the next court date or their release would bring our administration of justice into disrepute, are also **intricately connected to** the over-all response to the pandemic.

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[41] *Vinuya v. Romulo*, G.R. No. 162230, April 28, 2010.

This is **because** once petitioners are released, the courts **will have to rely on the Executive Branch and its officers** to monitor and enforce compliance with the bail plan. This will be **especially complicated** during this period of national health emergency when everyone in the Executive Branch is focused on fighting the virus and the disease it brings. Further, it is the **Executive Branch** that **has the resources** to commit and spend for **alternative custodial arrangements** to keep petitioners safe from COVID-19.

The **doctrine of primary jurisdiction** articulates that "courts will **hold off from determining** a controversy involving a **question** within the jurisdiction of an administrative agency, particularly when **its resolution demands the special knowledge, experience, and services** of the administrative tribunal to determine technical and intricate matters of fact."[42] The country's law has **now entrusted to the Executive Branch, especially the IATF**, the authority to decide upon how to go about **combatting** the spread of the virus and its disease **everywhere*, including our courts, penitentiaries and detention or holding facilities*. Full discretionary authority** has been **delegated** to this administrative office as regards this broad matter, by virtue of its **expertise** and **specialized knowledge**.

I say with a great deal of confidence that there would **potentially** be a **great deal of embarrassment and confusion** should there be **multifarious pronouncements** by various departments on this pressing concern. More, these pronouncements could be **deadly** and **costly** if made **unilaterally without coordination** or **consultation with** the Executive Branch.

Balancing varied interests – a summary.

Of all **the issues I have canvassed** *vis-à-vis* petitioners' plea to be released on bail for a specified amount or upon recognizance, the **things that have been established** are:

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[42] *Cordillera Global Network v. Paje*, G.R. No. 215988, April 10, 2019.

— the **extremely contagious nature** of **COVID-19**,

— the **likelihood of transmission** of the virus and the disease **inside detention facilities among PDLs**, *unless intervention measures are put in place*,

— the **difficulties in achieving physical distancing, providing protective gears**, and **accessing frequent handwashing**,

— the **increased risk to petitioners** as a result of their **detention** and **pre-existing medical conditions**,

— respondents' **concrete earnest efforts** to **prevent** the **transmission of** and the **infection with COVID-19** of **PDLs** including petitioners, and

— the **absence of confirmed cases** of COVID-19 at MMDJ-4 at Camp Bagong Diwa, Taguig City, the Taguig City Jail-Female Dormitory, Manila City Jail-Female Dorm, and the Manila City Jail-Male Dormitory.

While the facts about the **extreme contagious nature** of COVID-19 are real, and **existing concerns about the state of our detention facilities** are **highly relevant**, they are **not** the only factors **determinative** or **dispositive** of petitioners' plea.

We also **have to take into account** respondents' and other jail wardens' **concrete efforts to put into place protective measures** against the virus.

Further, there is a **host of other issues I believe petitioners have to address**, for which **they provided no answers**, and to date **have not suggested** any.

In **summary**, in these very challenging times, even as we **fully recognize** the potential **harmful health impact on detained persons** of the virus, the Court **must balance** *what respondents in particular have been doing and will do to keep PDLs healthy and alive as well as the legal requirements* of, one, **adhering** to the **legislated policy** of having *just the compass of the Executive Branch as the single baton* in the united fight against COVID-19 for our common collective protection, and

two, **sustaining** *our role* in the **proper functioning** of our **legal system** and the **administration of justice**.

Separate Opinion of Justice Delos Santos — some points to ponder upon. . .

For the most part, I concur in the ***Separate Opinion*** of my esteemed colleague, Justice Delos Santos. May I however respectfully forward some of my thoughts on a very few items that in my humble opinion could be subject to unintended interpretations.

One. I disagree with the reasoning that:

> First, the general import of the terms in Section 4 (a) of the Bureau of Corrections Act in relation to the Nelson Mandela Rules clearly show that such provision is not judicially-enforceable.
>
> . . . . . .
>
> The phrase "in compliance with established United Nations standards" in Section 4 (a) of the Bureau of Corrections Act is so **generic** that it clearly appears to be **silent regarding the manner of its implementation**. . . .
>
> . . . . . .
>
> As to the issue of specific implementation, the following phrases of the afore-cited Nelson Mandela Rules stand out: (a) "reasonable accommodation and adjustments"; (b) "full and effective access to prison life on an equitable basis"; (c) "shall meet all requirements of health"; (d) "cubic content of air, minimum floor space, lighting, heating and ventilation"; (e) "special accommodation"; and (f) "[a]rrangements shall be made." All of these phrases do not provide specific details as to the manner of implementation. . .
>
> Second, the implementation of the Bureau of Corrections Act is dependent on the available funds of the Bureau. (emphases supplied)

To begin with, primary and subordinate legislations would almost always be couched in general terms that understandably would lack details. Such terms as "reasonable," "equitable," "circumstances" and others are so common among public and private legal instruments, **but it does not mean** that these

otherwise binding documents would **not be judicially enforceable**.

To illustrate, the definitions of "probable cause" and the various other standards of proof (*e.g.*, beyond a reasonable doubt, preponderant evidence, substantial evidence) use the same words as "reasonable," "circumstances," *etc*., **yet we never ever complained** that we cannot enforce them.

Indeed, such ambiguous terms are meant to be **questions of fact** whose **resolution** must be grounded in the specific facts and circumstances established by evidence or supporting allegations. Their ambiguity is **clarified** by the process of receiving evidence or submissions, and in the end, a court is able to define what "reasonable" and "equitable" concretely signify.

Hence, in one case, this Court was confronted with the issue of "whether there is a 'counteraction' of forces between the union and the company and whether each of the parties exerted 'reasonable effort at good faith bargaining'"[43] **but we did not decline to rule on this issue because of the ambiguity of the standard**. Instead, we said "whether there was already deadlock between the union and the company is likewise a question of fact. It requires the determination of evidence to find. . ."

I also **disagree** with the thought that **budgetary restrictions and considerations** are factors in determining the **existence** of a right and its **enforceability**. I will of course be the first to **concede** that in the **"implementation"** of a statutory program, **budget becomes a critical factor**. But this weighing does **not** happen at the **initial stage** where the **existence** of a right and its **enforceability** are being determined. **Budget** could be a **factor** in **fashioning** the **appropriate remedy** or **relief**, and **assessing** the **reasonableness** of the **compliance** with the **remedy** or **relief**, but this occurs only *after* a **right** has been determined to **exist** and to be **enforceable**.

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[43] *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corporation*, G.R. No. 170007, April 7, 2014.

In any event, please **recall** that in one of the Court's more celebrated decisions, we decreed:

WHEREFORE, the petition is DENIED. The September 28, 2005 Decision of the CA in CA-G.R. CV No. 76528 and SP No. 74944 and the September 13, 2002 Decision of the RTC in Civil Case No. 1851-99 are AFFIRMED but with MODIFICATIONS in view of subsequent developments or supervening events in the case. The *fallo* of the RTC Decision shall now read:

WHEREFORE, judgment is hereby rendered ordering the abovenamed defendant-government agencies to clean up, rehabilitate, and preserve Manila Bay, and restore and maintain its waters to SB level (Class B sea waters per Water Classification Tables under DENR Administrative Order No. 34 [1990]) to make them fit for swimming, skin-diving, and other forms of contact recreation.

In particular:

(1) Pursuant to Sec. 4 of EO 192, assigning the DENR as the primary agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, and Sec. 19 of RA 9275, designating the DENR as the primary government agency responsible for its enforcement and implementation, the DENR is directed to fully implement its Operational Plan for the Manila Bay Coastal Strategy for the rehabilitation, restoration, and conservation of the Manila Bay at the earliest possible time. It is ordered to call regular coordination meetings with concerned government departments and agencies to ensure the successful implementation of the aforesaid plan of action in accordance with its indicated completion schedules.

(2) Pursuant to Title XII (Local Government) of the Administrative Code of 1987 and Sec. 25 of the Local Government Code of 1991, 42 the DILG, in exercising the President's power of general supervision and its duty to promulgate guidelines in establishing waste management programs under Sec. 43 of the Philippine Environment Code (PD 1152), shall direct all LGUs in Metro Manila, Rizal, Laguna, Cavite, Bulacan, Pampanga, and Bataan to inspect all factories, commercial establishments, and private homes along the banks of the major river systems in their respective areas of jurisdiction, such as but not limited to the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, the Meycauayan-Marilao-Obando (Bulacan) Rivers,

the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other minor rivers and waterways that eventually discharge water into the Manila Bay; and the lands abutting the bay, to determine whether they have wastewater treatment facilities or hygienic septic tanks as prescribed by existing laws, ordinances, and rules and regulations. If none be found, these LGUs shall be ordered to require non-complying establishments and homes to set up said facilities or septic tanks within a reasonable time to prevent industrial wastes, sewage water, and human wastes from flowing into these rivers, waterways, esteros, and the Manila Bay, under pain of closure or imposition of fines and other sanctions.

(3) As mandated by Sec. 8 of RA 9275,[43] the MWSS is directed to provide, install, operate, and maintain the necessary adequate waste water treatment facilities in Metro Manila, Rizal, and Cavite where needed at the earliest possible time.

(4) Pursuant to RA 9275,[44] the LWUA, through the local water districts and in coordination with the DENR, is ordered to provide, install, operate, and maintain sewerage and sanitation facilities and the efficient and safe collection, treatment, and disposal of sewage in the provinces of Laguna, Cavite, Bulacan, Pampanga, and Bataan where needed at the earliest possible time.

(5) Pursuant to Sec. 65 of RA 8550,[45] the DA, through the BFAR, is ordered to improve and restore the marine life of the Manila Bay. It is also directed to assist the LGUs in Metro Manila, Rizal, Cavite, Laguna, Bulacan, Pampanga, and Bataan in developing, using recognized methods, the fisheries and aquatic resources in the Manila Bay.

(6) The PCG, pursuant to Secs. 4 and 6 of PD 979, and the PNP Maritime Group, in accordance with Sec. 124 of RA 8550, in coordination with each other, shall apprehend violators of PD 979, RA 8550, and other existing laws and regulations designed to prevent marine pollution in the Manila Bay.

(7) Pursuant to Secs. 2 and 6-c of EO 513 and the International Convention for the Prevention of Pollution from Ships, the PPA is ordered to immediately adopt such measures to prevent the discharge and dumping of solid and liquid wastes and other ship-generated wastes into the Manila Bay waters from vessels docked at ports and apprehend the violators.

(8) The MMDA, as the lead agency and implementor of programs and projects for flood control projects and drainage services in Metro Manila, in coordination with the DPWH, DILG, affected LGUs, PNP Maritime Group, Housing and Urban Development Coordinating Council (HUDCC), and other agencies, shall dismantle and remove all structures, constructions, and other encroachments established or built in violation of RA 7279, and other applicable laws along the Pasig-Marikina-San Juan Rivers, the NCR (Parañaque-Zapote, Las Piñas) Rivers, the Navotas-Malabon-Tullahan-Tenejeros Rivers, and connecting waterways and esteros in Metro Manila. The DPWH, as the principal implementor of programs and projects for flood control services in the rest of the country more particularly in Bulacan, Bataan, Pampanga, Cavite, and Laguna, in coordination with the DILG, affected LGUs, PNP Maritime Group, HUDCC, and other concerned government agencies, shall remove and demolish all structures, constructions, and other encroachments built in breach of RA 7279 and other applicable laws along the Meycauayan-Marilao-Obando (Bulacan) Rivers, the Talisay (Bataan) River, the Imus (Cavite) River, the Laguna De Bay, and other rivers, connecting waterways, and esteros that discharge wastewater into the Manila Bay.

In addition, the MMDA is ordered to establish, operate, and maintain a sanitary landfill, as prescribed by RA 9003, within a period of one (1) year from finality of this Decision. On matters within its territorial jurisdiction and in connection with the discharge of its duties on the maintenance of sanitary landfills and like undertakings, it is also ordered to cause the apprehension and filing of the appropriate criminal cases against violators of the respective penal provisions of RA 9003, Sec. 27 of RA 9275 (the Clean Water Act), and other existing laws on pollution.

(9) The DOH shall, as directed by Art. 76 of PD 1067 and Sec. 8 of RA 9275, within one (1) year from finality of this Decision, determine if all licensed septic and sludge companies have the proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks. The DOH shall give the companies, if found to be non-complying, a reasonable time within which to set up the necessary facilities under pain of cancellation of its environmental sanitation clearance.

(10) Pursuant to Sec. 53 of PD 1152, 48 Sec. 118 of RA 8550, and Sec. 56 of RA 9003, 49 the DepEd shall integrate lessons on pollution prevention, waste management, environmental protection, and like subjects in the school curricula of all levels to inculcate in

the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago.

(11) The DBM shall consider incorporating an adequate budget in the General Appropriations Act of 2010 and succeeding years to cover the expenses relating to the cleanup, restoration, and preservation of the water quality of the Manila Bay, in line with the country's development objective to attain economic growth in a manner consistent with the protection, preservation, and revival of our marine waters.

(12) The heads of petitioners-agencies MMDA, DENR, DepEd, DOH, DA, DPWH, DBM, PCG, PNP Maritime Group, DILG, and also of MWSS, LWUA, and PPA, in line with the principle of "continuing mandamus," shall, from finality of this Decision, each submit to the Court a quarterly progressive report of the activities undertaken in accordance with this Decision.

No costs.[44]

The kilometric dispositive portion **will at once tell us** that the concerned entities will **have to spend some money**, which calls for a budget, to be able to comply with what the Court has ruled to be the **rightful entitlements** of the claimants therein. It was **never an issue to the Court** that in determining the existence of a right and in enforcing it, we may be requiring some government agencies to spend some resources to promote, protect and defend the right.

In truth, nothing ought to **restrict** the Court from **adjudicating** the **existence** of a right and its **enforceability** on the **basis** of the **availability** of **budget** for the **implementation** of a right. We should be able to **distinguish** one from the other and to **keep sacred** this **dichotomy**.

Second. I disagree with the rationale that:

Presently, there is ***no*** constitutional provision or law which ***automatically*** grants bail, releases on recognizance or allows other

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[44] *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008.

modes of temporary liberty to all accused or inmates who are clinically-vulnerable (i.e., sickly, elderly or pregnant). As it stands, courts concerned will still have to consider the following guidelines for bail in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure. . . .

The above-mentioned enumeration clearly pertain to **purely factual questions** that trial courts are equipped to pass upon. Moreover, the consideration of these factors which includes others not mentioned but are analogous to the ones provided means that such guidelines **do not work in isolation**. (emphases supplied)

The cited rule pertains to the **determination** of the **amount of bail** where bail is a **matter of right**. It has no application where **bail is a matter of discretion** as a result of the imposable penalties upon the crime charged where evidence of guilt is strong.

I do not wish to impart the idea that Section 9, Rule 114 *per se* is a **list of factors** to be weighed **every time** a **petition for bail** is filed. Section 9 becomes relevant **only when** the ruling in ***Enrile*** is **applicable** *in the sense* of being **the standard for resolving the case**, particularly, in determining whether the ***Enrile*** **two-step test** is complied with: (a) that the detainee will not be a flight risk or a danger to the community; and (b) that there exist special, humanitarian and compelling circumstances. The **Section 9 factors** are good indicators, among others, of the existence of these elements in the ***Enrile*** **test**.

In this connection, I disagree with the statement that:

Fourth, the Court's ruling in ***Enrile v. Sandiganbayan, et al.,*** is inapplicable in the instant case.

. . . . . .

In Enrile, the Court emphasized that while the Philippines honors its "commitment to uphold the fundamental human rights as well as value the worth and dignity of every person," the grant of bail to those charged in criminal proceedings as well as extraditees must be based upon a clear and convincing showing: (a) that the detainee will ***not*** be a **flight risk** or a **danger** to the **community**; ***and*** (b) that there exist special, humanitarian and compelling circumstances. . . .

Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes related to national security and are also valuable members of the CPP-NPA-NDF and its affiliates. Even if the alleged facts underlying humanitarian reasons were to be accepted without question, they still have to be weighed against the fact that the charges against the petitioners involve serious matters of national security and public safety. . . . As a consequence, the petitioners' reliance on this ruling is patently misguided. . . .

Even assuming for the sake of argument that the petitioners had managed to attach documents proving the foregoing pieces of information, the determination of whether or not guilt is strong should still be lodged with the trial courts who are well-equipped to handle them. . . . (emphases and underscoring supplied)

As submitted earlier, Enrile applies here, **not in the sense** that herein petitioners would also be entitled to be released on a bail plan, **but in the sense** that ***Enrile*** is a legally binding decision, a law, that must **apply equally to all** who are able to meet the standards that Enrile espouses. To conclude *otherwise* is to **institutionalize** the **forbidden thought** that ***some people are better treated in and under the law than others upon dubious grounds***.

Thus, herein petitioners are **correct in invoking *Enrile*** but **may still be not released** on bail for a specified amount or on recognizance **unless they are able to muster** the **two-step test** in ***Enrile***: (a) the detainee will **not be a flight risk** or **a danger** to the community; and (b) **there exist special, humanitarian and compelling circumstances**. The **test** in ***Enrile*** has **nothing** to do with **assessing** whether or not the **evidence** of **petitioners' guilt** is **strong**, but on **other factors** as mentioned above.

Third. I disagree with the rationale that:

In the case of the petitioners' continued confinement in their respective detention facilities, **the Court cannot issue an order for the creation of a "Prisoner Release Committee" in the absence of any law and in the absence of any concluded bail hearing which resulted in the grant of provisional liberty**. As it stands, **only the political branches of government (Executive and Legislative) have the power to determine for themselves if such recourse is warranted**. The only act that the Court may do under the

circumstances is to order the conduct bail hearings before the trial courts with dispatch. . . .

I have my misgivings if the **political** branches of government have the **authority to order the release of PDLs**, or for that matter, **their continued detention**, if, **in the former**, the evidence of guilt is strong for a crime punishable by death, *reclusion perpetua* or life imprisonment or there has been **yet no determination** thereof in a hearing, or if, **in the latter**, it has been **decided after a hearing** that the evidence of guilt is **not** strong for a crime punishable by death, *reclusion perpetua* or life imprisonment. **The determination in this regard exclusively belongs to the courts.**

Fourth. I also disagree with this statement:

> Besides, whenever a conundrum arises **in times of emergency** when police power collides with constitutionally-protected freedoms or fundamental rights, the political questions doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests. . . *However*, while public safety is the paramount and overriding concern of the State and while it is also true that laws should be interpreted in favor of the greatest good of the greatest number during emergencies, *individual freedoms also have to be respected*. . . (Emphases supplied)

I **do not want** to give the **misimpression** that **petitioners will remain in detention** because "*whenever a conundrum arises in times of emergency when police power collides with constitutionally-protected freedoms or fundamental rights, the political questions doctrine* **will often tip the balance** *in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests*." This is farthest from the truth. They will **stay under detention** because they **failed to satisfy the requirements** that would have otherwise qualified them to be released.

More, I am not comfortable with the idea that **during emergencies**, the Court will already desist from acting in favour of individual rights since *the political question doctrine* **will often tip the balance**. This is a recipe for authoritarianism

which I am sure even respondents and the OSG are not advocating at present.

Fifth. I disagree with the references to the following conclusions which may have an impact on the trial of petitioners' criminal cases below:

> Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes related to **national security** and are also valuable members of the CPP-NPA-NDF and its affiliates. . .
>
> . . . . . .
>
> . . . As earlier discussed, the government cannot afford to gamble its chances and resources by allowing the petitioners who are allegedly key members of the CPP-NPA-NDF to roam free while the COVID-19 pandemic remains an imminent and grave threat. . .

I would **not** have wanted us to give so much thought and weight to petitioners' status as rebels when as the Separate Opinion itself states this matter as being **merely an allegation** (*i.e.*, the Separate Opinion uses the descriptor "alleged") and more importantly when this is an issue being litigated at the trial courts below. It would have **sufficed to focus** on **petitioners' collective inability to provide concrete circumstances and bail plan** to prove the first-prong of the ***Enrile*** test.

No one left behind, healing as one — fashioning the appropriate relief.

We are **not in ordinary times**. Also, **time** is **not on anyone's side**. The reason lies in the **nature of the enemy** we are all facing. The spread or transmission rate of COVID-19, to use lay language, is "**less than a week** and that **more than 10 percent of patients are infected by somebody** who has the virus but **does not yet have symptoms**."[45] As further explained by **WHO**:

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[45] Coronavirus spreads quickly and sometimes before people have symptoms, study finds, at https://www.sciencedaily.com/releases/2020/03/200316143313.htm (last accessed April 10, 2020).

Q. How are COVID-19 and influenza viruses different?

The speed of transmission is an important point of difference between the two viruses. Influenza has a shorter median incubation period (the time from infection to appearance of symptoms) and a shorter serial interval (the time between successive cases) than COVID-19 virus. **The serial interval for COVID-19 virus is estimated to be 5-6 days**, while for influenza virus, the serial interval is 3 days. This means that **influenza can spread faster than COVID-19**. Further, transmission in the first 3-5 days of illness, or potentially pre-symptomatic transmission – transmission of the virus before the appearance of symptoms – is a major driver of transmission for influenza. In contrast, while we are learning that **there are people who can shed COVID-19 virus 24-48 hours prior to symptom onset, at present, this does not appear to be a major driver of transmission. The reproductive number — the number of secondary infections generated from one infected individual — is understood to be between 2 and 2.5 for COVID-19 virus,** higher than for influenza. . . . **Children are important drivers of influenza virus transmission in the community.** For COVID-19 virus, initial data indicates that **children are less affected than adults and that clinical attack rates in the 0-19 age group are low. Further preliminary data from household transmission studies in China suggest that children are infected from adults, rather than vice versa. . . .** For COVID-19, data to date suggest that 80% of infections are mild or asymptomatic, 15% are severe infection, requiring oxygen and 5% are critical infections, requiring ventilation. These fractions of severe and critical infection would be higher than what is observed for influenza infection. Those most at risk for severe influenza infection are children, pregnant women, elderly, those with underlying chronic medical conditions and those who are immunosuppressed. **For COVID-19, our current understanding is that older age and underlying conditions increase the risk for severe infection.**[46]

The **ubiquitous advice** about this pandemic is that, *unlike in other situations where time heals*, **time** is **not** our **best ally**. **Transmission** is **rapid** and **easy**. The **host and carrier** does

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[46] SUBJECT IN FOCUS: Q&A: Similarities and differences — COVID-19 and influenza, at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_2 (last accessed April 10, 2020).

not carry a badge for easy identification. Those who **look healthy** can be just that, mere appearance of health.

I therefore **do not criticize** petitioners for resorting directly to this Court. As correctly held by the *ponencia*, the **doctrine of the hierarchy of courts** does **not apply** to the present circumstances.

Fortunately, respondents have responded well to the call for **preventive measures** against COVID-19 at our detention centers. From all indications, and in the absence of evidence to the contrary, respondents **have acquitted** themselves well in this regard. It is my hope that they **remain aggressive against** the virus and continue keeping the PDLs safe from the disease. Their **timely response answers petitioners' rightful concerns** against this invisible enemy.

It is my understanding from the petition that at the time of filing, **petitioner Reina Mae Nasino** was **five-months pregnant**. She must have given birth by now. I do not know if her baby now stays with her. But if the baby does, it is **entitled to separate protection** apart from its mother, petitioner Nasino, would be entitled to.

Hence, while I **recognize** and **adhere to** the **primordial if not exclusive** role of the Executive Branch in the fight against COVID-19, I believe that we have **a role to play in protecting the baby** from adverse consequences that are **not of the baby's own doing**. After all, **her mother** is in this state of panic **because** the **lower court** has **issued processes** for her preventive detention; further, she and her **co-petitioners** are invoking their entitlement to **bail under the circumstances**; and, lastly, the **health** of the **baby** is exposed to a **greater** risk of infection than those who are staying with their mothers outside the detention facilities. To use the hyperbole of **Human Rights Watch**, the baby's situation is **akin** to having a **death sentence** imposed upon it **by mere accident** or **as an innocent by-stander**.[47]

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[47] COVID-19 Shouldn't Be a Death Sentence for People in US Prisons, at https://www.hrw.org/news/2020/04/03/covid-19-shouldnt-be-death-sentence-people-us-prisons (last accessed April 11, 2020).

In ***Echegaray v. Secretary of Justice***,[48] the Court **affirmed** that the **power to save the life of a human being** is **not exclusive** to any of the three branches of government. The Court said poignantly: *"The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life."*

Our jurisprudence has also **confirmed** that "the Court is, under the Constitution, empowered to promulgate rules for the protection and enforcement of constitutional rights,"[49] the most prominent being the **right to life**. With the Court's authority to promulgate formal rules for this purpose, with more reason **the Court can exercise** *and not resile from* the **jurisdiction** to put its two cents' worth whenever a **person's life** or **health** – in this case, that of the **baby** of a pre-judgment PDL – is **also at stake** from **circumstances not of her own making**.

The **greater risks** that the present pandemic have caused are the **actual facts** that **fuel** the **present controversy** which makes it **justiciable**. Let me stress. There is **nothing advisory, nothing philosophical, nothing dreamy** about the COVID-19. We have been quarantined for almost half of this year already, our courts and others have lost the equivalent of about six-months of man-hours, **all because of the REAL dangers** to life, health and overall well-being of the entire population of the Philippines and the entire world. I would like the Court to give relief to petitioner Nasino's baby **not because** of the ineptitude of respondents, but as a result of the **reality** of the **greater risks** facing **petitioner Nasino's baby** coming from **facts** about this **pandemic**.

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[48] G.R. No. 132601, January 19, 1999.

[49] *Castillo v. Cruz*, G.R. No. 182165, November 25, 2009.

ACCORDINGLY, I vote to **TREAT** the present petition as petitioners' applications for bail or recognizance as well as their motions for other confinement arrangements, and **REFER** the same to the respective trial courts where their criminal cases are pending, which courts should be **DIRECTED** to conduct the necessary proceedings and consequently, resolve these incidents with utmost dispatch.

CONCURRING OPINION

LOPEZ, *J.*:

On April 6, 2020, several Persons Deprived of Liberty[1] (PDLs) filed a petition[2] before this Court seeking their provisional freedom for the duration of the COVID-19[3] pandemic through recognizance or bail. The PDLs alleged that they belong to the "*vulnerable or at-risk groups*" because of their medical and/or physical conditions.[4] Also, the PDLs asked for *ipso facto*

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[1] Person Deprived of Liberty (PDL) — refers to a detainee, inmate, or prisoner, or other person under confinement or custody in any other manner. However, in order to prevent labeling, branding or shaming by the use of these or other derogatory words, the term "prisoner" has been replaced by this new and neutral phrase "person deprived of liberty" under Article 10, of International Covenant on Civil and Political Rights (ICCPR), who "shall be treated with humanity and with respect for the inherent dignity of the human person." (Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10575, IRR of RA 10575, [May 23, 2016]).

[2] Petition, pp. 1-62.

[3] Coronavirus disease.

[4] There are 22 petitioners in this case. *13 are detained at Metro Manila District Jail (MMDJ) 4, Camp Bagong Diwa, Taguig City, namely: Almonte, Atadero, Jr., Bacarra, A. Birondo, Casambre, Castillo, Fernandez, Jr., Gamara, Ladlad, Legaspi, Silva, A. Villamor, and Rosales; *4 are detained at Taguig City Jail Female Dorm, namely, W. Birondo, V. Villamor, Lagtapon, and Perez (21 years old, leprosy); *4 are detained at Manila City Jail, namely, Murillo, Nasino (22 years old, pregnant), Tomada, and Belleza; and *1 Petitioner is serving sentence at Correctional Institution for Women (CIW),

release from detention on humanitarian and equitable grounds considering the threats of the present public health emergency. Essentially, they prayed for the following reliefs:

1) DIRECTING the temporary RELEASE ON RECOGNIZANCE of petitioners, including those similarly situated who are listed herein but were not able to subscribe on this Petition due to the lockdown, for humanitarian consideration, for the duration of the state of public health emergency, national calamity, lockdown and community quarantine due to the threats of the COVID-19;

2) In the alternative, DIRECTING the RELEASE ON BAIL of herein petitioners, including those similarly situated who are listed and referred to in this Petition, the amounts of which shall be set at the discretion of this Honorable Court;

3) MANDATING the creation of a Prisoner Release Committee, similar to those set up in other countries, to urgently study and implement the release of all other prisoners in various congested prisons throughout the country who are similarly vulnerable but cannot be included in this Petition due to the difficult circumstances; and

4) DECLARING the issuance of ground rules relevant to the release of eligible prisoners.[5]

However, it is settled that equity may be availed only in the absence of and never against statutory law or rules of procedure.[6] In our jurisdiction, there are existing positive rules relevant to the rights of PDLs which remain in force.

Mandaluyong City, namely, Bucatcat (73 years old). All petitioners are detainees whose cases are still on trial, except for Bucatcat, who is a prisoner serving sentence at CIW in Mandaluyong. Moreover, except for Perez, 21 years old, with leprosy and Nasino, 22 years old, 5 months pregnant, all petitioners are in their 60's and above and most have hypertension, diabetes and/or pulmonary disease.

[5] Petition, p. 57.

[6] *Philippine Carpet Manufacturing Corporation v. Tagyamon*, 723 Phil. 562 (2013). See also *Lim Tupas v. Court of Appeals*, 271 Phil. 628 (1991); and *Zabat, Jr. v. Court of Appeals*, 226 Phil. 489 (1986).

The solemn duty of the Court is to apply the law. It is not a trier of facts.

The right to bail is enshrined in the 1987 Constitution.[7] Section 1, Rule 114 of the Rules of Court defined bail as "*the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court x x x*." Also, bail is either a matter of right or discretion depending on the penalty, thus:

RULE 114

x x x x x x x x x

SEC. 4. *Bail, a matter of right; exception.* — All persons in custody shall be admitted to bail **as a matter of right**, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

SEC. 5. *Bail, when discretionary.* — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, **admission to bail is discretionary**. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

x x x x x x x x x

SEC. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — **No person charged with a capital offense**, or an offense punishable **by *reclusion perpetua*** or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (Emphases Supplied)

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[7] See CONSTITUTION, Article III, Section 14 (2).

In this case, the PDLs failed to indicate whether the charges against them are bailable or not. The Solicitor General's comment later disclosed that except for one who is serving sentence, all the PDLs were charged with non-bailable offenses and their cases are pending trial.[8] The PDLs admitted these facts in their reply.[9] It is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with *reclusion perpetua* or life imprisonment.[10] As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. The determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence.[11] A hearing is likewise required for the trial court to consider the factors in fixing the amount of bail.[12] Notably, this Court outlined the duties of a judge in resolving bail applications,[13] to wit:

1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;

2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;

3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;

4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond; otherwise petition should be denied.

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[8] Comment, pp. 3-9.

[9] Reply, p. 5.

[10] CONSTITUTION, Art. III, Sec. 13; see also RULES OF COURT, Rule 114, Section 7.

[11] *Gimeno v. Arcueno, Sr.*, 320 Phil. 463 (1995).

[12] RULES OF COURT, Rule 114, Sec. 9.

[13] *Gacal v. Infante*, 674 Phil. 324 (2011), citing *Cortes v. Catral*, 344 Phil. 415 (1997).

Here, the PDLs raised factual issues about their health conditions which allegedly made them vulnerable to the pandemic. This requires a balancing of interests between the PDLs' presumption of innocence and the duty of the State to ensure that they will be ready to serve the penalty if eventually found guilty.[14] Yet, what the PDLs submitted are unauthenticated medical certificates which cannot be subject of judicial notice.[15] Likewise, it must be ascertained whether the PDLs are flight risk, or capable of committing another crime during their temporary liberty which may affect public order and safety. On this point, it must be emphasized that this Court is not a trier of facts. Thus, the petition should have been filed before the Regional Trial Courts where the PDLs' criminal cases are pending. This is consistent with the rule that the decision on whether to detain or release an accused before and during trial is ultimately an incident of the judicial power to hear and determine the criminal case.[16]

Bail on humanitarian grounds is a matter within the sound discretion of the courts.

In *Enrile v. Sandiganbayan*,[17] this Court allowed bail for humanitarian reasons based on the following factors: (1) the principal purpose of bail, which is to guarantee the appearance of the accused at the trial or whenever so required by the court; (2) the Philippines' responsibility in the international community arising from the national commitment under the *Universal Declaration of Human Rights*, specifically, to uphold the fundamental human rights as well as value the worth and dignity of every person; (3) the petitioner's social and political standing

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[14] *Sy v. Sandiganbayan (Third Division)*, G.R. No. 237703, October 3, 2018, 882 SCRA 217, 230.

[15] RULES OF COURT, Rule 129, Sec. 2.

[16] *Gutierrez v. People*, G.R. No. 193728 (Notice), April 4, 2018.

[17] 767 Phil. 147 (2015).

and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely; and (4) the fragile state of petitioner's health, as proven by the testimony of a physician presents another compelling justification for his admission to bail.

The PDLs failed to present similar circumstances. The filing of petitions for bail before the trial courts where the criminal cases are pending is a remedy that has always been available. However, the PDLs opted not to avail of such process insisting that this will not provide an adequate and speedy relief to escape the ravaging effects of the pandemic. I see no reason for this apprehension. Foremost, the trial courts conduct only a summary hearing in bail applications.[18] Also, there are ample safeguards under the *Revised Guidelines for Continuous Trial of Criminal Cases* against any delay in the proceedings. Specifically, petitions for bail shall be set for summary hearing after arraignment and pre-trial and shall be resolved by the trial court within a non-extendible period of 30 calendar days from date of the first hearing, without need of oral argument and submission of memoranda.[19] Lastly, the *Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial* provides that a motion to reduce bail shall enjoy priority in the hearing of cases.[20]

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[18] *Revilla, Jr. v. Sandiganbayan*, G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.

[19] A.M. No. 15-06-10-SC (Resolution), April 25, 2017.

[20] Section 3 of A.M. No. 12-11-2-SC (March 18, 2014) states: "*When amount of bail may be reduced.* — If the accused does not have the financial ability to post the amount of bail that the court initially fixed, he may move for its reduction, submitting for that purpose such documents or affidavits as may warrant the reduction he seeks. **The hearing of this motion** shall enjoy priority in the hearing of cases. (Emphasis Supplied)

Worldwide initiatives to release prisoners amid the pandemic are not absolute.

It is true that several countries have implemented release programs for prisoners to prevent the spread of COVID-19 virus but these initiatives were subject to exceptions. In Afghanistan, the members of Islamist Militant Group are not included. In Indonesia, those released were mostly juvenile offenders and those who already served at least two-thirds of their sentences. In Iran, only low-risk and non-violent offenders serving short sentences are released. In Morocco, the prisoners were selected based on their health, age, conduct, and length of detention and were granted pardon. In United Kingdom, high-risk inmates convicted of violent or sexual offenses, or of national security concern or a danger to children were excluded.[21] It must be stressed that the release of prisoners in other jurisdictions was made upon the orders of their Chief Executives.

Corollarily, the matter of unilaterally ordering the temporary release of the PDLs solely on equitable grounds is, strictly speaking, not purely judicial in character. This Court must abstain from exercising such power lest it encroach on the prerogatives of the President and the Congress. The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in the framing of our Constitution. Each department has exclusive cognizance of matters placed within its jurisdiction and is supreme within its own sphere.[22] It is not within the province of the judiciary to express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the Chief Executive or the Congress on matters purely political in nature. Otherwise, it may be considered as an interference

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[21] List: Countries Releasing Prisoners Over Coronavirus Fears. Accessed April 23, 2020 at https://www.rappler.com/newsbreak/iq/257267-list-countries-release-prisoners-over-coronavirus-fears.

[22] *Echegaray v. Secretary of Justice*, 358 Phil. 410 (1998).

or an attempt to influence the exercise of their powers.[23] Hence, the temporary release of PDLs outside of bail, recognizance and other court processes is best left to the Chief Executive and Congress, especially since matters related to public health and safety are political questions.

PDLs can avail of adequate protections under international and domestic laws.

The overcrowding situation in jail facilities in the Philippines increases the risk of contracting any disease. This means that regardless of age or whether they have pre-existing medical condition, the PDLs are all vulnerable to contracting COVID-19 because of the congestion, along with inadequate nutrition and scarcity in health care. These are problems that need to be sufficiently addressed, not only on account of the pandemic, but more so because these rights are ought to be guaranteed to prisoners both under international and domestic laws.

On this score, the *Universal Declaration of Human Rights* is customarily binding upon the members of the international community. The Philippines has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. The Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail.[24] Accordingly,

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[23] *Director of Prisons v. Ang Cho Kio*, 144 Phil. 439 (1970).

[24] In *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, 550 Phil. 63 (2007), this Court ruled that the Philippines, along with the other members of the family of nations, committed to uphold the fundamental human rights as well as value the worth and dignity of every person. This commitment is enshrined in Section 2, Article II of our Constitution which provides: "The State values the dignity of every human person and guarantees full respect for human rights."

this Court extended the application of bail to deportation[25] and extradition[26] proceedings.

Later, the United Nations General Assembly adopted the *United Nations Standard Minimum Rules for the Treatment of Prisoners*[27] or the *Nelson Mandela Rules*, which seeks to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.[28] It clothed the PDLs with the following rights:

Rule 24

1. **The provision of health care for prisoners is a State responsibility.** Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, **paying particular attention to prisoners with special health-care needs** or with health issues that hamper their rehabilitation.

x x x x x x x x x

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[25] *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

[26] *Government of Hongkong Special Administrative Region v. Olalia, Jr., supra*.

[27] General Assembly Resolution 70/175, adopted on December 17, 2015.

[28] *Id.*, Preliminary Observation 1.

Rule 27

1. **All prisons shall ensure prompt access to medical attention in urgent cases.** Prisoners who **require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.** Where a **prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners** referred to them with appropriate treatment and care.

x x x x x x x x x

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

x x x x x x x x x

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

x x x x x x x x x

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. **If necessary, other prisoners** with mental disabilities and/or health conditions **can be observed and treated in specialized facilities** under the supervision of qualified health-care professionals.

x x x x x x x x x

(Emphases supplied.)

The standards for the treatment of prisoners are expressly incorporated in Republic Act No. 10575 or the Bureau of

Corrections (BuCor) Act of 2013[29] and its implementing rules[30] *viz.*:

[R.A. No. 10575]

SECTION 4. *The Mandates of the Bureau of Corrections.* — The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. x x x

x x x x x x x x x

[Implementing Rules]

RULE II — GENERAL PROVISIONS

x x x x x x x x x

Section 2. *Declaration of Policy*. — It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary by promoting and ensuring their reformation and social reintegration, **creating an environment conducive to rehabilitation** and compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP).

x x x x x x x x x

ee. Safekeeping — refers to the custodial mandate of the BuCor's present corrections system, and shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs. The **safekeeping of inmates** shall moreover comprise decent provision for their basic needs, **which include habitable quarters, food, water, clothing, and medical care**, in compliance with the established UNSMRTP, and consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights. The complementary component of Safekeeping in custodial function is Security which ensures that inmates are completely incapacitated from further

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[29] Approved on May 24, 2013.

[30] Approved on May 23, 2016.

committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. Security also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to corrections officers.

x x x x x x x x x

RULE IV — MANDATES OF THE BUREAU OF CORRECTIONS AND TECHNICAL OFFICERS

a) Safekeeping of National Inmates. In compliance with established United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), the safekeeping of inmates shall include:

1. Decent and adequate provision of basic necessities such as shelters/quarters, food, water, clothing, medicine;
2. Proper observance of prescribed privileges such as regulated communication and visitation; and
3. Efficient processing of necessary documentary requirements and records for their timely release. The processing of these documentary requirements shall be undertaken by the Directorate for Inmate Documents and Records (DIDR).

The core objective of these safekeeping provisions is to "accord the dignity of man" to inmates while serving sentence in accordance with the basis for humane understanding of Presidential Proclamation 551, series 1995, and with UNSMRTP Rule 60. (Emphases Supplied)

The implementing rules is explicit that PDLs who are suffering from contagious diseases should be confined in the hospital or infirmary inside the prison compound. Those needing advanced medical treatment shall be brought to the nearest hospital if the prison's medical facilities are not adequate to treat the disease:

RULE VII — FACILITIES OF THE BUREAU OF CORRECTIONS

d) Hospital/Infirmary — refers to a medical facility established inside the prison compound for treatment of sick or injured inmates. This will also serve as a place of confinement for inmates with contagious

disease. Sick inmates requiring advance medical treatment shall be brought to the nearest hospital if the prison hospital does not have the necessary medical equipment and expertise to treat such malady.

Hospital/Infirmary for Types A and B shall contain, at least, basic facilities such as isolation room, emergency room, operating room, recovery room, dental, laboratory, X-ray room, comfort rooms, beddings, pharmacy and other standard facilities for Hospitals/ Infirmaries. This shall be in accordance with the Administrative Order No. 147-s-2004 issued by the Department of Health.

Verily, the trial courts having jurisdiction over the criminal cases and bail applications may refer the PDLs to the Bureau of Jail Management and Penology (BJMP)'s or BuCor's infirmary for purposes of evaluation and treatment. The 2015 BJMP Comprehensive Operations Manual likewise provides that, in cases of emergency wherein it would not be possible to secure the trial court's order granting Temporary Pass, the BJMP is authorized to take an inmate who is seriously ill to the nearest hospital. Thereafter, the Jail Warden shall notify the regional director and the trial court.[31] All jail personnel must also observe the guidelines in handling inmates with special needs such as mentally ill patients, suicidal inmates, inmates with disability, children in conflict with the law, senior citizen inmates, infirm inmates and pregnant or female inmates with infants.[32]

FOR THESE REASONS, I concur in the result that the immediate referral of the petition to the appropriate trial courts handling the PDLs' cases is in order.

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[31] 2015 BJMP Comprehensive Operations Manual, Section 40.

[32] 2015 BJMP Comprehensive Operations Manual, Section 34.

SEPARATE OPINION

PERLAS-BERNABE, *J.*:

I concur in the result. As I have proposed from the inception of this case, the instant petition should be treated as petitioners' respective applications for bail/recognizance, as well as their motions for suitable and practicable confinement arrangements, and consequently, be referred to the proper trial courts for the conduct of further proceedings. However, due to the collective decision of the membership to confine the *ponencia* to this unanimous disposition subject to separate opinions on some significant constitutional issues, I am impelled to submit this Separate Opinion to explain the reasons and justifications for my concurrence.

I. Prayer for Release on Bail/Recognizance.

Primarily, petitioners seek direct recourse to the Court for their temporary release on recognizance or, in the alternative, bail, "for the duration of the state of public health emergency, national calamity, lockdown[,] and community quarantine due to the threats of x x x [Corona Virus Disease 2019 (COVID-19)]."[1]

At its core, bail "acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial."[2] Its purpose is "to guarantee the appearance of the accused at the trial, or whenever so required by the trial court."[3] Similarly, "[r]ecognizance is a mode of securing the release of any person in custody or detention for the commission of an offense" but is made available to those who are "unable to post bail due to abject poverty."[4]

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[1] Petition, p. 57.

[2] *Leviste v. Court of Appeals*, 629 Phil. 587, 593 (2010).

[3] *Enrile v. Sandiganbayan*, 767 Phil. 147, 166 (2015).

[4] See Section 3 of Republic Act No. (RA) 10389, entitled "AN ACT INSTITUTIONALIZING RECOGNIZANCE AS A MODE OF GRANTING

Our Constitution and statutes prescribe a legal framework in granting bail or recognizance to persons deprived of liberty (PDLs) pending final conviction. The Constitution denies bail, as a matter of right, to "those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong."[5] In the same vein, Republic Act No. (RA) 10389, known as the "Recognizance Act of 2012," provides that recognizance is not a matter of right when the offense is punishable by "death, *reclusion perpetua*, or life imprisonment"[6] and as per its implementing rules, "when the evidence of guilt is strong,"[7] consistent with the Constitution.

When the accused is charged with an offense punishable by death, *reclusion perpetua*, or life imprisonment, the usual

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THE RELEASE OF AN INDIGENT PERSON IN CUSTODY AS AN ACCUSED IN A CRIMINAL CASE AND FOR OTHER PURPOSES," otherwise known as "RECOGNIZANCE ACT OF 2012," approved on March 14, 2013.

[5] Section 13, Article III of the 1987 CONSTITUTION reads:

> Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

[6] Section 5 of RA 10389 reads:

> Section 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution.* – The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment: *Provided*, That the accused or any person on behalf of the accused files the application for such:
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> (a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and
>
> (b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance.

procedure is for the accused to apply for bail with notice to the prosecutor. Thereafter, the judge is mandated to conduct a hearing to primarily determine the existence of strong evidence of guilt or lack of it, against the accused. When the evidence of guilt is not strong, the judge is then tasked to fix the amount of bail taking into account the guidelines set forth in Section 9, Rule 114 of the Rules of Criminal Procedure. In *Cortes v. Catral*,[8] the Court explained:

> [W]hether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.
>
> When a person is charged with an offense punishable by death, *reclusion perpetua*[,] or life imprisonment, bail is a matter of discretion. Rule 114, Section 7 of the Rules of Court states: "No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action." Consequently, when the accused is charged with an offense punishable by death, *reclusion perpetua*[,] or life imprisonment, the judge is mandated to conduct a hearing, whether summary or otherwise in the discretion of the court, not only to take into account the guidelines set forth in Section 9, Rule 114 of the Rules of Court, but primarily to determine the existence of strong evidence of guilt or lack of it, against the accused.[9] (Underscoring supplied)

Pursuant to procedural rules, the accused may also seek a reduction of the recommended bail amount,[10] or seek a release through recognizance upon satisfaction of the conditions set forth by law.[11]

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[7] See Section 2, Rule I of the "PPA-DOJ INTERNAL GUIDELINES FOR THE IMPLEMENTATION OF REPUBLIC ACT NO. 10389" (2014).

[8] 344 Phil. 415 (1997).

[9] *Id.* at 423-424.

[10] See Section 20, Rule 114 of the Rules of Criminal Procedure.

[11] See Sections 6 to 8, RA 10389.

In this case, petitioners are all charged with offenses that are punishable by death, *reclusion perpetua*, or life imprisonment.[12] In fact, one of them had already been convicted

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[12] Petitioners are charged with the following crimes:

(1) Dionisio S. Almonte – a) Kidnapping with Murder/Rebellion; b) violation of Presidential Decree No. (PD) 1866; and c) Arson/Robbery.

(2) Ireneo O. Atadero, Jr. – violation of RA 9516.

(3) Alexander Ramonita K. Birondo – a) violation of PD 1866/RA 10591; b) Obstruction of Justice; c) Direct Assault.

(4) Winona Marie O. Birondo – a) violation of RA 9516/RA 10591; b) Obstruction of Justice; c) Direct Assault.

(5) Rey Claro Casambre – a) Murder and Attempted Murder; b) violation of PD 1866; c) violation of RA 10591.

(6) Ferdinand T. Castillo – a) Double Murder and Multiple Attempted Murder; b) violation of RA 10591.

(7) Francisco O. Fernandez – a) violation of PD 1866; b) violation of Commission on Elections Resolution No. 10466; c) violation of RA 10591; d) violation of RA 9516; e) Murder; f) three (3) counts of Robbery.

(8) Renante M. Gamara – a) Kidnapping with Murder; b) Murder and Frustrated Murder; c) violation of PD 1866; d) violation of RA 10591.

(9) Vicente P. Ladlad – a) fifteen (15) counts of Murder; b) violation of PD 1866; c) violation of RA 9516/RA 10591.

(10) Ediesel R. Legaspi – a) violation of RA 9516/RA 10591.

(11) Adelberto A. Silva – a) fifteen (15) counts of Murder; b) Frustrated Murder; c) violation of RA 10591; d) violation of RA 9516.

(12) Alberto L. Villamor – a) violation of PD 1866; b) violation of RA 9516/RA 10591.

(13) Virginia B. Villamor – a) violation of P.D. No. 1866; b) Swindling/ *Estafa*; c) violation of RA 10591.

(14) Cleofe Lagatapon – a) violation of PD 1866; b) violation of RA 9516/RA 10591; c) Murder; d) Multiple Murder and Robbery; e) Robbery.

(15) Ge-ann C. Perez – a) violation of RA 9516/RA 10591; b) Murder; c) Robbery.

(16) Emmanuel M. Bacarra – a) Murder; b) Multiple Frustrated Murder; c) Multiple Frustrated Murder; d) violation of RA 10591.

(17) Oliver B. Rosales – a) violation of RA 10591; b) violation of RA 9516.

(18) Norberto A. Murillo – fifteen (15) counts of Murder.

(19) Reina Mae A. Nasino – violation of RA 9516/RA 10591.

(20) Dario B. Tomada – fifteen (15) counts of Murder.

by the trial court and her appeal is pending resolution.[13] Petitioners have not shown that any of them has filed the necessary bail applications. It was neither shown that bail hearings were conducted in their respective cases in order to determine whether or not there exists strong evidence of guilt against them, which would, in turn, determine their qualification or disqualification for the reliefs prayed for.

"Strong evidence of guilt" entails the submission of evidence by the parties, and consequently, a circumspect factual determination. **The Court is not a trier of facts,** and hence, is not competent to engage itself in such a laborious endeavor. **Institutionally, the Court does not function like a trial court where hearings are conducted for the presentation of evidence by the litigants involved.** Accordingly, it is incapable of determining whether or not any of the petitioners may be released on bail or recognizance pursuant to the provisions of law and the Constitution.

This notwithstanding, petitioners seek temporary liberty — specifically, through bail or recognizance — on humanitarian grounds, invoking this Court's equity jurisdiction. It is hornbook doctrine, however, that equity comes into play only in the absence of law. "Equity is justice outside legal provisions, and must be exercised in the absence of law, not against it."[14] As mentioned, there is a prescribed legal framework in granting bail or recognizance to PDLs pending final conviction. Bail or recognizance cannot be granted to persons who are charged with capital offenses when the evidence of guilt against them is strong. **Hence, the Court would be betraying its mandate to apply the law and the Constitution should it prematurely**

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(21) Oscar Belleza – fifteen (15) counts of Murder.

(22) Lilia Bucatcat – Arson (convicted). (see Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 9-12).

[13] Namely, petitioner Lilia Bucatcat.

[14] *Viva Shipping Lines, Inc. v. Keppel Philippines Marine, Inc.*, 781 Phil. 95, 121 (2016); citing *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 166 (2005).

order the release of petitioners on bail or recognizance *absent the requisite hearing to determine whether or not the evidence of guilt against them is strong*. While it is noted that this was done in the past in the case of *Enrile v. Sandiganbayan* (*Enrile*),[15] the majority ruling in that case should be deemed as "*pro hac vice*" in light of the past Senator's "solid reputation in both his private and public lives"[16] and "his fragile state of health"[17] which deserved immediate medical attention.

To understand the peculiarity of *Enrile*, one may simply consult the majority Decision therein which would readily show, on its face, that **no bail hearing to determine the existence of "strong evidence of guilt" against Enrile was conducted. In fact, the absence of this requisite hearing was precisely the reason why the *Sandiganbayan* denied Enrile's motion to fix bail on the ground of prematurity**:

> On June 5, 2014, the Office of the Ombudsman charged Enrile and several others with plunder in the *Sandiganbayan* on the basis of their purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). On June 10, 2014 and June 16, 2014, Enrile respectively filed his Omnibus Motion and Supplemental Opposition, praying, among others, that he be allowed to post bail should probable cause be found against him. The motions were heard by the *Sandiganbayan* after the Prosecution filed its Consolidated Opposition.
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> On July 3, 2014, the *Sandiganbayan* issued its resolution denying Enrile's motion, particularly on the matter of bail, on the ground of its prematurity[,] considering that Enrile had not yet then voluntarily surrendered or been placed under the custody of the law. Accordingly, the *Sandiganbayan* ordered the arrest of Enrile.
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> On the same day that the warrant for his arrest was issued, Enrile voluntarily surrendered to Director Benjamin Magalong of the Criminal Investigation and Detection Group (CIDG) in Camp Crame, Quezon

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[15] *Supra* note 3.

[16] See *id.* at 173.

[17] *Id.*

City, and was later on confined at the Philippine National Police (PNP) General Hospital following his medical examination.

Thereafter, Enrile filed his Motion for Detention at the PNP General Hospital, and his Motion to Fix Bail, both dated July 7, 2014, which were heard by the *Sandiganbayan* on July 8, 2014. In support of the motions, Enrile argued that he should be allowed to post bail because: (a) the Prosecution had not yet established that the evidence of his guilt was strong; (b) although he was charged with plunder, the penalty as to him would only be *reclusion temporal*, not *reclusion perpetua*; and (c) he was not a flight risk, and his age and physical condition must further be seriously considered.

On July 14, 2014, the *Sandiganbayan* issued its first assailed resolution denying Enrile's Motion to Fix Bail, disposing thusly:

> **. . . [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.**
>
> **To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.**[18] (Emphases and underscoring supplied)

To my mind, the majority ruling in *Enrile*, which in turn, cited *De La Rama v. The People's Court*,[19] is an unusual judicial

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[18] *Id.* at 161-163.

[19] In *De la Rama v. People's Court* [77 Phil. 461, 465-466 (1946)], therein petitioner was afflicted with, among others, active pulmonary tuberculosis, an ailment which was, at that time, still had no known cure. In granting bail, the Court held:

> Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner "is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis," and that in said institute they "have seen many similar cases, latter progressing into advance stages when treatment and medicine are no longer of any avail"; taking into consideration that the petitioner's previous petition for bail was denied by the People's

precedent which strays from the prescribed legal course on bail or recognizance. For a person charged with a capital offense, a bail hearing is necessary to determine whether or not the accused may nonetheless be released on account of the established finding that the evidence against him or her is not strong. This requirement finds force in none other than our Constitution. At any rate, the foregoing special considerations taken into account by the majority therein were not shown to attend in this case. Hence, petitioners cannot invoke the *Enrile* ruling to successfully obtain their desired relief.

Petitioners, however, should not be completely barren of any relief from this Court. **In the *interest of substantial justice,* and considering that the present petition is the first of its kind in the context of this novel public health situation, the Court may relax the usual procedure requiring that bail applications be first filed before the trial courts, and instead, treat the instant petition as petitioners' respective bail applications and refer the same to the proper trial courts.** Thereafter, the trial courts having jurisdiction over petitioners' respective cases must determine the merits of the bail applications. **However, before proceeding, they must first ascertain whether or not previous bail applications have been filed by petitioners and their status.** This **preliminary determination** upon referral to the respective trial courts would result into the following possible scenarios:

Court on the ground that the petitioner was suffering from quiescent and not active tuberculosis, and the implied purpose of the People's Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People's Court has adopted and applied the well-established doctrine cited in our above-quoted resolution in several cases, among them, the cases against Pio Duran (Case No. 3324) and Benigno Aquino (Case No. 3527), in which the said defendants were released on bail on the ground that they were ill and their continued confinement in New Bilibid Prison would be injurious to their health or endanger their life; it is evident and we consequently hold that the People's Court acted with grave abuse of discretion in refusing to release the petitioner on bail.

(1) If a bail application had already been previously filed and consequently denied by the trial court, then the denial must stand on the ground that there is already a determination that the evidence of guilt against the accused-petitioner charged with a capital offense is strong and hence, need not be re-litigated further;

(2) If a bail application had already been previously filed but had yet to be resolved by the trial court, the bail hearings should just continue, taking into account the submissions in the present petition; or

(3) If no bail application was previously filed and bail hearings have yet to be conducted to determine whether or not the evidence of guilt against an accused-petitioner charged with a capital offense is strong, then the trial court must, with notice to the prosecutor, conduct the necessary proceedings to make such determination.

Once it is determined that the evidence against an accused-petitioner (or any accused for that matter) is not strong and hence, qualified for bail or recognizance, he or she should then be given an opportunity to present evidence showing, *inter alia*, his or her age and medical condition. As per our Rules of Criminal Procedure, these factors must be taken into account in determining the reasonable amount of bail to be imposed.[20]

To reiterate, this petition is the first of its kind in the context of this novel public health situation. It is apt to mention that the petition was filed back on April 8, 2020.[21] Judicial notice may be taken of the fact that at that time, the COVID-19 pandemic was at its unnerving onset. Public uncertainty, confusion, and paranoia were at their peak, and the government, as a whole, was just beginning to reckon the proper policy approach in dealing with a pandemic of historical and global proportions. Therefore, with the life-concerning threat of the COVID-19 pandemic hanging above their heads, petitioners directly resorted

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[20] See Section 9, Rule 114 of the Rules of Criminal Procedure.

[21] See Petition, p. 1.

to this Court to seek their temporary release. Verily, humanitarian considerations juxtaposed against the novelty of the public health situation, especially with the emerging public perception at that time, dictate that instead of denying the petition outright, partial relief be accorded to them.

It deserves highlighting that there would be no harm in treating the petition as petitioners' respective bail applications, and referring them to the proper trial courts. **The procedure for referral as herein proposed is not some groundbreaking innovation; it is but analogous to remand directives which have been customarily done by the Court.** Needless to state, non-traditional procedures such as this are clearly within the powers of the Court[22] and are permissible when there are compelling reasons to further the higher interests of substantial justice, as in this case. While this may not be the ordinary procedure, the circumstances so warrant the discretionary relaxation of our rules.

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[22] Section 6, Rule 135 of the Rules of Court states:

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

Relatedly, Section 5, Article VIII of the 1987 Constitution states:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x x x x x x
>
> (5) **Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts**, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

A caveat, however, must be made: the unique situation of petitioners as being the first litigants to file such petition before the Court only obtains as to them. Henceforth, it is my view that PDLs similarly situated as petitioners should follow the existing rules of procedure and Court issuances on filing bail/recognizance applications before the proper inferior courts having jurisdiction over their respective cases.

II. Prayer for "Other Non-Custodial Measures."

Our laws on bail or recognizance do not account for prison conditions as a ground for provisional liberty under these specific legal modes. Under our existing legal framework, the right to be released on bail or recognizance is anchored only on the nature of the charge and on whether or not there exists strong evidence of guilt against the accused. Nevertheless, nothing prevents an accused from seeking a different imprisonment arrangement if he or she is able to prove that his or her life is greatly prejudiced by his or her continued confinement. Neither are courts prohibited from granting an accused such practicable alternative confinement arrangements to protect his or her life, although not considered as bail or recognizance in the traditional sense of our laws. After all, our statutes command that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws,"[23] and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."[24]

As our current legal framework does not specify the parameters for these reliefs, it is submitted that they be adjudged according to the deliberate indifference standard adopted in foreign jurisprudence. However, before delving into this topic, I find it imperative to discuss some fundamental principles relative to the right to life in light of the subhuman conditions of our prison system. This springs from the insinuations during the

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[23] CIVIL CODE, Article 9.

[24] CIVIL CODE, Article 10.

deliberations on this case that it is the legislative's task to remedy our subhuman prison conditions, and that the right to life does not include the right against cruel and unusual punishment under Section 19, Article III of the 1987 Constitution.

There is no quibbling that courts are duty-bound to recognize a person's right to life, and grant permissible reliefs despite, and to reiterate, the silence, obscurity or insufficiency of our laws. This command is founded on none other than the fundamental law, particularly in our Bill of Rights enshrined in the Constitution. **A person's right to life – whether accused of a crime or not – is inalienable and does not take a back seat nor become dormant just because of the lack of necessary legislation to address our subhuman prison conditions.** When the right to life is at stake, the Bill of Rights operates; making a fair and just ruling to preserve the right to life is not entirely dependent on some unpassed legislation that directs the structural improvement of our jails or allocates budget to improve our penal institutions. It must be borne in mind that Section 4 (a) of RA 10575[25] expressly states that:

> Section 4. *The Mandates of the Bureau of Corrections*. — x x x
>
> (a) Safekeeping of National Inmates — The safekeeping of inmates shall include decent provision of quarters, food, water and clothing **in compliance with established United Nations standards**. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the [Bureau of Jail Management and Penology (BJMP)]. (Emphasis supplied)

This is in accord with the State's policy expressed in Section 2 of the same law:

> Section 2. *Declaration of Policy*. — **It is the policy of the State to promote the general welfare and safeguard the basic rights of**

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[25] Entitled "AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR," otherwise known as "THE BUREAU OF CORRECTIONS ACT OF 2013," approved on May 24, 2013.

every prisoner incarcerated in our national penitentiary. It also recognizes the responsibility of the State to strengthen government capability aimed towards the institutionalization of highly efficient and competent correctional services.

Towards this end, the State shall provide for the modernization, professionalization and restructuring of the Bureau of Corrections (BuCor) by upgrading its facilities, increasing the number of its personnel, upgrading the level of qualifications of their personnel and standardizing their base pay, retirement and other benefits, making it at par with that of the [BJMP]. (Emphasis supplied)

These United Nations standards pertain to the Nelson Mandela Rules issued by the UN General Assembly:

The Standard Minimum Rules for the Treatment of Prisoners, originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the **universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners**, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world.[26] (Emphasis supplied)

The Nelson Mandela Rules pertinently provide:

1. PRISONER'S INHERENT DIGNITY AND VALUE AS HUMAN BEINGS[27]
   - Treat all prisoners with the respect due to their inherent dignity and value as human beings.
   - Prohibit and protect prisoners from torture and other forms of ill-treatment.
   - Ensure the safety and security of prisoners, staff, service providers and visitors at all times.
2. VULNERABLE GROUPS OF PRISONERS[28]

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[26] <https://www.un.org/en/events/mandeladay/mandela_rules.shtml> (last visited on July 14, 2020).

[27] Refer to Rules 1 to 5 of the United Nations Standard Minimum Rules (SMRs).

[28] Refer to Rules 2, 5 (2), 39 (3), 55 (2) and 109-110 of the United Nations SMRs.

- Take account of the individual needs of prisoners, in particular the most vulnerable categories.
- Protect and promote the rights of prisoners with special needs.
- Ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis, and are treated in line with their health conditions.

3. MEDICAL AND HEALTH SERVICES[29]

- Ensuring the same standards of health care that are available in the community and providing access to necessary health-care services to prisoners free of charge without discrimination.
- Evaluating, promoting, protecting and improving the physical and mental health of prisoners, including prisoners with special healthcare needs.

x x x x x x x x x[30]

Because of their recognition in our local legislation, they have been transformed as part of domestic law, or at the very least, having been contained in a resolution of the UN General Assembly, constitute "soft law" which the Court may enforce. In *Pharmaceutical and Health Care Association of the Philippines v. Duque*:[31]

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. **The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.** The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

x x x x x x x x x

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[29] Refer to Rules 24-27, 29-35 of the United Nations SMRs.

[30] <https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_UN_SMRs.pdf> (last visited July 17, 2020).

[31] 561 Phil. 386 (2007).

"Soft law" does not fall into any of the categories of international law set forth in Article 38, Chapter III of the 1946 Statute of the International Court of Justice. It is, however, an expression of non-binding norms, principles, and practices that influence state behavior. **Certain declarations and resolutions of the UN General Assembly fall under this category. The most notable is the UN Declaration of Human Rights, which this Court has enforced in various cases**, specifically, *Government of Hongkong Special Administrative Region v. Olalia* [550 Phil. 63 (2007)], *Mejoff v. Director of Prisons* [90 Phil. 70 (1951)], *Mijares v. Rañada* (495 Phil. 372 (2005)], and *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.* [520 Phil. 935 (2006)].[32] (Emphases supplied)

With the foregoing in mind, it is therefore incorrect to say that the Nelson Mandela Rules are absolutely not judicially enforceable in our jurisdiction. By authority of our laws, courts may already recognize the effects of our subhuman prison conditions and grant proper reliefs based on the circumstances of the case. To be sure, the lack of laws allocating budget for the structural improvement of our jails in order to address subhuman conditions does not mean that our courts are powerless to grant permissible reliefs which are grounded on the Bill of Rights of our Constitution. In this relation, it must be emphasized that when the court grants such reliefs, it does not venture in policy making or meddle in matters of implementation; *after all, it cannot compel — as petitioners do not even pray to compel — Congress to make laws or pass a budget for whatever purpose*. **Policy making towards improving our jail conditions is a separate and distinct function from adjudicating Bill of Rights concerns upon a valid claim of serious and critical life threats while incarcerated.** The former is within the province of Congress, the latter is within the Court's.

Additionally, in response to one view,[33] let me stress that **the protection of the right against cruel and unusual**

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[32] *Id.* at 397-398 and 406.

[33] See Separate Opinion of Associate Justice Edgardo L. Delos Santos, pp. 52-55.

punishment pursuant to Section 19, Article III of our Constitution is not completely left to the determination of legislature. To recount, the exchanges during the constitutional deliberations evince the intent of the Framers to create a provision explicitly recognizing the problem of our substandard jail conditions and that Congress **"should do something about it"**; hence, the phrase "should be dealt with BY LAW":

MR. REGALADO: Madam President, I am proposing a further amendment to put some standards on this, to read: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER."

Please permit me to explain. The punishment may not be physical but it could be degrading. Perhaps, the Members have seen the picture of that girl who was made to parade around the Manila International Airport with a placard slung on her neck, reading "I am a thief."

That is a degrading form of punishment. It may not necessarily be corporal nor physical. That is why I ask for the inclusion of OR DEGRADING "punishment" on this line and employment should be ON ANY PRISONER. It includes a convicted prisoner or a detention prisoner.

MR. MAAMBONG: Where would the words be?

MR. REGALADO: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER." This is all-inclusive.

MR. MAAMBONG: In other words, the Commissioner seeks to delete the words "against CONVICTED prisoners or pretrial detainees," and in its place would be "ON ANY PRISONER."

MR. REGALADO: Because in penal law, there are two kinds of prisoners: the prisoners convicted by final judgment and those who are detention

prisoners. Delete "or pretrial detainees"; then, "or the use of GROSSLY substandard or INADEQUATE penal facilities." If we just say "substandard," we have no basis to determine against what standard it should be considered. But if we say "GROSSLY substandard," that is enough of a legislative indication and guideline.

MR. MAAMBONG: Madam President, before we take it up one by one, the Committee modification actually deleted the words "substandard or outmoded," and in its place, we put the word INADEQUATE. Is it the Gentleman's position that we should put back the word "substandard" instead of "INADEQUATE?"

MR. REGALADO: I put both, "or the use of GROSSLY substandard or INADEQUATE penal facilities," because the penal facilities may be adequate for a specific purpose but it may be substandard when considered collectively and vice-versa; and then, we delete the rest, "should be dealt with BY LAW." That capsulizes, I think, the intent of the sponsor of the amendment.

FR. BERNAS: If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO: **How do we determine what is substandard?**

FR. BERNAS: ***We leave that to the legislature.*** What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it.

MR. REGALADO: Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models ***but*** **it may be sufficient for us**?

FR. BERNAS:	I do not think we should go into great details on this. We are not legislating. . .
MR. REGALADO:	So, the sponsor's position is that **we just *leave it to the legislature*** to have a legislative ***standard of their own*** in the ***form of an ordinary legislation***?
FR. BERNAS:	***Yes.***[34] (Emphases and underscoring supplied)

However, nowhere is it shown that the Framers intended to completely insulate the matter of subhuman jail conditions from judicial relief when a substantial relation to a person's right to life is convincingly made. **In my opinion, the right to life permutates to the prohibition against any form of cruel and unusual punishment against one's person. When serious and critical threats to one's life are adequately proven by virtue of one's conditions while incarcerated, the Court must fill in the void in the law and grant permissible reliefs.** Under extraordinary circumstances, temporary transfers or other confinement arrangements, when so proven to be practicable and warranted, may be therefore decreed by our courts if only to save the life of an accused, who is, after all, still accorded the presumption of innocence. Indeed, an accused cannot just be left to perish and die in jail in the midst of a devastating global pandemic, without any recourse whatsoever. At the risk of belaboring the point, the lack of laws addressing the subhuman conditions of our prison system does not mean that our courts are rendered powerless to grant permissible reliefs, especially to those who have yet to be finally convicted of the crimes they were charged with. **The Court's duty to protect our Bill of Rights is constant – respecting the right to life is constant.** To deny relief on the excuse that it is Congress' responsibility to institutionally improve our prison systems is tantamount to judicial abdication of this perpetual tenet.

At this juncture, it is relevant to point out that the main thrust of preventive imprisonment is not to punish – as there

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[34] Record of the 1986 Constitutional Commission No. 034 (July 19, 1986).

is yet no penalty – but rather, to protect society from potential convicts and their propensity to commit further crimes. Preventive imprisonment also ensures that the court having jurisdiction over the case may properly conduct the necessary proceedings and effectuate its decision. In *United States v. Salerno*,[35] the Supreme Court of the United States (SCOTUS) touched upon this basic premise that pretrial detention does not serve as a punishment for dangerous individuals:

> Although a court could detain an arrestee who threatened to flee before trial, such detention would be permissible because it would serve the basic objective of a criminal system — bringing the accused to trial. x x x
>
> x x x x x x x x x
>
> We conclude that the detention imposed by the Act falls on the regulatory side of the dichotomy. **The legislative history of the Bail Reform Act clearly indicates that Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals.** x x x **Congress instead perceived pretrial detention as a potential solution to a pressing societal problem.** x x x There is no doubt that **preventing danger to the community is a legitimate regulatory goal.** x x x[36] (Emphases supplied, citations omitted)

While, as recognized above, "preventing danger to the community is a legitimate regulatory goal," an accused's right to life borne from critical subhuman conditions cannot be just sacrificed at the altar of police power if there are **practicable alternative solutions** to both ensure his or her continued detention, as well as his or her survival. Again, preventive imprisonment is not yet a penalty. To let an accused perish in jail because of **the deliberate indifference of the State** towards his or her medical conditions is even worse than a penalty because he or she has been effectively sentenced to death absent a final determination of his or her guilt. Surely, there must be some form of judicial relief to, at the very least, balance these various interests.

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[35] 481 US 739 (1987).

[36] *Id.*

The **deliberate indifference standard** is based on jurisprudence from the United States, where we have patterned the Bill of Rights of our own Constitution. As rationalized by SCOTUS, "when the State takes a person into its custody and holds him there against his will, [as in the case of prisoners,] the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being."[37] In the case of *Estelle v. Gamble* (*Estelle*),[38] the SCOTUS, however, qualified that it is the State's "deliberate indifference to serious medical needs of prisoners [which] constitutes the 'unnecessary and wanton infliction of pain' x x x proscribed by the Eighth Amendment." In *Estelle*, it was held:

> **We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain,"** x x x **proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs** x x x **or by prison guards in intentionally denying or delaying access to medical care** x x x **or intentionally interfering with the treatment once prescribed.** x x x **Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.**
>
> x x x x x x x x x
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> x x x **[I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute "an unnecessary and wanton infliction of pain" or to be** x x x **"repugnant to the conscience of mankind."** Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. **In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of**

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[37] *Deshaney v. Winnebago County Dept. of Social Services*, 489 US 189 (1989).

[38] 429 US 97 (1976).

decency" in violation of the Eighth Amendment. x x x (Emphases and underscoring supplied, citations omitted)

Since the SCOTUS's promulgation of *Estelle*, the "deliberate indifference" standard has been used in succeeding cases in order to determine whether or not a supposed inadequacy in medical care received by an inmate may constitute a violation of the Eighth Amendment.[39] This standard was further refined in *Helling v. McKinney*[40] (*Helling*), wherein the SCOTUS introduced two (2) elements that may help in determining whether there exists such violation, namely the objective and subjective factors. The existence of these factors must be proven with evidence showing that: (*a*) the prisoner was deprived of a basic human need or that he or she had an objectively serious medical condition (*objective factor*); and (*b*) the prison officials knew about the prisoner's need or condition, which they consciously disregarded by actions beyond mere negligence (*subjective factor*).[41]

To clarify, the *objective factor* should involve a determination of **whether or not the inmate is exposed to a risk which seriously and critically threatens his or her right to life while incarcerated**. As stated in *Helling*, such determination requires more than a scientific and statistical inquiry into the seriousness of the potential harm and the likelihood that such injury to health will actually be caused by the inmate's exposure to such risk. It also requires the court to assess whether society considers the risk that the inmate complains of to be so grave that it violates contemporary standards of decency to expose anyone

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[39] See *Erickson v. Pardus*, 551 US 89 (2007); *Balisok v. Fleck*, 87 F.3d 1317 (9th Cir. 1996); *Helling v. McKinney*, 509 US 25 (1993); *Hudson v. McMillian*, 503 US 1 (1992); *Wilson v. Seiter*, 501 US 294 (1991); *Unpublished Disposition*, 937 F.2d 613 (9th Cir. 1991); *Wellman v. Faulkner*, 715 F.2d 269 (7th Cir. 1983); and *Deshaney*, *supra* note 37.

[40] *Id.*

[41] See also *Wilson v. Adams*, 901 F.3d 816 (7th Cir. 2018); *Petties v. Carter*, 836 F.3d 722 (7th Cir. 2016); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Seiter*, *id.*; and *Estelle*, *supra* note 38.

unwillingly to such a risk. In other words, the prisoner must show that the risk of which he or she complains of is not one that today's society chooses to tolerate.[42]

On the other hand, the *subjective factor* should involve an inquiry of the prison authorities' attitude and conduct in dealing with the risk complained of by the inmate, *i.e.*, whether or not such attitude and conduct are tainted with deliberate indifference to the serious medical needs of the inmate. On this note, further US case law suggests that the existence of "deliberate indifference" on the part of prison authorities involves a "state-of-mind" inquiry on their part.[43] Such deliberate indifference "can be evidenced by 'repeated examples of negligent acts which disclose a pattern of conduct by the prison medical staff' or it can be demonstrated by '**proving that there are such systematic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care**.'"[44]

While the relief portion of the instant petition prays for petitioners' temporary release on recognizance or in the alternative, bail, petitioners also ask this Court that they be released through "other non-custodial measures,"[45] asserting their right to life, and not to be subjected to cruel and unusual punishment based on the Bill of Rights of our Constitution. As implied by the *ponencia*'s disposition, the Court has not turned a blind eye away from these pleas that are, after all, founded on our fundamental law. **Thus, similar to the referral of petitioners' applications for bail/recognizance, the Court has adopted the proposal to instead, treat the instant petition as petitioners' motions for suitable but practicable confinement arrangements. In my own view, I submit that these motions should be adjudged according**

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[42] See *Helling*, *supra* note 39.

[43] *Wilson v. Seiter*, *supra* note 39.

[44] *Wellman v. Faulkner*, *supra* note 39; emphasis supplied.

[45] Petition, p. 57.

to the above-mentioned parameters of deliberate indifference.

Nonetheless, it must be highlighted that in the same way that the Court is unequipped to make a factual determination on whether or not the evidence of guilt against any of the petitioners is strong, it is equally unequipped to make a factual determination of whether or not the State has breached the "deliberate indifference" standard with respect to the confinement conditions of each petitioner. **The jail conditions of each petitioner *vis-à-vis* their own medical status are distinct from one another and cannot be sweepingly assumed without the benefit of a dedicated proceeding for the purpose.** Hence, the Court cannot just yet grant petitioners any form of temporary release outside the traditional modes of bail or recognizance, without the benefit of a full-blown hearing therefor. As earlier intimated, the petition must therefore be referred to the respective trial courts in order for them to ascertain the peculiarities of each petitioner's situation and assess the same in accordance with the parameters stated above. Once it is determined that there exists a "deliberate indifference" on the part of the State, these courts may then accord the accused confinement arrangements that are logistically practicable under the given situation (*e.g.*, transfers to other detention facilities, directive to minimize capacity in the accused's jail, isolation, *etc*.), taking into account not only the side of the accused but also the submissions of the State, in particular, the prison officials in charge of the custody of the accused. This is clearly warranted, considering the averments of respondents that the BuCor and the BJMP have implemented various health policies, protocols, and measures to ensure that they will be able to take care of their inmates should the latter catch COVID-19, and that the Court, through Office of the Court Administrator Circular No. 91-2020[46] in relation to A.M. No. 12-11-2-SC,[47] has already

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[46] Entitled "RELEASE OF QUALIFIED PERSONS DEPRIVED OF LIBERTY" dated April 20, 2020.

[47] Entitled "GUIDELINES FOR DECONGESTING HOLDING JAILS BY ENFORCING THE RIGHTS OF ACCUSED PERSONS TO BAIL AND TO SPEEDY TRIAL," dated March 18, 2014.

provided guidelines towards decongesting penal facilities and humanizing conditions of PDLs pending hearing of their cases.[48] Notably, the accused may choose to assail the ruling of the trial courts on this score, as well as on their respective bail applications should they be dissatisfied, although the same must be coursed through the proper proceeding in accordance with our rules of procedure.

III. Prayer for the Creation of a Prisoner Release Committee.

Petitioners also pray for the creation of a Prisoner Release Committee[49] which would be tasked to urgently study and implement the release of all other prisoners. However, it is beyond the power of the Court to institute policies that are **not judicial in nature**. Unlike the reliefs discussed above that entail (1) the relaxation of procedural rules and (2) the enforcement of the Bill of Rights, this measure is tantamount to a directive that squarely interferes with **institutional administration**, which the Court cannot do. There is simply **no legal or equitable basis** for the Court to dictate the establishment of an administrative body that will study and implement the release of all other prisoners. While the Court understands the plight of petitioners in light of this unprecedented public health emergency, the creation of a similar Prisoner Release Committee is a policy matter best left to the discretion of the political branches of government.

The other permissible reliefs discussed above are, however, herein accorded in order to assuage petitioners' health concerns, subject to the trial courts' determinations through the proper findings of fact for the purpose.

WHEREFORE, I vote to: (*a*) **TREAT** the petition as petitioners Dionisio S. Almonte, *et al*.'s respective applications

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[48] See Comment, p. 32.

[49] Petition, p. 57.

for bail and motions for other confinement arrangements as discussed in this Opinion; (*b*) **REFER** the bail applications and motions to the trial courts for further proceedings in accordance with the parameters herein stated; and (*c*) **DENY** the prayer for the creation of a Prisoner Release Committee.

SEPARATE OPINION

ZALAMEDA, *J.*:

On 08 March 2020, the President issued Presidential Proclamation (PP) 922 declaring a state of public health emergency throughout the Philippines upon confirmation by the Secretary of Health of local transmission of coronavirus disease (COVID-19).[1] The present Petition was filed on 09 April 2020, a month after the issuance of PP 922.

Fearful that the contagion will catch up to them while in detention, petitioners seek succor from this Court, asking for temporary liberty through bail or personal recognizance based on equity (Sections 1[2] and 5 (5)[3] of Article VIII of the 1987

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[1] Presidential Proclamation No. 922, Sec. 5; this state of public health emergency shall remain in force and effect until lifted or withdrawn by the President, and has not been lifted or withdrawn as of this date.

[2] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[3] SECTION 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified

Constitution, in relation to Rule 3, Section 1[4] of A.M. No. 10-4-20-SC). The Petition is filed directly before this Court as an exception to the procedures on applications for bail[5] or personal recognizance,[6] as well as the different modes of judicial review under the Rules of Court.

Petitioners describe themselves as belonging to the "vulnerable or at-risk groups [to contract COVID-19] by reason of their medical and/or physical conditions"[7] and are "currently committed in places of detention where it is impossible to practice self-isolation, social distancing, and other COVID-19 precautions."[8] The table[9] below summarizes petitioners' situation on their respective ages, health conditions, and actual detention facilities:

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and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[4] RULE 3: THE EXERCISE OF JUDICIAL FUNCTION

SECTION 1. The Supreme Court [is] a court of law. – The Court is a court of law. Its primary task is to resolve and decide cases and issues presented by litigants according to law. However, it may apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case.

[5] Revised Rules on Criminal Procedure, Rule 114; *Cortes v. Catral*, A.M. No. RTJ-97-1387, 10 September 1997.

[6] Republic Act (RA) No. 10389, Recognizance Act of 2012. See also Implementing Guidelines (http://probation.gov.ph/wp-content/uploads/2014/10/Implementing-Guidelines-ROR.pdf [last accessed 07 July 2020]).

[7] Petition, p. 6.

[8] *Id.* at 12.

[9] *Id.* at 12-16.

	Petitioner	Case (Case number, crime charged, case status)	Condition (Age, health)	Actual Detention Facility
1	Dionisio S. Almonte	Not specified	62, non-proliferative diabetic retinopathy	Metro Manila District Jail 4 (MMDJ 4), Camp Bagong Diwa, Taguig City
2	Ireneo O. Atadero, Jr.	Not specified	57, hypertensive with type 2 diabetes mellitus	MMDJ 4
3	Emmanuel Bacarra[10]	Not specified	55, hypertensive heart disease stage 1, non-insulin dependent diabetes mellitus type 2, TC benign prostatic hypertrophy and osteoarthritis	MMDJ 4
4	Alexander Ramonita K. Birondo	Not specified	68, with bronchial asthma and dyslipidemia	MMDJ 4
5	Winona Marie O. Birondo	Not specified	61, bronchial asthma cellulitis and dyslipidemia	Taguig City Jail Female Dorm, Camp Bagong Diwa, Taguig City (Female Dorm)
6	Rey Claro Casambre	Not specified	68, diabetes mellitus with vascular and neurologic complications	MMDJ 4
7	Ferdinand T. Castillo	Not specified	60, hypertension	MMDJ 4

[10] Data entered twice in petition under (c) and (q).

8	Francisco O. Fernandez, Jr.	Not specified	71, hypertensive cardiovascular disease and chronic obstructive pulmonary disease	MMDJ 4
9	Renante Gamara	Not specified	62 (nothing further)	MMDJ 4
10	Vicente P. Ladlad	Not specified	70, chronic obstructive pulmonary disease (emphysema) and hypertension	MMDJ 4
11	Ediesel R. Legaspi	Not specified	62, hypertension	MMDJ 4
12	Adelberto A. Silva	Not specified	72, hypertension, had post triple percutaneous transluminal coronary angioplasty and post myocardial infarction in 2002	MMDJ 4
13	Alberto L. Villamor	Not specified	63, type 2 diabetes mellitus, hypertension stage 2, microalburminuria, dermatophy and neuropathy	MMDJ 4
14	Virginia B. Villamor	Not specified	65, hypertension with bronchial asthma, chronic recurrent major depressive disorder	Female Dorm
15	Cleofe Lagtapon	Not specified	66 (nothing further)	Female Dorm
16	Geann Perez	Not specified	21, leprosy	Female Dorm

17	Oliver B. Rosales	Not specified	48, ischemic heart disease, peripheral neuropathy, acid peptic disease	MMDJ 4
18	Norberto A. Murillo	Not specified	66, hypertension and diabetes mellitus type 2	Manila City Jail
19	Reina Mae Nasino	Not specified	22, pregnant	Manila City Jail
20	Dario Tomada	Not specified	60, diabetes mellitus type 2, bronchial asthma, T/C chronic obstructive pulmonary disease	Manila City Jail
21	Oscar Belleza	Not specified	63, hypertension, post craniotomy due to sub-acute subdural hematoma left fronto parietal area, suffered cerebrovascular accident, has mass in right infra auricular area	Manila City Jail
22	Lilia Bucatcat	Not specified	73 (nothing further)	Serving sentence at the Correctional Institute for Women (CIW), Mandaluyong City

The Petition raises just one issue: whether petitioners, who are elderly, sickly, and with other medical conditions, should be released on humanitarian considerations in the context of COVID-19.[11] Meanwhile, this Court formulated the following issues during deliberations:

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[11] Petition, p. 34.

A. Whether the instant Petition filed directly before this Court may be given due course.

B. Whether the Nelson Mandela Rules are enforceable in Philippine courts.

C. Whether the petitioners may be given provisional liberty on the ground of equity.

D. Whether the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency.[12]

I vote to DENY the Petition.

Petitioners' Direct Recourse to this Court for Provisional Liberty on the Ground of Equity

The determination on the propriety of the instant Petition for provisional liberty may be given due course on the ground of equity, upon an inquiry on the following: 1) jurisdiction of the Court over applications for bail or recognizance; 2) compliance by petitioners with the procedures for applications for bail or recognizance; and 3) exemption of petitioners from complying with the procedures for such applications.

This Court is clearly not among those vested with jurisdiction over applications for bail or recognizance under the Rules and the law. The jurisdiction over both applications for bail and recognizance lies with the trial courts.[13] To be sure, Rule 114 of the Revised Rules on Criminal Procedure governs applications for bail, while Republic Act (RA) No. 10389 governs applications for recognizance.

Also, the issues raised by petitioners, particularly those that entail the determination of the due execution and authenticity of their submitted documents, involve a determination of facts

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[12] *Per curiam ponencia*, p. 5.

[13] Revised Rules on Criminal Procedure, Rule 114, Section 4; RA 10389, Section 5.

best addressed to the sound discretion of the trial courts. **Indeed, petitioners ought to have submitted their applications for temporary release before the respective courts where their cases are pending.** And even if We are to take cognizance of the Petition, petitioners failed to substantiate their right to be released on bail or recognizance.

In determining the amount of bail, the trial courts consider the following factors: financial ability of the accused to give bail; nature and circumstances of the offense; penalty for the offense charged; character and reputation of the accused; age and health of the accused; weight of the evidence against the accused; probability of the accused appearing at the trial; forfeiture of other bail; if the accused was a fugitive from justice when arrested; and pendency of other cases where the accused is on bail.[14]

On the other hand, RA 10389 lists the following requirements for an application for recognizance and the disqualifications for such application:

> SEC. 6. *Requirements*. — The competent court where a criminal case has been filed against a person covered under this Act shall, upon motion, order the release of the detained person on recognizance to a qualified custodian: Provided, That all of the following requirements are complied with:
>
> (a) A sworn declaration by the person in custody of his/her indigency or incapacity either to post a cash bail or proffer any personal or real property acceptable as sufficient sureties for a bail bond;
> (b) A certification issued by the head of the social welfare and development office of the municipality or city where the accused actually resides, that the accused is indigent;
> (c) The person in custody has been arraigned;
> (d) The court has notified the city or municipal sanggunian where the accused resides of the application for recognizance. x x x
> (e) The accused shall be properly documented, through such processes as, but not limited to, photographic image

[14] Revised Rules on Criminal Procedure, Rule 114, Section 9.

reproduction of all sides of the face and fingerprinting: Provided, That the costs involved for the purpose of this subsection shall be shouldered by the municipality or city that sought the release of the accused as provided herein, chargeable to the mandatory five percent (5%) calamity fund in its budget or to any other available fund in its treasury; and

(f) The court shall notify the public prosecutor of the date of hearing therefor within twenty-four (24) hours from the filing of the application for release on recognizance in favor of the accused: Provided, That such hearing shall be held not earlier than twenty-four (24) hours nor later than forty-eight (48) hours from the receipt of notice by the prosecutor: Provided, further, That during said hearing, the prosecutor shall be ready to submit the recommendations regarding the application made under this Act, wherein no motion for postponement shall be entertained.

SEC. 7. *Disqualifications for Release on Recognizance*. — Any of the following circumstances shall be a valid ground for the court to disqualify an accused from availing of the benefits provided herein:

(a) The accused bad made untruthful statements in his/her sworn affidavit prescribed under Section 5(a);
(b) The accused is a recidivist, quasi-recidivist, habitual delinquent, or has committed a crime aggravated by the circumstance of reiteration;
(c) The accused had been found to have previously escaped from legal confinement, evaded sentence or has violated the conditions of bail or release on recognizance without valid justification;
(d) The accused had previously committed a crime while on probation, parole or under conditional pardon;
(e) The personal circumstances of the accused or nature of the facts surrounding his/her case indicate the probability of flight if released on recognizance;
(f) There is a great risk that the accused may commit another crime during the pendency of the case; and
(g) The accused has a pending criminal case which has the same or higher penalty to the new crime he/she is being accused of.

Petitioners do not seek to invalidate the established requirements for bail or recognizance, but instead claim exception therefrom due to their peculiar circumstances. **Evident, however, is petitioner's failure to comply with these clear and comprehensive requirements.** Petitioners also significantly failed to present this Court with information if the crimes for which they had been detained are bailable, or their financial status qualifies them for recognizance, and/or they have a definite plan for their temporary release.

It was only after respondents narrated the circumstances relating to the charges against petitioners that the latter were compelled to provide the Court with a more detailed, but still incomplete, information. Petitioners still failed to indicate vital information, such as the actual case numbers, motions filed in relation to their age and health condition, and court orders corresponding to such motions. They did not even assert any pending applications for bail or recognizance before the trial courts, as well as other applications or custodial arrangements, or if such had been denied.

The initial lack of candor about the nature of the crimes charged, and the context for the filing thereof, invite questions as to the legitimacy of using the threat of contracting COVID-19 in petitioners' bid to gain liberty, temporary or otherwise.

As petitioners invoke this Court's exercise of equity jurisdiction, praying for exemption from the procedures of applications for bail or recognizance on humanitarian grounds, they present their respective ages and health statuses, as well as the existing conditions of their detention facilities to show that they are especially exposed and vulnerable to contract COVID-19. However, this prayer for exemption rests on flimsy grounds.

Out of the 22 petitioners,17 are senior citizens, or are 60 years of age and older. There are 12 male senior citizens with health issues,[15] one male senior citizen without health

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[15] Dionisio S. Almonte, Alexander Ramonita K. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco O. Fernandez, Jr., Vicente P.

issues,[16] and three male non-senior citizens with health issues.[17] There are two female senior citizens with health issues,[18] two female senior citizens without health issues,[19] and two female, non-senior citizens with health issues. One of the two female non-senior citizens is five months pregnant at the time of the filing of the Petition but has since given birth,[20] while the other has leprosy.[21] The health issues of petitioners include diabetes and hypertension.[22] **However, only 17 petitioners provided copies of their medical certificates, and only six medical certificates out of the 17 were issued in 2020. None of the petitioners have been tested for, or are alleged to have, COVID-19.**

The Petition described the physical situations in the Quezon City Jail, the Cebu City Jail, the Mandaue City Jail, and the New Bilibid Prison (NBP) in Muntinlupa, to support their claim of exposure and vulnerability to contract COVID-19. Yet, none of the petitioners are confined in any of the said institutions. Petitioners are actually detained in four other different sites: MMDJ 4 in Camp Bagong Diwa, Taguig City Jail; Female Dorm, which is also in Camp Bagong Diwa, Taguig City Jail; Manila City Jail, and the CIW in Mandaluyong City.[23]

Ladlad, Ediesel R. Legaspi, Adelberto A. Silva, Alberto L. Villamor, Norberto A. Murillo, Dario Tomada, and Oscar Belleza. Petition, pp. 37-38.

[16] Renante Gamara. Petition, p. 38.

[17] Ireneo O. Atadero, Jr., Emmanuel Bacarra, and Oliver Rosales. Petition, pp. 37-38.

[18] Winona Marie O. Birondo and Virginia B. Villamor. Petition, pp. 37-38.

[19] Cleofe Lagtapon and Lilia Bucatcat. Petition, p. 38.

[20] Reina Mae Nasino. Petition, p. 40. Petitioner Nasino gave birth on 01 July, and returned to Manila City Jail on 02 July. https://www.philstar.com/nation/2020/07/05/2025696/detainee-seeks-hospital-stay-after-giving-birth (last accessed 06 July 2020).

[21] Ge-ann Perez. Petition, p. 39.

[22] Petition, pp. 37-40.

[23] *Id.* at 12-16.

Petitioners emphasize that their collective actual health situation and congested detention facilities put them at greater risk of contracting COVID-19. They harp upon these facts, but conveniently ignore the reality of the absence of any incident of COVID-19 infection in their actual detention facilities. While it is true that after the filing of the Petition, and during its pendency, 20 PDLs and 1 staff tested positive for COVID-19 at the CIW where one of the petitioners is imprisoned, those who tested positive have since been transferred to the isolation facilities at the NBP.[24] Thus, the actual risk of petitioners contracting COVID-19 is more speculative than real.

In seeking for their temporary release through bail or recognizance, petitioners are primarily asking this Court to turn a blind eye to the established requirements which take into account the nature and gravity of the crimes charged. Petitioners ultimately want the Court to controvert Art. III, Section 13 of the 1987 Constitution, which provides that "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. x x x" Most of the petitioners are incarcerated for non-bailable crimes and offenses. Even conceding the extraordinary backdrop of this case, humanitarian reasons alone cannot justify the utter disregard of the Constitution, the law, and the rules of procedures.

If only to belabor the point, judicial policy dictates that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.[25] And since petitioners failed to show that they have exhausted the appropriate remedies before the lower courts,

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[24] https://www.cnnphilippines.com/news/2020/4/21/Women-s-Correctional-more-COVID-19-infections.html (last accessed 11 May 2020).

[25] *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993; 291 Phil. 664 (1993); 217 SCRA 633. Emphasis added.

i.e., by filing applications for bail and recognizance therein, or compelling circumstances have exempted them from disregarding the hierarchy of courts, the Petition must be denied.

The Court issued Guidelines for Both the Temporary and Permanent Release of Qualified PDLs

Recognizing that We cannot assume the role of the trial courts concerning applications for bail or recognizance, the Court has issued circulars on the trial courts' conduct of procedures on both the **temporary and permanent release of qualified persons deprived of liberty (PDLs)**. These circulars serve as further proof that the entire judiciary was in operation regardless of the threat of contracting COVID-19. In the same vein, this Court acknowledged the congestion in detention facilities nationwide and the consequent high risk of PDLs contracting COVID-19. This Court, by itself or through the Office of the Court Administrator (OCA), issued these circulars as part of its response to the demands brought about by COVID-19.

First, on 31 March 2020, we issued AC No. 33-2020[26] directing the online filing of complaints or information, and posting of bail due to the rising number of COVID-19 infection. The OCA released the corresponding guidelines, OCA 89-2020,[27] on 03 April 2020. Second, on 20 April 2020, the OCA issued OCA Circular No. 91-2020[28] to address the **temporary or permanent release of qualified PDLs**, reminding judges to adhere to the Guidelines for Decongesting Jails by Enforcing the Rights of the Accused Persons to Bail and to Speedy Trial (A.M. No. 12-11-2-SC, effective 1 May 2014),[29] particularly Sections 5

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[26] http://sc.judiciary.gov.ph/11145/ (last accessed 06 July 2020).

[27] http://sc.judiciary.gov.ph/11165/ (last accessed 06 July 2020).

[28] http://sc.judiciary.gov.ph/11234/ (last accessed 06 July 2020).

[29] http://oca.judiciary.gov.ph/wp-content/uploads/2014/04/A.M.-No.-12-11-2-SC.pdf (last accessed 06 July 2020).

(release after service of minimum imposable penalty) and 10 (provisional dismissal). Third, AC No. 38-2020[30] dated 30 April 2020 set the guidelines for reduced bail and recognizance as modes for the **temporary release of qualified PDLs** during this public health emergency, pending resolution of their cases.

As a result, 9,731 PDLs from 17 March to 29 April 2020 were released nationwide. This number has since increased to 33,790 as of 22 June 2020.[31] The Chief Justice's far-reaching efforts to further decongest our detention facilities, especially in light of the situation brought about by COVID-19, is truly commendable.

Corollary to this Court's initiatives, on 15 April 2020,[32] the Department of Justice (DOJ), through the Board of Pardons and Parole (BPP), issued Board Resolution No. OT-04-15-2020, or the Interim Rules on Parole and Executive Clemency (Interim Rules).[33] The BPP addresses the congestion in the national penitentiaries by advocating the **permanent release of qualified PDLs**. As of 10 June 2020, the DOJ's efforts resulted to 749 PDLs' release on parole and 356 PDLs' receipt of executive clemency.[34] **The combined efforts of this Court, the OCA, and the DOJ has brought about the release of 34,895 PDLs from 17 March to 22 June 2020.**

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[30] http://sc.judiciary.gov.ph/11306/ (last accessed 06 July 2020).

[31] Re: Updated Report on the Number of Persons Deprived of Liberty (PDLs) Released from Custody, Memorandum from the OCA to the Office of the Chief Justice dated 02 July 2020.

[32] Published 30 April 2020, and to take effect on 15 May 2020.

[33] https://law.upd.edu.ph/wp-content/uploads/2020/04/DOJ-BR-No-OT-04-15-2020.pdf (last accessed 06 July 2020)

[34] Letter of DOJ Secretary Menardo I. Guevarra to Chief Justice Diosdado M. Peralta dated 15 June 2020.

The Enforceability of the Nelson Mandela Rules in the Philippines vis-à-vis the State's Prerogative of Selecting Appropriate Police Power Measures in Times of Emergency

Petitioners cite Rules 13, 16, 18, 22, 24, 25, 27, 30, 42, 109, and 111 of the Revised UN Standard Minimum Rules for the Treatment of Prisoners, or the Nelson Mandela Rules (Mandela Rules),[35] in support of their claim that the State has the duty to protect the health and safety of its prisoners.

The Mandela Rules, however, must be read in their entirety and in the proper context. The Expert Group that formulated the Mandela Rules articulated the standard of adequate systems in penal institutions. It also recognized that the said Rules are not capable of wholesale application in all places because of the difference in the legal, social, economic, and geographical situations in each country. The preliminary observations which preface the Nelson Mandela Rules bear witness to this recognition:

> Preliminary observation 1
>
> The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.
>
> Preliminary observation 2
>
> 1. **In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times.**

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[35] On 17 December 2015, the United Nations' General Assembly, in A/Res/70/175, approved the recommendation of the Expert Group that the Rules should be known as "the Nelson Mandela Rules," to honor the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace.

They should, however, serve to stimulate a constant endeavor to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of these rules as a whole. **It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.**[36]

These preliminary observations allow us to characterize the measures that this Court has undertaken for the temporary and permanent release of PDLs, as well as the practices introduced by the officials of the BJMP, under the Department of the Interior and Local Government (DILG), and the BuCor, under the DOJ,[37] as part of our country's compliance with United Nations standards and as part of our country's response in catering to the needs of PDLs brought about by COVID-19.[38] Section 4 (a) of RA 10575, or The Bureau of Corrections Act of 2013, expressly states that "the safekeeping of inmates shall include decent provision of quarters, food, water, and clothing in compliance with United Nations standards."

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[36] https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (last accessed 10 July 2020).

[37] The DOJ has also initiated the same response in the Bureau of Immigration (BI) which reported on 14 May 2020 that its 75 personnel and 84 foreign detainees in Camp Bagong Diwa have all tested negative for COVID-19. The 84 out of 400 detainees were tested because they are at greater risk of contracting COVID-19. They are either senior citizens or have underlying medical conditions. All detainees are required to sanitize. The BI detention facility undergoes "rigorous cleaning and continuous disinfection." Visits have been temporarily prohibited. https://tribune.net.ph/index.php/2020/05/14/foreign-inmates-bi-personnel-negative-of-covid-19/ (last accessed 06 July 2020).

[38] From the verified reports of the BJMP and BuCor submitted by the OSG as annexes to its Comment. Annex A — Verified Report, BJMP, pp. 17-18; Annex C — Verified Report, BJMP, pp. 2-7, 13, 17.

The BJMP and the BuCor have prohibited jail visits since March 2020 to minimize PDLs' exposure to the COVID-19 virus.[39] They have also implemented a "no *paabot*" policy prohibiting bringing food and other personal items into the detention facilities and penal institutions.[40] Aside from information campaigns involving both personnel and PDLs,[41] there have been activities such as distribution of vitamins to personnel[42] and PDLs,[43] production of face masks,[44] and distribution of sanitation and disinfection materials.[45] PDLs are also given the means for electronic money transfer[46] and for video calls (*e-dalaw*).[47]

Measures put in place for addressing tuberculosis in Philippine detention facilities have been replicated to address probable

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[39] Annex E — Verified Report, BJMP, pp. 1-2; Annex E — Compendium of Policies, BuCor, p. 7.

[40] Annex E — Compendium of Policies, BuCor, p. 24.

[41] Annex B — Verified Report, BJMP, p. 4; Annex A — Management of CIW, BuCor, pp. 91-10; Annex B — Management in the NBP, BuCor, pp. 5-6; Annex C — Best Practices, BuCor.

[42] Annex B — Verified Report, BJMP, pp. 3-4; Annex C — Verified Report, BJMP, p. 2; Annex D — Verified Report, BJMP p. 1; Annex E — Verified Report, BJMP, p. 4; Annex B — Management in the NBP, BuCor, pp. 1-2.

[43] Annex B — Verified Report, BJMP, p. 6; Annex D — Verified Report, BJMP, p. 7; Annex E — Verified Report, BJMP, p. 6; Annex B — Management in the NBP, BuCor, pp. 7-8.

[44] Annex C — Verified Report, BJMP, p. 14; Annex A — Management of CIW, BuCor, pp. 11-15.

[45] Annex B — Verified Report, BJMP, p. 7; Annex C — Verified Report, BJMP, pp. 12-13; Annex D — Verified Report, BJMP, pp. 2, 7.

[46] Annex A — Verified Report, BJMP, pp. 8-9, 20; Annex B — Verified Report, BJMP, pp. 11-12; Annex D — Verified Report, BJMP, p. 12; Annex E —Verified Report, BJMP, p. 10.

[47] Annex A — Verified Report, BJMP, p. 7; Annex C — Verified Report, BJMP, p. 14; Annex D — Verified Report, BJMP, p. 10; Annex E — Verified Report, BJMP, p. 10.

COVID-19 cases. These measures include conducting infection control protocols (proper entry screening[48] and mass screenings inside detention facilities), creating isolation units for infected patients to halt further spread of the disease,[49] and installing quarantine areas for discharged patients.[50] Medical practitioners assigned to detention facilities and penal institutions have been identified.[51] PDLs who are sick, especially those who have fever, cough, and colds, undergo medical consultations at the designated isolation areas.[52] The PDLs who tested positive in the CIW have been admitted to the Mandaluyong City Medical Center and the National Kidney and Transplant Institute.[53] Psychosocial activities,[54] including psychotherapy,[55] are continuously conducted.

Petitioners also enumerated the countries that released PDLs because of the fear of the spread of COVID-19 infections. We would like to point out that the release of PDLs who are similarly situated to petitioners in terms of age and health should be done with extreme caution. Utmost prudence in releasing PDLs

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[48] Annex B — Verified Report, BJMP, p. 14; Annex C — Verified Report, BJMP, pp. 14-16; Annex D — Verified Report, BJMP, pp. 12-13; Annex E — Verified Report, BJMP, p. 15; Annex A — Management of CIW, BuCor, pp. 3-8; Annex B — Management in the NBP, BuCor, pp. 3-4, 9-22.

[49] Annex A — Verified Report, BJMP, pp. 9-15; Annex B — Verified Report, BJMP p. 31; Annex C — Verified Report, BJMP, pp. 17-20; Annex E — Verified Report, BJMP, pp. 11-13; Annex F — Verified Report, BJMP; Annex D — Isolation Practices, BuCor.

[50] Annex A — Management of CIW, BuCor, pp. 1-3.

[51] Annex G — Verified Report, BJMP.

[52] Annex A — Verified Report, BJMP, pp. 7, 20; Annex B — Verified Report, BJMP, p. 11; Annex A Verified Report, BJMP, pp. 14-16; Annex A — Management of CIW, BuCor, pp. 16-17.

[53] Annex A — Management of CIW, BuCor, p. 1.

[54] Annex C — Verified Report, BJMP, pp. 9-12; Annex D — Verified Report, BJMP, pp. 9-11; Annex E — Verified Report, BJMP, p. 8.

[55] Annex A — Verified Report, BJMP, p. 7; Annex B — Verified Report, BJMP, pp. 5, 9.

with health issues and senior citizens is justified as their release may further endanger their health.[56] Petitioners, however, did not show whether they will be in a better physical environment, or be better protected, upon gaining their temporary freedom. Petitioners did not even inform this Court of the COVID-19 situation in the areas they propose to stay during their temporary release.

Moreover, the countries[57] that released PDLs followed a stringent set of criteria in determining who may be released, such as the kind of cases filed, the length of the sentence served, and a plan for release. Only a few of these countries have released their political prisoners. Iran granted leave to thousands of PDLs, including political prisoners, sometime in March and extended this leave until 20 May 2020.[58] The grant was based allegedly on dubious terms of good behavior and payment of exorbitant bail. As a result, several prisoners have since returned to prison despite the extension.[59] Egypt released four women who were accused of "inciting a protest," "disseminating false information," and "possession of material disseminating false

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[56] See the Written Ministerial Statement for Northern Ireland, https://www.justice-ni.gov.uk/news/covid-19-temporary-release-prisoners-scheme (last accessed 06 July 2020).

[57] The petitioners mentioned the United States, Canada, Germany, Ethiopia, India, Indonesia, England, Ireland and Wales, Iran, Sri Lanka, and Egypt. Petition, p. 4. Apart from the countries mentioned in the Petition, news reports say that these countries also released PDLs due to COVID-19: Afghanistan, Morocco, and Myanmar. https://www.rappler.com/newsbreak/iq/257267-list-countries-release-prisoners-over-coronavirus-fears (last accessed 06 July 2020).

[58] https://www.voanews.com/middle-east/voa-news-iran/iran-extends-prisoner-furloughs-amid-covid-threat (last accessed 06 July 2020); https://www.france24.com/en/20200419-iranian-president-says-prisoner-leave-to-be-extended (last accessed 06 July 2020).

[59] https://www.washingtonpost.com/opinions/2020/04/23/why-irans-coronavirus-pandemic-is-also-crisis-human-rights/ (last accessed 06 July 2020).

information" after payment of bail. Egypt also released 15 politicians and activists who had been "arbitrarily detained" for months.[60] Some of Egypt's political prisoners who remain in detention have been tested for COVID-19.[61] However, tens of thousands remain in prison for peacefully exercising their rights to freedom of expression, protest, and assembly.[62] The crimes for which Egypt's political prisoners are indicted sharply contrast with those of petitioners.

A Final Word

The situation that the world faces is unprecedented. These are challenging times, but the Judiciary has been equal to the task, albeit with the recognition that there is still much to be done. While the health crisis persists, the Judiciary, along with the Executive and the Legislative branches, need to re-visit their policies, re-calibrate their actions, and promptly react to the emerging needs of the times.

Still, the Court cannot act contrary to, or in excess of, its own authority, no matter how noble the intention. To insist on equity and liberality while forsaking laws, rules, and established procedures is self-defeating. Justice must always be served "according to the mandate of the law."[63] No one benefits from undermining the whole system.

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[60] https://www.amnesty.org/en/latest/news/2020/03/egypt-release-prisoners-of-conscience-and-other-prisoners-at-risk-amid-coronavirus-outbreak/ (last accessed 06 July 2020).

[61] https://www.middleeasteye.net/news/coronavirus-egypt-tests-political-prisoners-preventive-measure (last accessed 06 July 2020).

[62] https://globalvoices.org/2020/04/28/despite-covid-19-no-respite-for-human-rights-crackdowns-in-egypt/ (last accessed on 06 July 2020).

[63] *Gelos v. Court of Appeals*, G.R. No. 86186, 08 May 1992; 284-A Phil. 114-124 (1992); 208 SCRA 608.

The Judiciary and the Executive have made, and continue to take, the necessary action for both **temporary and permanent release of qualified PDLs**. The pleas of petitioners and of various organizations to decongest and improve the conditions of Philippine jails did not fall on deaf ears. The actions of this Court, the BPP, the BJMP, and the BuCor are testament to the collective recognition that decongestion is a problem needing to be addressed regardless of the existence of a public health emergency. Moreover, the ideals expressed in international instruments on the treatment of prisoners, like the Nelson Mandela Rules, should constantly be taken into account in crafting laws and in the formulation of policies.

In view of the foregoing, I vote to DENY the Petition.

SEPARATE OPINION

DELOS SANTOS, *J.*:

The Court is once again called to strike a balance between upholding police power and protecting civil liberties—this time, in the backdrop of a worldwide adversity.

Antecedents

***Background*:**

In December of 2019, a new variant of coronavirus closely related to the Severe Acute Respiratory Syndrome Coronavirus (SARS-CoV)[1] and the Middle East Respiratory Syndrome Coronavirus (MERS-CoV)[2] officially known as SARS-CoV-2

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[1] https://www.cdc.gov/sars/about/fs-sars.html (last accessed: April 28, 2020).

[2] https://www.cdc.gov/coronavirus/mers/about/index.html (last accessed: April 28, 2020).

suddenly emerged from Wuhan, China.[3] Coronavirus Disease 2019 (COVID-19), the pulmonary disease caused by SARS-CoV-2.

COVID-19 spread around the world like wildfire. It eventually reached the Philippine soil for the first time on January 21, 2020 thru a 38-year old female Chinese national who was eventually tested positive for the presence of SARS-CoV-2.[4] This was followed by a declaration of "public health emergency of international concern" by the World Health Organization (WHO) on January 30, 2020 after an emergency committee convened in Geneva, Switzerland.[5] Unfortunately, on March 7, 2020, the Department of Health (DOH) reported the first local transmission of COVID-19 in the Philippines.[6] Since the first case of local transmission in the Philippines, COVID-19-related infections and deaths have exponentially skyrocketed. Panic had spread and the government had to act swiftly to protect the people.

Government Responses:

On March 8, 2020, President Rodrigo Roa Duterte (President Duterte) issued Proclamation No. 922 declaring a State of Public Health Emergency throughout the Philippines due to COVID-19.[7]

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[3] https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/ (last accessed: April 28, 2020); https://www.cdc.gov/coronavirus/types.html (last visited: April 28, 2020).

[4] See https://www.who.int/philippines/emergencies/covid-19-in-the-philippines (last accessed: April 28, 2020); https://www.doh.gov.ph/doh-press-release/doh-confirms-first-2019-nCoV-case-in-the-country (last accessed: April 28, 2020).

[5] https://www.doh.gov.ph/doh-press-release/who-declares-2019-nCoV-ARD-public-health-emergency-of-international-concern (last accessed: April 28, 2020).

[6] https://www.doh.gov.ph/doh-press-release/doh-confirms-local-transmission-of-covid-19-in-ph (last accessed: April 28, 2020).

[7] https://www.officialgazette.gov.ph/downloads/2020/02feb/20200308-PROC-922-RRD-1.pdf (last accessed: April 28, 2020).

On March 16, 2020, President Duterte issued Proclamation No. 929 declaring a State of Calamity throughout the Philippines due to COVID-19 and imposing the Enhanced Community Quarantine (ECQ) effective March 17, 2020 at 12:00 A.M.[8] Immediately thereafter, Executive Secretary Salvador C. Medialdea issued a Memorandum by order of President Duterte containing among others a directive on all the heads of departments, agencies, offices and instrumentalities of the government including the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Philippine Coast Guard (PCG), all government-owned-and-controlled corporations (GOCCs), all government financial institutions (GFIs), all state universities and colleges (SUCs) and all local government units (LGUs) to commence the implementation of the ECQ and Stringent Social Distancing (SSD) Measures.[9]

On March 24, 2020, Republic Act No. 11469 (Bayanihan to Heal as One Act) was signed into law.[10] This law granted special powers to President Duterte for the purpose of suppressing the COVID-19 pandemic.

On April 6, 2020, inmates Dionisio S. Almonte, Ireneo O. Atadero, Jr., Alexander Ramonita K. Birondo, Winona Marie O. Birondo, Rey Claro Casambre, Ferdinand T. Castillo, Francisco Fernandez, Jr., Renante Gamara, Vicente P. Ladlad, Ediesel R. Legaspi, Cleofe Lagtapon, Ge-Ann Perez, Adelberto A. Silva, Alberto L. Villamor, Virginia B. Villamor, Oscar Belleza, Norberto A. Murillo, Reina Mae A. Nasino,

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[8] https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-PROC-929-RRD.pdf (last accessed: April 28, 2020).

[9] https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-MEMORANDUM-FROM-ES-RRD.pdf (last accessed: April 28, 2020).

[10] https://www.senate.gov.ph/Bayanihan-to-Heal-as-One-Act-RA-11469.pdf (last accessed: April 28, 2020).

Dario Tomada, Emmanuel Bacarra, Oliver B. Rosales and Lilia Bucatcat filed directly before this Court a petition denominated as "In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic."

Petition

The petitioners allege that they are "political prisoners and detainees" and are among the elderly, sick and pregnant "currently committed in places of detention where it is practically impossible to practice self-isolation, social distancing, and other COVID-19[11] precautions."[12] As such, they are invoking this Court's power to exercise "equity jurisdiction" and are seeking "temporary liberty on humanitarian grounds" either on **recognizance** *or* on **bail**.[13] In seeking their provisional release on recognizance or bail, the petitioners raise the following arguments:

(1) The fatal COVID-19 virus causing respiratory failure — which emerged from Wuhan, China and spread all over the world — has no known vaccine and has no proven cure.[14]

(2) "The continued incarceration and detention of highly vulnerable inmates such as the elderly, pregnant women, and those who have pre-existing medical conditions that pose a high risk of contracting the coronavirus is tantamount to cruel and unusual punishment, which the 1987 Constitution explicitly prohibits."[15]

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[11] Corona Virus Disease.

[12] *Rollo*, p. 14.

[13] *Id.* at 8.

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

[15] *Id.* at 7.

(a) The United Nations (UN) Human Rights Committee makes it incumbent upon the State to protect and preserve all its prisoners' right to health and medical care which are among the guarantees of the right to life.[16]

(b) "Prisons and jails are incubators and amplifiers of infectious diseases and given the sorry state and conditions of jails all over the world, a coronavirus outbreak in prison would be awfully and especially destructive" which even "prompted UN High Commissioner for Human Rights Michelle Bachelet to call for the immediate release of vulnerable prisoners all over the world."[17]

(c) Other countries (specifically US, Canada, Germany, Ethiopia, India, Indonesia, England, Ireland and Wales, Iran, Sri Lanka and Egypt) had already began releasing "hundreds to tens of thousands of prisoners" due to the COVID-19 pandemic while the Philippines has yet to respond to the High Commissioner's call.[18]

(3) The instant case should be resolved "based on compassion and humanitarian considerations" in line with this Court's "just, humane and compassionate discretion"[19] "in view of the silence or insufficiency of the law and the rules in regard to [the petitioners'] urgent and extraordinary predicament."[20]

(a) Rule 114 of the Rules of Court "does not include humanitarian considerations as a ground for the

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[16] *Id.* at 6-7.

[17] *Id.* at 5.

[18] *Id.* at 6.

[19] *Id.* at 8.

[20] *Id.* at 10.

grant of bail"[21] and the guidelines for granting provisional liberty on bail set in ***Cortes v. Judge Catral***[22] "do not provide any recourse to the said accused who has literally nowhere to go to avoid the life-threatening perils of public health emergencies like the COVID-19 outbreak."[23]

(b) The Court "*may include* humanitarian considerations as a ground for the grant of bail"[24] "by way of an ***exception*** to procedures on applications for bail or personal recognizance as well as the different modes of judicial review under the Rules of Court."[25]

(c) This Court has the power under Section 1 and Section 5 (5) in relation to Rule 3, Section 1 of the Internal Rules of the Supreme Court[26] to "apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case."[27]

(d) *Certiorari* is not available as a remedy to the petitioners for it is "infeasible" for them "to apply for temporary liberty on humanitarian considerations with the trial courts" due to the Luzon-wide enhanced community quarantine (ECQ).[28]

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[21] *Id.*

[22] A.M. No. RTJ-97-1387, September 10, 1997, 344 Phil. 415-431.

[23] *Rollo*, p. 10.

[24] *Id.*

[25] *Id.* at 9.

[26] A.M. No. 10-4-20-SC (May 4, 2010).

[27] *Rollo*, p. 9.

[28] *Id.* at 10.

(e) This Court's rulings in ***Reyes v. Lim, et al.***,[29] ***Orata v. Intermediate Appellate Court, et al.***,[30] and ***Daan v. Sandiganbayan***[31] which brushed aside some provisions in the Rules of Court by reason of equity jurisdiction as well as a US Circuit Court's ruling in ***US v. Jones***[32] (misspelled by the petitioners as "Joyce") which granted a bail application on the ground health perils—are all applicable to the petitioners' circumstances.

(f) This Court should conform to the rulings of its US counterpart in the ***DeShaney vs. Winnebago County Dept. of Social Services***[33] and ***Helling vs. McKinney***[34] in interpreting the latter's Eighth Amendment — "a verbatim reproduction of Section 19 (1), Article III of the Bill of Rights" of the 1987 Philippine Constitution on cruel and inhuman punishments — which imposes upon the State the obligation to protect the safety and general well-being of prisoners and to shield them from unsafe conditions.[35]

(g) The BJMP "is not enjoined by law to effect, as a matter of ministerial duty, the release of inmates *motu proprio* or without court-issued release orders in the course of a public health emergency."[36]

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[29] G.R. No. 134241, August 11, 2003.

[30] G.R. No. 73471, May 8, 1990.

[31] G.R. Nos. 163972-77, March 28, 2008.

[32] 3 Wn. (C.C.) 224, Fed. Cas. No. 15,495; cited in: Separate Concurring Opinion of Associate Justice Arturo D. Brion in ***Enrile v. Sandiganbayan, et al.***, G.R. No. 213847, July 12, 2016, 789 Phil. 679, 712-713.

[33] 489 US 189, 199-200 (1989).

[34] 509 US 25 (1993).

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

[36] *Id.* at 10.

(h) The petitioners should be released on humanitarian grounds in consonance with their rights under International Law which includes the International Covenant on Civil and Political Rights, the Convention Against Torture, the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") in relation to the Bureau of Corrections Act (R.A. No. 10575), the UN Principles for Older Persons, and all other worldwide calls by UN officials as well as the responses of other countries favorable to inmates.[37]

(i) The release on humanitarian grounds of the petitioners through recognizance, bail or non-custodial measures is just and proper consistent with the Court's rulings in ***Enrile v. Sandiganbayan, et al.***[38] and ***De La Rama v. People's Court***[39] which allowed the grant of bail for humanitarian reasons related to health and advanced age.[40]

(4) The government's untimely response to the spread of the COVID-19 pandemic and counter-measure efforts is not enough to guarantee the safety of the population including the petitioners and all other inmates.

(a) It is not enough that "the government apparently allotted a budget of [₱]47,363,816.47 for procurement of medicines, PPEs[41] to protect prisoners all over the country" and the "Bureau of Jail Management and Penology (BJMP) has imposed a total lockdown in detention facilities

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[37] *Id.* at 42-54.

[38] *Infra*, note 207.

[39] No. L-982, October 2, 1946, 77 Phil. 461, 465-466.

[40] *Rollo*, pp. 54-58.

[41] Personal Protective Equipment.

nationwide" because the latter "has yet to release any information as to whether there are PUMs,[42] PUIs[43] or positive patients in any of the detention facilities."[44]

(b) There was no adequate, coordinated national government response to the COVID-19 situation in the first two (2) months of the virus' emergence.[45]

(c) The declaration of a State of Public Health Emergency did not provide medical solutions or health measures especially in vulnerable communities such as detention facilities.[46]

(5) The hellish prison conditions in Philippines makes the petitioners vulnerable to COVID-19 infection[47] — making the elderly, sickly and pregnant prisoners to most likely contract the COVID-19 virus due to such conditions.[48]

Comment

As for the respondents who are represented by the Office of the Solicitor General (OSG), they oppose the petitioners' pleas and propound the following arguments:

(1) The petitioners are all valuable members of the Communist Party of the Philippines-New People's Army – National Democratic Front (CPP-NPA-NDF) who are engaging in "a ruse to remove them from the confines of judicially-approved custody" which is underhandedly

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[42] Persons Under Monitoring.

[43] Persons Under Investigation.

[44] *Rollo*, p. 6.

[45] *Id.* at 23-25.

[46] *Id.* at 25-29.

[47] *Id.* at 29-33.

[48] *Id.* at 34-42.

based on "merely opportunistic legalism to distort established judicial processes" and who are charged with non-bailable offenses as follows:[49]

(a) Dionisio S. Almonte: kidnapping with murder/ rebellion; violation of Presidential Decree (P.D.) No. 1866;[50] and arson/robbery. Prior to his arrest, he served as secretary of the CPP-NPA unit in Southern Tagalog.

(b) Ireneo O. Atadero, Jr.: violation of Republic Act (R.A.) No. 9516. Prior to his arrest, he served as the organizer of the *Kilusang Mayo Uno*, a known Communist Terrorist Group (CTG) allied with the CPP-NPA-NDF according to the OSG.

(c) Alexander Ramonita K. Birondo: violation of P.D. No. 1866/R.A. No. 10591;[51] obstruction of justice; and direct assault. Prior to his arrest, he was an officer of the CPP-NPA and consultant of the NDF. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(d) Winona Marie O. Birondo: violation of R.A. Nos. 9516/10591; obstruction of justice; and direct assault. Prior to her arrest, she served as consultant of the NDF and was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

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[49] *Id.* at 225; see also pp. 226-232.

[50] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (June 29, 1983).

[51] Comprehensive Firearms and Ammunition Regulation Act (May 29, 2013).

(e) Rey Claro Casambre: murder and attempted murder; violation of P.D. No. 1866; and violation of R.A. No. 10591. Prior to his arrest, he was a CPP-Central Committee (CC) member and also a consultant of the NDF. He also served as an officer of the NPA General Command.

(f) Ferdinand T. Castillo: double murder and multiple attempted murder; and violation of R.A. No. 10591. Prior to his arrest, he served as the secretary of the CPP-NPA's Metro Manila Regional Party Committee.

(g) Francisco O. Fernandez: violation of P.D. No. 1866; violation of Commission on Elections Resolution No. 10466; violation of R.A. No. 10591; violation of R.A. No. 9516; murder; and three (3) counts of robbery. Prior to his arrest, he was a member of the CPP-CC and served, among others, as the secretary of the CPP-NPA Visayas Commission, spokesperson of the NDF-Negros, and secretary of the CPP-NPA National United Front Commission (NUCF).

(h) Renante M. Gamara: kidnapping and murder; murder and frustrated murder; violation of P.D. No. 1866; and violation of R.A. No. 10591. Prior to his arrest, he served as secretary of the CPP-NPA's Metro Manila Regional Party Committee and an alternative member of the CPP-CC. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(i) Vicente P. Ladlad: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case); violation of P.D. No. 1866; and violation of R.A. No. 9516/R.A. No. 10591. Prior to his arrest, he has served, among others, as alternative member of the CPP-CC, as the secretary of the CPP-NUCF,

as consultant of the NDF, and as commander of the Southern Tagalog's operations command.

(j) Ediesel R. Legaspi: violation of R.A. No. 9516/ R.A. No. 10591. Prior to his arrest, he served as the secretary of the CPP-NPA's regional committee in Southern Tagalog.

(k) Adelberto A. Silva: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case); frustrated murder; violation of R.A. No. 10591; and violation of R.A. No. 9516. Prior to his arrest, he served as member of the CPP-CC and as secretary of the CPP's National Organizing Department. He was previously detained but released last 2016 as a confidence-building measure for the government's peace negotiations with the NDF.

(l) Alberto L. Villamor: violation of P.D. No. 1866; and violation of R.A. No. 9516/R.A. No. 10591. Prior to his arrest, he was a member of the NDF.

(m) Virginia B. Villamor: violation of P.D. No. 1866; swindling/*estafa*; and violation of R.A. No. 10591. Prior to her arrest, she was a member of the NDF.

(n) Cleofe Lagatapon: violation of P.D. No. 1866; violation of R.A. No. 9516/R.A. No. 10591; murder; multiple murder and robbery; and robbery. Prior to her arrest, she had served the CPP-NPA-NDF in Negros in various capacities as: head of the southeast front, deputy secretary of the regional committee, and member of the regional committee's executive committee.

(o) Ge-Ann C. Perez: violation of R.A. No. 9516/R.A. No. 10591; murder; and robbery. Prior to her arrest, she served as the communication staff of the CPP-NPA's regional committee in Negros.

(p) Emmanuel M. Bacarra: murder; multiple frustrated murder; multiple frustrated murder; and violation of R.A. No. 10591. Prior to his arrest, he served as an officer of the CPP-NPA's unit in Panay.

(q) Oliver B. Rosales: violation of R.A. No. 10591; and violation of R.A. No. 9516. Prior to his arrest, he served as a national officer of the CPP-NPA's organizing department.

(r) Norberto A. Murillo: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as head of the finance committee of the CPP-NPA's regional committee in Southern Tagalog.

(s) Reina Mae A. Nasino: violation of R.A. No. 10591 and R.A. No. 9165.[52] Prior to her arrest, she served as the coordinator of the *Kalipunan ng Damayang Mahihirap* (KADAMAY)-Manila, a group allied with the CTG.

(t) Dario B. Tomada: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as chairman of the Samahan han Gudti nga Parag-Uma ha Sinirangan Bisayas (SAGUPA-SB), a group allied with the CTG.

(u) Oscar Belleza: fifteen (15) counts of murder (in the infamous Inopacan Massacre Case). Prior to his arrest, he served as leader of the propaganda organizing team of the CPP-NPA's regional unit in Eastern Visayas.

(v) Lilia Bucatcat: charged and convicted of arson; and presently serving her sentence. Prior to her arrest and detention, she served as the secretary of the CPP-NPA's regional unit in Eastern Visayas.

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[52] Comprehensive Dangerous Drugs Act of 2002 (January 23, 2002).

(2) Petitioners Alexander Ramonita K. Birondo, Winona Marie O. Birondo, Renante M. Gamara, Vicente P. Ladlad and Adelberto A. Silva had been granted provisional liberty by this Court last August of 2016 in view of their participation in the peace talks between the government and the CPP-NPA-NDF; but blatantly reneged on their commitment to go back to their detention facilities after the failed negotiations which necessitated their re-arrest.[53]

(3) The petitioners are being deceptive by engaging in "pseudo-political correctness in lieu of sound legal arguments" and putting this Court "under the lenses" and "[i]n the fickle arena" of public opinion by emotionally pleading "humanitarian reasons" which implies that a denial of their petition is tantamount to a refusal to act charitably.[54]

(4) The petitioners are being deceptive by being silent and by not putting in issue on whether or not the State can provide them with medical care while maintaining their confinement *vis-à-vis* the threat of COVID-19 as they have not even alleged that there exists better medical care for thousands of detainees or that there are medical professionals and ventilators available awaiting for them outside their detention facilities.[55]

(5) The petitioners' "continued detention even affords them ready access to government resources if and when the dreaded virus reaches the doors to their cells, no less outside their cells."[56]

(6) The government had already adopted the following measures in response to the COVID-19 pandemic:[57]

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[53] *Rollo*, p. 232.

[54] *Id.* at 224-226.

[55] *Id.* at 225.

[56] *Id.* at 226.

[57] *Id.* at 236-238.

(a) Health protection and safety measures are in place in all penal facilities in the country.[58]

(b) The observance of safety measures other than social distancing (such as total lockdown, restriction of visitation, proper hygienic practices, and/or isolation of inmates displaying symptoms of illnesses) is achievable in jails.[59]

(7) The petitioners' have ample remedies before the lower courts as this Court had issued several circulars for purposes of attending to urgent matters regarding the legal concerns of persons deprived of liberty (PDLs) as part of its efforts to decongest the jails due to the COVID-19 pandemic.[60]

(8) The petition should be dismissed outright for violating the doctrine of hierarchy of courts.[61]

(a) The question posed by the petitioners on whether or not they should be released on bail or recognizance requires an evaluation of facts.[62]

(b) This Court is not a trier of facts and it will be overwhelmed with countless petitions which might set a precedent by simple invocation of "equity" and the threat of the COVID-19 pandemic.[63]

(c) The petitioners' collective acts of attaching documents to prove their medical conditions are factual questions.[64]

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[58] *Id.* at 256-259.

[59] *Id.* at 255.

[60] *Id.* at 238.

[61] *Id.* at 240-245.

[62] *Id.* at 242.

[63] *Id.* at 242-243.

[64] *Id.* at 256.

(d) The grant or denial of temporary or provision liberty based on "humanitarian grounds" does not diminish the jurisdiction of the trial courts tasked to evaluate the veracity of their allegations as well as other factual considerations.[65]

(e) The COVID-19 pandemic is not a compelling circumstance to oust the lower courts of their respective jurisdictions; which is made apparent by the Office of the Court Administrator (OCA) Circular No. 91-2020.[66]

(9) The petitioners cannot be temporarily released on recognizance because all of them were charged of crimes punishable by *reclusion perpetua* or death and are disqualified to avail of the benefit in R.A. No. 10389[67] (Recognizance Act).[68]

(10) The petitioners are not entitled to bail because they were charged with offenses punishable by *reclusion perpetua* and the determination of whether or not the evidence of guilt is strong shall be made by the trial court thru a proper hearing.[69]

(11) The petitioners cannot be granted temporary liberty based on equity.[70]

(a) Equitable arguments cannot prevail over legal findings.[71]

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[65] *Id.* at 243.

[66] *Id.* at 244-245.

[67] *Infra*, note 204.

[68] *Rollo*, pp. 245-247.

[69] *Id.* at 247-249.

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

[71] *Id.* at 249, citing: ***David-Chan v. Court of Appeals, et al***., G.R. No. 105294, February 26, 1997, 335 Phil. 1140, 1149.

(b) Complete and substantial justice is attainable thru governing law (*i.e.*, R.A. No. 10389 and Section 7, Rule 114 of the Rules of Court).[72]

(12) The case of ***Enrile v. Sandiganbayan***[73] is inapplicable in the present situation because the petitioners, as shown by their past records, are more likely to escape once released and are high-ranking leaders of terrorist groups who have committed heinous crimes making their release on "humanitarian grounds" an irony "when their acts betray the rationale behind the grant of bail."[74]

(13) The present petition is violative of the equal protection clause.[75]

(a) The petitioners are attempting to set themselves apart by making an unwarranted and impermissible classification.[76]

(b) "[T]here is no substantial difference which sets the petitioners apart from all other persons detained in jail" and their release "would give them undue favor and would result in inequality and discrimination."[77]

(c) "Young and old are equally vulnerable from being inflicted with the disease in absence of precautionary and safety measures."[78]

(d) The observance of social distancing measures in jails is admittedly impossible or unachievable but

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[72] *Id.* at 250.

[73] *Infra*, note 207.

[74] *Rollo*, pp. 250-252.

[75] *Id.* at 252-256.

[76] *Id.* at 253.

[77] *Id.* at 254.

[78] *Id.*

it does not provide any legal justification to give the petitioners an unwarranted favor of being provisionally released while other prisoners remain languishing in jail.[79]

(e) The petitioners "have not shown any evidence proving that they are indeed political prisoners and[,] as such, they can be treated differently from among the other prisoners in the country."[80]

(14) The release of prisoners in other foreign jurisdictions based on humanitarian grounds brought about by the COVID-19 pandemic as cited by the petitioners are qualified by certain conditions.[81]

(a) "The Philippine government is not expected to conform to the manner of releasing prisoners being adopted by other countries" as its "courts are equipped with legal parameters in resolving whether prisoners in different penal facilities could be released."[82]

(b) In Germany, prisoners with short periods of remaining sentences were released; excluding those who were convicted of sexual offenders and violent crimes.[83]

(c) In Ethiopia, President Sahle-Work Zewde granted pardon to more than 4,000 prisoners for those convicted of minor crimes with a maximum penalty

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

[80] *Id.* at 256.

[81] *Id.* at 259-263.

[82] *Id.* at pp. 259-260, citing: Justice Jose C. Vitug's Separate Opinion in ***Government of the United States of America v. Purganan, et al.*** (G.R. No. 148571, December 17, 2002, unreported extended resolution).

[83] *Id.* at 260.

of three (3) years of imprisonment as well as for those who were about to be released from jail.[84]

(d) In the State of New Jersey, inmates jailed for probation violations and those convicted in Municipal Courts or sentenced for low-level crimes in the Superior Court were released.[85]

(e) In India, the release of prisoners excluded "hardened criminals."[86]

(f) In Afghanistan, 10,000 prisoners who were mostly juveniles, women and sick were released.[87]

(g) The CPP-NPA-NDF has been known to exploit every opportunity in the guise of "humanitarian considerations" to facilitate the release of its detained members and is currently bent on exploiting the COVID-19 pandemic while the rest of the world is finding solutions to defeat the virus.[88]

(h) The Nelson Mandela Rules "clearly indicate that only prisoners infected with contagious diseases shall be isolated from prison."[89]

(i) The petitioners have acknowledged that they are not infected with COVID-19.[90]

(15) OCA Circular No. 91-2020 sufficiently provides guidelines towards decongesting penal facilities and humanizing conditions of detained persons pending hearing of their cases.[91]

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[84] *Id.*

[85] *Id.*

[86] *Rollo*, p. 261.

[87] *Id.*

[88] *Id.*

[89] *Rollo*, p. 261.

[90] *Id.* at 262.

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

(16) COVID-19 "knows no age and health conditions and can infect anyone at any time and any place" because "[t]here are cases of old and sickly COVID-19 positive patients who have fully recovered, while some of the young healthy patients have lost their battle to the virus."[92]

Issues

-I-

Whether or not the instant petition filed directly before this Court may be given due course. . .

-II-

Whether or not the Nelson Mandela Rules are enforceable in Philippine courts. . .

-III-

Whether or not the petitioners may be given provisional liberty on the ground of equity. . .

-IV-

Whether or not the Court has the power to pass upon the State's prerogative of selecting appropriate police power measures in times of emergency. . .

Discussions

On giving due course to the present petition:

Petitions filed before this Court are essentially divided into two (2) main categories: (a) those that invoke appellate jurisdiction; and (b) those that invoke original jurisdiction. Those falling within the first category are petitions for review under Rule 45 of the Rules of Court where the Court's main function is resolving pure questions of law much like the courts of

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[92] *Id.* at 261.

cassation in other jurisdictions. Those falling under the second category are petitions that either: (a) seek for the issuance of extraordinary or prerogative writs (*certiorari*, *prohibition*, *mandamus*, *continuing mandamus*, *quo warranto*, *habeas corpus*, *amparo*, *habeas data*, and *kalikasan*); or (b) seek for the invocation of the Court's inherent powers such as those pertaining to the maintenance of orderly proceedings (contempt) or those pertaining to administrative disciplinary proceedings against members of both the Bench and the Bar. While the procedural requirements to be evaluated by this Court in deciding whether or not to give due course for petitions under the first category are relatively straightforward, the procedural requirements for petitions under the second category involving extraordinary *writs* are a tad complicated. The requirements as well as the corresponding exceptions in this specific subcategory of petitions differ depending on the *writ* or type of remedy sought.

As to the procedural requirements for the issuance of extraordinary *writs*—when directly invoking this Court's jurisdiction—are concerned, there have been several instances where technicalities have been brushed aside in order to resolve cases with utmost constitutional significance and far-reaching consequences. Accordingly, due to the practical importance of keeping the dockets down to a controllable level or load so that only petitions with significant import will be entertained, the doctrine of hierarchy of courts was devised and developed in order to manage petitions falling under the concurrent jurisdiction of the second, third and final level courts. Hence, the issuance of extraordinary *writs* will essentially depend on the guidelines laid down in the recent landmark case of ***GIOS-SAMAR, Inc. v. Department of Transportation and Communications, et al.***,[93] which are condensed as follows:

(1) Despite having original and concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals (or the Sandiganbayan and the Court of Tax Appeals, in some cases) in the issuance of extraordinary *writs*, a

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[93] G.R. No. 217158, March 12, 2019, citations omitted.

direct recourse to this Court seeking for such issuance is proper only to seek resolution of questions of law because it is not a trier of facts;

(2) The hierarchy of courts is a constitutional imperative and a filtering mechanism so that this Court may be able: (a) to devote its time and resources primarily to cases falling within its exclusive jurisdiction; and (b) to ensure the adequate ascertainment of all facts by lower courts which are necessarily equipped to perform such function.

(3) The doctrine of hierarchy of courts proceeds from the constitutional power of this Court to promulgate rules "concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts" for the orderly administration of justice.

(4) The recognized exceptions to the hierarchy of courts have a common denominator—the issues for resolution are purely legal. These exceptions are:

(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;

(b) when the issues involved are of transcendental importance;

(c) cases of first impression;

(d) the constitutional issues raised are better decided by the Court;

(e) exigency in certain situations;

(f) the filed petition reviews the act of a constitutional organ;

(g) 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

(h) 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."

Considering the aforementioned guidelines in ***GIOS-SAMAR***, the undersigned now proceeds to evaluate the present unsanctioned "Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the COVID-19 Pandemic" seeking for the issuance of an extraordinary writ: (a) directing the release of the petitioners from their detention either on bail or on recognizance; (b) mandating the creation of a "Prisoner Release Committee" for the purpose of "urgently study[ing] and implement[ing] the release of all other prisoners in various congested prisons throughout the country who are similarly vulnerable but cannot be included in [their petition] due to the difficult circumstances"; and (c) declaring "the issuance of ground rules relevant to the release of eligible prisoners."

Accordingly, the undersigned deems it imperative to clarify that **litigants may only file petitions and other pleadings sanctioned by the Constitution, law, or procedural rules promulgated by this Court**. In other words, this Court is generally not bound to entertain or to give due course to unsanctioned petitions. Nonetheless, the arguments put forth in the pleadings of both parties involve: (a) significant and far-reaching implications on disputes involving a collision of general welfare and individual rights; and (b) unprecedented and pressing concerns related to the COVID-19 pandemic currently affecting the whole nation. Considering the magnitude of the pandemic which affects all sectors of society, there is now a pressing need and compelling justification to suspend the application of the doctrine of hierarchy of courts and to take on its constitutional duty to settle controversies. However, such statement should not be interpreted to mean that litigants shall have an unbridled freedom to file unsanctioned pleadings directly before this Court. Hence, it should be emphasized that

the *rarity* of the present occurrence (which is the present COVID-19 pandemic) is more than enough to indicate to the public that this act of giving due course to the present petition shall not be abused as it is primarily based on observations regarding compelling matters raised by both parties as earlier mentioned.

On the Judicial Enforceability of the Nelson Mandela Rules in the Philippine Jurisdiction:

A comprehensive initial discussion as to the effect of international law on Philippine laws is imperative in order to determine the degree of enforceability of the Nelson Mandela Rules.

The term "international law" (or "public international law" according to other recognized authorities) generally refers to a body of rules which govern the relationship[94] of states and international organizations which, in some instances like human rights concerns, include the treatment of natural persons.[95] It is founded largely upon the principles of reciprocity, comity, independence, and equality of states.[96] The sources of this "body of rules" are provided by Article 38 of the Statute of the International Court of Justice[97] as follows:

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[94] The traditional definition of international law is that it is a body of rules and principles of action which are binding upon civilized states **in their relations to one another** (Bernas, *An Introduction to Public International Law*, 1st Ed. (2002), p. 1).

[95] More recently, the law of nations or international law is defined as "rules and principles of general application dealing with the conduct of States and of international organizations and with their relations inter se, as well as some of their relations with persons, natural or juridical." (***United States v. Al Bahlul***, 820 F.Supp.2d 1141 [2011]), citations omitted; see also: U.N. Charter Art. 93, ¶ 5.

[96] See: ***Republic of Indonesia, et al. v. Vinzon***, G.R. No. 154705, June 26, 2003, 452 Phil. 1100, 1107, citations omitted.

[97] All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice (U.N. Charter Art. 93, ¶ 1).

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

   b. international custom, as evidence of a general practice accepted as law;

   c. the general principles of law recognized by civilized nations;

   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

The aforementioned sources of international law have been traditionally categorized into peremptory and non-peremptory norms. On one hand, **peremptory norms** or *jus cogens* refers to those mandatory and non-derogable norms or principles which give rise to *erga omnes* obligations (even if no consensus exists on their substance)[98] and which are modifiable only by general international norms of equivalent authority.[99] On the other hand,

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[98] The Court in ***Mijares, et al. v. Hon. Ranada, et al.*** (G.R. No. 139325, April 12, 2005, 495 Phil. 372, 395, citations omitted) enunciated that "[t]he classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as *the opinion juris sive necessitates* (opinion as to law or necessity)"; see also: ***Vinuya, et al. v. Romulo, et al.***, G.R. No. 162230, April 28, 2010, 633 Phil. 538, 557-580, citations omitted. On a related note, the initial factor for determining the existence of custom is the actual behavior of states—this includes several elements: duration, consistency, and generality of the practice of states (Bernas, *op. cit*., pp. 10-11).

[99] See: ***Bayan Muna v. Romulo, et al.***, G.R. No. 159618, February 1, 2011, 656 Phil. 246, 306, citations omitted.

non-peremptory norms, are those international principles or rules which do not have compelling or binding effect against a state.

Concomitantly, the 1987 Philippine Constitution contains some provisions alluding to the practice of considering international norms and principles as part of domestic laws. However, it is settled that the Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.[100] This long-standing doctrinal pronouncement, in relation to international law, is consistent with Articles 1 (2) and 55 of the UN Charter[101] which espouses "the principle of equal rights and self-determination of peoples."[102] From a Philippine legal standpoint, international norms which are considered forming part of domestic laws must still yield to the supremacy of the Constitution.[103] Consequently, both

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[100] ***Biraogo v. The Philippine Truth Commission of 2010***, G.R. No. 192935, December 7, 2010, 651 Phil. 374, 427, citations omitted.

[101] Charter of the United Nations and Statute of the International Court of Justice (1945).

[102] Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction (***Disomangcop, et al. v. Datumanong, et al.***, G.R. No. 149848, November 25, 2004, 486 Phil. 398, 442-443, citations omitted).

[103] Nothing is better settled than that the Philippines being independent and sovereign, its authority may be exercised over its entire domain. There is no portion thereof that is beyond its power. Within its limits, its decrees are supreme, its commands paramount. Its laws govern therein, and everyone to whom it applies must submit to its terms. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is a diminution of its sovereignty (***Reagan v. Commissioner of Internal Revenue***, G.R. No. L-26379, December 27, 1969, 141 Phil. 621, 625). In the final analysis, this Court already had the opportunity to clarify that "[t]he fact that international law has been made part of the law of the land does ***not*** pertain to or imply the **primacy** of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. x x x In states where the constitution is the highest law of the

peremptory and non-peremptory norms may become part of the sphere of domestic law as provided under the present Constitution either by: (a) **transformation**—a method which requires an international law or principle to be converted to domestic law thru a constitutional *mechanism* such as enactment of an enabling legislation or ratification of a treaty; and (b) **incorporation**—a method where an international law or principle is deemed to have the force of domestic law thru a constitutional *declaration*.[104] Of these methods, it is understood that international norms are either transformed or incorporated into domestic laws depending on which category they belong.

Article 53 of the Vienna Convention on the Law of Treaties[105] (Vienna Convention) states that "a peremptory norm of general international law is a norm **accepted** and **recognized** by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Since Section 2, Article II of the Constitution expressly states that the Philippines "adopts the **generally accepted** principles of international law as part of the law of the land," it is beyond question that only norms which have attained a **peremptory** status by general acceptance or recognition by the community of states can be considered as part of the law of the land by **incorporation**. Resultantly, all other norms ***not* contemplated** or **covered** in the **definition** of **"peremptory norm"** in Article 53 of the Vienna Convention have to undergo the method of **transformation** in order to have

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land, such as the Republic of the Philippines, both statutes and treaties may be invalidated if they are in conflict with the Constitution (***Secretary of Justice v. Lantion, et al.***, G.R. No. 139465, January 18, 2000, 379 Phil. 165-213, citations omitted).

[104] See: ***Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.***, G.R. No. 173034, October 9, 2007, 561 Phil. 386, 398, citations omitted. However, the "incorporation clause" in Section 2, Article II cannot be reasonably interpreted to automatically alter or deactivate other provisions of the Constitution without passing through the sanctioned process of amendment or revision outlined in Article XVII.

[105] Ratified by the Philippines on November 15, 1972.

a binding effect as other domestic laws. Furthermore, transformation may be undertaken either of the following methods: (a) thru ratification of a treaty under Section 21,[106] Article VII of the Constitution; or (b) thru enactment of an enabling law adopting a non-peremptory norm of international law.

As to the characterization of the Nelson Mandela Rules, the undersigned reproduces Articles 10 to 14, Chapter IV of the United Nations (UN) Charter as follows:

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

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[106] No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

   a. promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;

   b. promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation,

regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations. (Underscoring supplied)

The aforementioned provisions clearly show that the UN Charter merely grants **recommendatory** powers to the UN General Assembly (composed of all member states *per* Article 9 of the same Charter) in terms of policy-making. As observed by Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen), UN General Assembly Resolutions such as the Nelson Mandela Rules may constitute "soft law" or **non-binding** norms, principles and practices that influence state behavior.[107] Consequently, any resolution issued by the UN General Assembly does not carry with it the status of being a peremptory norm. Simply put, it has no binding effect on UN member states. Since the Nelson Mandela Rules gained an official international status thru the UN General Assembly's adoption of a Resolution on December 17, 2015, it stands to reason that the same Rules cannot be considered as a binding peremptory norm of international law for being merely recommendatory. A **contrary rule of interpretation** which will make every resolution of the UN General Assembly, like the Nelson Mandela Rules, automatically binding and part of the law of the land **would undermine and unduly restrict the sovereignty of the Republic of the Philippines**. It stifles the Republic's prerogative to interpret international laws thru the lenses of its own legal system or tradition. Therefore, the Nelson Mandela Rules needs to be **transformed** into a domestic law thru an enabling act of Congress in a **clear and unequivocal manner** to have a legally binding force.

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[107] ***Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.***, *supra*, footnote 104, citations omitted. Mindful of the basic idea of sovereignty, non-peremptory norms or "soft laws" should not be understood to automatically alter constitutional provisions even if they yield influence on a state's behavior.

In response to the UN General Assembly's adoption of the Nelson Mandela Rules, R.A. No. 10575[108] (Bureau of Corrections Act) was enacted by Congress. It made an implied reference to the Nelson Mandela Rules by providing as follows:

> Section 4. The Mandates of the Bureau of Corrections. – The [Bureau of Corrections] shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.
>
> (a) Safekeeping of National Inmates – The safekeeping of inmates shall include decent provision of quarters, food, water and clothing ***in compliance with*** **established United Nations standards**. The security of the inmates shall be undertaken by the Custodial Force consisting of Corrections Officers with a ranking system and salary grades similar to its counterpart in the BJMP.
>
> (b) Reformation of National Inmates – The reformation programs, which will be instituted by the [Bureau of Corrections] for the inmates, shall be the following:
>
> (1) Moral and Spiritual Program;
>
> (2) Education and Training Program;
>
> (3) Work and Livelihood Program;
>
> (4) Sports and Recreation Program;
>
> (5) **Health and Welfare Program**; and
>
> (6) Behavior Modification Program, to include Therapeutic Community.
>
> (c) The reformation programs shall be undertaken by Professional Reformation Personnel consisting of Corrections Technical Officers with ranking system and salary grades similar to Corrections Officers.
>
> (1) Corrections Technical Officers are personnel employed in the implementation of reformation programs and those personnel whose nature of work requires proximate or direct contact with inmates.

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[108] The Bureau of Corrections Act of 2013 (May 24, 2013).

> (2) Corrections Technical Officers include priests, evangelists, pastors, teachers, instructors, professors, vocational placement officers, librarians, guidance counselors, **physicians, nurses, medical technologists, pharmacists, dentists, therapists**, psychologists, psychiatrists, sociologists, **social workers,** engineers, electricians, agriculturists, veterinarians, lawyers and similar professional skills relevant to the implementation of inmate reformation programs. (Emphasis supplied)

At this juncture, there now arises a need to determine whether this Court or the entire Judicial branch is *constitutionally-empowered* to *issue writs or other orders to compel* the Bureau of Corrections and all the other public respondents to *implement* Section 4 of the Bureau of Corrections Act in some *particular manner*.

The answer strongly points to the negative for the following reasons:

First, the general import of the terms in Section 4 (a) of the Bureau of Corrections Act in relation to the Nelson Mandela Rules clearly shows that such provision (Section 4) is not judicially-enforceable.

In constitutional interpretation, it is settled that a provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.[109] The same can be said of statutory interpretation if the law itself clearly defines a right in terms of its nature and extent as well as the liability or duty imposed pursuant to such right. In effect, statutory provisions which are not self-executing do not confer rights which can be judicially enforced — they only provide guidelines for executive action.[110]

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[109] ***Manila Prince Hotel v. Government Service Insurance System, et al.***, G.R. No. 122156, February 3, 1997, 335 Phil. 82, 102, citations omitted.

[110] *Cf*. ***Kilosbayan, Incorporated, et al. v. Morato, et al.***, G.R. No. 118910, November 16, 1995, 320 Phil. 171, 183-184.

The phrase "in compliance with established United Nations standards" in Section 4 (a) of the Bureau of Corrections Act is so **generic** that it clearly appears to be **silent regarding the manner of its implementation**. A thorough reading of the law will reveal that Section 23 of the same law merely delegates the task of jointly promulgating the necessary implementing rules and regulations to the Department of Justice (DOJ) in coordination with the Bureau of Corrections, the Civil Service Commission (CSC), the Department of Budget and Management (DBM), and the Department of Finance (DOF).[111] The law is also silent as to the degree (moderate or strict).

For purposes of demonstration, the undersigned reproduces some provisions in the Nelson Mandela Rules pertaining to the accommodation of prisoners as follows:

Rule 5

x x x x x x x x x

2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

x x x x x x x x x

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

x x x x x x x x x

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[111] See: Section 23 of R.A. No. 10575 (*Implementing Rules and Regulations*. — The DOJ, in coordination with the BuCor, the CSC, the DBM and the Department of Finance (DOF), shall, within ninety (90) days from the effectivity of this Act, promulgate the rules and regulations necessary to implement the provisions of this Act.).

Rule 28

In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate. (Underscoring supplied)

As to the issue of specific implementation, the following phrases of the afore-cited Nelson Mandela Rules stand out: (a) "reasonable accommodation and adjustments"; (b) "full and effective access to prison life on an equitable basis"; (c) "shall meet all requirements of health"; (d) "cubic content of air, minimum floor space, lighting, heating and ventilation"; (e) "special accommodation"; and (f) "[a]rrangements shall be made." All of these phrases do not provide specific details as to the manner of implementation. They all appear to constitute or operate as primary guidelines for the proper handling of inmates in terms of accommodation. For instance, the words "reasonable," "access," "special," and "arrangements" are so vague that the ministerial duty of an executive or administrative agency cannot be pinpointed in terms of the effectivity of a mandatory injunctive *writ*. Bluntly speaking, how will the Bureau of Corrections determine what is "special" or what is "reasonable" in executing a *writ*? **A court cannot simply define these terms and invent parameters akin to administrative issuances resembling subordinate legislation.** Other details lacking in the general import of the Nelson Mandela Rules are the dimensions associated with "cubic content of air, minimum floor space, lighting, heating and ventilation." The dimensions regarding the living quarters and amenities provided in Implementing Rules and Regulations[112] (IRR) of the Bureau of Corrections Act cannot possibly be altered by virtue of a court order without violating the principle of separation of powers. As pointed out earlier, Section 23 of the Bureau of Corrections Act places the task of promulgating the IRR on the DOJ (in coordination with the Bureau of Corrections), the CSC, the

[112] May 23, 2016.

DBM and the DOF. There is nothing in the same Section which permits the courts to adjust these rules based on "equitable" considerations. Under the circumstances contemplated in the aforementioned provisions in the Nelson Mandela Rules, only the Executive department can reasonably determine the parameters of its compliance. Besides, the Judiciary's interference with the Executive department in the enforcement of a plain provision of the statute would, in effect, destroy the independence of the latter department and subject it under the former's ultimate control.[113]

As keenly observed by Chief Justice Diosdado M. Peralta (Chief Justice Peralta), the Nelson Mandela Rules espouse the generally vicarious idea that it is the responsibility of every state to make accommodations in prisons well suited for proper hygiene, nutrition and hydration, especially to prisoners with particular health care needs. These rules, instead, highlight the obligation of transferring prisoners, whether convicts or detainees, with urgent medical conditions to specialized institutions and in specialized facilities where they can have prompt access to medical attention. The main premises for the application of international law principles are lacking in the case of the petitioners, especially in the absence of an emerging and/or immediate need to receive specialized medical attention which the prison facilities cannot cater to and address at the moment.

Second, the implementation of the Bureau of Corrections Act is dependent on the available funds of the Bureau.

Section 22 of the same law provides:

> Section 22. Implementation. — The **implementation** of this Act shall be undertaken in staggered phases, but not to exceed five (5) years, taking into consideration the **financial position** of the **national government**: Provided, That any partial implementation shall be uniform and proportionate for all ranks. (Emphasis supplied)

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[113] See: Dissenting Opinion of Senior Associate Justice Elias Finley Johnson in ***Nicolas v. Albeto***, No. 28275, January 10, 1928, 51 Phil. 370, 382-383.

Yearly financial positions of the national government are mostly dependent on factors beyond its control. For instance, revenues thru tax and regulatory fee collections cannot be reasonably predicted. Various factors—such as the number of taxpayers, the net taxable income of taxpayers, the volume of activities involving excise and value-added taxes, the number of applicants of any sanctioned permit or franchise—all fluctuates depending on results on the dynamics of the nation's collective economic activities. This translates to uncertain internal revenue streams which accounts for almost all of the sources of the nation's resources available for budget. To add to the Bureau of Corrections' financial woes, the national government has also to contend with budgetary concerns coming from other sectors (or problems) of society which, frankly, are within the absolute prerogative of Congress to prioritize; sadly, even over the needs of correctional facilities. Unsurprisingly, this is beyond the control of the Bureau of Corrections and, sometimes, even beyond the control of Congress if it has to respond to exigencies.

Another factor is the unpredictability of the influx of inmates in correctional or detention facilities. Even with the most sophisticated data-gathering methods and analytical tools assisted by the current capabilities of modern technology, both the Executive and the Legislative cannot reasonably estimate or anticipate how many persons will commit crimes in a stated interval of time. In order to demonstrate this problem, the undersigned reproduces Section 12 of the Nelson Mandela Rules as follows:

Rule 12

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular

> supervision by night, in keeping with the nature of the prison. (Underscoring supplied)

A ***realistic assessment*** of the Philippine correctional system will show that the national government's financial position cannot possibly cope up with the standards of the Nelson Mandela Rules which even contemplates prisoners detained in "individual cells or rooms" for "each prisoner" to occupy "by himself or herself." To add to the Bureau of Corrections' burdens, the first paragraph of the afore-cited rule even goes as far as to imply that "temporary overcrowding" is or should be the norm in correctional facilities. For some countries with seemingly unlimited resources and relatively low crime rates, compliance is considerably possible. However, for the Philippines which has been reportedly afflicted with persisting issues of overcrowding, the instance of "temporary overcrowding" is colloquially "*pangarap ng gising*" (the stuff of dreams). Admittedly, the Bureau of Corrections has limited land area or real estate. Any adaptive measure as to the influx of inmates will have to be "vertical"—correctional buildings will have to be remodelled in order to add more stories or floors to house more cells. Any budget allotted by the national government to the Bureau of Corrections will have to be stretched to meet such accommodational needs.

As regards the provisions of the IRR on accommodation and facilities (which appears to provide details in relation to the Nelson Mandela Rules), the implementation of a mandatory injunctive *writ* will be inherently limited by the availability of funds. *First*, the provisions in the IRR containing matters relating to the standards under the Nelson Mandela Rules (*i.e*., ventilation, floor area, lighting, *etc*.) all ***require funds*** to be realized. *Second*, the IRR is a subordinate legislation — it ***merely implements*** the provisions in the Bureau of Corrections Act with the aid of congressionally-provided funds. Stated differently, the IRR is: (a) not a source of substantive rights and substantive obligations which, under the Constitution, are properly created or recognized by substantive laws; and (b) dependent upon available funds as appropriated by Congress. Hence, in terms of accommodation, any judicial relief asserting to enjoin some form of compliance

with the provisions of the IRR will merely amount to a "paper relief" when funds are inadequate to execute a *writ*.

To be clear, the undersigned is *not* saying that, just because the Executive branch is currently limited in its resources to comply with the mandate in Section 4 of the Bureau of Corrections Act, any solution to address the poor and substandard state of existing correctional and other detention facilities is, and will remain to be impossible to achieve. It is not impossible for the government to improve its financial status and adequately provide for the sectors that currently lack the needed funding. All that the undersigned is saying is that the proper branches of government constitutionally-empowered to raise the needed funding and to remedy the situation regarding the accommodation and sanitation problems affecting correctional and other detention facilities are the political branches—the Legislative and the Executive—not the Judiciary. In sum, the very reason for denying the instant petition is to avoid violating the separation of powers enshrined in the Constitution—not because this Court is or should be insensitive to the plight of the petitioners.

Third, the respondents' present *inability* to comply with the Nelson Mandela Rules or Section 4 of the Bureau of Corrections Act regarding the accommodation of all prisoners cannot be considered as a ground to release the petitioners pursuant to the constitutional prohibition against cruel, degrading or inhuman punishment.

To begin with, the petitioners' (except for Lilia Bucatcat who is presently serving her sentence) previous arrest and present temporary detention are not considered as penalties or punishments as contemplated in Article 24 (1) of the Revised Penal Code because the service of a sentence of one in prison begins only on the day the judgment of conviction becomes final.[114] However, since Article 29[115] of the Revised Penal Code

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[114] See: ***Baking, et al. v. Director of Prisons***, G.R. No. L-30364, July 28, 1969, 139 Phil. 110, 117.

[115] As amended by Republic Act No. 10592 (An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code [May 29, 2013]).

provides that convicted "[o]ffenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment,"[116] the undersigned deems it necessary to elucidate further on the matter of cruel, degrading and inhuman punishments.

The prohibition against the infliction of cruel, degrading or inhuman punishment in Section 19,[117] Article III of the present Constitution was derived from the Eighth Amendment[118] of the US Constitution which likewise proscribes the infliction of "cruel and unusual" punishments. However, what constitutes cruel and unusual punishment has not been exactly defined.[119] Instead, the Court in ***Echegaray v. Secretary of Justice, et al.***,[120] provides several insights on what cruel, degrading and inhuman punishment includes, *viz*.: (a) "death penalty *per se* is not a cruel, degrading or inhuman punishment"; (b) "[p]unishments are cruel when they involve torture or a lingering death" as they "impl[y] [that] there something inhuman and barbarous, something more than the mere extinguishment of life"; (c) "[i]n a limited sense, anything is cruel which is calculated to give pain or distress, and since punishment imports pain or suffering to the convict"; (d) the cruelty proscribed by the Constitution is that which is "inherent in the method of

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[116] See: ***Inmates of the New Bilibid Prison, et al. v. Sec. Leila M. De Lima, et al.***, G.R. No. 212719, June 25, 2019.

[117] Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

[118] Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[119] See: ***Perez v. People, et al.***, G.R. No. 164763, February 12, 2008, 568 Phil. 491, 518, citations omitted.

[120] G.R. No. 132601, October 12, 1998, 358 Phil. 410, 430, 434-436, citations omitted.

punishment, not the necessary suffering involved in any method employed to extinguish life humanely"; (e) what is cruel and unusual "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice" and "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society"; and (f) "the primary indicator of society's standard of decency with regard to capital punishment is the response of the country's legislatures to the sanction."

In relation to deprivation of liberty, whether imposed as a punishment or preventive measure, the Court should turn to the deliberations of the 1986 Constitutional Commission (Constitutional Commission) for guidance regarding the accommodation of inmates, the portions of which are hereunder reproduced as follows:

> **MR. NATIVIDAD:** May I go on to Section 22 which says: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment, or the death penalty inflicted." I will not deal with the death penalty because it has already been belabored in many remarks. In due time, perhaps I will be given a chance to say a few words on that, too. But I am referring to cruel, degrading and inhuman punishment. I am drawing upon my experience as the Chairman of the National Police Commission for many years. As Chairman of the National Police Commission, the same way that General de Castro here was, one of my duties was to effect the inspection of jails all over the country. We must admit that our jails are a shame to our race. Once we were invited by the United Nations' expert on penology — I do not remember his name, but he is a doctor friend of mine — and he reported back to us that our jails are penological monstrosities.
>
> Here in the cities, 85 percent are detention prisoners and only 15 percent are convicted

prisoners. But if we visit the jails, they are so crowded and the conditions are so subhuman that one-half of the inmates lie down on the cold cement floor which is usually wet, even in summer. One-half of them sleep while the other half sit up to wait, until the other half wake up, so that they can also sleep. In the toilets, right beside the bowl, there are people sleeping. I visited the prisons and that was the time I fought for the Adult Probation Law because I remember what Winston Churchill and the criminologist Dostoevski said: "If you want to know the level of civilization of a country, all you have to do is visit their jails." In jurisprudence, the interpretation of "cruel and unusual punishment" in the United States Constitution was made by the Supreme Court when it said, and I quote: "Interpretation of the Eight[h] Amendment in the phrase 'cruel and unusual punishment,' must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Courts in the United States in 10 landmark cases — some of these I would like to mention in passing: Halt v. Sarver, Jackson v. Bishop, Jackson v. Handrick, Jordan v. Fitzharris and Rockly v. Stanley — stated that sub-human conditions in a prison is an unconstitutional imposition of cruel and unusual punishment.

I would just like to — even without an amendment — convince the Committee that if a prison is subhuman and it practices beatings and extended isolation of prisoners, and has sleeping cells which are extremely filthy and unsanitary, these conditions should be included in the concept of "cruel and inhuman punishment." Even without amendment but with this concept, I would like to encourage the legislature to give higher priority to the upliftment of our jails

and for the judiciary to act because the judiciary in habeas corpus proceedings freed some prisoners. So, by means of injunction, the courts stopped these practices which are inimical to the constitutional rights of inmates. On the part of the executive, it initiated reforms in order that the jails can be more humane and fair. If this concept of "cruel and inhuman punishment" can be accepted, Mr. Presiding Officer, I may not even ask for an amendment so that in the future, the judiciary, the executive and the legislative can give more remedial measures to this festering problem of subhuman conditions in our jails and prisons.

I submit, Mr. Presiding Officer.

FR. BERNAS: Mr. Presiding Officer, although I would say that the description of the situation is something that is inhuman, I wonder if it fits into the purpose of Section 22. The **purpose** of Section 22 is to **provide a norm** for ***invalidating a penalty*** that is imposed by law. Let us say that thieves should be punished by imprisonment in a filthy prison, that would be "cruel and unusual punishment." But if the law simply say that thieves should be punished by imprisonment, that by itself does not say that it is cruel. So, it does not invalidate the penal law. So my own thinking is that what the Gentleman has in mind would be something more proper; even for ordinary legislation or, if at all, for Section 21.

MR. NATIVIDAD: The Gentleman said that he is not going to sentence him in a filthy prison. Of course not. But this is brought out in the petition for *habeas corpus* or for injunction. This is revealed in a proper petition.

FR. BERNAS: I agree with the Commissioner, but as I said, **the *purpose* of Section 22 is to *invalidate***

the law itself which imposes a penalty that is cruel, degrading or inhuman. That is the purpose of this law. The Commissioner's purpose is different.

MR. NATIVIDAD: My purpose is to abate the inhuman treatment, and thus give spirit and meaning to the banning of cruel and inhuman punishment. In the United States, if the prison is declared unconstitutional, and what is enforced is an unconstitutional punishment, the courts, because of that interpretation of what is cruel and inhuman, may impose conditions to improve the prison; free the prisoners from jail; transfer all prisoners; close the prison; or may refuse to send prisoners to the jail.

FR. BERNAS: We would await the formulation of the Commissioner's amendment.

MR. NATIVIDAD: So, in effect, it is abating the continuance of the imposition of a cruel and inhuman punishment. I believe we have to start somewhere in giving hope to a big segment of our population who are helplessly caught in a trap. Even the detention prisoners, 85 percent of whom are jailed in the metropolitan area, are not convicted prisoners, and yet although not convicted in court, they are being made to suffer this cruel and inhuman punishment. I am saying this in their behalf, because as Chairman of the National Police Commission for so many years, it was my duty to send my investigators to chronicle the conditions in these jails day by day. I wrote letters to the President asking for his help, as well as to the Batasan, but there was no reply.

Finally, I am now here in this Commission, and I am writing this letter through the Chairman of this Committee. I hope it will be answered. (Emphases supplied)

As shown in the aforementioned exchanges, Commissioner Teodulo C. Natividad (Commissioner Natividad) initially proposed that the prohibition on cruel, degrading or inhuman punishment be made to cover subhuman accommodations of inmates in correctional and other detention facilities. Contrastingly, Commissioner Joaquin G. Bernas (Commissioner Bernas) opposed Commissioner Natividad's proposal by enunciating that the **purpose** of such **prohibition** is "to provide a ***norm*** for **invalidating** a **penalty** that is **imposed** by law" or "to **invalidate** the **law *itself*** which imposes a penalty that is cruel, degrading or inhuman" — not to recognize a substantive right. However, Commissioner Natividad's proposal gained traction as Commissioner Regalado E. Maambong (Commissioner Maambong) supported the idea that the prohibition on cruel, degrading or inhuman punishment be made to encompass subhuman jail conditions as follows:

> **MR. MAAMBONG:** Mr. Presiding Officer, the clarification being sought or the amendment which may be proposed, if it becomes necessary, reflects the concern of Commissioners Natividad, Ople, de los Reyes and myself, regarding our Proposed Resolution No. 482 which gives meaning and substance to the constitutional provision against cruel or unusual punishment. I do not wish to be expansive about it. I will try to stick to my time limit, but I find this rather emotional on my part because, as a practicing lawyer, I have been going in and out of jails. As a lawyer, of course, I would like to call the attention of the Committee to certain things which they already know, that it has been established by courts of modern nations that the concept of cruel or unusual punishment is not limited to instances in which a particular inmitate or pretrial prisoner is subjected to a punishment directed to him as an individual, such as corporal punishment or torture, confinement in isolation or in large numbers, in open barracks or uncompensated

> labor, among other forms. Confinement itself within a given institution may amount to cruel or unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices that are so bad as to be shocking to the conscience of reasonably civilized people. It must be understood that the life, safety and health of human beings, to say nothing of their dignity, are at stake. Although inmates are not entitled to a country club existence, they should be treated in a fair manner. Certainly, they do not deserve degrading surroundings and unsanitary conditions. (Emphasis supplied)

This led to the following exchange of concerns between Commissioners Maambong and Bernas, as follows:

> **MR. MAAMBONG:** Just one sentence, Mr. Presiding Officer, so that my train of thought will not be destroyed, if I may.
>
> Unless facilities of the penitentiary are brought up to a level of constitutional tolerability, they should not be used for the confinement of prisoners at all. Courts in other jurisdictions have ordered the closure of sub-standard and outmoded penal institutions. All these require judicial orders in the absence of implementing laws to provide direct measures to correct violations of human rights or institute alterations in the operations and facilities of penal institutions. I may not have to present any amendment but I will ask some clarifications from the Committee. For example, in the case of the words "cruel, degrading or inhuman punishment," my question is: Does this cover convicted inmates and pretrial detainees? That is the first question.
>
> **FR. BERNAS:** This is a matter which I discussed with Commissioner Natividad. I think the

Gentleman has similar ideas on this. I tried to explain to him that the problem he envisions is different from the problem being treated here. In Section 22, we are talking of a proposed, if it becomes necessary, reflects the concern punishment that is contained in a statute which, if as described in the statute is considered to be degrading or inhuman punishment, invalidates the statute **itself**. But the problem that was discussed with me by Commissioner Natividad is the situation where a person is convicted under a valid statute or is accused under a valid statute and, therefore, detained but is confined under degrading and inhuman circumstances. I suggested to him that that will be treated not together with this, because this section has a different purpose, but as a different provision as a remedy for individuals who are detained legally but are being treated in an inhuman way.

MR. MAAMBONG: Are we saying that when a person is convicted under a valid statute and he is inside the jail because of the conviction out of that valid statute when he is treated in an inhuman and degrading manner, we have no remedy at all under Section 22?

FR. BERNAS: My understanding is that this is not the protection he can appeal to. That is why I was asking Commissioner Natividad that if he wants a protection for that, to **please formulate something else**.

MR. MAAMBONG: All right, then.

The second question would be: The words "cruel, degrading or inhuman punishment" do not cover the situation that we contemplate of substandard or outmoded penal facilities and degrading and unsanitary conditions inside the jail[?]

FR. BERNAS: **Yes**, we are referring to cruel, degrading or inhuman punishments **which are prescribed in the statute *itself***. We cannot conceive a situation that the statute would prescribe that. The problem that the Gentleman contemplates again, I think, is about a person who is held under a valid statute but is treated cruelly and inhumanly in a degrading manner. So, we ask for a different remedy for him. (Emphases supplied)

The aforementioned discussions show that Commissioner Bernas *emphasized the need for creating a separate provision* in order to address the observation that it is inconceivable for Congress to enact a statute prescribing on its face for a cruel, degrading or inhuman punishment. After a stimulating exchange of ideas, the framers eventually arrived at a compromise as shown by the following discussions:

THE PRESIDENT: Is there any objection? (Silence) The Chair hears none; the motion is approved.

The body will continue the consideration of Section 22 of the Bill of Rights which reads:

The employment of corporal or psychological punishment against prisoners or pretrial detainees, or the use of substandard or outmoded penal facilities characterized by degrading surroundings, unsanitary or subhuman conditions should be dealt with in accordance with law.

Commissioner Maambong is recognized.

MR. MAAMBONG: Madam President, I just would like to indicate the generous response of the Members of the Commission to this proposed amendment, notably Commissioners Romulo, Suarez, Davide, Rigos and others who offered beautiful suggestions to implement the concept.

I will start, however, with the perfecting modifications offered by the Committee, acting through the efforts of Commissioner Nolledo to whom the proponents are very grateful.

Based on the draft, copies of which are now in the possession of the Members, on line 2, between the words "against" and "prisoners," insert the word CONVICTED.

On line 3, delete the words "substandard or outmoded" and substitute the word INADEQUATE.

On the same line 3, delete the last word "characterized," together with all the words on line 4, and substitute the word UNDER.

On lines 5 and 6, delete the words "in accordance with law" and substitute the words BY LAW. So with this [*sic*] Committee modifications, the whole proposed amendment would read: "The employment of corporal or psychological punishment against CONVICTED prisoners or pretrial detainees, or the use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

We now present that before the Committee, Madam President.

MR. SUAREZ: Madam President.

THE PRESIDENT: Commissioner Suarez is recognized.

MR. SUAREZ: Thank you, Madam President.

Will the proponent accept a simple amendment to his amendment which will be in connection with line 1?

We have heard many discussions regarding the way the Bill of Rights should be stated, emphatically by the honorable Vice-

President. So bearing this in mind, this is the proposed amendment to the amendment.

Instead of a statement of a principle, let us begin with the word NO such that the proposed amendment will now read: NO PHYSICAL OR MENTAL PUNISHMENT SHALL BE EMPLOYED.

MR. MAAMBONG: Madam President, I would refer that proposed amendment to the Committee for its comment so that we can save time.

THE PRESIDENT: What does the Committee say?

FR. BERNAS: As I said in the beginning, as the Bill of Rights is now shaping up, we have **two kinds of rights** — rights which are **self-implementing** and rights which **need implementation**. The rights which are self-implementing are generally worded in the way Commissioner Suarez would have it. But this particular right which we are putting in here is something which **needs implementation**. So, actually, **the effective provision here would be "should be dealt with BY LAW" because we are still dependent on law.**

MR. SUAREZ: May I add that my proposal is to make two sentences out of this proposed provision. So put a period (.) after "detainees" and continue the next sentence: "The use of inadequate . . ."

FR. BERNAS: How would it read now?

MR. SUAREZ: It would read something like this: "NO PHYSICAL OR MENTAL PUNISHMENT SHALL BE EMPLOYED against CONVICTED prisoners or pretrial detainees. The use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

FR. BERNAS: I think the proposed amendment of Commissioner Maambong, when it speaks of "should be dealt with BY LAW," has reference not just to inadequate or substandard conditions, but even **also** to **torture**.

MR. MAAMBONG: I confirm that, Madam President.

FR. BERNAS: Yes. So, it does modify the sense of Commissioner Maambong's proposal. I would leave it to Commissioner Maambong to say whether he accepts that or not.

MR. MAAMBONG: Actually, I am amenable to the use of the words "NO PHYSICAL or psychological. . ." But I really have a difficulty in separating the two things with the words "should be dealt with BY LAW" and I would rather agree with the Committee on this point.

FR. BERNAS: At any rate, what Commissioner Suarez wants to be emphasized is already covered by other provisions.

MR. MAAMBONG: Yes, Madam President.

FR. BERNAS: This is more of a command to the State saying that beyond having recognized these things as prohibited, the State should do something to remedy whatever may be a violation.

MR. MAAMBONG: Yes. But I would just like to indicate, even though I cannot accept the amendment, that the wording of Commissioner Suarez would indeed be more emphatic and it would have served my purpose better if it would not destroy the essence of the whole provision.

FR. BERNAS: Yes.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Will the sponsor entertain an amendment to his amendment?

MR. MAAMBONG: Yes, Madam President.

THE PRESIDENT: We are still on the amendment of Commissioner Suarez.

MR. REGALADO: No. I will address it instead to Commissioner Maambong.

MR. BENGZON: Madam President, I think Commissioner Suarez is not going to insist on his amendment. So, may we allow him to withdraw?

MR. SUAREZ: Inasmuch as the word "corporal" has already been substituted with the word PHYSICAL, as stated by the honorable proponent. I will not insist on my amendment to the amendment because the sense is already very well conveyed.

Thank you.

THE PRESIDENT: Commissioner Regalado desires to be recognized in relation to the proposed amendment.

MR. MAAMBONG: Yes, Madam President, but I would just like to make a statement. Considering that Commissioner Suarez mentioned "PHYSICAL" — I did say "corporal" — to save time, I would rather ask the Committee to allow me to change "corporal" to PHYSICAL; then, I will accept that amendment on the word PHYSICAL by Commissioner Suarez.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: Madam President, I am proposing a further amendment to put some standards on this, to read: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER."

Please permit me to explain. The punishment may not be physical but it could be degrading. Perhaps, the Members have seen the picture of that girl who was made to parade around the Manila International Airport with a placard slung on her neck, reading "I am a thief."

That is a degrading form of punishment. It may not necessarily be corporal nor physical. That is why I ask for the inclusion of OR DEGRADING "punishment" on this line and employment should be ON ANY PRISONER. It includes a convicted prisoner or a detention prisoner.

MR. MAAMBONG: Where would the words be?

MR. REGALADO: "The employment of PHYSICAL, psychological OR DEGRADING punishment ON ANY PRISONER." This is all-inclusive.

MR. MAAMBONG: In other words, the Commissioner seeks to delete the words "against CONVICTED prisoners or pretrial detainees," and in its place would be "ON ANY PRISONER."

MR. REGALADO: Because in penal law, there are two kinds of prisoners: the prisoners convicted by final judgment and those who are detention prisoners. Delete "or pretrial detainees"; then, "or the use of GROSSLY substandard or INADEQUATE penal facilities." If we just say "substandard," we have no basis to determine against what standard it should be considered. But if we say "GROSSLY substandard," that is enough of a legislative indication and guideline.

MR. MAAMBONG: Madam President, before we take it up one by one, the Committee modification actually deleted the words "substandard or outmoded," and in its place, we put the word INADEQUATE. Is it the Gentleman's

position that we should put back the word "substandard" instead of "INADEQUATE"?

MR. REGALADO: I put both, "or the use of GROSSLY substandard or INADEQUATE penal facilities," because the penal facilities may be adequate for a specific purpose but it may be substandard when considered collectively and vice-versa; and then, we delete the rest, "should be dealt with BY LAW." That capsulizes, I think, the intent of the sponsor of the amendment.

FR. BERNAS: If we add the word "GROSSLY," we are almost saying that the legislature should act only if the situation is gross.

MR. REGALADO: **How do we determine what is substandard?**

FR. BERNAS: ***We leave that to the legislature.*** What I am saying is that the legislature could say: "Well, this is substandard but it is not grossly substandard; therefore, we need not do anything about it."

MR. REGALADO: Could we have a happy compromise on how the substandard categorization could come in because it may be substandard from the standpoint of American models ***but* it may be sufficient for us**?

FR. BERNAS: I do not think we should go into great details on this. We are not legislating . . .

MR. REGALADO: So, the sponsor's position is that **we just *leave it to the legislature* to have a legislative *standard of their own in the form of an ordinary legislation***?

FR. BERNAS: ***Yes***.

MR. MAAMBONG: Before I make any acceptance of the offered amendment, may I know from the Committee if on line 3, after the word "INADEQUATE," we should also replace "substandard" which we have cancelled earlier?

FR. BERNAS: I do not know where we are now, but this is what I have. "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against CONVICTED PRISONERS . . ."

MR. MAAMBONG: "against ANY PRISONER. . ." They were thinking of any prisoner.

MR. REGALADO: No, I put the word ON not "against." One inflicts the punishment on a person.

MR. MAAMBONG: Yes.

FR. BERNAS: But the word "inflict" is not used but "employment" is used. So, the preposition is "against," not "ON."

MR. REGALADO: That is right; it is a matter of style.

MR. BENGZON: Madam President.

THE PRESIDENT: The Acting Floor Leader is recognized.

MR. BENGZON: May we just leave that to the Committee on Style? What is important is, we decide on the concept. If we can decide on the concept, then we can leave the style to the Committee on Style.

THE PRESIDENT: It should be left to the Committee on Style or to the Committee itself, to the Committee of Commissioner Bernas if they are agreed on the substance as to what is to be contained in the proposed amendment.

FR. BERNAS: I just have one question on the substance. If we just say "ANY PRISONER," that may connote that the person is either a prisoner convicted or a pretrial prisoner and, therefore, charged. I would much rather have ANY PRISONER OR DETAINEE because a "prisoner" usually connotes someone who is convicted; a "detainee" could be on pretrial or not charged at all.

THE PRESIDENT: May we now have the recommendation of the Committee as to how this whole provision will read?

FR. BERNAS: So, the recommendation of the Committee would be: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE, or the use of INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

MR. RODRIGO: Madam President.

THE PRESIDENT: Yes, Commissioner Rodrigo is recognized.

MR. RODRIGO: I would like to call attention to the fact that the word "DEGRADING" is already in the first sentence of this section: "Excessive fine shall not be imposed nor cruel, degrading or inhuman punishment inflicted." So, why repeat the word "DEGRADING"?

FR. BERNAS: Precisely, Madam President, yesterday, we said that the provision we have in the present Constitution has reference to the punishment that is prescribed by the **law itself**; ***whereas*** what we are dealing with here is the **punishment** or **condition** which is **actually being practiced** (*sic*). In other words, we are, in the present Constitution, talking about punishment which, **if imposed by the law**, renders the law invalid.

In this paragraph, we are **describing *conditions*** of detainees who may be **held under valid laws *but* are being *treated*** in a ***manner*** that is ***subhuman*** or **degrading**.

MR. RODRIGO: So, that is the reason for repeating the word "DEGRADING."

FR. BERNAS: Yes, that is the reason.

MR. COLAYCO: Just one suggestion for the Committee.

THE PRESIDENT: Yes, Commissioner Colayco is recognized.

MR. COLAYCO: To shorten the sentence, I would suggest this: "The employment of PHYSICAL, psychological OR DEGRADING punishment IN ANY PLACE OF DETENTION." That will cover prisoners who are already convicted and those under detention or during trial.

MR. MAAMBONG: I am sorry I cannot accept that. I think the Committee has made a good job in modifying the sentence.

THE PRESIDENT: Will Commissioner Maambong please read his proposed amendment with all the suggestions that have come in?

MR. MAAMBONG: Yes. It would read like this: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE or the use of substandard or INADEQUATE penal facilities UNDER subhuman conditions should be dealt with BY LAW."

MR. FOZ: Madam President.

THE PRESIDENT: Commissioner Foz is recognized.

MR. FOZ: May I just ask one question of the proponent of the amendment[?] I get it that the law shall provide penalties for the conditions described by his amendment.

MR. MAAMBONG: In line with the decisions of the Supreme Court on the interpretation of cruel and unusual punishments, there may be a law which punishes this violation precisely or there may not be a law. What could happen is that the law could provide for some reliefs other than penalties.

In the United States, there are what is known as injunctive or declaratory reliefs and that is not exactly in the form of a penalty. But

I am not saying that the legislature is prevented from passing a law which will inflict punishment for violations of this section.

MR. FOZ: In case the law passed by the legislature would impose sanctions, not so much in the case of the first part of the amendment but **in the case of the second part** with regard to substandard or outmoded legal penal facilities characterized by degrading surroundings and insanitary or subhuman conditions, **on whom** should such sanctions be applied?

MR. MAAMBONG: It would have to be applied on the **administrators** of that penal institution. In the United States, in my reading of the cases furnished to me by Commissioner Natividad, there are instances where the law or the courts themselves ordered the closure of a penal institution and, in extreme cases, in some states, they even set the prisoners free for violations of such a provision.

MR. FOZ: I am concerned about the features described as substandard or outmoded penal facilities characterized by degrading surroundings, because **we know very well the conditions in our jails**, particularly in the local jails. It is not really the fault of those in charge of the jails but these conditions are the result of lack of funds and the support by local government, in the first instance, and by the national government.

Does the Gentleman think we should penalize the jailers for outmoded penal facilities?

MR. MAAMBONG: No, Madam President. What we are trying to say is that lack of funds is a very convenient alibi for the State, and I think with these provisions, the State should do something about it.

MR. FOZ: Thank you, Madam President.

FR. BERNAS: Madam President, **we are *not* telling the legislature *what to do*: we are just telling them that *they should do something about it*.**

MR. DE CASTRO: Madam President.

THE PRESIDENT: Commissioner de Castro is recognized.

MR. DE CASTRO: Thank you.

The provision which says: "The employment of PHYSICAL, psychological OR DEGRADING PUNISHMENT against ANY PRISONER OR DETAINEE SHALL be dealt with BY LAW" is already provided for by our present laws. We already have laws against third-degree punishments or even psychological punishments. Do we still need this provision?

Thank you. Madam President.

MR. MAAMBONG: As I was saying, Madam President, the law need not penalize; the law may only put in corrective measures as a remedy.

MR. REGALADO: Madam President.

THE PRESIDENT: Commissioner Regalado is recognized.

MR. REGALADO: May I just rejoin the statement of Commissioner de Castro that we have laws already covering situations like this. The law we have on that in the Revised Penal Code is maltreatment of prisoners which comes from the original text *maltratos de los encarcerados*. That presupposes that the prisoner is incarcerated.

The proposed legislation sought here will apply not only to incarcerated prisoners, but also to other detainees who, although not incarcerated, are nevertheless kept, their liberty of movement is controlled before incarceration. So, **this is for the legislature to fill that void in the law**.

MR. GUINGONA: Madam President.

MR. BENGZON: Madam President.

THE PRESIDENT: Commissioner Guingona seeks to be recognized.

MR. GUINGONA: Thank you, Madam President.

The description that our penal facilities are characterized by degrading surroundings under subhuman conditions, in my opinion, is already indicative of substandard or inadequate facilities. And, therefore, I was wondering whether or not the words "substandard or INADEQUATE" might be a surplusage.

MR. BENGZON: Madam President, the Committee is asking for a vote.

THE PRESIDENT: Yes, but what is the phrasing now?

MR. GUINGONA: May I ask, Madam President, for reply to my comment before we vote?

MR. MAAMBONG: May I make a very short reply on that. Precisely, the Committee has modified the original version by deleting the words "characterized by degrading surroundings, unsanitary or" because it is felt that that is a surplusage.

THE PRESIDENT: So, please read it now as it is now ready to be voted upon.

MR. MAAMBONG: Yes, Madam President. It will read: "The employment of PHYSICAL, psychological OR DEGRADING punishment against ANY PRISONER OR DETAINEE or the use of substandard or INADEQUATE penal facilities UNDER subhuman conditions **should be dealt with BY LAW**."

I now ask if this is acceptable to the Committee.

VOTING

THE PRESIDENT: This particular amendment has been accepted by the Committee and, therefore, we are now ready to vote.

As many as are in favor of this particular amendment, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (No Member raised his hand.)

The results show ***28*** **votes in favor and** ***none*** **against**; the amendment, as amended, is approved. (Emphases supplied)

The aforementioned exchanges show that Commissioner Maambong eventually softened his stance in rejecting Commissioner Bernas' proposal that the determination of what constitutes "substandard or inadequate penal facilities under subhuman conditions" as well as "employment of physical, psychological, or degrading punishment" should best be left to the Legislature. This translated into an ***unopposed approval*** of Commissioner Bernas' proposal. As a result, Section 19 (2) of Article III of the present Constitution came into being; hereunder reproduced as follows:

> 2. The employment of **physical, psychological, or degrading punishment** against any prisoner or detainee or the use of **substandard or inadequate penal facilities under subhuman conditions** ***shall be dealt with by law***. (Emphasis supplied)

With all due respect, the undersigned disagrees with the opinions of Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe) and Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) who both echoed the US Supreme Court's ruling in ***Estelle, et al. v. Gamble***[121] that the Eighth Amendment establishes "the government's obligation to provide medical care for those whom it is punishing by incarceration"

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[121] 429 U.S. 97 (1976).

and that the "deliberate indifference to serious medical needs of prisoners constitutes 'unnecessary and wanton infliction of pain.'" It bears stressing that, aside from this jurisdiction's judicial policy that this Court is not bound by the legal perspective expounded by the US Supreme Court,[122] the US Constitution's Eighth Amendment ***radically differs*** from the Philippine Constitution's Section 19, Article III in terms of judicial enforceability. Both provisions are juxtaposed for comparison as follows:

PHILIPPINE CONSTITUTION	**UNITED STATES CONSTITUTION**
Section 19, Article III	Eighth Amendment
1. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.	Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
2. The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions **shall be dealt with by law**. (emphases supplied)	

[122] See: ***Ient, et al. v. Tullett Prebon (Philippines), Inc.***, G.R. No. 189158, January 11, 2017, 803 Phil. 163, 186.

Clearly, only Congress has the constitutional power to address subhuman conditions that plague our penal institutions.[123] The Court **cannot isolate** Section 19 (1) and **ignore** Section 19 (2) if it is expected to uphold the Constitution. The fact that Section 19 **(2)**, Article III of the Philippine Constitution **has no counterpart** in the **US Constitution**, patently shows that the framers of the Constitution had understood and realized the inherent and realistic financial limitation of congressional appropriation.

Accordingly, the undersigned respectfully reiterates the **basic** principle that the Constitution is to be **interpreted as a whole**.[124] A constitutional provision **should function to the full extent** of its substance and its terms, not by itself alone, but in conjunction with all other provisions of that great document.[125] No one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument — sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and **one section is not to be allowed to defeat another**, if by any reasonable construction, the two can be made to stand together.[126] In other words, a provision of the Constitution does not operate in isolation without regard to others. This is because the law must not be read in truncated parts, its provisions must be read in relation to the whole law.[127]

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[123] Read in the entire context of this Decision, this statement is clearly not meant to foreclose any judicial relief to remedy subhuman conditions —it is meant to anchor these judicial reliefs on statutes positively enacted by Congress.

[124] ***Francisco, Jr. v. House of Representatives, et al.***, G.R. No. 160261, November 10, 2003, 460 Phil. 830, 886.

[125] ***Atty. Macalintal v. Commission on Elections, et al.***, G.R. No. 157013, July 10, 2003, 453 Phil. 586, 632, citations omitted.

[126] ***Atty. Macalintal v. Presidential Electoral Tribunal***, G.R. No. 191618, November 23, 2010, 650 Phil. 326, 341, citations omitted.

[127] ***Philippine International Trading Corporation v. Commission on Audit***, G.R. No. 183517, June 22, 2010, 635 Phil. 447, 454.

As such, **cherry-picking principles in order to uphold a desired and pre-determined result not only betrays the solemn and constitutional duty of magistrates to be impartial but is also a fundamentally-proscribed indirect method of altering or repealing provisions of the Constitution**.

Furthermore, the scope of the term "law" has always been understood to be limited to congressionally-enacted statutes. It cannot be reasonably interpreted to mean or encompass either judicial decisions (including procedural rules promulgated by the Court in the exercise of its rule-making power) or administrative rules promulgated by the Executive Department *without violating the basic principle of separation of powers*. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed.[128]

In the case of Section 19 (2), Article III of the Constitution, there is nothing in the same provision which reasonably points to the possibility that the term "law" carries with it a technical meaning encompassing the common law practice of referring to judicial decisions as "laws." As pointed out earlier in the deliberations of the Constitutional Commission, the phrase **"dealt with by law"** has been clarified when Commissioner Florenz D. Regalado propounded the question: **"How do we determine what is substandard?"** to which Commissioner Bernas succinctly responded: **"We leave that to the *legislature*."** This exchange leaves no doubt as to the meaning of the term "law" as used in Section 19 (2), Article III of the Constitution — it clearly refers to statutes enacted by Congress. Besides, jurisprudence is already settled that: (a) **judicial decisions** which apply and/or interpret the law **are not laws** although they are considered as "part of the law of the land";[129] and (b) **administrative rules and regulations,** even if they "have the

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[128] ***Chavez v. Judicial and Bar Council, et al.***, G.R. No. 202242, July 17, 2012, 691 Phil. 173, 199.

[129] See: ***Columbia Pictures, Inc., et al. v. Court of Appeals, et al.***, G.R. No. 110318, August 28, 1996, 329 Phil. 875, 907, citations omitted.

force and effect of law," **are *not* laws** as they do not establish demandable rights and enforceable obligations.[130] For purposes of interpreting the term "law" in the context of Section 19 (2), Article III of the Constitution, it is not difficult to fathom that there is a clear line demarcating between what is legislative and what is not. Accordingly, Congress has to act first by enacting a remedial statute before the Executive and the Judiciary can validly proceed to promulgate any measure if subhuman conditions of detention facilities are to be addressed in accordance with what the Constitution prescribes.

As such, it is unfair to insinuate that this Court is being "deliberately indifferent" to the petitioners' plight if it refuses to grant the instant petition when **no less than the Constitution itself** lodges the power of addressing "the use of substandard or inadequate penal facilities under subhuman conditions" on Congress. Those who feel that the duty (of addressing the subhuman conditions of detention facilities) should be shared by *all* branches of the government even without any enabling law should also be mindful that the only remedy at this point is a constitutional amendment — not an expanded but contrived interpretation of the Constitution — lest this Court do violence to the basic principle of separation of powers.

Moreover, Section 19 (2), Article III of the Constitution effectively preserved the doctrine in ***People v. Dionisio***[131] (promulgated during the time when the 1935 Constitution was still in effect) which espoused that "***[w]hat*** evils should be corrected as pernicious to the body politic, and ***how*** correction should be done, is a matter primarily addressed to the discretion

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[130] Cf. ***First Lepanto Ceramics, Inc. v. Court of Appeals, et al.***, G.R. No. 110571, March 10, 1994, 301 Phil. 32, 40, citations omitted; ***Banco Filipino Savings and Mortgage Bank v. Navarro, et al.***, G.R. No. L-46591, July 28, 1987, 236 Phil. 370, 378-379, citations omitted; ***Tayug Rural Bank v. Central Bank of the Philippines***, G.R. No. L-46158, November 28, 1986, 230 Phil. 216, 223-224, citations omitted; ***People v. Que Po Lay***, No. L-6791, March 29, 1954, 94 Phil. 640, 642, citations omitted; contra: ***Jardeleza v. People***, G.R. No. 165265, February 6, 2006, 517 Phil. 179, 201-202.

[131] No. L-25513, March 27, 1968, 131 Phil. 408, 412.

of the legislative department, not of the courts." As to "**how** correction should be done," the Court had already clarified in ***Lim, et al. v. People, et al.***,[132] thusly:

> Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is **flagrantly *and* plainly oppressive *and* wholly disproportionate** to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading. (Emphasis supplied)

To be considered as constitutionally repulsive under the aforecited pronouncement in ***Lim***, a punishment prescribed by the statute *itself* must be flagrant and plainly oppressive *as well as* disproportionate. Consistent with the Constitutional Commission's deliberations on Section 19 (2), Article III of the Constitution, this pronouncement refers to the statute *itself* and *not* to the *implementation* of such statute. As such, the pronouncement in ***David, et al. v. Macapagal-Arroyo, et al.***[133] makes it straightforward and clear that "[t]he criterion by which the validity of the statute or ordinance is to be measured is the **essential basis** for the exercise of power, and **not** a **mere incidental *result*** arising **from** its **exertion**." This means that a punishment *per se* as provided by law does not become cruel, degrading or inhuman due to the results of its implementation but due to the *basis* or legislative intention of its enactment. Besides, a cruel, degrading or inhuman manner of implementing an otherwise constitutionally-permissive punishment exposes the responsible public officer or employee to corresponding criminal, civil and administrative liabilities. Accordingly, the undersigned nevertheless finds it imperative and appropriate

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[132] G.R. No. 149276, September 27, 2002, 438 Phil. 749, 754, cited in: ***Maturan v. Commission on Elections, et al.***, G.R. No. 227155, March 28, 2017, 808 Phil. 86, 94.

[133] G.R. No. 171396, May 3, 2006, 522 Phil. 705, 795, citations omitted.

to point out that *incidents* in the *implementation* of a punishment have proper recourses and do not affect the validity of the statute or ordinance providing for such sanction.

Anent the **flagrance** (as contemplated in ***Lim***) of an oppressive or wholly disproportionate nature as one of the indicators that a punishment may be cruel, degrading or inhuman, the undersigned points out that detention *per se* which incidentally results in the deprivation of the prisoners' sanitation needs can hardly be equated to "torture" under R.A. No. 9745.[134] Section 3 (a) of the same law states:

> (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is ***intentionally*** **inflicted** on a person for such purposes as obtaining from him/her or a third person information or a confession; **punishing** him/her for an act he/she or a third person has committed or is suspected of having committed; or **intimidating** or **coercing** him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is **inflicted** by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does ***not*** **include** pain or suffering arising only from, **inherent** in or ***incidental*** to lawful sanctions. (Emphases supplied)

The terms of the aforementioned provision clearly contemplate unlawful instances of **flagrant** or **intentional** infliction of pain or suffering on the part of the perpetrator. Any pain or suffering **inherent** in or **incidental** to lawful sanctions are ***excluded*** from the definition of "torture." This only means that, if any pain or suffering arises incidental to or due to the inherent nature of a punishment or sanction imposed by legislature, the same may not be deemed as "torture" to invoke the constitutional prohibition against cruel, degrading or inhuman punishment for being flagrant. Although not committed to the idea that only torture constitutes cruel, degrading and inhuman punishment, the undersigned still maintains its prudent stand that Legislature is the **only** branch of government tasked under Section 19 (2), Article III of the Constitution to address subhuman

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[134] Anti-Torture Act of 2009 (November 10, 2009).

conditions in jails and other detention facilities. Such task — of either **enacting** a special appropriations law or **including** in its yearly general appropriations law funds and measures for the upliftment of jail conditions—**cannot be forced upon Congress by any judicial *writ***. Regrettably, the basic principle of checks-and-balances do not allow this Court to consider the petitioners as continually being subjected to torture in their present detention conditions absent any indication of flagrance on the respondents' part as it will unduly expand the statutory definition of torture. Besides, judicial review may only be resorted to when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government — not work as a peremptory *writ* of *mandamus* improperly applied to compel the performance of an inherently discretionary act such as legislation.

In conclusion, the undersigned reiterates that the *extent* of judicial remedies should only be those which are circumscribed by substantive law if the fundamental constitutional doctrine of separation of powers is to be respected. The Judiciary must function within its sphere of its power — which does not include the power to order either the Legislative to enact a law or the Executive to issue a particular implementing rule not mandated by any statute.

Last, courts are not constitutionally empowered to issue advisory opinions or promulgate rules, even thru adjudication, which amount to giving details as to the implementation of statutory provisions.

A "justiciable controversy" refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[135] A petition must show "an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real,

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[135] ***Velarde v. Social Justice Society***, G.R. No. 159357, April 28, 2004, 472 Phil. 285, 302, citations omitted.

and not a mere theoretical question or issue."[136] In other words, courts have no authority to: (a) pass upon issues through advisory opinions; (b) resolve hypothetical or feigned problems as well as friendly suits collusively arranged between parties without real adverse interests; and (c) adjudicate mere academic questions to satisfy scholarly interests, however intellectually challenging.[137]

Concomitantly, this Court has the constitutional power, among others, to promulgate rules of pleading, practice and procedure as well as of those concerning the protection and enforcement of constitutional rights.[138] Comparatively, administrative agencies have the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.[139]

As regards the broad standards set by the Nelson Mandela Rules as well as the generic terms used in Section 4 (a) of the Bureau of Corrections Act, the Court has no power to promulgate rules or even order thru adjudication the *specific manner* on *how* to implement *specific protective measures* which the inmates are entitled. Such power of "subordinate legislation" belongs to administrative agencies to "fill in the gaps of a statute for its proper and effective implementation" by virtue of their expertise in their fields of specialization.[140] In other words,

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[136] ***Philippine Airlines, Inc. v. National Labor Relations Commission, et al.***, G.R. No. 120567, March 20, 1998, 351 Phil. 172, 183, citations omitted.

[137] ***Guingona, Jr., et al. v. Court of Appeals, et al.***, G.R. No. 125532, July 10, 1998, 354 Phil. 415, 426, citations omitted.

[138] ***Estipona v. Lobrigo, et al.***, G.R. No. 226679, August 15, 2017, 816 Phil. 789, 800-806, citing: Section 5 (5), Article VIII of the 1987 Constitution.

[139] ***Smart Communications, Inc., et al. v. National Telecommunications Commission***, G.R. No. 151908, August 12, 2003, 456 Phil. 145, 155-156, citations omitted.

[140] See: ***H. Villarica Pawnshop, Inc., et al. v. Social Security Commission, et al.***, G.R. No. 228087, January 24, 2018, 824 Phil. 613, 633-634, citations omitted.

providing for details as to *how* a provision of law will be *carried out* or *implemented* is part of executive—not judicial—functions. Moreover, it also goes without saying that the Bureau of Corrections is duty-bound under Sections 3 and 4 of the Bureau of Corrections Act to look after the welfare of the inmates even "including families of inmates and their victims." Consequently, this Court would be engaging in subordinate legislation if it supplies the details on how to implement the Bureau of Corrections Act instead of providing for rules on either pleading and practice or protection and enforcement of constitutional rights. However, this realization that judicial functions do not include the duty to "fill in the gaps of the statute" should be distinguished from the courts' power to strike down laws or administrative issuances for being unconstitutional or invalid. In this case, striking down portions of administrative issuances does not result in the creation of new rules or new entitlements—it merely renders such stricken portions ineffectual.

As pointed out by Chief Justice Peralta, unless there is clear showing that the petitioners are actually suffering from a medical condition that requires immediate and specialized attention outside of their confinement—as, for instance, an actual and proven exposure to or infection with the SARS-CoV-2—they must remain in custody and isolation incidental to the crimes with which they were charged, or for which they are being tried or serving sentence. Only then can there be an actual controversy and a proper invocation of humanitarian and equity considerations that is ripe for this Court to determine.

Associate Justice Rodil V. Zalameda (Justice Zalameda) also shares a complementary view that contracting COVID-19 has become more speculative than real because there is no such case in petitioners' actual detention facility due to isolation from the public. This negates the actual risk of contracting COVID-19 despite congestion and despite their health condition. And although congested facilities may hasten the spread of COVID-19, such disease is not borne solely out of congested facilities. Furthermore, Justice Zalameda points out that the petitioners: (a) did not inform this Court of the COVID-19 situation in the areas where they propose to stay for their

temporary release; and (b) did not show whether they will actually be in a better physical environment during their temporary release—as their possible temporary release during the duration of the ECQ should also be subject to monitoring by the State.

Take for example the case of petitioner Reina Mae A. Nasino who was then pregnant while being detained and is currently facing charges for violations of R.A. No. 10591 and R.A. No. 9165. This Court cannot automatically and unfairly assume that the Bureau of Corrections is ill-equipped and inept in handling cases of pregnant inmates whether regarding their safekeeping or assisting during childbirth and rearing. To order the Bureau of Corrections to "undertake measures to protect pregnant inmates and their unborn children" would be an empty and redundant display of judicial power—amounting to a mere advisory opinion. Besides, it is premature to order any protective measure for safe delivery of pregnant inmates who have yet to give birth to their children. It is only when there is a lapse or deliberate neglect on the Bureau of Correction's performance of its duty resulting in injury to both mother and child or a violation of the pregnant inmate's right to be taken care of during childbirth can a cause (or even a right) of action arise. To recover at all, there must be some cause of action at the commencement of the suit.[141] Ultimately, this is up to the DOJ (in coordination with the Bureau of Corrections), CSC, DBM and DOF to determine the specific measures in which to protect the inmates in the custody of all detention facilities in the country.

On Releasing the Petitioners Pursuant to Equity:

In order to determine whether or not the petitioners (who pray for their temporary release on bail or recognizance for health and age reasons as well as for the creation of a "Prisoner Release Committee" with the accompanying issuance of ground rules for such release) may successfully invoke "equity" or

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[141] ***Swagman Hotels and Travel, Inc. v. Court of Appeals, et al.***, G.R. No. 161135, April 8, 2005, 495 Phil. 161, 172, citations omitted.

"equity jurisdiction," it is necessary for the undersigned to explain the legal system of the Philippines and its ramifications in terms of adjudication.

At the outset, there are two (2) main categories of legal systems or traditions that originally came out of Europe: (a) the civil law system; and (b) the common law system. Countries like Spain, France, Germany, Portugal, Italy and Switzerland have been traditionally labelled as civil law jurisdictions;[142] while countries such as the United Kingdom (except Scotland which partly adopts the civil law system), the United States of America (US), Canada, Australia, New Zealand and other countries of the British Commonwealth have been known as common law jurisdictions.[143]

The civil law system (sometimes referred to as "statute law" or "statutory law" system by some legal scholars) pertains to the practice of deciding cases based on explicit provisions of law enacted by an authority like the legislature in the case of statutes or the people themselves in the case of constitutions. Here, courts ought to recognize "the generative capacity of legislation" for, according to orthodox civil law theory, a statute is conceived of as "being the most satisfactory and perfect method of realizing justice," and as the "unique source of judicial decisions."[144] In other words, Congress (or the people in the case of the Constitution) has the plenary power to enact laws pertaining to persons or things within its territorial jurisdiction; either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the Constitution or limited or restrained by its own.[145] Concomitantly, case laws of civil law

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[142] See: Merryman, *et al.*, *The Civil Law Tradition (An Introduction to the Legal Systems of Europe and Latin America)*, 3rd Ed., (2007), p. 1.

[143] See: https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf (last accessed: May 1, 2020).

[144] See: Concurring and Dissenting Opinion of Associate Justice (later Chief Justice) Enrique M. Fernando in ***People v. Sabio, Sr., et al.***, G.R. No. L-45490, November 20, 1978, 176 Phil. 212, 232, citations omitted.

[145] ***The City of Davao, et al. v. The Regional Trial Court, Branch XII, Davao City, et al.***, G.R. No. 127383, August 18, 2005, 504 Phil. 543, 560, citations omitted.

jurisdictions are governed by the doctrine of *jurisprudence constante*. Under the latter doctrine, a single decision is not binding on courts but, when a series of decisions form a "constant stream of uniform and homogenous rulings having the same reasoning," *jurisprudence constante* applies and operates with "considerable persuasive authority."[146]

Contrastingly, the common law system (sometimes refer to as "judge-made law" or "customary law" by some legal scholars) pertains to the practice of settling disputes based on customs supplemented with the general principles of justice, fairness and equity. In this legal system, parties to the dispute anchor their claims or defenses on common practices which they need to substantiate with evidence before the courts. Relatedly, case laws in common law jurisdictions are governed by the doctrine of *stare decisis*[147] where principles which have been laid out in prior decisions create a binding precedents as regards future decisions dealing with essentially the same factual and/or legal questions.[148] This has the effect of rendering such prior judicial decisions as "customs" which essentially operate to bind future rulings.[149] Adherents to the common law system claim that their courts "find" rather than "make" the law and, "in doing so are fashioning and refining the law as it then existed in light of reason and experience"; thereby bringing "the law into conformity with reason and common sense."[150] They also claim

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[146] See: ***Doerr, et al. v. Mobil Oil Corporation, et al.***, 774 So.2d 119 (2000), citations omitted.

[147] *Stare decisis et non quieta movere*—stand by the decisions and disturb not what is settled (see: ***Lazatin, et al. v. Desierto, et al.***, G.R. No. 147097, June 5, 2009, 606 Phil. 271, 281-283, citations omitted.

[148] See: ***United Coconut Planters Bank v. Spouses Uy***, G.R. No. 204039, January 10, 2018, 823 Phil. 284, 293-295, citations omitted; ***Pepsi-Cola (Phils.), Inc. v. Espiritu, et al.***, G.R. No. 150394, June 26, 2007, 552 Phil. 594, 599-600, citations omitted.

[149] See: Scalia, *A Matter of Interpretation (Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws)*, 1st Ed., (1997), p. 4.

[150] See: ***Rogers v. Tennessee***, 532 U.S. 451 (2001).

that "those acts of Parliament, which have from time to time been made to enforce this universal law, or to facilitate the execution of [its] decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the Kingdom; without which it must cease to be a part of the civilized world."[151] In other words, common law consider statutes as merely re-affirmations of universal principles "discovered" thru logical reasoning and presumably used by judges in settling a particular dispute. Moreover, the practice where "justice must satisfy the appearance of justice"[152] is the legal norm.

The Philippines practices the mixed legal system due to its Spanish and American influence during the colonial periods. Its legal system which comprises *primarily* (and predominantly) of the civil law system inherited from Spain *supplemented* by common law principles inherited from the US.

The civil law aspect of the Philippine legal system derives its foundations from: (a) the presently defunct Act No. 2127[153] which mandates that the language of the text of the law shall prevail in the interpretation of laws;[154] (b) the judicially-institutionalized maxims of *verba legis non est recedendum*[155] (from the words of a statute there should be no departure) and *noscitur a sociis*[156] (where a particular word or phrase is

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[151] See: ***Sosa v. Alvarez-Machain, et al.***, 542 U.S. 692 (2004), citations omitted.

[152] See: ***Levine v. United States***, 362 U.S. 610 (1960), citing: ***Offutt v. United States***, 348 U.S. 11 (1954).

[153] An Act Amending Section Thirteen of Act Numbered Twenty-Six Hundred and Fifty-Seven, Known as the "Administrative Code" (March 17, 1917).

[154] See: ***People v. Soler***, G.R. No. L-45263, December 29, 1936, 63 Phil. 868, 871-872.

[155] ***Bolos v. Bolos***, G.R. No. 186400, October 20, 2010, 648 Phil. 630, 637, citations omitted.

[156] ***Coca-Cola Bottlers, Phils., Inc. (CCBPI), Naga Plant v. Gomez, et al.***, G.R. No. 154491, November 14, 2008, 591 Phil. 642, 659, citations omitted.

ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated); (c) Articles 7 and 10 of the Civil Code where "[l]aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary" and "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail";[157] and (d) the constitutional power of this Court "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"[158] and assess whether or not there is failure to act in contemplation of law.[159]

Concomitantly, the common law aspect of the Philippine legal system traces its roots from: (a) Articles 8 and 9 of the Civil Code where "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines" and "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws"; and (b) the long-standing judicial adage that "equity follows the law."[160]

As to the legal effect of case laws, the Philippines exercises a unique brand of the common law doctrine of *stare decisis*. Up to a certain degree, this Court will uphold an established precedent and, if need be, evaluate such prior ruling by: (a) determining whether the rule has proved to be intolerable simply in defying practical workability; (b) considering whether the rule is subject to a kind of reliance that would lend a special

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[157] See: ***Gamboa v. Teves, et al.***, G.R. No. 176579, June 28, 2011, 668 Phil. 1, 37, citations omitted.

[158] Section 1, Article VIII of the Constitution.

[159] See: ***Reyes, Jr. v. Belisario, et al.***, G.R. No. 154652, August 14, 2009, 612 Phil. 936, 956, citations omitted.

[160] See: ***Philippine Rabbit Bus Lines, Inc. v. Arciaga, et al.***, G.R. No. L-29701, March 16, 1987, 232 Phil. 400, 405, citations omitted.

hardship to the consequences of overruling and add inequity to the cost of repudiation; (c) determining whether related principles of law have so far developed as to have the old rule no more than a remnant of an abandoned doctrine; and, (d) finding out whether facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification.[161] It does not strictly and rigidly adhere to precedents akin to those of common law jurisdictions like the United Kingdom where judges make law as binding as an Act of Parliament.[162]

In line with the aforementioned backdrop of the Philippine legal system, the undersigned will now proceed with the merits of the case.

Here, the petitioners ask this Court to exercise its "equity jurisdiction" and to: (a) order their release on bail or on recognizance on humanitarian reasons; (b) order the creation of a "Prisoner Release Committee" to facilitate the release of all other clinically-vulnerable inmates all throughout the country; and (c) promulgate ground rules relevant to the release of eligible prisoners—all on the ground of "equity."

The undersigned maintains that this Court cannot grant their prayers due to the following reasons:

First, this Court cannot allow the release of the petitioners on the ground of equity without violating the Constitution.

Adoption by the Philippines of the civil law tradition as its predominant or primary attribute of its legal system finds its support in the principle of checks-and-balances or separation of powers. By the well-known distribution of the powers of government among the executive, legislative, and judicial departments by the Constitution, there was provided that marvelous scheme of check and balances which has been the

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[161] ***Ting v. Velez-Ting***, G.R. No. 166562, March 31, 2009, 601 Phil. 676, 690, citations omitted.

[162] See: ***De Castro v. Judicial and Bar Council, et al.***, G.R. No. 191002, April 20, 2010, 632 Phil. 657, 686, citations omitted.

wonder and admiration of the statesmen, diplomats, and jurists in every part of the civilized world.[163] In this system, the Legislative makes the law, the Executive implements the law, and the Judiciary applies and/or interprets the law. This tripartite distribution of powers is inherent in democratic governments where no single branch may dominate another. Stated differently, the principle of checks-and-balances is inherently woven into the fabric of democracy.

Under the Philippine civil law tradition, courts are principally bound to apply the law[164] and in such a way that it does not usurp legislative powers by judicial legislation.[165] It is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.[166] It ensures that laws are given full effect and that judicial doctrines are stable and consistent so that those who are bound may reasonably rely upon them in planning their affairs.[167]

Notwithstanding the presence of a considerably moderate leeway that the Judiciary enjoys in interpreting constitutional and statutory provisions, it is imperative to emphasize that there is a sharp distinction between: (a) liberal construction which courts are able to find out the true meaning of statutes from

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[163] See: Concurring Opinion of Senior Associate Justice Elias Finley Johnson in ***Government of the Philippine Islands v. Spinger, et al.***, No. L-26979, April 1, 1927, 50 Phil. 259, 305.

[164] ***Abello, et al. v. Commissioner of Internal Revenue, et al.***, G.R. No. 120721, February 23, 2005, 492 Phil. 303, 309, citations omitted.

[165] ***Corpuz v. People***, G.R. No. 180016, April 29, 2014, 734 Phil. 353, 416, citations omitted.

[166] ***Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue***, G.R. No. 196907, March 13, 2013, 706 Phil. 442, 450, citations omitted.

[167] The evolution of any legal doctrine takes place slowly. Law normally changes that way. Otherwise[,] the law would lack the stability necessary for ordinary citizens to rely upon it in planning their lives. x x x (Breyer, *The Court and the World* [*American Law and the New Global Realities*], 1st Ed. [2015], p. 15.).

the language used, the subject matter, and the purposes of those framing them; and (b) the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced—the former is a legitimate exercise of judicial power while the latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government.[168] It presupposes that any perceived "gap" or legal vacuum should be within the parameters set by law for courts have no authority to short-circuit the democratic process of legislation and determine for themselves thru interpretation the best policy that should have been clearly enunciated by such statutes. As such, courts should always be mindful that, in establishing doctrines, it does not tread on the powers of Legislature—whose members are duly elected by the People as their representatives and as their instruments of enacting their Sovereign Will. This judicial paradigm **ensures that the possibility of grave abuse of discretion is mitigated and that decisions are tethered to the law**. Accordingly, it may be said that the primary duty of adhering to the text of the law is in recognition of the inherent nature of the democratic process wherein the people elect their representatives who, in turn, choose and pursue the appropriate policies on the former's behalf. Moreover, the principal judicial recourse of adhering to the text of the law before utilizing extrinsic aids or extraneous sources is the ultimate manifestation of impartiality and the most objective of ways to apply and interpret the law.

Presently, there is ***no*** constitutional provision or law which ***automatically*** grants bail, releases on recognizance or allows other modes of temporary liberty to all accused or inmates who are clinically-vulnerable (*i.e.*, sickly, elderly or pregnant). As it stands, courts concerned will still have to consider the following guidelines for bail in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure which is quoted hereunder:

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[168] ***Fetalino, et al. v. Commission on Elections***, G.R. No. 191890, December 4, 2012, 700 Phil. 129, 153, citations omitted.

Section 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

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Section 9. Amount of bail; guidelines. — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following **factors**:

(a) Financial ability of the accused to give bail;

(b) Nature and circumstances of the offense;

(c) Penalty for the offense charged;

(d) Character and reputation of the accused;

(e) **Age and health of the accused**;

(f) Weight of the evidence against the accused;

(g) Probability of the accused appearing at the trial;

(h) Forfeiture of other bail;

(i) The fact that accused was a fugitive from justice when arrested; and

(j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required. (Emphasis supplied)

The above-mentioned enumerations clearly pertain to **purely factual questions** that trial courts are equipped to pass upon. Moreover, the consideration of these factors which includes others not mentioned but are analogous to the ones provided means that such guidelines **do not work in isolation**.

In this case, the ground of "humanitarian reasons" raised by the petitioners *only concerns the fifth factor*—age and health of the accused. This means that, if this Court will make a pronouncement which automatically grants bail or recognizance thereby dispensing with the task of evaluating all the factors, such predetermination of an entitlement to provisional liberty will effectively **create a class** of prisoners **with a substantive right** for it is clear that inmates who are liberated are better off than those who are not. *Substantive law* is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which in turn give rise to a cause of action; that part of the law which courts are established to administer; as opposed to *adjective or remedial law*, which prescribes the method of enforcing rights or obtain redress for their invasions.[169]

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[169] ***Primicias v. Ocampo, et al.***, No. L-6120, June 30, 1953, 93 Phil. 446, 452, citations omitted.

Since the function of adjudication implies a determination of facts,[170] dispensing with such function of evaluation will also have the effect of **creating a substantive right**. A judicial pronouncement which predetermines an eligibility or entitlement does not anymore undergo a "method of enforcing rights or obtaining redress of their invasions" which is the very essence of being "adjective" or "remedial" thereby intruding into the sphere of substantive law.

Admittedly, the Court may "fill in the gaps" of the law in some circumstances.[171] But such "gaps" should be within the parameters of the law and such act of "filling" should not amount to the creation of a substantive right with a corresponding substantive obligation. Besides, the factors in Section 9, Rule 114 are intended to "fix a reasonable amount of bail." In other words, they cannot be used in the same manner as the factors in Section 5 of the same Rule to determine whether an accused is entitled to bail.

Here, the undersigned acknowledges that, under Section 25 of the Revised Rules of Criminal Procedure, Executive Judges of the Regional Trial Courts have the responsibility to "conduct monthly personal inspections of provincial, city, and municipal jails and their prisoners within their respective jurisdictions"; "ascertain the number of detainees, inquire on their proper accommodation and health and examine the condition of the jail facilities"; and "order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees." However, this does not mean that the "age and health of the accused" shall be the only determining factor for the grant or denial of bail (assuming for the sake of argument that the factors in Sections 5 and 9 are interchangeable)

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[170] *Cf.* ***Hon. Cariño, et al. v. Commission on Human Rights, et al.***, G.R. No. 96681, December 2, 1991, 281 Phil. 547, 562, citations omitted.

[171] See: ***Victorio-Aquino v. Pacific Plans, Inc., et al.***, G.R. No. 193108, December 10, 2014, 749 Phil. 790, 822.

as it is obvious that there are other factors that courts in bail applications should consider.

Relatedly, the creation of a "Prisoner Release Committee" entails the need for establishing funds for operational purposes. Since Section 24, Article VI of the Constitution explicitly states that appropriation bills shall originate exclusively at the House of Representatives, any attempt on the part of this Court to order (premised on interpretation) for a disbursement or release of funds for a particular purpose which is devoid of any constitutional or statutory fiat will cross the realm of legislative functions. Granting reliefs or inventing remedies which are totally devoid of clear constitutional or statutory basis is simply *ultra vires*. As maintained by Justice Bernabe, it is beyond the power of the Court to institute policies that are not judicial in nature. She further explains that, while the Court understands the plight of petitioners in light of this unprecedented public health emergency, the creation of a similar Prisoner Release Committee is a policy matter best left to the discretion of the political branches of government.

At this point, it becomes noteworthy to stress that the civil law tradition does not essentially allow courts to craft policies of substantive import. In a book co-authored with Bryan A. Garner (famously known as the Editor-in-Chief of Black's Law Dictionary), the late former US Supreme Court Associate Justice Antonin Scalia laments:

> Ours is a common-law tradition in which judicial improvisation has abounded. Statutes were a comparatively infrequent source of English law through the mid-19th century. Where statutes did not exist, the law was the product of judicial invention, at least in those many areas where there was no accepted common law for courts to "discover." It is unsurprising that the judges who used to be the lawgivers took some liberties with the statutes that began to supplant their handiwork—adopting, for example, a rule that statutes in derogation of the common law (judge-made law) were to be narrowly construed and rules for filling judicially perceived "gaps" in statutes that had less to do with perceived meaning than with the judges' notions of public policy. Such distortion of texts that have been adopted by the people's elected

representatives is undemocratic. In an age when democratically prescribed texts (such as statutes, ordinances, and regulations) are the rule, the judge's principal function is to give those texts their fair meaning.

Some judges, however, refuse to yield the ancient judicial prerogative of making the law, improvising on the text to produce what they deem socially desirable results—usually at the behest of an advocate for one party to a dispute. The judges are also prodded by interpretive theorists who avow that courts are "better able to discern and articulate basic national ideals than are the people's politically responsible representatives." On this view, judges are to improvise "basic national ideals of individual liberty and fair treatment, even when the content of these ideals is not expressed as a matter of positive law in the written Constitution."

To the extent that people give this view any credence, the notion that judges may (even should) improvise on constitutional and statutory text enfeebles the democratic polity. As Justice John Marshall Harlan warned in the 1960s, an invitation to judicial lawmaking results inevitably in "a lessening, on the one hand, of judicial independence and, on the other, of legislative responsibility, thus polluting the bloodstream of our system of government." Why these alarming outcomes? First, when judges fashion law rather than fairly derive it from governing texts, they subject themselves to intensified political pressures—in the appointment process, in their retention, and in the arguments made to them. Second, every time a court constitutionalizes a new sliver of law—as by finding a "new constitutional right" to do this, that, or the other—that sliver becomes henceforth untouchable by the political branches. In the American system, a legislature has no power to abridge a right that has been authoritatively held to be part of the Constitution — even if that newfound right does not appear in the text. Over the past 50 years especially, we have seen the judiciary incrementally take control of larger and larger swaths of territory that ought to be settled legislatively.

It used to be said that judges do not "make" law—they simply apply it. In the 20th century, the legal realists convinced everyone that judges do indeed make law. To the extent that this was true, it was knowledge that the wise already possessed and the foolish could not be trusted with. It was true, that is, that judges did not really "find" the common law but invented it over time. Yet this notion has

been stretched into a belief that judges "make" law through judicial interpretation of democratically enacted statutes. x x x[172]

In the context of US Constitutional law, the aforementioned commentary will surely spark debates. Aside from the fact that the US had always considered itself as a common law jurisdiction since its inception, a perennial theoretical battle has always divided the US Supreme Court into two (2) opposing ideological camps primarily because of the "unenumerated rights clause" in the Ninth Amendment of their Constitution which reads:

> The enumeration in the Constitution, of **certain rights**, shall not be construed to deny or disparage others retained by the people. (Emphasis supplied)

The "liberal" justices of the US Supreme Court posit that they are constitutionally-empowered and authorized to recognize these "certain rights" which are "implied" by their Constitution. They are mostly known to be advocates of the "Living Constitution" doctrine where it is ideal to "interpret" the provisions in such a way as they "adapt to the times" and "as understood and intended by the people of the present." The "conservative" justices, on the other hand, argue that it should be Congress—being the people's representatives—who are constitutionally-authorized to determine these "implied certain rights." They believe that it is "undemocratic" to have the unelected judges craft or select policies to meet the exigent needs of the times. Understandably, the terms "certain rights" in the Ninth Amendment makes Justice Scalia's conservative and highly-textualist statements controversial in the arena of US Constitutional law discussions.

In the context of Philippine Constitutional law discussions, such "conservative-versus-liberal" debates have little bearing or relevance to jurisprudence. The present Philippine Constitution, although it draws most of its significant provisions from the US Constitution, does not have a provision similar or

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[172] Scalia, *et al., Reading Law*: *The Interpretation of Legal Texts*, 1st Ed. (2012), pp. 3-5.

related to the "unenumerated rights clause" of the Ninth Amendment which suggests either the existence of implied rights or that the legal system or tradition should predominantly adhere or be based on common law instead of civil law. The Declaration of Principles and State Policies in Article II as well as the Bill of Rights in Article III contain no such "unenumerated rights" provision. Neither does Article VIII nor all the other articles in the Constitution have the effect of giving the Judiciary the power to "determine" any right which may have been "implied" in the Constitution. In fact, the opposite seems to be the case as it is explicitly shown in Section 1, Article VIII of the Constitution which states:

> Section 1. The **judicial power** shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power **includes** the **duty of the courts of justice to settle actual controversies** involving rights which are legally demandable and enforceable, and to **determine** whether or not there has been a **grave abuse of discretion** amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

There is nothing in the aforementioned provision that the power "to settle actual controversies" which can be interpreted to mean that the Judiciary may "recognize certain rights" implied in the Constitution thru interpretation or simple application of laws. Even the word "includes," when used in the context of the whole second paragraph clearly appears to merely enumerate or state the **scope** of "judicial power" which includes both the duty to—(a) settle actual controversies; and (b) determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Moreover, it cannot be reasonably implied that the term "justice" in the phrase "courts of justice" gives magistrates an unfettered prerogative of straying away from legislative enactments. On the contrary, the phrase "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction" strongly suggests that even judicial functions should be within the parameters of the law. Such principle is shown by rulings

explaining that the *writ of certiorari*'s purpose is supervisory to keep inferior courts within the parameters of their respective jurisdictions.[173] Since jurisdiction is "the power and authority of a court to hear, try, and decide a case"[174] "conferred only by the Constitution or by statute,"[175] it is inevitable to assume that explicit provisions define the limits of judicial power only to those matters *within the confines* of the law.

Besides, the adjudicative approach of primarily resorting or deferring to the text of the law is not without cogent reasons. It greatly minimizes, if not removes, any personal and subconscious bias that an unelected magistrate may inadvertently factor in weighing the rights or interests and obligations of conflicting parties. This is the reason why a judge must always maintain cold neutrality and impartiality for he or she is a magistrate, not an advocate.[176] Moreover, such approach is also in recognition of the idea that, in a democratic and republican system of government, laws are borne out of the general consensus of the people's directly chosen representatives. It ensures that magistrates do not wander far away into their own subjective preferences. As such, what it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.[177]

Accordingly, those claiming that the resort to common law is "progressive" fail to realize that even such legal tradition is

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[173] ***Tagle v. Equitable PCI Bank, et al.***, G.R. No. 172299, April 22, 2008, 575 Phil. 384, 395-396, citations omitted.

[174] ***Mitsubishi Motors Philippines Corporation v. Bureau of Customs***, G.R. No. 209830, June 17, 2015, 760 Phil. 954, 960, citations omitted.

[175] ***Philippine Migrants Rights Watch, Inc., et al. v. Overseas Workers Welfare Administration, et al.***, G.R. No. 166923, November 26, 2014, 748 Phil. 348, 356, citations omitted.

[176] ***Dela Cruz (Concerned Citizen of Legaspi City) v. Judge Carretas***, A.M. No. RTJ-07-2043, September 5, 2007, 559 Phil. 5, 18, citations omitted.

[177] ***Ifurung v. Carpio Morales, et al.***, G.R. No. 232131, April 24, 2018, citations omitted.

as ancient as the civil law tradition relative to the modern times. The idea is not novel or revolutionary such as to create a messianic realization that our Judiciary, all on its own, should suddenly discard the civil law aspect of its legal tradition and wholly replace it with common law.

However, the undersigned is not saying that the Philippines cannot change the primary aspect of its legal system or tradition from civil law to common law. Such shift in legal tradition should be done in a constitutionally-permissible manner. Stated differently, there are constitutionally-sanctioned processes or remedies available to change a policy, governmental structure, or legal culture. These processes should not be bypassed for the sake of convenience or disputable exigencies if this government is one "of laws and not of men." All that the undersigned is emphasizing is that a shift in legal tradition would require no less than a constitutional (or legislative for purely statutory rights and obligations) amendment or revision[178] —a process explicitly sanctioned in the Constitution itself. For now, the Judiciary cannot short-circuit the legislative democratic process and invent a new right in the guise of interpretation.

At some point, the people should be able to bear the brunt of being responsible in their exercise of the constitutional right to suffrage. The present existing policies are but fruits of the seeds sowed by the people thru the exercise of their right to vote. Policies are virtually the results of public consensus—of majoritarian choice, if the basic ideals of democracy itself are to be respected. Those who are unhappy with these policies have the option to vote for a new set of officials come elections. For the majority, this is relatively effortless; but for the minority, it is up to them to *convince* those on the other side on the *merits* of their choices—there should be *no compulsion*, even thru judicial enforcement, as it is a vice on sovereign will; unless, of course, fundamental rights are arbitrarily violated. More importantly, those principles and values that we have come to

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[178] Includes initiative and referendum in the case of purely statutory rights and obligations.

accept as "absolute" or to recognize as "inherent" did not even start out as such—they arose and developed as a result of the people's collective and cumulative experiences as well as their corresponding responses over time. We might hold some values or principles dear to our hearts, but that does not mean that we are absolutely entitled to legally enforce them against others just because we strongly believe in them; more so that strong personal beliefs especially of unelected magistrates do not make general consensus. These values and principles **must first be recognized** by the Constitution or law **in a clear and discernible manner**. Surely, principles and values are not static just as all the other aspects of the world that influence or dictate our lives; but they have to function according to the legal platform in which they are recognized.

Besides, society has matured to the point where a fundamental safeguard known as the Bill of Rights have been positively recognized in the Constitution instead of implied from the vague and undefined concept of common or natural law. Thru experience and thru democracy's emergence, fears that fundamental rights and freedoms might be trumped by the arbitrariness of government's legislature in wielding its power have long dissipated. The Constitution had already placed sovereign power in the hands of the people and had bound the hands of the government from abusing its power.

Second, courts cannot take an unbridled approach of considering anything judicially-perceived to be "lacking" in the text of the law as "gaps" which instantaneously call for the application of equity because it violates the principle of separation of powers.

Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[179] It has been described as "justice outside legality."[180] As the complement of legal jurisdiction,

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[179] ***Reyes v. Lim, et al.***, G.R. No. 134241, August 11, 2003, 456 Phil. 1, 10, citations omitted.

[180] ***Chavez v. Bonto-Perez, et al.***, G.R. No. 109808, March 1, 1995, 312 Phil. 88, 98, citations omitted.

equity seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do.[181]

In its previous rulings, this Court has applied the concept of "equity jurisdiction" to: (1) relax stringent procedural rules in order to serve substantial justice or to resolve the case on its merits based on the evidence;[182] (2) prevent unjust enrichment and ensure restitution;[183] (3) reconvey land to the party found to be the true owner;[184] (4) appoint a receiver in an intra-corporate dispute to prevent waste and dissipation of assets and commission of illegal acts as well as redress the injuries of the minority stockholders against the wrongdoing of the majority;[185] (5) review the records of the case in order to determine which findings should be preferred as more conformable to the evidentiary facts;[186] (6) adjusting the rights of parties in accordance with the circumstances obtaining at the time of rendition of judgment by reducing the cost of the land in a contract of sale due to the "depreciation of currencies" *vis-à-vis* the costs of completion of construction;[187] (7) fix the reckoning point of interest from

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[181] ***Elcee Farms, Inc., et al. v. Semillano, et al.***, G.R. No. 150286, October 17, 2003, 460 Phil. 81, 93, citations omitted.

[182] ***University of the Philippines, et al. v. Dizon, et al.***, G.R. No. 171182, August 23, 2012, 693 Phil. 226, 260-261, citations omitted; ***United Feature Syndicate, Inc. v. Munsingwear Creation Manufacturing Company***, G.R. No. 76193, November 9, 1989, 258-A Phil. 841, 849, citations omitted.

[183] ***Regulus Development, Inc. v. Dela Cruz***, G.R. No. 198172, January 25, 2016, 779 Phil. 75, 86, citations omitted.

[184] ***Atty. Gomez, et al. v. Court of Appeals, et al.***, G.R. No. 77770, December 15, 1988, 250 Phil. 504, 513.

[185] ***Angeles, et al. v. Santos, et al.***, G.R. No. L-43413, August 31, 1937, 64 Phil. 697, 706-707.

[186] ***Philippine Airlines, Inc. v. National Labor Relations Commission, et al.***, G.R. No. 126805, March 16, 2000, 384 Phil. 828, 838, citations omitted.

[187] ***Agcaoili v. Government Service Insurance System***, G.R. No. L-30056, August 30, 1988, 247-A Phil. 74, 83.

the date of the finality of the decision;[188] (8) reduce interests and penalties;[189] (9) compel the registered owner to reconvey the right, interest, share and participation in the registered parcel of the one lawfully entitled thereto;[190] (10) settle boundary disputes;[191] (11) appoint a "special master" to conduct and supervise an election of directors when it appears that a fair election cannot otherwise be had;[192] (12) remand the case to the trial Court for determination on the merits of the issue of validity of the issuance of a free patent and of the title which followed as a matter of course;[193] (13) brush aside the reglementary periods in the filing of an election protest;[194] (14) give due course to or reverse the dismissal of an appeal;[195] or (15) order a refund in a case involving a contract of repurchase of real property where there would have been a forfeiture of both land and hard-earned money.[196] In all of these cases, the

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[188] ***Zubiri v. Quijano***, G.R. No. L-48696, November 28, 1942, 74 Phil. 47, 48.

[189] ***Spouses Valenzuela v. Kalayaan Development & Industrial Corporation***, G.R. No. 163244, June 22, 2009, 608 Phil. 177, 191-192, citations omitted.

[190] ***Aragon, et al. v. Aragon, et al.***, G.R. No. L-11472, March 30, 1959, 105 Phil. 365, 368.

[191] ***Catigbac, et al. v. Leyesa, et al.***, G.R. No. L-18806, December 23, 1922, 44 Phil. 221, 223.

[192] ***The Board of Directors and Election Committee of the SMB Workers Savings and Loan Association, Inc., et al. v. Tan, et al.***, G.R. No. L-12282, March 31, 1959, 105 Phil. 426, 430-431, citations omitted.

[193] ***Armamento v. Guerrero***, G.R. No. L-34228, February 21, 1980, 185 Phil. 115, 120-121.

[194] ***Ramos v. Court of First Instance of Zamboanga Del Norte, et al.***, G.R. Nos. 55245-46, December 19, 1984, 218 Phil. 530, 536.

[195] ***Citybank, N.A. v. National Labor Relations Commission, et al***., G.R. No. 159302, August 22, 2008, 585 Phil. 83, 86-87, citations omitted; ***Moll v. Hon. Buban, et al.***, G.R. No. 136974, August 27, 2002, 436 Phil. 627, 640, citations omitted.

[196] ***Genova v. De Castro***, G.R. No. 132076, July 22, 2003, 454 Phil. 662, 677-678.

undersigned evinces his observations that: (1) the grant of a relief based on equity was, in turn, based on some *specific provision* of law found on the Civil Code and other laws which allow for the application of equity to some degree (*e.g.*, Articles 19, 477, 1192, 1229, 1310, 1359, 1362, 1423, 1486, 1520, 1547, 1601, 1603, 1711, 1722, 1741, 1762, 1794, 1797, 1798, 1819, 1831, 2142, 2208, 2215 and 2227 of the Civil Code); and (2) the exercise of equity jurisdiction was resorted to set aside the rules of procedure in favor of resolving cases on the merits or upholding substantive rights.

In the instant case, the petitioners' reliance on equity is misplaced for they are asking this Court to grant them a relief not supported by any provision of the Constitution or law. While the rules on bail appear to be inflexible on the petitioners' part, equity does not authorize courts to create substantive rights by way of "adjustment" and in the guise of interpretation. Granting provisional liberty to the petitioners may or may not be morally right depending on the personal belief of each individual person. However, what is "moral," "just," "fair," or "equitable" is highly subjective and relative; which is why a reasonable inference (such as the text of a law) is needed to minimize subjectivity and strengthen the impartiality of presiding magistrates and mitigate instances of grave abuse of discretion. As aptly put in ***Rural Bank of Parañaque, Inc. v. Remolado, et al.***:[197]

> Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

More importantly, the Court sitting *en banc* in ***Republic v. Provincial Government of Palawan***[198] had emphatically declared:

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[197] G.R. No. 62051, March 18, 1985, 220 Phil. 95, 98.

[198] G.R. No. 170867, December 4, 2018, citations omitted.

The Court finds the submission untenable. **Our courts are basically courts of law, *not* courts of equity.** Furthermore, for all its conceded merits, equity is available only in the absence of law and not as its replacement. As explained in the old case of *Tupas v. Court of Appeals*:

> Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, **supplement** the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed — is "*aequetas nunquam contravenit legis*." (Emphasis supplied)

At this juncture, the undersigned deems it the proper time to point out that equity should **not** encompass ***all*** matters considered or perceived as "absence" or "gaps" of the law. The logic is simple: the areas or subjects beyond or outside the confines of written law are infinite in number. Individual cognition of humans allows each one to use his or her reasoning faculties differently from one another. In effect, it would almost certainly lead each magistrate to formulate his or her own version of natural law from the infinite area outside of written law. Consequently, if courts are allowed to grant reliefs in recognition of substantive rights not expressly intended by Congress to be included, judicial legislation would result. Specifically, if Articles 9 and 10 of the Civil Code are interpreted to give courts an *unfettered discretion* in choosing what subjects they perceive as "gaps" or "absence" in the law, then "the fundamental constitutional principles which underlie our tripartite system of government"[199] would be put to naught as legislative functions may now be indirectly exercised by a branch of government other than Congress. If the constitutional policy on the separation

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[199] ***Neri v. Senate Committee on Accountability of Public Officers and Investigations, et al.,*** G.R. No. 180643, March 25, 2008, 572 Phil. 554, 664.

of powers is to be respected, the same provisions of the Civil Code cannot also be interpreted to allow Congress to impliedly delegate its legislative powers to the courts in the guise of interpretation. Moreover, disregarding explicit provisions and even established precedents on the sole ground of equity creates jurisprudential instability because the application of laws and legal principles will become unpredictable. Certainly, society would be less chaotic if all those governed by our laws would have the ability to reasonably predict the consequences of their actions. Adverse sanctions which can be reasonably foreseen diminish the exposure to exasperation as well as the allure of taking the law into one's own hands.

As such, **a resort to *equity* is more of an *exception* rather than the general rule**. It is not at par with written laws as it is subjective. Textual provisions are **clear manifestations** of what Congress intends to include as subjects of legislation—equity is, frankly, a mere adjudicative approximation of what such intent includes. The wisdom behind limiting equity's application within the confines of written law is to prevent magistrates from straying away from fairly discernible legislative intent. Such is the reason why interpolation is improper where the meaning of the law is clear and sensible, either with or without the omitted word or words, because the primary source of the legislative intent is in the language of the law itself.[200] Moreover, emotions used as an attempt to trigger the application of equity are unstable and an emotional approach to adjudication often promotes bias, thereby slowly eroding a magistrate's impartiality. Hence, for equity to be properly applied: (1) it must be suppletory to written law; (2) it must not amount to a creation or grant of judicially-enforceable substantive rights or obligations; (3) it must, at least, be based on or consistent with some specific provision of law in view of the principle "that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence

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[200] ***De Castro v. Judicial and Bar Council, et al.***, G.R. No. 191002, April 20, 2010, 632 Phil. 657, 689, citations omitted.

—*interpretere et concordare legibus est optimus interpretendi*";[201] and (4) it must subject any catch-all provision to the principle of *ejusdem generis* "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."[202] The undersigned's intention here is not to strangle equity but to put it in its proper place in the context of statutory law. Therefore, it is apt that the political branches of government be left to their devices to pursue adaptive measures while the Judiciary should endeavor itself to preserve and foster legal stability.

Third, equity is applied only in the absence — never in contravention — of statutory law.[203] In this regard, the Recognizance Act[204] provides for the statutory requirements for release on recognizance. Section 5 of the same law states:

> Section 5. *Release on Recognizance as a Matter of Right Guaranteed by the Constitution*. — **The release on recognizance of any person in custody or detention for the commission of an offense is a matter of right when the offense is not punishable by death, *reclusion perpetua*, or life imprisonment:** *Provided*, That the accused or any person on behalf of the accused files the application for such:
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> (a) Before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and

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[201] See: ***Philippine International Trading Corporation v. Commission on Audit***, G.R. No. 183517, June 22, 2010, 635 Phil. 447, 458, citations omitted.

[202] See: ***Alta Vista Golf and Country Club v. City of Cebu, et al.***, G.R. No. 180235, January 20, 2016, 778 Phil. 685, 704, citations omitted.

[203] ***Agra, et al. v. Philippine National Bank***, G.R. No. 133317, June 29, 1999, 368 Phil. 829, 833.

[204] Republic Act No. 10389 (March 14, 2013).

> (b) Before conviction by the Regional Trial Court: *Provided, further*, That a person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law, or any modifying circumstance, shall be released on the person's recognizance. (Bold and underscoring supplied)

Thus, when the offense is punishable by *reclusion perpetua*, life imprisonment, or death, the accused's release on recognizance is no longer a matter of right—it becomes discretionary.

In addition, Section 12 of the Recognizance Act provides:

> Section 12. *No Release on Recognizance After Final Judgment or Commencement of Sentence; Exception.* — **The benefits provided under this Act shall not be allowed in favor of an accused after the judgment has become final or when the accused has started serving the sentence:** *Provided,* That this prohibition shall not apply to an accused who is entitled to the benefits of the Probation Law if the application for probation is made before the convict starts serving the sentence imposed, in which case, the court shall allow the release on recognizance of the convict to the custody of a qualified member of the barangay, city or municipality where the accused actually resides. (Emphasis supplied)

The afore-cited provision prohibits any release on recognizance after a judgment has become final or when the accused has started serving his sentence. The only recognized exception pertains only to the release of those detainees who are entitled to the benefits of the Probation Law; but only if the application for probation is made before the convict starts serving the sentence imposed.

As to the petitioners' prayer for the grant of bail, Section 13, Article III of the Constitution is clear that bail is not a matter of right in cases where the evidence of guilt is strong of those persons charged with offenses punishable by *reclusion perpetua*. This simply means that a specific constitutional provision exists which *requires a prior determination* that the evidence of guilt is not strong for those accused charged with

offenses punishable by *reclusion perpetua* before bail may be granted. Such constitutionally-required prior determination cannot be dispensed by reason of equity or exercise of equity jurisdiction.

As aptly explained by Justice Bernabe, our Constitution and statutes prescribe a legal framework in granting bail or recognizance to persons deprived of liberty pending final conviction. When the accused is charged with an offense punishable by death, *reclusion perpetua* or life imprisonment, the usual procedure is for the accused to apply for bail with notice to the prosecutor. Pursuant to the rules, the accused may also seek a reduction of the recommended bail amount,[205] or seek a release through recognizance upon satisfaction of the conditions set for by law.[206]

Complementing this view, Associate Justice Amy C. Lazaro-Javier also opined that it is not necessary to invoke equity or humanitarianism so courts could have the needed flexibility to do justice in a particular case under specifically unique circumstances, or to be able to rely upon broad moral principles of reasonableness, fair dealing and good conscience in resolving issues.

In essence, the existence of the constitutional provisions on bail as well as the Recognizance Act evidently militates against the resort to equity.

Fourth, the Court's ruling in ***Enrile v. Sandiganbayan, et al.***[207] is inapplicable in the instant case.

The grant or denial of bail applications contemplates three (3) scenarios:

(1) Bail is granted as a matter of right before or after conviction of the accused by the Metropolitan Trial

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[205] See: Section 20, Rule 14 of the Rules of Criminal Procedure.

[206] See: Sections 6 to 8 of Republic Act No. 10389.

[207] G.R. No. 213847, August 18, 2015, 767 Phil. 147, 165-178.

Court, Municipal Trial Court, Municipal Trial Court in Cities or Municipal Circuit Trial Court.[208]

(2) Bail is granted as a matter of right before conviction of the accused by the Regional Trial Court for an offense not punishable by death, *reclusion perpetua* or life imprisonment.[209]

(3) Bail is discretionary on the part of the Regional Trial Court upon conviction of the accused of an offense not punishable by death, *reclusion perpetua* or life imprisonment; or on the part of the appellate courts (Court of Appeals, Sandiganbayan and Court of Tax Appeals) if the records had already been transmitted to them or if the nature of the offense was downgraded by the trial court upon conviction from non-bailable to bailable.[210]

(4) Bail shall be denied or cancelled if the penalty imposed by the trial court is imprisonment exceeding six (6)-year due to the following or similar circumstances: (a) that the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration; (b) that the accused has previously escaped from legal confinement, evaded sentence, or violated the conditions of his or her bail without valid justification; (c) that the accused committed the offense while under probation, parole, or conditional pardon; (d) that the circumstances of the accused's case indicate the probability of flight if released on bail; or (e) that there is undue risk that he may commit another crime during the pendency of the appeal.[211]

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[208] Section 4 (a), Rule 114 of the Revised Rules of Criminal Procedure.

[209] Section 4 (b), Rule 114 of the Revised Rules of Criminal Procedure.

[210] Section 5, Rule 114 of the Revised Rules of Criminal Procedure.

[211] *Ibid.*

(5) Bail shall not be admitted if an accused is charged with a capital offense or an offense punishable by death, *reclusion perpetua* or life imprisonment when evidence of guilt is strong regardless of the stage of the criminal prosecution.[212]

In situations where bail is discretionary, the judge who either issues a warrant of arrest or grants a bail application while fixing a reasonable amount is duty-bound to primarily consider the following factors which are not limited to the previously mentioned factors in Section 9, Rule 114 of the Revised Rules of Criminal Procedure. In other words, a bail hearing is an indispensable requirement; especially when the accused is charged with an offense punishable by *reclusion perpetua,* life imprisonment, or death.[213]

In ***Enrile***, the Court emphasized that while the Philippines honors its "commitment to uphold the fundamental human rights as well as value the worth and dignity of every person," the grant of bail to those charged in criminal proceedings as well as extraditees must be based upon a **clear and convincing showing**: (a) that the detainee will ***not*** be a **flight risk** or a **danger** to the **community**; ***and*** (b) that there exist special, humanitarian and compelling circumstances. Under the rules on syntax, the conjunctive word "and" denotes a "joinder or union" of words, phrases or clause.[214] This means that "special, humanitarian and compelling circumstances" as a ground for granting bail does work in isolation—it has to be *accompanied* by *other* considerations. Moreover, the same ruling also emphasized that the "principal purpose of bail . . . is to guarantee the appearance of the accused at the trial, or whenever so required by the court." Meaning, when this Court reviewed the factual

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[212] Section 7, Rule 114 of the Revised Rules of Criminal Procedure.

[213] See: ***Aguirre, et al. v. Belmonte***, A.M. No. RTJ-93-1052, October 27, 1994, 307 Phil. 804, 810-817.

[214] ***Microsoft Corporation v. Manansala, et al.***, G.R. No. 166391, October 21, 2015, 772 Phil. 14, 22, citations omitted.

findings of the Sandiganbayan which were exposed during the bail hearings, *all* relevant circumstances were first *balanced* on the scales of justice before a ruling was handed down—bail was *not* automatically granted as a matter of right due to humanitarian reasons; but as a matter of discretion due to other accompanying factors. Besides, as asserted by Chief Justice Peralta, the ***Enrile*** Ruling cannot be considered as *pro hac vice* —a Latin term meaning "for this one particular occasion"—cannot be relied upon as a precedent to govern other cases[215] because such type of ruling violates the equal protection clause of the Constitution.[216]

Here, the petitioners do not deny the allegations of the OSG that they are indeed charged with heinous crimes related to **national security** and are also valuable members of the CPP-NPA-NDF and its affiliates. Even if the alleged facts underlying humanitarian reasons were to be accepted without question, they **still have to be weighed** against the fact that the charges against the petitioners **involve serious matters of national security and public safety**. In the petitioners' case, one need not stretch his or her imagination in contemplating a situation where a person of deteriorating health, for instance, can still commit crimes such as conspiracy to commit rebellion or can become an accomplice or accessory to the commission of rebellion. In the age of modern technology where the use of cellular phones is rampant and access to the internet is relatively effortless, a strong possibility looms that the petitioners may still possess the necessary ability to strategize hostile measures against the government or give aid to their active comrades by providing intelligence reports in their surroundings. Even if the Court were to ignore the concern of the possibility that some petitioners may be flight risks, the possibility of endangering the community is not remote. Such is the reason

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[215] ***Partido ng Manggagawa, et al. v. Commission on Elections***, G.R. No. 164702, March 15, 2006, 519 Phil. 644, 671, citations omitted.

[216] ***Knights of Rizal v. DMCI Homes, Inc., et al.***, G.R. No. 213948, April 18, 2017, 809 Phil. 453, 533.

why this Court in ***Villaseñor v. Abano, et al.***[217] enunciated that both "the good of the public as well as the rights of the accused" and "the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused" should all be ***balanced* in one equation**. As a consequence, the petitioners' reliance on this ruling is patently misguided. In the case of former Senator Juan Ponce Enrile, there was showing that he was neither a flight risk nor a danger to the community.

Fifth, the grant or denial of bail applications is within the jurisdiction of the trial courts well-equipped to handle questions of fact.

The Rules of Criminal Procedure **requires a hearing** before resolving a motion for bail by persons charged with offenses punishable by *reclusion perpetua* where the prosecution may discharge its burden of showing that the evidence of guilt is strong.[218] This hearing, whether summary or otherwise,[219] is mandatory and indispensable.[220] Connectedly, a "summary hearing" means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for the purpose of bail.[221] If a party is denied the opportunity to be heard, there would be a violation

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[217] G.R. No. L-23599, September 29, 1967, 128 Phil. 385, 391, citations omitted.

[218] ***People v. Dacudao, etc., et al.***, G.R. No. 81389, February 21, 1989, 252 Phil. 507, 514.

[219] ***People v. Antona, etc., et al.***, G.R. No. 137681, January 31, 2002, 426 Phil. 151, 157, citations omitted.

[220] ***Atty. Gacal v. Judge Infante, etc.***, A.M. No. RTJ-04-1845 (Formerly A.M. No. IPI No. 03-1831-RTJ), October 5, 2011, 674 Phil. 324, 340; ***Concerned Citizens v. Judge Elma***, A.M. No. RTJ-94-1183, February 6, 1995, 311 Phil. 99, 104, citations omitted.

[221] ***Go v. Court of Appeals, et al.***, G.R. No. 106087, April 7, 1993, 293 Phil. 425, 447, citations omitted.

of procedural due process.[222] Thus, in applications for bail, courts are duty-bound to: (a) notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation; (b) conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (c) decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution; and (d) if the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond—otherwise; bail should be denied.[223] Therefore, regardless of the trial court's disposition in applications for bail, the order should not be tainted with grave abuse of discretion and should give all parties an opportunity to present their respective pieces of evidence to support their causes or defenses.[224] As elucidated by Justice Bernabe, the Court would be betraying its mandate to apply the law and the Constitution should it prematurely order the release of petitioners on bail or recognizance absent the requisite hearing to determine whether or not the evidence of guilt against them is strong.

Relatedly, it is a settled rule that this Court is not a trier of facts.[225] With respect to a direct invocation of this Court's original jurisdiction writs, the same shall not be allowed unless the redress desired cannot be obtained in the appropriate courts.[226] The rationale for this rule is two-fold: (a) it would be an

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[222] ***Basco v. Rapatalo, etc.***, A.M. No. RTJ-96-1335, March 5, 1997, 336 Phil. 214, 233.

[223] ***Narciso v. Sta. Romana-Cruz***, G.R. No. 134504, March 17, 2000, 385 Phil. 208, 220, citations omitted.

[224] See: ***People v. Cabral, etc., et al.***, G.R. No. 131909, February 18, 1999, 362 Phil. 697, 709, 716-717, citations omitted.

[225] ***Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza***, G.R. No. 209132, June 5, 2017, 810 Phil. 172, 177.

[226] See: ***Lacson Hermanas, Inc. v. Heirs of Cenon Ignacio, et al.***, G.R. No. 165973, June 29, 2005, 500 Phil. 673, 677, citations omitted.

imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[227] Like Justice Bernabe, Associate Justice Henri Jean Paul B. Inting also shares the view that the Court cannot prematurely order the petitioners' release, either on bail or recognizance, without the mandatory bail hearing for the determination of the strength of the prosecution's cases against them because it is not equipped to receive evidence and make separate factual assessments for each petitioner in order to determine his or her entitlement to bail.

Here, the petitioners pray for their release on recognizance or bail and for the creation of a "Prisoner Release Committee" which strongly indicates that theirs is a petition for bail or recognizance filed directly before this Court. This cannot be done because, as previously pointed out, the factors enumerated in Sections 5 and 9, Rule 114 of the Revised Rules of Criminal Procedure are purely factual in nature. To determine whether evidence of guilt of the accused is strong, the conduct of bail hearings is required where the prosecution has the burden of proof, subject to the right of the defense to cross-examine witnesses and introduce evidence in rebuttal.[228] Only after weighing the pieces of evidence as contained in the summary will the judge formulate his or her own conclusion as to whether the evidence of guilt against the accused is strong based on his discretion.[229]

Besides, the principle espoused in ***Enrile*** cannot be applied in the instant case for the purpose of entertaining the present

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[227] ***Hiyas Savings and Loan Bank, Inc. v. Acuña, et al.***, G.R. No. 154132, August 31, 2006, 532 Phil. 222, 228.

[228] ***People v. Tanes***, G.R. No. 240596, April 3, 2019.

[229] See: ***People v. Dr. Sobrepeña, et al.***, G.R. No. 204063, December 5, 2016, 801 Phil. 929, 936, citations omitted.

petition because, in the case of former Senator Juan Ponce Enrile, a bail hearing was indeed conducted by the Sandiganbayan. The same cannot be said of the petitioners who, whether deliberate or not, failed to provide enough data or information in their petition involving the following matters: (a) specific charges, nature of their crimes and corresponding penalties; (b) stages of trial or proceedings; (c) specific dates and lengths of detention; (d) any motion filed before the trial courts for provisional release and; (e) present results of physical examinations on their status of health relating to COVID-19. For this reason, the Court has no way of assessing whether or not the evidence of guilt as to the petitioners is strong. As observed by both Justice Bernabe and Justice Caguioa, the petitioners have not shown that any of them have filed the necessary bail applications. It was also not shown by the petitioners that bail hearings were conducted in their respective cases in order to determine whether or not there exists strong evidence of guilt, which would, in turn, determine their qualification or disqualification for the reliefs prayed for. As Justice Zalameda bluntly puts, the petitioners are seeking to carve out for themselves a special circumstance that is not present in our established rules but failed in their duty to present the reasons why the general rule is not applicable to them; in effect, they want this Court to turn a blind eye to the established rules which take into account the nature and gravity of the crimes committed, as well as the number of years served.

Even assuming for the sake of argument that the petitioners had managed to attach documents proving the foregoing pieces of information, the determination of whether or not guilt is strong should still be lodged with the trial courts who are well-equipped to handle them. As precisely declared by Justice Caguioa, the want of necessary factual details brought about by a proper bail hearing precludes this Court from a full calibration of each petitioner's eligibility for either release on bail or recognizance.

Incidentally, since the petitioners failed to provide the data as to whether they have previously applied for bail, the Court is also not in the proper position to direct all the trial courts

where each of the petitioners' respective cases are pending to conduct bail proceedings or expedite unresolved bail applications. To do so would constitute an implied nullification of previously concluded bail proceedings in which some of the respective trial courts may have found strong evidence of guilt against some of the petitioners. This would result in a re-hearing or duplication of otherwise concluded proceedings. As such, the same petition **should have been individually and separately filed before the respective *trial courts* where each the petitioners' cases are currently pending**. Otherwise, this Court will be flooded with a deluge of bail applications seeking for a factual evaluation of every petitioner's unique circumstances.

Sixth, the respondents have adequately shown that they have already undertaken efforts to address the COVID-19 concern.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[230] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support.[231] The principle is based on convenience and expediency in securing and introducing evidence on matters that are not ordinarily capable of dispute and are not bona fide disputed.[232]

Here, the Court can take judicial notice of the fact that COVID-19 is transmitted from person to person via droplets, contact, and fomites. It is transmitted when one individual talks, sneezes, or coughs producing 'droplets' of saliva containing the COVID-19 virus.[233] These droplets are then inhaled by another person.

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[230] ***Juan v. Juan, et al.***, G.R. No. 221732, August 23, 2017, 817 Phil. 192, 205, citations omitted.

[231] ***Republic v. Sandiganbayan (4th Division), et al.***, G.R. No. 152375, December 16, 2011, 678 Phil. 358, 425.

[232] ***Flight Attendants' and Stewards' Association of the Philippines v. Philippine Airlines, Inc., et al.***, G.R. No. 178083, March 13, 2018, 827 Phil. 680, 733, citations omitted.

[233] Current data suggest person-to-person transmission most commonly happens during close exposure to a person infected with the virus that causes

COVID-19 transmission usually occurs among close contacts. It is therefore important to maintain a distance of more than one meter away from any person who has respiratory symptoms.[234] Likewise, it has been conveyed to the general public that there are population groups who have a higher risk of developing sever COVID-19 infections such as individuals aged 60 and above, pregnant, and those with underlying conditions or co-morbidity at risk of COVID-19 exacerbation.[235] This information is of public knowledge as has been imparted not only by international COVID-19 experts through different information media but also through the official acts of the executive department, through the issuances and advisories of the Department of Health and the country's Inter-Agency Task Force on Emerging Infectious Diseases (IATF-EID). As such, mandatory and discretionary judicial notice can be taken on this fact.

On a related note, the OSG in its Comment stated the specific precautions used by the Bureau of Corrections and the Bureau of Jail Management and Penology (BJMP) to control the spread of the COVID-19 pandemic and attached as an annex the April

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COVID-19, primarily *via* respiratory droplets produced when the infected person speaks, coughs, or sneezes. Droplets can land in the mouths, noses, or eyes of people who are nearby or possibly be inhaled into the lungs of those within close proximity. Transmission also might occur through contact with contaminated surfaces followed by self-delivery to the eyes, nose, or mouth. The contribution of small respirable particles, sometimes called aerosols or droplet nuclei, to close proximity transmission is currently uncertain. However, airborne transmission from person-to-person over long distances is unlikely (https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html [last accessed: April 28, 2020]); see also: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html (last accessed: April 28, 2020).

[234] https://www.doh.gov.ph/COVID-19/FAQs (last accessed: May 3, 2020).

[235] See DOH Secretary Administrative Order No. 2020-0015 (RE: Guidelines on the Risk-Based Public Health Standards for COVID-19 Mitigation) dated 27 April 2020 available at https://www.doh.gov.ph/sites/default/files/health-update/ao2020-0015.pdf (last accessed May 3, 2020).

21, 2020 BJMP Verified Report[236] which included relevant information on the following matters:

(1) COVID-19 Management in the:

  (a) Manila City Jail Male Dormitory

  (b) Manila City Jail Female Dormitory

  (c) Metro Manila District Jail — Annex 4

  (d) Taguig City Female Dormitory

(2) Best Practices in COVID-19 Management in all Regions

(3) Isolation Facilities

(4) Distribution of Medical Health Personnel and;

(5) Compendium of Policies and Interim Guidelines on COVID-19 Management.

In its Verified Report, the BJMP stated that it was adopting the following specific measures to prevent the spread of COVID-19 in detention facilities, to wit: (a) the suspension of inmate visitation as early as March 11, 2020; (b) continuous conduct of information dissemination on precautionary measures against COVID-19; (c) provision of facemasks and mandatory wearing of such among persons deprived of liberty (PDLs); (d) social distancing among PDLs; (e) regular exercise of PDLs to boost their immune system; (f) distribution of vitamins among PDLs; (g) medicines and special diets given to PDLs who have pre-existing medical conditions; (h) rigid disinfection of supplies and deliveries inside prison cells; (i) regular sanitation and disinfection of the whole jail perimeter including jail buildings and jail cells; (j) improvised foot bath to prevent virus to be carried inside jail cells and; (k) special monitoring for PDLs with pre-existing conditions.

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[236] Signed by: Jail Director Allan Sullano Irial (Chief of the Bureau of Jail Management and Penology); see also: Annexes A to G and H to H-41 of the April 21, 2020 Verified Report of the Bureau of Jail Management and Penology.

In case where PDLs become infected or show symptoms of COVID-19, the BJMP undertakes in its Verified Report to pursue the following safety measures: (a) immediate isolation of PDL with COVID-19 symptoms; (b) assessment by the jail nurse on the patient; (c) if associated with COVID-19, the jail officials refer the patient to the Department of Health (DOH) in accordance with the DOH referral procedure; (d) immediate conduct of contact tracing to monitor the extent of inmate exposure; and (e) the jail official also informs the inmate's family of the status and health condition of the inmate who is infected. Moreover, the BJMP Verified Report also states that there are already established isolation rooms equipped with medical equipment and supplies in case of inmate infection among PDLs. The jail infirmary also operates twenty-four (24) hours a day.[237]

Meanwhile, the April 22, 2020 Bureau of Corrections Verified Report[238] submitted along with the OSG's Comment provides for the following information:

(1) COVID-19 Management in:

  (a) Correctional Institution for Women

  (b) New Bilibid Prison

(2) Best Practices in COVID-19 Management in the Bureau of Corrections

(3) Isolation Facilities

(4) Compendium of Policies and Interim Guidelines on COVID-19 Management.

The Bureau of Corrections' Verified Report contains specific measures adopted throughout correctional facilities in the country, to wit: (1) general information drive about COVID-

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[237] Bureau of Jail Management and Prisons' Verified Report — Annex C.

[238] Signed by: Undersecretary Gerald Q. Bantag (Director General of the Bureau of Corrections); see also: Annexes A to E of the April 22, 2020 Verified Report of the Bureau of Corrections.

19; (2) no contact policy between inmates; (3) strict fourteen (14) days quarantine for newly committed PDLs; (4) proliferation and creation of isolation facilities to accommodate future COVID-19 patients; (5) no face mask, no entry policy; (6) the immediate deployment of manpower for the construction and renovation of facilities of PDLs and; (7) strict monitoring of ingress and egress of health personnel across jail buildings.[239]

Indeed, the whole nation is under unprecedented times with the spread of the COVID-19 pandemic. The threat of infection of COVID-19 reaches everyone even Filipinos outside prison jails. Although inmates of prison jails are at high risk of infection, the Bureau of Corrections and the BJMP have been steadfastly containing the spread of the pandemic inside jails throughout the country. Based on the records available to this Court, it appears that both bureaus have enforced proper social distancing and are safeguarding PDLs with special health conditions or high-risk inmates. Moreover, both bureaus also have in place isolation methods to secure PDLs in the unfortunate event an inmate becomes infected with COVID-19. As observed by Chief Justice Peralta, the Bureau of Corrections even put in place the necessary infrastructure to provide inmates a facility for online visits/video conference with their relatives. In light of these developments, the Filipino people including PDLs throughout the country should be secure in their thoughts that both bureaus are presumably performing their duties in properly handling the spread of the COVID-19 virus in detention facilities despite budgetary constraints.

Seventh, the petitioners have ample remedies under existing laws and Supreme Court issuances.

Notably, the Court is certainly attuned to the extreme needs of decongesting detention facilities to promote social distancing during this critical time. Initially, this Court thru the Office of the Chief Justice (OCJ) had already taken the initiative of issuing the following Administrative Circulars to address the problem

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[239] Bureau of Corrections' Verified Report Annex E — Compendium of Policies.

of jail congestion in this time of the COVID-19 pandemic, to wit: (a) Administrative Circular No. 38-2020; (b) Administrative Circular No. 37-2020; (c) Administrative Circular No. 33-2020. Likewise, the Office of the Court Administrator (OCA) also issued the following circulars: (a) OCA Circular No. 93-2020; (b) OCA Circular No. 91-2020; and (c) OCA Circular No. 89-2020—to implement the OCJ's administrative circulars. Both the OCJ and the OCA's circulars are intended to expedite the process of resolving bail applications currently pending especially those of indigents as well as providing guidelines for videoconferencing and electronic filing. All that the petitioners have to do is avail of the benefits under these issuances which are more than adequate to address their concerns on the COVID-19 pandemic—unless they are not so qualified or they failed to post the required bail amount, then they have to remain in detention and undergo trial to prove their innocence.

To date, the following issuances have been promulgated to directly and indirectly facilitate the proceedings involving the possible release of PDLs:

DATE	ISSUANCE	SUBJECT
March 13, 2020	Administrative Circular No. 29-2020	To All justices and COURT personnel of the CA, SB, CTA and personnel of the first and second level courts Re: Rising Cases of COVID-19 Infection
March 13, 2020	Administrative Circular No. 30-2020	To All justices and personnel of the collegiate courts and judges and personnel of the first and second level courts Re: NCJR under Community Quarantine
March 16, 2020	Administrative Circular No. 31-2020	To All litigants, justices, judges and personnel of the judiciary, and members of the Bar Re: Rising Cases of COVID-19 Infection

March 31, 2020	Administrative Circular No. 33-2020	To All litigants, justices, judges and personnel of the judiciary, and members of the Bar Re: Online Filing of Complaint or Information and Posting of Bail due to the rising cases of COVID-19 Infection
April 8, 2020	Administrative Circular No. 34-2020	To All litigants, justices, judges and personnel of the judiciary, and members of the Bar Re: Extension of Enhanced Community Quarantine Over Luzon Until 30 April 2020
April 3, 2020	OCA Circular No. 89-2020	To All litigants, justices, judges and personnel of the judiciary, and members of the Bar Re: Implementation of SC AC 33-2020 on the Electronic Filing of Criminal Complaints and Informations, and Posting of Bails
April 20, 2020	OCA Circular No. 91-2020	To All Judges of the First and Second Level Courts Re: Release of Qualified Persons Deprived of Liberty
April 27, 2020	Administrative Circular No. 35-2020	To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar Re: Extension of the Enhanced Community Quarantine in Certain Areas Until 15 May 2020
April 27, 2020	Administrative Circular No. 36-2020	To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar Re: Areas Placed under General Community Quarantine from 1 to 15 May 2020
April 27, 2020	Administrative Circular No. 37-2020	To: All Litigants, Judges and Court Personnel of the First and Second Level Courts, and Members of the Bar

		Re: Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing
April 30, 2020	Administrative Circular No. 38-2020	To: All Justices, Judges, Prosecutors, Public Attorneys and Members of the Bar Re: Reduced Bail and Recognizance as Modes for Releasing Indigent Persons Deprived of Liberty during this Period of Public Health Emergency, Pending Resolution of their Cases
May 4, 2020	OCA Circular No. 93-2020	To: All Concerned Litigants, Judges and Court Personnel of the First and Second Level Pilot Courts, and Members of the Bar Re: Implementation of Supreme Court Administrative Circular No. 37-2020 on the Pilot Testing of Hearings of Criminal Cases Involving Persons Deprived of Liberty Through Videoconferencing
May 8, 2020	OCA Circular No. 94-2020	To: All Concerned Litigants, Judges and Court Personnel of the First and Second Level Pilot Courts, and Members of the Bar Re: Resumption of Raffle of Cases Through Videoconferencing
May 15, 2020	Administrative Circular No. 40-2020	To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar Re: Courts in Areas Placed under General Community Quarantine from 16 to 31 May 2020
May 18, 2020	OCA Circular No. 96-2020	To: All Litigants, Concerned Judges and Court Personnel of the First and Second Level Courts, Members of the Bar Re: Pilot Testing of Hearings Through Videoconferencing

May 29, 2020	Administrative Circular No. 41-2020	To: All Litigants, Justices, Judges and Court Personnel of the Judiciary, and Members of the Bar Re: Court Operations Beginning 1 June 2020
June 1, 2020	OCA Circular No. 99-2020	To: All Judges of First and Second Level Courts Re: Required Reports during Community Quarantine Period
June 3, 2020	OCA Circular No. 100-2020	To: All Litigants, Concerned Judges and Court Personnel of the First and Second Level Court, and Members of the Bar Re: Additional Courts Authorized for Pilot-Testing of Hearing Through Videoconferencing

As emphasized by Chief Justice Peralta, applying for bail before the trial courts has not been rendered infeasible even amidst the COVID-19 pandemic and the Luzon-wide lockdown especially with the issuance of Administrative Circular Nos. 31-2020,[240] 33-2020,[241] 34-2020,[242] 37-2020[243] and 38-2020.[244]

[240] The Court explicitly assured that court hearings on urgent matters — including that of "*petitions, motions or pleadings related to bail*" — will continue during the entire period of the community quarantine.

[241] The Court specifically allowed the electronic filing of applications for bail and granted trial court judges a wider latitude of discretion for a lowered bail amount effective during the period of the present public health emergency. The circular also sanctioned the electronic transmission of bail application approvals and directed the consequent release order to be issued within the same day to the proper law enforcement authority or detention facility to enable the release of the accused.

[242] The Court expanded the efficacy of electronic filing criminal complaints and informations, together with bail applications, to keep up with the executive determination of the need to extend the period of the enhanced community quarantine in critical regions of the country.

[243] The Court ordered the pilot-testing of videoconference hearings on urgent matters in criminal cases, including bail applications, in critical regions where the risk of viral transmission is high.

[244] The Court authorized the grant of reduced bail and recognizance to indigent PDLs pending the continuation of the proceedings and the resolution of their cases.

At this point, it may be apt to disclose the data submitted by the OCA thru a Memorandum[245] to the OCJ pertaining to the incremental release of thirty thousand and five hundred twenty-two (30,522) PDLs from March 17, 2020 to June 22, 2020 as follows:

Period (2020)	**Number of PDLs Released Nationwide**
March 17 to April 29	9,731
April 30 to May 8	4,683
May 9 to May 15 (Region 5 — affected by Typhoon — work suspended in almost all areas)	3,941
May 16 to May 22	4,167
May 23 to May 29	2,927
May 30 to June 5	2,149
June 6 to June 11	2,924
June 12 to June 22	3,268
Total PDLs released from March 17 to June 22, 2020	**33,790**

Simultaneously, Department of Justice Secretary Menardo I. Guevarra also submitted his letter[246] to the OCJ attaching the latest report[247] of the Board of Pardons and Parole (BPP) implementing BPP Resolution No. OT-04-05-2020 (Interim Rules on Parole and Executive Clemency) which: (a) granted parole to two hundred twenty-one (221) PDLs; (b) deferred parole to four hundred sixty-six (466) PDLs; (c) evaluated three

[245] Re: Updated Report on the Number of Persons Deprived of Liberty (PDLs) Released from Custody (July 2, 2020).

[246] Letter of Secretary Menardo I. Guevarra to Chief Justice Diosdado M. Peralta (June 15, 2020).

[247] Prepared by: Assistant Parole Officer Laine Apple M. Gernale; reviewed and endorsed by: Executive Director III Reynaldo G. Bayang.

hundred fifty-six (356) *carpetas* for executive clemency; (d) recommended fifty-six (56) PDLs for conditional pardon; (e) recommended fifty-six (56) PDLs for commutation of sentence; and (f) reviewed cases of old and sickly PDLs which comprises the majority of all cases under review. The pertinent data is reproduced hereunder as follows:

Date Acted Upon	**PAROLE CASES**				
	Granted Parole	**Deferred Parole (NBI Records Check/ Verify Pending Cases**	**Denied Parole**	**No Action**	**Total Parole Cases**
May 18	46	42	11	1	**100**
May 20	86	338	33	11	**468**
May 27	4	48	3	0	**55**
June 3	29	26	1	0	**56**
June 10	56	12	2	0	**70**
TOTAL	221	466	50	12	**749**

Date Acted Upon	**EXECUTIVE CLEMENCY CASES**						
	Recommended for Conditional Pardon without Parole Conditions	Recommended for Conditional Pardon with Parole Conditions	Recommended for Commutation of Sentence	Deferred EC	Denied EC	No Action	Total Executive Clemency Cases
May 18	0	0	0	37	2	1	**40**
May 20	0	0	0	0	0	0	**0**
May 27	1	21	9	46	19	0	**96**
June 3	20	3	37	107	2	0	**169**
June 10	11	0	10	30	0	0	**51**
TOTAL	32	24	56	220	23	1	**356**

Clearly, the foregoing data shows that this Court's issuances thru the OCJ have made a significant impact in decongesting jails and other detention facilities in response to the COVID-19 pandemic. Indeed, ample judicial remedies are available to the petitioners and other similarly-situated PDLs who seek

provisional liberty. Likewise, administrative remedies for PDLs who are currently serving their sentences like petitioner Lilia Bucatcat are also available to them. As pointed out by both Chief Justice Peralta and Justice Zalameda, such administrative actions present an incontrovertible proof that institutions of the justice system other than the Judiciary are indeed enacting measures to decongest our detention and penal facilities in order to mitigate the possible spread of COVID-19. As such, the petitioners have no valid reason to insist that they have no other judicial or administrative remedy save for a direct recourse to this Court.

Besides, release on bail or recognizance is not the only way to decongest jails. This Court, thru former Chief Justices Hilario G. Davide, Jr. and Reynato S. Puno, had previously promulgated Administrative Circular Nos. 12-2000[248] and 08-2008[249] which gave the trial courts the option to impose the penalty of fine with subsidiary imprisonment instead of imprisonment itself. This is also supplemented by the enactment of Republic Act No. 11362[250] (Community Service Act) which authorized courts to require community service *in lieu* of jail service for offenses punishable by *arresto menor* and *arresto mayor*.[251] To claim that releasing prisoners on bail or recognizance is the only way to decongest jails is to ignore Congress and this Court's previous

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[248] RE: PENALTY FOR VIOLATION OF B.P. BLG. 22 (November 12, 2000); subsequently clarified by: Administrative Circular No. 13-2001 (SUBJECT: CLARIFICATION OF ADMINISTRATIVE CIRCULAR NO. 12-2000 ON THE PENALTY FOR VIOLATION OF BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECK LAW [February 14, 2001]).

[249] **SUBJECT:** GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES (January 25, 2008).

[250] An Act Authorizing the Court to Require Community Service in lieu of Imprisonment for the Penalties of *Arresto Menor* and *Arresto Mayor*, amending for the purpose Chapter 5, Title 3, Book I of Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code" (August 8, 2019).

[251] Section 2 of Republic Act No. 11362.

decongestion efforts that have already been put in place for trial courts to apply either in deciding the case or upon motion of the parties.

Last, Philippine constitutional and statutory provisions remain in force despite the ongoing pandemic as well as the international calls for the release of prisoners.

As Chief Justice Peralta puts it, neither the pandemic nor the executive declaration of a Luzon-wide lockdown has the effect of suspending our laws and rules, much less of shutting down the Judiciary. In support of this finding, Justice Zalameda quoted Justice Leonen's *ponencia* in ***Abogado, et al. v. Department of Environment and Natural Resources, et al.***[252] wherein the latter clearly enunciated that "[t]he imminence or emergency of an ecological disaster should not be an excuse for litigants to do away with their responsibility of substantiating their petitions before the courts." This is also supplemented by Associate Justice Jose C. Reyes, Jr.'s (Justice Reyes) opinion that the Philippine government is not expected to simply conform to the manner of releasing prisoners being adopted by other countries because such release is qualified by certain conditions. As pointed out by Chief Justice Peralta, the initiatives of other countries in decongesting prison facilities were based on laws and rules prevailing in those jurisdictions—the Philippines did not lag behind in this respect. Therefore, **if the true ideals of independence are to be valued at all, supranational entities and foreign sovereigns should not be allowed to *dictate* how the Philippines should conduct or handle its internal affairs; especially when it comes to protecting the lives, health and safety of its citizens**.

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[252] G.R. No. 246209, September 3, 2019.

On the prerogative to choose appropriate strategies and the proper judicial approach when general welfare concerns clash with civil liberties in times of emergency:

Political questions refer to those which are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the government.[253] These questions are concerned with issues dependent upon the wisdom, not the legality, of a particular act or measure being assailed in which this Court will not normally interfere unless the case shows a clear need for it to step in to uphold the law and the Constitution.[254] Recourse to the political question doctrine necessarily raises the underlying doctrine of separation of powers among the three great branches of government that the Constitution has entrenched.[255]

In relation to the political questions doctrine, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property;[256] although it also extends to providing for all public needs as *parens patriae*.[257] It has been established by jurisprudence that police power finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter since it is inborn in the very

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[253] ***Tañada, et al. v. Cuenco, et al***., No. L-10520, February 28, 1957, 103 Phil. 1051, 1066, citations omitted.

[254] ***Integrated Bar of the Philippines v. Zamora, et al.***, G.R. No. 141284, August 15, 2000, 392 Phil. 618, 637-638.

[255] ***Congressman Garcia v. The Executive Secretary, et al.***, G.R. No. 157584, April 2, 2009, 602 Phil. 64, 77.

[256] ***Gerochi, et al. v. Department of Energy (DOE), et al.***, G.R. No. 159796, July 17, 2007, 554 Phil. 563, 579, citations omitted.

[257] See: ***JMM Promotion and Management, Inc., et al. v. Court of Appeals, et al.***, G.R. No. 120095, August 5, 1996, 329 Phil. 87, 93-94, citations omitted.

fact of statehood and sovereignty.[258] However, no less than the Constitution declares that "[t]he maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy."[259] Such seemingly redundant constitutional declaration only serves to buttress the State's inherent prerogative "to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people [as it] flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law."[260]

Concomitantly, the power to promote the health, morals, peace, education, good order or safety and general welfare of the people by making statutes or ordinances is *vested in the legislature*.[261] The most obvious manifestation of such power are penal statutes in which the State defines and punishes crimes as well as lays down the corresponding criminal rules of procedure.[262] Also, related to the enactment of penal statutes as an implement of police power, it is necessary either for the State agents to have "custody of the law" in bail applications or for the courts to acquire "jurisdiction over the person" of the accused[263] — the purpose of which is for the accused "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

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[258] ***Zabal, et al. v. Duterte, et al.***, G.R. No. 238467, February 12, 2019, citations omitted.

[259] Section 5, Article II of the 1987 Constitution.

[260] ***Metropolitan Manila Development Authority v. Viron Transport Co., Inc.***, G.R. No. 170656, August 15, 2007, 557 Phil. 121, 140.

[261] ***Cruz, et al. v. Pandacan Hiker's Club, Inc.***, G.R. No. 188213, January 11, 2016, 776 Phil. 336, 348-349, citations omitted.

[262] *Cf.* ***People v. Santiago***, G.R. No. L-17584, March 8, 1922, 43 Phil. 120, 124, 127-128.

[263] See: ***David v. Agbay, et al.***, G.R. No. 199113, March 18, 2015, 756 Phil. 278, 292-293.

behalf."[264] In other words, the State's act of detaining a person charged with a crime even when his or her guilt is still to be proven by the prosecution is not without pragmatic and underlying wisdom. Deprivation of liberty, especially if evidence of guilt is strong or no bail was posted, in such instance ensures that: (a) the court will have jurisdiction over the person of the accused, as earlier stated, in order to render a binding judgment; (b) the state agents will be assured of having the ability to bring the accused to participate in necessary proceedings as required by the court; and (c) the accused will be prevented from committing another crime which endangers society or from undertaking further acts to conceal the crime being charged against him or her. Verily, it is reasonable to assume that police power which includes keeping persons accused of a crime in custody is not subject to a reasonable debate.

In the case of the petitioners' continued confinement in their respective detention facilities, the Court cannot issue an order for the creation of a "Prisoner Release Committee" in the absence of any law and in the absence of any concluded bail hearing which resulted in the grant of provisional liberty. As it stands, only the political branches of government (Executive and Legislative) have the power to determine for themselves if such recourse is warranted. The only act that the Court may do under the circumstances is to order the conduct of bail hearings before the trial courts with dispatch. Besides, it must be emphasized in the first place, that the legislature, which is the constitutional **repository of police power** and exercises the prerogative of determining the policy of the State, is by force of circumstances **primarily the judge of necessity, adequacy or reasonableness** and wisdom, of any law promulgated in the **exercise** of the police power, or of the **measures adopted to implement the public policy** or to **achieve public interest**.[265] In instances, the President may exercise police power to a limited extent

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[264] Section 14 (2), Article III of the 1987 Constitution.

[265] ***Ichong v. Hernandez, et al.***, G.R. No. L-7995, May 31, 1957, 101 Phil. 1155, 1165-1166.

only for the purpose of securing public safety.[266] Thus, it is the elected representatives of the People who should determine "the greatest good for the greatest number"[267] in times of national emergencies.

Besides whenever a conundrum arises ***in times of emergency*** when police power collides with constitutionally-protected freedoms or fundamental rights, the political question doctrine will often tip the balance in favor of general welfare acts or policies in view of the State's duty to primarily protect general interests. Such rule of interpretation is consistent with the basic principle instilled in ***Marcos, et al. v. Manglapus, et al.***[268] articulating that: "[i]t must be borne in mind that the Constitution, aside from being an allocation of power[,] is also a **social contract** whereby the people have **surrendered** their **sovereign powers** to the State **for** the **common good**." *However*, while public safety is the paramount and overriding concern of the State and, while it is also true that laws should be interpreted in favor of the greatest good of the greatest number during emergencies, *individual freedoms also have to be respected.* As Justice Reyes describes, such duty entails the complex task of harmonizing fundamental interests of every individual, both free and deprived of liberty, and the general public and, while certain individual's plea for the application of the "humanity of law" may be considered in exceptional circumstances, public protection is equally paramount and thus, can never be discounted. Thus, in upholding police power measures over constitutional freedoms *in times of emergency*, the Court should subject any encroachment of either constitutional or statutory rights to the following interpretational parameters:

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[266] See: ***Fortun, et al. v. Macapagal-Arroyo, et al.***, G.R. No. 190293, March 20, 2012, 684 Phil. 526, 556-557, citing: Section 18, Article VII of the Constitution.

[267] See: ***Churchill, et al. v. Rafferty***, G.R. No. L-10572, December 21, 1915, 32 Phil. 580, 604, citations omitted; ***Philippine Long Distance Telephone Company v. City of Davao, et al.***, G.R. No. L-23080, October 30, 1965 (With Resolution of October 30, 1965), 122 Phil. 478, 490, citations omitted.

[268] G.R. No. 88211, September 15, 1989, 258 Phil. 479, 504.

(1) Such encroachment shall be incidental to public safety and shall not enter the bounds of arbitrariness;

(2) Measures pursued or concerns protected by the State should be reasonably related or linked to the attainment of its legitimate objectives consistent with general welfare; and

(3) The measure undertaken or concern addressed for the benefit of the majority pursuant to an exercise of police power must not be *unnecessarily* oppressive on the minority.

The current choice of the State to continually detain the petitioners satisfies the aforementioned criteria for these reasons:

First, the State's exercise of its prerogative to elect appropriate strategies under the present public health emergency situation branches have ample basis.

"Public safety" involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters—it is an abstract term with no physical form with a boundless range, extent or scope.[269]

In the case at hand, there is wisdom in the continued detention of the petitioners as the nature of their respective charges is serious enough to justify their continued detention *until* bail hearings have been conducted and their applications have been acted upon favorably. Viewed in the context of the Executive department's vantage point, the release of the petitioners endangers national security. It can be reasonably inferred under the circumstances that the Executive department has already made up its mind that the last thing they need in the fight against COVID-19 is to face the hostilities of armed rebel groups. As it is there are reports of COVID-19 cases already permeating in jails; there are also reports that rebel groups have launched

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[269] ***Representative Lagman, et al. v. Hon. Medialdea, et al.***, G.R. No. 231658, July 4, 2017, 812 Phil. 179, 324, citations omitted.

armed attacks against the military and the police who are engaged in their duties of distributing relief goods and manning the check points. At this point, the most prudent course of action that the Court may do is to defer to the political branches as regards the matter of selecting the most appropriate strategy to maintain public order and preserve public safety. As Justice Zalameda opines, there has to be a balance between the State's duty to protect the specific victims of the crime as well as the general public, and the petitioners' rights under international law.

Second, the State's measure of continually detaining the petitioners is reasonably related to its objective of maintaining public order and preserving public safety. While there is still no judicially declared terrorist organization in our jurisdiction pursuant to Section 17[270] of R.A. No. 9372[271] to date,[272] the US

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[270] *Proscription of Terrorist Organizations, Association, or Group of Persons*. — Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[271] Human Security Act of 2007 (March 6, 2004).

[272] Section 17 of Republic Act No. 9372 (Human Security Act of 2007 [March 6, 2004]) had been recently repealed and replaced by Section 26 of Republic Act No. 11479 (The Anti-Terrorism Act of 2020 [July 3, 2020]) which now reads:

"*Proscription of Terrorist Organizations, Association, or Group of Persons*. — Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.

and the European Union have both classified the CPP, NPA and *Abu Sayyaf* Group as foreign terrorist organizations.[273] Obviously, this is a legitimate and vital concern to national security. As earlier discussed, the government cannot afford to gamble its chances and resources by allowing the petitioners who are allegedly key members of the CPP-NPA-NDF to roam free while the COVID-19 pandemic remains an imminent and grave threat. During this time, the government cannot afford to lose its front-liners in its battle against the pandemic. The last thing that this Court should do *in times of nationwide public health emergency* is to tip the scales of justice against public safety and against national security interests. This realization alone adequately *supports the reasonable link or relation* between the petitioners' continued detention and the objective of suppressing the COVID-19 pandemic.

However, such pronouncement is merely for the **very limited purpose** of determining whether or not there is a reasonable link or relation between the assailed government measures or concerns and the legitimate objectives regarding general welfare in *times of emergency*. Admittedly, the undersigned cannot, in good conscience, naively ignore age-old and popular *allegations* that the CPP-NPA-NDF is a terrorist organization. But as part of due process, the undersigned **cannot also preempt** at this time **any finding** that the authorizing division of the Court of Appeals may encounter in the future should the DOJ file an application under the newly-enacted Section 26 of R.A. No. 11479[274] (formerly Section 17 of R.A. No. 9372 which used to lodge proscription proceedings before the Regional Trial Court) to have the CPP-NPA-NDF declared "as a terrorist and

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The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA)."

[273] See: ***Southern Hemisphere Engagement Network, Inc., et al. v. Anti-Terrorism Council, et al.***, G.R. No. 178552, October 5, 2010, 646 Phil. 452, 475.

[274] The Anti-Terrorism Act of 2020 (July 3, 2020).

outlawed group of persons, organization, or association." In essence, the DOJ ***still has to prove*** in such proscription proceedings that the CPP-NPA-NDF was and is indeed engaged in acts constitutive of terrorism. As voiced out by Justice Reyes, the Court should refrain at this time from making such pronouncements that goes into the merits of petitioners' pending cases.

Last, the petitioners' continued detention cannot be considered as an unnecessarily oppressive act of the State.

Oppression has been defined as "an act of cruelty, severity, unlawful exaction, domination or excessive use of authority."[275] Since the petitioners are allegedly members of the CPP-NPA-NDF, their continued detention is still deemed **necessary** until and unless they prove during the bail hearing that the evidence of their supposed guilt is not strong. Such unavoidable restraint of liberty is not "unnecessarily oppressive" as the petitioners have not shown that the State had been indifferent to their clinical needs. The medical certificates attached by the petitioners as annexes adequately prove that the Bureau of Corrections and the BJMP had not been remiss in their duties of assisting inmates in undergoing the required medical checkups. Had the opposite been the case, the petitioners would have been left to their own devices to deal with their own vulnerable health. Allowing the petitioners to undergo medical checkups with the necessary assistance from State agents negates the presence of "excessive use of authority," "cruelty" or "domination." Under the extant circumstances, the State cannot be reasonably considered by the Court as having acted cruelly in continually denying the petitioners of their liberty in the midst of the COVID-19 pandemic.

Treatment of the Petition

In a nutshell, the petitioners' prayers in seeking for the release on recognizance or bail and for the creation of a "Prisoner Release

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[275] ***Golangco v. Atty. Fung***, G.R. No. 147640, October 12, 2006, 535 Phil. 331, 341, citations omitted.

Committee" (along with the issuance of ground rules for eligible prisoners) indicate that theirs is a petition for bail or recognizance filed directly before this Court. As explained in detail earlier in the discussions, not one of these prayers may be granted for the following reasons:

(1) The grant or denial of bail application requires a hearing and an evaluation of proven facts which are functions of trial courts;

(2) This Court's time and resources will be better utilized by resolving cases within the scope of its exclusive jurisdiction;

(3) The petitioners *failed to provide any data* or attachment pertaining to their bail applications filed, if any, with the respective trial courts handling their cases for this Court to evaluate;

(4) The petitioners are *not without any remedy* to seek for provisional liberty before the proper forum if they so choose;

(5) This Court had already issued several guidelines to facilitate the proceedings involving the possible release of PDLs; and

(6) The creation of a "Prisoner Release Committee" has no clear constitutional and statutory basis.

Although the Court may, in some instances, refer bail or recognizance applications filed before it to the trial courts, it is not feasible to do so in this case because: (a) some of the petitioners may have already filed their bail or recognizance applications before the respective trial courts handling their cases; (b) re-opening bail or recognizance applications may unnecessarily prolong the criminal proceedings if evidence of guilt adduced by the prosecution had already been adjudged by the respective trial courts as strong; (c) bail or recognizance application is an absolute prerogative or option of a detained accused; and (d) guidelines for the possible release of PDLs

have been put in place. Under the circumstances, the most prudent course of action is to let the petitioners pursue their bail or recognizance applications before the ***proper forum***. After all, this Court had already promulgated several issuances to facilitate the possible release of PDLs—all that the petitioners have to do is to abide by these guidelines.

At this point, it is wise to impart Chief Justice Peralta's conclusion that the petitioners are probably seeking administrative—not judicial—remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than **to direct the trial courts concerned to resolve the underlying criminal cases with deliberate dispatch**. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As the petitioners complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing that it is the same exact fear which looms outside of prison walls.

Conclusion

The world is currently facing a battle that harbors the potential to be one of the deadliest in history. The enemy cannot be seen and its workings cannot, as of yet, be understood even by the most brilliant of minds in the scientific community. Faced with a monumental task of balancing all governmental efforts of curbing a formidable enemy for the benefit of the general population against some sensible but conjectural fears that the health of some inmates or detainees might be neglected by authorities, it is prudent to interpret the Constitution and the

law in a manner which places public safety as the pinnacle of all concerns for "[s]elf-preservation is the first law of nature"[276] and "the fundamental and paramount objective of the [S]tate [is to bring] about 'the greatest good to the greatest number.'"[277] However, as a matter of duty, such interpretation is of course subject to strict libertarian safeguards. While the undersigned sympathizes with the petitioners' miserable plight, it simply cannot act in a manner violative of the fundamental law. The remedy simply lies with the political branches to pursue. As lucidly explained in ***Vera, et al. v. Avelino, et al.***[278] by Associate Justice (later Chief Justice) Cesar Bengzon:

> Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should stand ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those involving political questions. x x x
>
> Let us likewise disabuse our minds from the notion that the judiciary is the repository of remedies for all political or social ills. We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and a zealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrong-doing, each may be brought to account, either by impeachment, trial or by the ballot box.

Despite Associate Justice Gregorio Perfecto's livid and scathing dissent that the afore-cited ratiocination "is irrelevant" because the Court at that time was supposedly "dealing with a constitutional wrong which, under the fundamental law, can and must be redressed by the [J]udiciary,"[279] the reliefs prayed

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[276] ***Soplente v. People***, G.R. No. 152715, July 29, 2005, 503 Phil. 241, 242, quoting: Samuel Butler.

[277] See: ***Calalang v. Williams, et al.***, G.R. No. L-47800, December 2, 1940, 70 Phil. 726, 735.

[278] G.R. No. L-543, August 31, 1946, 77 Phil. 192, 205-206.

[279] *Id.* at 295.

for by the petitioners are constitutionally-impossible to grant because it involves "engrafting upon a law something that has been omitted which someone believes ought to have been embraced"[280]—a clear act of judicial legislation. The petitioners and the public have to understand that, as guardian of the Constitution, this Court cannot break its sworn duty to uphold the fundamental law. Succinctly, the Court is not constitutionally-empowered to perform acts contrary to the principle of separation of powers no matter how lofty the underlying intentions may be.

Besides impartiality demands that this Court should exercise an even-handed temperament in balancing the conflicting interests embodied in both the general welfare clause and the constitutionally-protected fundamental rights. An emotional approach to an extraordinarily tense situation betrays the objective resolution of highly-controversial disputes. Therefore, the undersigned is of the view that it is not what this Court is *willing* to do—but what it *can* do—under the circumstances which determines the fate of the present petition.

WHEREFORE, the undersigned votes to **DENY** the instant petition for lack of merit and for improperly invoking the Court's original jurisdiction.

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[280] See: ***Tañada v. Yulo, et al.***, G.R. No. L-43575, May 31, 1935, 61 Phil. 515, 519.

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lead a reasonably prudent person to believe that he actually has such authority. (San Miguel Corporation *vs.* Francisco *Vda. De* Trinidad, *et al.*, G.R. No. 237506, July 28, 2020) p. 425

— Even if the agent exceeded his authority under the SPA, the principal must be bound by the mortgages executed by the former, for "as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible by his act of confidence must bear the loss." (*Id.*)

— For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence. (*Id.*)

— There can be no apparent authority of an agent without acts or conduct on the part of the principal and such acts or conduct of the principal must have been known and relied upon in good faith and as a result of the exercise of reasonable prudence by a third person as claimant and such must have produced a change of position to its detriment; the apparent power of an agent is to be determined by the acts of the principal and not by the acts of the agent. (*Id.*)

ALIBI

Defense of — For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. (People *vs.* Fetalco, G.R. No. 241249, July 28, 2020) p. 475

ALIBI AND DENIAL

Defenses of — As regards, the defense of alibi, We have pronounced time and again that both denial and alibi

government, or gave any unwarranted benefits, advantage or preference. (*Id.*)

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Prostitution — Refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration. (People *vs.* Amurao, G.R. No. 229514, July 28, 2020) p. 306

Trafficking in persons — In *People v. Casio*, the Court defined the elements of Trafficking in Persons, as follows: (1) the act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (2) the means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (3) The purpose of trafficking is exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." (People *vs.* Amurao, G.R. No. 229514, July 28, 2020) p. 306

— It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; under Section 6(a) of R.A. No. 9208, the crime is qualified when the trafficked person is a child, which is defined as a person below the age of 18 years old or above 18 years old but is unable to fully take care of or protect himself/herself

upon. (Rivera *vs.* Dalangin, A.C. No. 12724, July 28, 2020) p. 29

— A lawyer who willfully disobeys a court order requiring him to do something may not only be cited and punished for contempt but may also be disciplined as an officer of the court; any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. (Basiyo, *et al. vs.* Alisuag, A.C. No. 11543, July 28, 2020) p. 23

— An "unlawful" conduct refers to any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law; it does not necessarily imply the element of criminality although the concept is broad enough to include such element. (Rivera *vs.* Dalangin, A.C. No. 12724, July 28, 2020) p. 29

— By failing to examine documentary evidence, which turned out to be altered, respondent did not observe greater care to prevent the court from being misled; while prior knowledge of the alteration and that he willfully submitted the false evidence were not established, respondent's carelessness does not free him from liability. (Bukidnon Cooperative Bank, Represented by General Manager Wilhelmia P. Ferrer *vs.* Arnado, A.C. No. 12734, July 28, 2020) p. 40

— Respondent exhibited dishonesty in feigning that he did not represent complainant in a civil case; respondent should have been circumspect in notarizing a document knowing that a compulsory heir was left out; taken together, respondent fell short of the standards expected of a lawyer in upholding the integrity and dignity of the legal profession. (Rivera *vs.* Dalangin, A.C. No. 12724, July 28, 2020) p. 29

— To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in

to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; 3. decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution; 4. if the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya, A.M. No. RTJ-17-2503, July 28, 2020) p. 47

Petition for — The court treats the instant petition as applications for bail or recognizance as well as motions for appropriate confinement and arrangement in view of the Covid 19 pandemic and refers the same to the respective trial courts where the cases are pending. (In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the Covid-19 Pandemic, Dionisio S. Almonte, represented by his wife Gloria P. Almonte, *et al. vs.* People, *et al.*, G.R. No. 252117, July 28, 2020) pp. 628-629

Right to — Considering that petitioners were charged with offenses punishable by *reclusion perpetua*, they are not entitled to bail as a matter of right; evaluation of the evidence to determine petitioners' entitlement to bail involves factual questions, which the trial courts are competent to handle. (In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the Covid-19 Pandemic, Dionisio S. Almonte, represented by his wife Gloria P. Almonte, *et al. vs.* People, *et al.*, G.R. No. 252117, July 28, 2020) pp. 628-629

— The determination of the requisite evidence can only be reached after due hearing; a judge must first evaluate the prosecution's evidence; a hearing is likewise required for the trial court to consider the factors in fixing the amount of bail. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional

BANKS

BILL OF RIGHTS

impaired; of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. (People *vs.* The Honorable Fourth Division, Sandiganbayan, *et al.*, G.R. Nos. 233061-62, July 28, 2020) p. 366

— If the delay occurs beyond the given time period and the right is invoked, the burden of proof is shifted to the prosecution to prove that the delay is reasonable and justified; in *Cagang*, the Court held that once the burden of proof shifts to prosecution, the prosecution must prove the following: "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." (Catamco (formerly Nancy C. Perez) *vs.* Sandiganbayan Sixth Division, *et al.*, G.R. Nos. 243560-62, July 28, 2020) p. 492

— On July 31, 2018, a definitive ruling on the concept of inordinate delay was laid down by the Court *en banc* in *Cagang v. Sandiganbayan* as follows: (1) The right to speedy disposition of cases is different from the right to speedy trial; (2) For purposes of determining inordinate delay, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation; (3) Courts must determine which party carries the burden of proof; (4) Determination of the length of delay is never mechanical; (5) The right to speedy disposition of cases (or the right to speedy trial) must be timely raised. (People *vs.* The Honorable Fourth Division, Sandiganbayan, *et al.*, G.R. Nos. 233061-62, July 28, 2020) p. 366

CERTIORARI

Petition for — In *People v. The Honorable Sandiganbayan (First Division)*, it was declared that a special civil action for *certiorari* is the proper remedy against the Sandiganbayan's order of dismissal of a criminal complaint

— In *People v. Asaytuno, Jr.* citing *People v. Tomawis*, the Court has emphasized the importance of the required insulating witnesses at the time of seizure and confiscation, thus: The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. (*Id.*)

— In *People v. Dela Cruz*, the Court held that a single police officer's act of bodily keeping the seized drugs is viewed with distrust, fraught with dangers, reckless, if not dubious, and a doubtful and suspicious way of ensuring the integrity of the items. (*Id.*)

— In *People v. Ubungen* citing *People v. Pajarin*, the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial. (*Id.*)

— "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item; marking after seizure is the starting point in the custodial link; it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. (Barayuga *vs.* People, G.R. No. 248382, July 28, 2020) p. 567

— Non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not in itself render the confiscated drugs inadmissible, as the desire for a perfect and unbroken chain of custody rarely occurs, but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165. (People *vs.* Manansala, G.R. No. 228825, July 28, 2020) p. 292

outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. (People *vs.* Manansala, G.R. No. 228825, July 28, 2020) p. 292

— The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court; it must prove that the dangerous drug seized from petitioner is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt. (Barayuga *vs.* People, G.R. No. 248382, July 28, 2020) p. 567

— The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court. (People *vs.* Balbarez, G.R. No. 246999, July 28, 2020) p. 558

— The utter disregard of the required procedures created a huge gap in the chain of custody; we reiterate that the provisions of Section 21 of R.A. No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man; the Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. (*Id.*)

— To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked

COURT OF TAX APPEALS (CTA)

Denial of protest — Section 7(a)(2) of R.A. No. 9282 provides that the "inaction" of the CIR or his failure to decide a disputed assessment within the 180-day period is "deemed a denial" of the protest; Section 3(a)(2), Rule 4 of the Revised Rules of the CTA further clarifies that "that in case of disputed assessments, the inaction of the CIR within the 180-period under Section 228 of the 1997 NIRC shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the CTA." (Kepco Philippines Corporation *vs.* Commissioner of Internal Revenue, G.R. Nos. 225750-51, July 28, 2020) p. 244

COURTS

Consolidation of cases — The propriety of consolidation of cases is a matter addressed to the sound discretion of the court taking into account its purpose or object, to wit: (1) avoid multiplicity of suits; (2) guard against oppression or abuse; (3) prevent delay; (4) clear congested dockets; (5) simplify the work of the trial court; and (5) save unnecessary costs and expense. (Fil-Agro Rural Bank, Inc., through the Philippine Deposit Insurance Corp. (PDIC), as Liquidator *vs.* Villaseñor, Jr., G.R. No. 226761, July 28, 2020) p. 280

CRIMINAL PROCEDURE

Preliminary investigation — Section 3(f), Rule 112 of the Revised Rules on Criminal Procedure provides that the investigating prosecutor has ten (10) days "after the investigation to determine whether or not there is sufficient ground to hold the respondent for trial." (Catamco (formerly Nancy C. Perez) *vs.* Sandiganbayan Sixth Division, *et al.*, G.R. Nos. 243560-62, July 28, 2020) p. 492

— Section 4 of the same rule states that "within five (5) days from his resolution, the investigating prosecutor shall forward the record of the case to the Ombudsman

of his employment, to a recognition of the juridical possession of the employer; as long as the juridical possession of the thing appropriated did not pass to the employee, the offense committed is theft, qualified or otherwise. (*Id.*)

— When the money, goods, or any other personal property is received by the offender from the offended party (1) in *trust*, or (2) on *commission*, or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received; mere receipt of the money, goods, or personal property does not suffice, it is also essential that the accused acquired both material or physical possession and juridical possession of the thing received; juridical possession refers to a possession which gives the transferee a right over the thing transferred and this, he may set up even against the owner. (*Id.*)

HUMAN RELATIONS

Abuse of rights — The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another; when Article 19 is violated, an action for damages is proper under Article 20 and 21 of the New Civil Code; Article 20 pertains to damages arising from a violation of law. (Navarro-Banaria *vs.* Banaria, *et al.*, G.R. No. 217806, July 28, 2020) p. 137

— While Article 19 of the New Civil Code may have been intended as a mere declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, *e.g.*, that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. (*Id.*)

Rule on — Petitioner's failure to observe good faith in the exercise of her right as the wife and legal guardian of her physically and mentally infirmed husband has caused

as a serious charge. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya, A.M. No. RTJ-17-2503, July 28, 2020)

— Judges should maintain competence and diligence which are prerequisites to the due performance of judicial office; their role in the administration of justice requires a continuous study of the law and jurisprudence; contrary rule will not only lessen the faith of the people in the courts but will also defeat the fundamental role of the judiciary to render justice and promote the rule of law. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya, A.M. No. RTJ-17-2503, July 28, 2020)

— Penalty of dismissal from the service, imposed upon the respondent judge for multiple counts of gross ignorance of the law; the court could no longer afford to be lenient to a judge who repeatedly commits infractions and refuses to correct his ways despite previous warning, lest it would give the public the impression that incompetence and repeated offenders are being countenanced in the judiciary. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya, A.M. No. RTJ-17-2503, July 28, 2020)

— Unfamiliarity with the laws and procedures is a sign of incompetence which betrays the confidence of the public in the courts; judges ought to simply apply basic, simple and well-known rules and jurisprudence; anything less is ignorance of the law. (Office of the Court Administrator *vs.* Hon. Flor, Jr., Presiding Judge, Branch 28, Regional Trial Court, Bayombong, Nueva Vizcaya, A.M. No. RTJ-17-2503, July 28, 2020)

Knowingly rendering an unjust judgment — Knowingly rendering an unjust judgment constitutes a serious criminal offense under Article 204 of the Revised Penal Code (RPC); to commit the offense, the offender must be a

proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. (People *vs.* The Honorable Fourth Division, Sandiganbayan, *et al.*, G.R. Nos. 233061-62, July 28, 2020) p. 366

JURISDICTION

Concept of — Time and again, the Court has held that a judgment rendered by a court without jurisdiction is null and void, creates no rights, and produces no effect; it may be attacked anytime since a void judgment for want of jurisdiction is no judgment at all; all acts performed pursuant to it and all claims emanating from it have no legal effect. (Fil-Agro Rural Bank, Inc., through the Philippine Deposit Insurance Corp. (PDIC), as Liquidator *vs.* Villaseñor, Jr., G.R. No. 226761, July 28, 2020) p. 280

LABOR RELATIONS

Appeal by the employer from a judgment involving monetary award — An employee of an employer who is undergoing insolvency proceedings has many layers of protection starting from being allowed to prosecute his claim, registering a contingent claim before the insolvency court, and finally, enjoying a preference in case the assets of the corporation are ordered liquidated to pay for its debts. (Karj Global Marketing Network, Inc. *vs.* Mara, G.R. No. 190654, July 28, 2020) p. 75

— Article 110, in fact, can only be enforced in liquidation proceedings as held in *Development Bank of the Philippines v. Secretary of Labor*: In this jurisdiction, bankruptcy, insolvency and general judicial liquidation proceedings provide the only proper venue for the enforcement of a creditor's preferential right such as that established in Article 110 of the Labor Code; what Article 110 means in the context of an insolvent employer is "that during bankruptcy, insolvency or liquidation proceedings involving the existing properties of the employer, the employees have the advantage of having

their unpaid wages satisfied ahead of certain claims which may be proved therein." (*Id.*)

— As the Court held in *Viron Garments Manufacturing, Co., Inc. v. NLRC*, the mandatory nature of the bond "is clearly limned in the provision that an appeal by the employer may be perfected '*only upon the posting of a cash or surety bond*'; the word 'only' makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected"; as against this rule, the Court has recognized exceptional circumstances where it relaxed the requirement for an appeal bond. (*Id.*)

— Assuming the insolvent corporation undergoes liquidation, the measure of protection given to employees is stated in Article 110 of the Labor Code, which provides for preference for unpaid wages and monetary claims even before the payment of claims of the government and other creditors. (*Id.*)

— Following Article 217 of the Labor Code, and given the LA's and NLRC's exclusive and original jurisdiction to rule on money claims of an employee, such case may only be filed and ruled upon by the LA and NLRC; however, when an employer is undergoing insolvency proceedings, Article 217 of the Labor Code has to be read together with Section 60 of the Insolvency Law which states that a creditor may be allowed to proceed with the suit to ascertain the amount due to it but the execution of which shall be stayed; during the pendency of the insolvency proceedings, the measure of protection for the employee is to have the claim considered as a contingent claim before the insolvent court following Section 55 of the Insolvency Act. (*Id.*)

— This Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases; in *Your Bus Lines v. NLRC*, the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision; while the

notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list; in *Blancaflor v. NLRC*, the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted. (*Id.*)

— To determine whether to allow a liberal application of the rule on bonds, it is crucial to understand, especially in this case, whether respondent stands to lose the security provided by the appeal bond as the purpose of the appeal bond, as held in *Viron*, is to ensure that when the workers prevail, they will receive the money judgment in their favor: the requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. (*Id.*)

— While the court, when it finds that a lower court or quasi-judicial body is in error, may simply and conveniently nullify the challenged decision, resolution or order and remand the case thereto for further appropriate action, it is well within the conscientious exercise of its broad review powers to refrain from doing so and instead choose to render judgment on the merits when all material facts have been duly laid before it as would buttress its ultimate conclusion, in the public interest and for the expeditious administration of justice, such as where the ends of justice would not be subserved by the remand of the case. (*Id.*)

LABOR STANDARDS

Deduction from the wages — Any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as well as the Omnibus Rules implementing it; Article 116 of the Labor Code clearly provides that it is unlawful for any person, directly or indirectly, to withhold any amount from the wages of

Regular and seasonal employees — Under the law, regular employees are those engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer; on the other hand, seasonal employees are those whose work or engagement is seasonal in nature and their employment is only for the duration of the season. (Espina, *et al. vs*. Highlands Camp/Rawlings Foundation, Inc., *et al.*, G.R. No. 220935, July 28, 2020) p. 183

Regular employees — Employees' services are necessary and directly related to the employer's business; they were in fact regular employees. (Espina, *et al. vs*. Highlands Camp/Rawlings Foundation, Inc., *et al*., G.R. No. 220935, July 28, 2020) p. 183

Seasonal employees — To be classified as seasonal employees, two (2) elements must concur: (1) they must be performing work or services that are seasonal in nature; and (2) they have been employed for the duration of the season. (Espina, *et al. vs*. Highlands Camp/Rawlings Foundation, Inc., *et al*., G.R. No. 220935, July 28, 2020) p. 183

MODES OF DISCOVERY

Admission by adverse party — A request for admission seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters to enable a party to discover the evidence of the adverse side and facilitate an amicable settlement of the case to expedite the trial of the same. (Republic *vs.* Datuin, *et al.*, G.R. No. 224076, July 28, 2020) p. 203

MORTGAGES

Contract of mortgage — To be valid, the following essential requisites must be met: *first*, that the mortgage is constituted to secure the fulfillment of a principal obligation; *second*, the mortgagor is the absolute owner of the thing mortgaged; and third, the persons constituting the mortgage have the free disposal of their property,

— A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him or her to attest to the contents and truthfulness of the statements therein. (*Id.*)

— In the performance of his or her duties, a notary public must observe the highest degree of care in complying with the basic requirements to preserve the public's confidence in the integrity of the notarial system; this is because notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. (*Id.*)

OMBUDSMAN

Rules of Procedure of the Office of the Ombudsman —In assessing whether petitioners' right to speedy disposition of cases was violated, *Cagang* dictates that the Court first examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation; if the Ombudsman exceeded the prescribed period, the burden of proof shifts to the State; while the Rules of Procedure of the Ombudsman does not provide a period within which the preliminary investigation should be concluded, the periods provided under Rule 112 of the Rules of Court, finds suppletory application. (Catamco (formerly Nancy C. Perez) *vs.* Sandiganbayan Sixth Division, *et al.*, G.R. Nos. 243560-62, July 28, 2020) p. 492

— Once the Information has been filed with the Sandiganbayan, action by the OSP on the motion for reconsideration or reinvestigation is no longer a matter of right but a privilege, as the Sandiganbayan has to grant leave to the OSP in order for it to act on the motion for reconsideration or reinvestigation. (People *vs.* The Honorable Fourth Division, Sandiganbayan, *et al*., G.R. Nos. 233061-62, July 28, 2020) p. 366

the middle of the proceedings is against the rules of fair play and justice. (Interorient Maritime Enterprises, Inc. and/or Interorient Maritime, *et al. vs.* Hechanova, G.R. No. 246960, July 28, 2020) p. 549

— In *Bucal v. Bucal*, "It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case; the rationale for the rule was explained in *Development Bank of the Philippines [DBP] v. Teston*," *viz.*: Due process considerations justify this requirement; it is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief; the fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant. (*Id.*)

PLUNDER ACT (R.A. NO. 7080)

Elements — The crime of Plunder, as culled from the law itself (*i.e.*, R.A. No. 7080), has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d); and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated, or acquired is at least P50 Million Pesos. (Sombero, Jr. *vs.* Office of the Ombudsman, *et al.*, G.R. Nos. 237888 & 237904, July 28, 2020) p. 460

PRESUMPTIONS

Presumption of regularity in the performance of official duties — It is important to note that while the police officers are presumed to have regularly performed their duty, the presumption only applies when there is nothing

— The SEC, the national government regulatory agency charged with supervision over the corporate sector, has been authorized to promulgate rules and regulations reasonably necessary to enable it to perform its duties and mandates; its power to prescribe fees, and the reasonableness of the amount, must therefore be read in light of this regulatory function. (First Philippine Holdings Corporation *vs.* Securities and Exchange Commission, G.R. No. 206673, July 28, 2020) p. 94

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application of — Accused-appellant's repeated physical, verbal and emotional abuse on the victim, which started when he was young, constitute violations of Section 5 (a) and (i) of R.A. No. 9262. (People *vs.* ZZZ, G.R. No. 232500, July 28, 2020 p. 331

Lascivious conduct — The acts of touching and fondling of CCC's breasts and touching of her vagina undeniably amounted to "lascivious conducts"; there is a need to modify the nomenclature of the crime charged to "Lascivious Conduct under Section 5 (b) of R.A. No. 7610." (People *vs.* ZZZ, G.R. No. 232500, July 28, 2020 p. 331

— The case of *People v. Caoili* is instructive on the proper designation of the offense in case lascivious conduct is committed, thus: accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty: 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty; 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal

— In statutory rape, it is enough that the age of the victim is proven and that there was sexual intercourse; it is not necessary to prove that the victim was intimidated or that force was used against her, because in statutory rape the law presumes that the victim, on account of her tender age, does not and cannot have a will of her own. (People *vs.* Fetalco, G.R. No. 241249, July 28, 2020) p. 475

— Sexual intercourse with a woman who is below 12 years of age constitutes statutory rape; as a qualification, Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a child below seven (7) years old"; the age of the victim (four [4] years old) was sufficiently alleged in the Information and proved by the prosecution. (*Id.*)

Elements — Statutory rape is committed when: (1) the offended party is under twelve (12) years of age; and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation, whether the victim was deprived of reason or consciousness, or whether it was done through fraud or grave abuse of authority. (People *vs.* Fetalco, G.R. No. 241249, July 28, 2020) p. 475

TAXATION

Commissioner of Internal Revenue — The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204(A) of the 1997 National Internal Revenue Code, as amended (1997 NIRC); the CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax. (Kepco Philippines Corporation *vs.* Commissioner of Internal Revenue, G.R. Nos. 225750-51, July 28, 2020) p. 244

Taxability of membership fees — Income is defined as "an amount of money coming to a person or corporation within a specified time, whether as payment for services,

— Settled is the rule that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. (People *vs.* ZZZ, G.R. No. 232500, July 28, 2020) p. 331

— The alleged inconsistency on the place where the crime happened is a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. (People *vs.* Fetalco, G.R. No. 241249, July 28, 2020) p. 475

— This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness; this is especially true when the testimony is given by child victims who were exposed to extremely traumatic situations at a very tender age. (*Id.*)

— Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. ((*Id.*)

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