PHILIPPINE REPORTS

VOL. 881

SEPTEMBER 2 - 7, 2020

VOLUME 881

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 2-7, 2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 10619. September 2, 2020]

ELIZA ARMILLA-CALDERON, *Complainant, v.* **ATTY. ARNEL L. LAPORE,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN ADMINISTRATIVE COMPLAINTS FOR DISBARMENT AND SUSPENSION AGAINST LAWYERS, THE *ONUS PROBANDI* LIES ON THE COMPLAINANT, WHO IS DUTY-BOUND TO PROVE THE VERACITY OF THE ALLEGATIONS IN HIS OR HER COMPLAINT BY A PREPONDERANCE OF EVIDENCE, WHICH IS SUCH EVIDENCE OF GREATER WEIGHT, OR MORE CONVINCING THAN THAT WHICH IS OFFERED IN OPPOSITION; COMPLAINANT'S BARE ALLEGATIONS OF MISCONDUCT CANNOT PREVAIL OVER THE PRESUMPTION OF REGULARITY ACCORDED TO A LAWYER AS MEMBER OF THE BAR.— The Court has repeatedly stressed that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence. Preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. The *onus probandi* lies on the complainant, who is duty-bound to prove the veracity of the allegations in his or her complaint by a preponderance of evidence. x x x. Recently, the Court invariably pronounced in *Morales v. Atty. Borres, Jr.*, that in

disbarment proceedings, complainant bears the burden of proof. Complainant therein failed to discharge this burden and hence, respondent's right to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place. In the case at bench, x x x, a perusal of the records would reveal that complainant merely alleged that Atty. Lapore, by taking advantage of her absence, facilitated the fictitious sales between her and her parents, and then between the latter and Charity. Strikingly, though, she miserably failed to present any proof in support of the alleged forgery in her signature or the authenticity of the thumb mark of his father indicating his consent to the sale. If complainant was so sure her signature was fake, she could have submitted the documents in question for expert analysis to the National Bureau of Investigation, the Philippine National Police, or some other handwriting expert. Regrettably for complainant, the records are bereft of any such analysis or even any attempt to have her signature examined. Moreover, she failed to attend the scheduled mandatory hearings before the IBP-CBD and did not even bother to inform it of the change in her address. Under the circumstances, complainant's bare allegations of Atty. Lapore's purported misconduct cannot prevail over the presumption of regularity accorded to the lawyers as members of the Bar. Absent any showing that he acted in any manner that would render Atty. Lapore as unfit to the practice of law and unable to hold the office of an attorney, this complaint must fail.

2. ID.; ID.; ID.; COMPLAINANT'S CLAIM OF FORGERY OR FALSIFICATION MUST BE ESTABLISHED AND DETERMINED IN APPROPRIATE PROCEEDINGS, LIKE CRIMINAL OR CIVIL CASES, FOR IT IS ONLY BY SUCH PROCEEDINGS THAT THE LAST WORD ON THE FALSITY OR FORGERY CAN BE UTTERED BY A COURT OF LAW WITH THE LEGAL COMPETENCE TO DO SO, AND A DISBARMENT PROCEEDING IS NOT THE OCCASION TO DETERMINE SAID ISSUE.—It bears stressing that the document on which the contested signature appeared was notarized. Notarial documents carry the presumption of regularity. The burden of proving that the signature affixed on it is false and simulated lies on the party assailing its execution. Here, it is incumbent upon the complainant to prove by clear and convincing evidence that her signature, as appearing on the Deed of Absolute Sale, is

forged. Again, she failed to discharge this burden. Indeed, complainant's claim of forgery or falsification must be competently proved because these allegations cannot be presumed. The allegations should first be established and determined in appropriate proceedings, like criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. Considerably, a disbarment proceeding is not the occasion to determine the issue of falsification or forgery.

3. ID.; ID.; ID.; THE COURT WILL NOT HESITATE TO EXTEND ITS PROTECTIVE ARM WHEN THE ACCUSATION AGAINST LAWYERS IS NOT INDUBITABLY PROVEN.—Time and again, the Court has reminded that it will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties. In the same vein, however, it will not hesitate to extend its protective arm when the accusation against them is not indubitably proven.

R E S O L U T I O N

INTING, *J.*:

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The burden of proof in disbarment and suspension proceedings always rests on the complainant. Considering the serious consequence of disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty. The burden is obviously not satisfied when complainant relies on mere assumptions and suspicions as evidence.[1]

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[1] See *Atty. Guanzon v. Atty. Dojillo*, A.C. No. 9850, August 6, 2018, citing *Atty. De Jesus v. Atty. Risos-Vidal*, 730 Phil. 47, 53 (2014).

Before the Court is a Complaint[2] for disbarment filed with the Office of the Bar Confidant by Eliza Armilla-Calderon (complainant) against Atty. Arnel L. Lapore (Atty. Lapore).

Complainant is the registered owner of a lot located in Brgy. IV, Sipalay City, Negros Occidental, covered by Original Certificate of Title No. P-14240 (Sipalay lot). In 2014, she received information that the Sipalay lot was bought by her niece, Charity Reinwald (Charity), who is married to a Swiss national. On June 20, 2014, when complainant went home, Charity confirmed that she bought the lot from Julieta Armilla (Julieta), complainant's mother, and that it was their family lawyer, Atty. Lapore, who facilitated the transaction.[3]

According to complainant, the transaction was attended by fraud as her signature in the Deed of Absolute Sale[4] dated August 8, 2012 was forged. She cannot personally sign the document since she was in San Mateo, Rizal. She further claimed that Atty. Lapore falsified another Deed of Absolute Sale[5] dated December 10, 2013[6] to make it appear that her mother sold the Sipalay lot to Charity. She suggested that Atty. Lapore took advantage of her absence and abused her trust. He exploited her aged mother and her dying father, Eliseo Armilla (Eliseo), in convincing them to sell the subject property.[7]

In response, Atty. Lapore averred that the present complaint was a replica of a complaint docketed as Civil Case No. 2033 filed with Branch 61, Regional Trial Court, Kabankalan City. He clarified that complainant was never the owner of the Sipalay lot but merely a trustee thereof. He narrated that complainant was not a natural child of spouses Julieta and Eliseo, but they

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

[3] *Id.* at 270.

[4] *Id.* at 17-18.

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

[6] *Id.* at 5, 271. The Deed of Absolute Sale is dated December 10, 2012 in the Extended Resolution of the Integrated Bar of the Philippines-Board of Governors.

[7] *Id.* at 271.

sent her to school and cared for her as their daughter. Later, she abandoned her two children under the care of the spouses.[8]

Atty. Lapore admitted that it was him who convinced the complainant to return the property to Julieta. Through a Deed of Absolute Sale, she freely signed and consented to convey the property to her mother in exchange for the latter's sacrifices, money, and effort in rearing for complainant's children. The Deed of Absolute Sale was notarized on August 8, 2012 after complainant visited him in his office.[9]

On December 14, 2015, the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) scheduled a Mandatory Conference but none of the parties appeared. In the second hearing, only Atty. Lapore appeared.[10] Based on the records, complainant failed to attend both hearings because the mails were returned to the IBP-CBD with a notation "Unknown addressee." Later, in an Order[11] dated March 21, 2016, the IBP-CBD terminated the mandatory conference and directed the parties to submit their respective position papers. Only Atty. Lapore complied and submitted his position paper.[12]

Proceedings before the IBP

In her Report and Recommendation[13] dated November 29, 2016, Investigating Commissioner Dominica L. Dumangeng-Rosario (Investigating Commissioner Dumangeng-Rosario) opined that Atty. Lapore failed to faithfully discharge his duties as a notary public, and recommended: (1) the revocation of his notarial commission; (2) his disqualification from reappointment as notary public for two years; and (3) his suspension for two months from the practice of law.

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[8] *Id.* at 272-273.

[9] *Id.* at 273-274.

[10] *Id.* at 274.

[11] *Id.* at 171.

[12] See Position Paper for the Respondent, *id.* at 175-185.

[13] *Id.* at 269-286.

On July 2, 2018, the IBP-Board of Governors (BOG) reversed the recommendations of Investigating Commissioner Dumangeng-Rosario and dismissed the complaint against Atty. Lapore.[14] The IBP-BOG observed that the complainant failed to substantiate her claims and allegations. Being a notarized document, the Deed of Absolute Sale is not only entitled to full faith and credit, it is also a *prima facie* evidence of the facts stated therein.[15]

Issue

Whether Atty. Lapore should be held administratively liable for the complained acts against him.

The Court's Ruling

The Court adopts the findings of the IBP-BOG and resolves to dismiss the complaint against Atty. Lapore for lack of *prima facie* case to warrant the penalty of disbarment or the revocation of his notarial commission.

The Court has repeatedly stressed that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence. Preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. The *onus probandi* lies on the complainant, who is duty-bound to prove the veracity of the allegations in his or her complaint by a preponderance of evidence.[16]

In *Atty. De Jesus v. Atty. Risos-Vidal*,[17] the Court found that Atty. Clodualdo C. De Jesus (complainant Atty. De Jesus) failed to discharge the burden of proving Atty. Alicia A. Risos-Vidal's (respondent Atty. Risos-Vidal) administrative liability by clear and preponderance of evidence. Except for his bare allegations,

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[14] See the Extended Resolution of the Integrated Bar of the Philippines-Board of Governors, *id.* at 287-297.

[15] *Id.* at 294.

[16] *Anacin, et al. v. Atty. Salonga*, A.C. No. 8764 (Notice), January 8, 2020.

[17] 730 Phil. 47 (2014).

complainant Atty. De Jesus did not present any proof to substantiate his claim that respondent Atty. Risos-Vidal used her position as director of the IBP-CBD to enhance her law practice.[18]

Recently, the Court invariably pronounced in *Morales v. Atty. Borres, Jr.*,[19] that in disbarment proceedings, complainant bears the burden of proof. Complainant therein failed to discharge this burden and hence, respondent's right to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place.[20]

In the case at bench, similar to the aforementioned cases, a perusal of the records would reveal that complainant merely alleged that Atty. Lapore, by taking advantage of her absence, facilitated the fictitious sales between her and her parents, and then between the latter and Charity. Strikingly, though, she miserably failed to present any proof in support of the alleged forgery in her signature or the authenticity of the thumb mark of his father indicating his consent to the sale. If complainant was so sure her signature was fake, she could have submitted the documents in question for expert analysis to the National Bureau of Investigation, the Philippine National Police, or some other handwriting expert. Regrettably for complainant, the records are bereft of any such analysis or even any attempt to have her signature examined. Moreover, she failed to attend the scheduled mandatory hearings before the IBP-CBD and did not even bother to inform it of the change in her address. Under the circumstances, complainant's bare allegations of Atty. Lapore's purported misconduct cannot prevail over the presumption of regularity accorded to the lawyers as members of the Bar. Absent any showing that he acted in any manner that would render Atty. Lapore as unfit to the practice of law and unable to hold the office of an attorney, this complaint must fail.[21]

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[18] *Id.* at 53.

[19] A.C. No. 12476, June 10, 2019.

[20] *Id.*

[21] *Anacin, et al. v. Atty. Salonga, supra* note 16.

It bears stressing that the document on which the contested signature appeared was notarized. Notarial documents carry the presumption of regularity. The burden of proving that the signature affixed on it is false and simulated lies on the party assailing its execution. Here, it is incumbent upon the complainant to prove by clear and convincing evidence that her signature, as appearing on the Deed of Absolute Sale, is forged. Again, she failed to discharge this burden.

Indeed, complainant's claim of forgery or falsification must be competently proved because these allegations cannot be presumed. The allegations should first be established and determined in appropriate proceedings, like criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. Considerably, a disbarment proceeding is not the occasion to determine the issue of falsification or forgery.[22]

Time and again, the Court has reminded that it will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties. In the same vein, however, it will not hesitate to extend its protective arm when the accusation against them is not indubitably proven.[23]

WHEREFORE, the present administrative case against respondent Atty. Arnel L. Lapore is **DISMISSED** for lack of factual and legal merit.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[22] *Zarcilla, et al. v. Atty. Quesada*, 827 Phil. 629, 639 (2018).

[23] *Anacin, et al. v. Atty. Salonga, supra* note 16, citing *Atty. Guanzon v. Atty. Dojillo, supra* note 1.

SECOND DIVISION

[G.R. No. 188029. September 2, 2020]

ARTURO C. CALUBAD, *Petitioner, v.* **BILLY M. ACERON and OLIVER R. SORIANO,**[1] *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENTS; GROUNDS THEREOF. — Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. In addition, it may be invoked only on two grounds, namely, extrinsic fraud and lack of jurisdiction. None of these grounds are present in this case.

2. ID.; ID.; ID.; ID.; IF LACK OF JURISDICTION IS THE GROUND, PETITIONER MUST SHOW NOT MERELY ABUSE OF JURISDICTIONAL DISCRETION, BUT AN ABSOLUTE LACK OF AUTHORITY TO HEAR AND DECIDE THE CASE. — Jurisdiction is the authority to decide a case, and not the decision rendered therein. Evidently, the RTC acquired jurisdiction over the subject matter and over the persons of Oliver and Aceron. Moreover, the present case has already become final and executory when the court *a quo* issued its assailed Resolution which justifies its subsequent issuance thereof to put the judgment into effect. In a petition for annulment of judgment based on lack of jurisdiction, petitioner Calubad must show not merely abuse of jurisdictional discretion but an absolute lack of authority to hear and decide the case which he failed to do so.

3. ID.; ID.; JUDGMENTS; A FINAL JUDGMENT IS IMMUTABLE AND UNALTERABLE AND CAN NO LONGER BE MODIFIED IN ANY RESPECT EVEN IF THE MODIFICATION IS MEANT TO CORRECT AN ERRONEOUS CONCLUSION OF FACT OR OF LAW; RATIONALE. — [A] judgment that has become final is

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[1] Hon. Hilario L. Laqui, Presiding Judge of Regional Trial Court of Quezon City, Branch 218, is deleted as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

immutable and unalterable and can no longer be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. In addition, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. It serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist.

4. ID.; ID.; ID.; EFFECT OF JUDGMENTS; A JUDGMENT OF THE COURT IS CONCLUSIVE AND BINDING ONLY UPON THE PARTIES AND THOSE WHO ARE THEIR SUCCESSORS IN INTEREST BY TITLE AFTER THE COMMENCEMENT OF THE ACTION IN COURT; CASE AT BAR. — Section 47 (b), Rule 39 of the Rules of Court explicitly provides that a judgment of the court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court. . . . While it is true that petitioner Calubad is not a party to Civil Case No. Q-93-18011, the foregoing provision states that the Resolution dated December 13, 2004 is conclusive and binding upon him being the successor-in-interest of Oliver who acquired title to the subject property after Civil Case No. Q-93-18011 has become final and executory. As a general rule, a person not impleaded and [not] given the opportunity to present his or her case cannot be bound by the decision. However, having acquired alleged interest over the subject property only after the finality of Civil Case No. Q-93-18011, he is bound by the judgment and the determination of rights of the original parties therein.

5. ID.; ID.; ANNULMENT OF JUDGMENTS; THIS REMEDY EXTENDS ONLY TO A PARTY IN WHOSE FAVOR THE REMEDIES OF NEW TRIAL RECONSIDERATION, APPEAL, AND PETITION FOR RELIEF FROM JUDGMENT ARE NO LONGER AVAILABLE THROUGH NO FAULT OF SAID PARTY; CASE AT BAR. — [P]etitioner Calubad's resort to the remedy of annulment of judgment under

Rule 47 is unnecessary as the same extends only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. As a non-party in Civil Case No. Q-93-18011, petitioner Calubad could not bring the action for annulment of judgment considering that the remedies of new trial, reconsideration, appeal or setting the judgment aside through a petition for relief are not available to him in the first instance.

6. ID.; ID.; ID.; ANNULMENT OF JUDGMENT IS AN EQUITABLE RELIEF THAT ENABLES A PARTY-LITIGANT TO BE DISCHARGED FROM THE BURDEN OF BEING BOUND BY A VOID JUDGMENT; CASE AT BAR.— [E]ven assuming that petitioner Calubad can avail of the relief under Rule 47, such an action would not finally determine his rights over the subject property as against the competing rights of the original parties. Annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with.

7. ID.; ID.; ID.; AN ACTION FOR ANNULMENT OF JUDGMENT IS AN INDEPENDENT ACTION THAT DOES NOT INVOLVE THE MERITS OF THE JUDGMENT OR RESOLUTION SOUGHT TO BE ANNULLED, AND IS NOT AN APPEAL FROM THE SAID JUDGMENT OR RESOLUTION; CASE AT BAR.— [A]n action for annulment of judgment under Rule 47 of the Rules of Court does not involve the merits of the final order of the trial court. The issues of whether the subsequent mortgage of the subject property by Oliver to petitioner Calubad, and [whether] the indefeasibility of a Torrens title give[s] petitioner a right of ownership over the subject property superior to that of Aceron are outside the scope of the present petition for review. To resolve such issues requires a review of evidence which this Court obviously cannot do in this petition. An action for annulment of judgment is an independent action where the judgment or resolution sought to be annulled is rendered and is not an appeal of the judgment or resolution therein. Thus, the issue of petitioner Calubad's alleged interest on or ownership of the subject property cannot be addressed in this petition for review.

APPEARANCES OF COUNSEL

Emmanuel M. Basa for petitioner.

The Law Firm of Habitan Ferrer Chan Tagapan Patriarca And Associates for respondent Billy M. Aceron.

Rafael Chris F. Teston for O. Soriano.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition [for Review on *Certiorari*][2] are the September 19, 2007 Resolution[3] and May 29, 2009 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 100249 dismissing outright the Petition for Annulment of Final Resolution[5] under Rule 47 of the Rules of Court filed by Arturo C. Calubad (Calubad) on the ground that he had other available remedies other than a petition for annulment under Rule 47 and there being no extrinsic fraud committed against him.

The Antecedents

Sometime in April 1992, Billy M. Aceron (Aceron) and Oliver R. Soriano (Oliver) entered into an unnotarized Deed of Conditional Sale[6] for a consideration of ₱1.6 million over a parcel of land located in Quezon City with an area of 760 square meters and covered by Transfer Certificate of Title (TCT) No. 15860 registered in the name of spouses Francisco R. Soriano and Rosa R. Soriano (Spouses Soriano). The latter had donated

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[2] *Rollo*, pp. 20-49.

[3] CA *rollo*, pp. 121-126 penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Monina Arevalo-Zenarosa.

[4] Id. at 161-162; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Conrado M. Vasquez and Celia C. Librea-Leagogo.

[5] Id. at 22-25.

[6] Records, Vol. I, pp. 129-131.

the subject property to their son, Oliver. Since the title over the subject property was yet to be reconstituted in the name of Oliver, the parties entered into a Deed of Conditional Sale which provided that Oliver shall cause the reconstitution of title and transfer of ownership to Aceron. Meanwhile, Aceron may take possession of the subject property upon payment of ₱300,000.00.[7]

In October 1992, the title was reconstituted, prompting Aceron to demand from Oliver the execution of a Deed of Absolute Sale. However, Oliver informed Aceron that he would cancel the Deed of Conditional Sale. Hence, on October 19, 1993, Aceron filed a Complaint[8] before the Regional Trial Court (RTC) of Quezon City, Branch 96 docketed as Civil Case No. Q-93-18011 praying that Oliver execute the Deed of Absolute Sale and pay damages. On the other hand, Oliver claimed that he had to cancel the Deed of Conditional Sale because Aceron failed to pay the total amount of the contract.[9]

On December 26, 1996, the RTC in Civil Case No. Q-93-18011 rendered its Decision[10] in favor of Aceron and ordered Oliver to execute a Deed of Absolute Sale over the subject property and pay ₱25,000.00 as attorney's fees. Aceron filed an appeal[11] before the CA praying for payment of moral and exemplary damages and additional attorney's fees. However, the appellate court, in its February 18, 2002 Decision,[12] denied his appeal and affirmed the RTC's Decision dated December 26, 1996 which became final and executory on August 5, 2003.

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[7] *Rollo*, p. 109.

[8] Records, Vol. I, pp. 1-8.

[9] Id. at 35-39.

[10] Id. at 186-198, penned by Judge Hilario L. Laqui.

[11] Id. at 199.

[12] Id. at 262-269; penned by Associate Justice Andres B. Reyes, Jr. (retired Associate Justice of the Supreme Court) and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino.

Thereafter, on July 4, 2003, the trial court granted the motion for writ of execution filed by Oliver.[13]

On August 5, 2003, the Register of Deeds of Quezon City issued TCT No. N-253373[14] in the name of Oliver. Thereafter, on November 5, 2003, Oliver informed Aceron of the notarial rescission of the Deed of Conditional Sale and demanded that he vacate the subject property within five days.[15]

On December 17, 2003, Oliver obtained a loan in the amount of ₱1.6 million from petitioner Calubad and as a security therefor, he mortgaged the subject property covered by TCT No. N-253373.[16]

Thereafter, on January 9, 2004, Aceron moved for the execution of the RTC's December 26, 1996 Decision which was granted by the trial court in its March 5, 2004 Order.[17] Thus, on April 1, 2004, Aceron deposited the amount of ₱970,000.00 at the Office of the Clerk of Court.[18] However, Oliver failed to deliver TCT No. N-253373 as ordered.

Hence, Aceron moved that Oliver be divested of his title over the subject property and that it be transferred to him.[19] However, Oliver manifested that he could not surrender the title because it was already mortgaged to petitioner Calubad before the issuance of the RTC's March 5, 2004 Order.[20] On July 23, 2004, Aceron moved that Oliver's title and ownership over the subject property be transferred to his name, free from all liens and encumbrances, pursuant to the CA's Decision dated February 18, 2002.[21]

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[13] Id. at 279.

[14] Id. at 301-304.

[15] Id. at 286.

[16] Id. at 331-334.

[17] Id. at 306-307.

[18] Id. at 312.

[19] Id. at 317-318.

[20] Id. at 321.

[21] Id. at 322-323.

On October 3, 2004, Aceron filed an Omnibus Motion[22] praying that: (a) petitioner Calubad deliver TCT No. N-253373 in the name of Oliver; (b) Oliver and Calubad refrain from doing acts that would adversely affect the delivery of TCT No. N-253373; (c) Oliver execute a Deed of Absolute Sale in favor of Aceron; (d) Oliver be divested of his title over the subject property; and (e) the ownership over the subject property be transferred to Aceron free from all liens and encumbrances.

On December 13, 2004, the trial court granted[23] Aceron's Omnibus Motion which became final and executory on January 20, 2005, to wit:

> WHEREFORE, the motion is GRANTED. The Court hereby declares that:
>
> 1. Defendant Oliver Soriano is hereby divested of his ownership over the property covered by TCT No. N-253373. Defendant may withdraw the amount deposited by plaintiff totaling to P970,000.00 as payment of the balance of the purchase price as DIRECTED by this court in its 05 March 2004 Order;
>
> 2. The Register of Deeds of Quezon City is hereby DIRECTED to issue a new title in the name of plaintiff BILLY ACERON free from all encumbrances and/or liens which shall have the force and effect of a conveyance in due form of law;
>
> 3. The mortgage and consequent foreclosure sale as null and void.
>
> SO ORDERED.[24]

Hence, Calubad filed a petition[25] under Rule 65 before the appellate court docketed as CA-G.R. SP No. 88415, assailing the RTC's Resolution dated December 13, 2004 on the ground that it did not acquire jurisdiction over his person as he was not a party to the case and was not given a day in court. Thus, he could not be subject of the assailed Order.

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[22] Id. at 328-330.

[23] Id. at 342-345.

[24] Id. at 344-345.

[25] Records, Vol. 2, at 359-381.

On March 14, 2006, the appellate court rendered its Decision[26] in CA-G.R. No. SP No. 88415 dismissing Calubad's petition for being an improper remedy. Calubad moved for the reconsideration thereof which was denied by the appellate court in its March 27, 2007 Resolution.[27]

Calubad filed a petition for review on *certiorari* under Rule 45 before this Court. However, the same was denied in our June 6, 2007 Resolution which became final and executory on August 1, 2007.[28]

Assailed Ruling of the Court of Appeals:

On August 23, 2007, Calubad filed a Petition for Annulment of Final Resolution[29] under Rule 47 of the Rules of Court docketed as CA-G.R. SP No. 100249, which sought to annul the RTC's Resolution dated December 13, 2004 in Civil Case No. Q-93-18011.

However, on September 19, 2007, the appellate court dismissed[30] outright Calubad's petition on the ground that he had been negligent in not pursuing an action or remedy to protect his legal interest upon knowledge of Aceron and Oliver's pending case as per his receipt of a copy of Aceron's Manifestation with Prayer to Reset Hearing on the Omnibus Motion dated October 26, 2004.

Section 1, Rule 47 of the Rules of Court governs the annulment of judgments or final orders and resolutions of the RTC in which ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. The appellate court ruled that petitioner had

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[26] Id. at 623-631; penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Rodrigo V. Cosico and Martin S. Villarama, Jr. (now retired SC Justice).

[27] Id. at 667.

[28] *Rollo*, p. 119.

[29] CA *rollo*, pp. 2-25.

[30] Id. at 86-91.

the opportunity to institute an appropriate legal action rather than the annulment of resolution under Rule 47 of the Rules of Court. In addition, the appellate court held that no extrinsic fraud was committed against petitioner.

Calubad moved for the reconsideration of the CA's September 19, 2007 Resolution. However, it was denied by the appellate court in its May 29, 2009 Resolution.[31] Hence, Calubad filed this Petition for Review on *Certiorari* under Rule 45.

ISSUES

The issues to be resolved in this case are the following:

I. Whether or not the appellate court has jurisdiction to: (a) cancel the annotations of the real estate mortgage and certificate of sale in favor of Calubad on TCT No. N-253373; (b) declare the real estate mortgage and foreclosure sale as null and void; and (c) declare Calubad as mortgagee in bad faith, despite the fact that Calubad is not a party to Civil Case No. Q-93-18011 and there was no notice of *lis pendens* on TCT No. N-253373.

II. Whether or not the appellate court is correct in dismissing the petition for annulment and in finding that Calubad has available remedies other than a petition for annulment of judgment or final resolution under Rule 47 of the Rules of Court.

Petitioner Calubad argues that there was no notice of *lis pendens* of Civil Case No. Q-93-18011 on TCT No. 15860 registered in the name of the Spouses Soriano nor on TCT No. N-253373 registered in the name of Oliver. He was not informed by Oliver or anyone regarding the existence of Civil Case No. Q-93-18011 before he agreed for the subject property covered by TCT No. N-253373 to be used as a security for the loan he extended to Oliver. Aceron had enough opportunity to file a notice of *lis pendens* but the latter failed to do so. Hence,

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[31] Id. at 161-162.

petitioner Calubad contends that he cannot be faulted when he relied on TCT No. N-253373.

He further claims that pursuant to the ruling in *Lim v. Chuatoco*,[32] he has the right to rely on the correctness of the certificate of title and he is not obliged to go beyond the certificate to determine the condition of the property. He contends that he is not a party to Civil Case No. Q-93-18011. Although he was furnished a copy of Aceron's Omnibus Motion dated October 3, 2004, he received the same after the scheduled hearing. In fact, Aceron filed a Manifestation with Prayer to Reset Hearing of the Omnibus Motion dated October 26, 2004 as there was no proof of service upon Oliver or his counsel, or petitioner Calubad. However, the trial court did not reset the hearing of Aceron's Omnibus Motion. Instead, it issued the assailed Resolution dated December 13, 2004.

Moreover, even if he received a copy of the said Omnibus Motion, petitioner Calubad opines that he has no personality to submit a comment or an opposition thereto as he was not a party to the said case. He also cannot file a motion for intervention as the case became final and executory in 2002, long before his receipt of Aceron's Omnibus Motion dated October 3, 2004. In addition, he cannot file a petition for relief from judgment under Rule 38 as it is available only to a party to the case where judgment or final order is made through fraud, accident, mistake or excusable negligence.

Instead, petitioner Calubad explains that he filed a petition for review on *certiorari* before the CA which was however dismissed on the ground of improper remedy. Hence, he filed this petition for annulment of judgment or resolution under Rule 47. He prayed that the CA's decision declaring the real estate mortgage and foreclosure sale as null and void be reversed and set aside and that the certificate of sale on the new title issued to Aceron be cancelled on the ground that as a party not included in the case, he cannot be bound by the said decision.

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[32] 493 Phil. 460, 469 (2005).

On the other hand, Aceron cites *Vda. De Medina v. Cruz*[33] where the petitioner therein acquired the right over the subject property after the original action was commenced and became final and executory. Similarly, herein petitioner Calubad acquired the right of a mortgagee after Civil Case No. Q-93-18011 has attained finality. Hence, having the force of law, it should be enforced against petitioner Calubad even though he is not a party thereto.

Moreover, petitioner Calubad cannot be considered a mortgagee in good faith because during the execution of the mortgage contract, Aceron was in possession of the subject property. Later, Oliver, accompanied by armed men, forcibly took possession of the subject property and Aceron's properties. Clearly, at that time, petitioner Calubad already knew of the trial court's decision in Civil Case No. Q-93-18011. Lastly, Aceron contends that as correctly found by the appellate court, there is no extrinsic fraud perpetrated against petitioner Calubad.

Oliver, on the other hand, opines that he was in good faith when he rescinded the Deed of Conditional Sale because Aceron failed to pay the balance of the purchase price. In fact, Aceron only made payment eleven (11) years after it had become due by depositing the amount with the court. By that time, the value of the subject property had considerably appreciated. Oliver also claims that he filed a motion for execution on May 21, 2003. However, Aceron delayed the execution of the judgment.

He further claims that the mortgage contract was done in good faith because it was executed after the rescission of the Deed of Conditional Sale and before the consignation of the balance of the purchase price. Thus, he cannot be faulted for mortgaging the subject property to petitioner Calubad.

The Court's Ruling

We find the petition without merit.

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[33] 244 Phil. 40, 48 (1988).

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy.[34] In addition, it may be invoked only on two grounds, namely, extrinsic fraud and lack of jurisdiction. None of these grounds are present in this case.

First, the RTC acted within its jurisdiction when it resolved the motion for execution filed by Aceron and consequently issued Resolution dated December 13, 2004 which divested Oliver of his ownership over the subject property and directed the Register of Deeds to issue a new title in the name of Aceron. It further declared petitioner Calubad's real estate mortgage and foreclosure sale as null and void.

Jurisdiction is the authority to decide a case, and not the decision rendered therein.[35] Evidently, the RTC acquired jurisdiction over the subject matter and over the persons of Oliver and Aceron. Moreover, the present case has already become final and executory when the court *a quo* issued its assailed Resolution which justifies its subsequent issuance thereof to put the judgment into effect. In a petition for annulment of judgment based on lack of jurisdiction, petitioner Calubad must show not merely abuse of jurisdictional discretion but an absolute lack of authority to hear and decide the case which he failed to do so.

Neither is there extrinsic fraud in the case at bar which would deprive petitioner Calubad to intervene and present his case in Civil Case No. Q-93-18011. The records show that Oliver, admittedly, mortgaged the subject property to petitioner Calubad after the decision in Civil Case No. Q-93-18011 had become final and executory. Hence, at the time Oliver mortgaged the subject property to petitioner Calubad, the issue of ownership over the subject property was already settled in favor of Aceron. On these reasons, petitioner Calubad failed to convince this

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[34] *Heirs of So v. Obliosca*, 566 Phil. 397, 406 (2008) citing *Orbeta v. Sendiong*, 501 Phil. 478, 489 (2005).

[35] *Heirs of So v. Obliosca*, id. at 407.

Court that there are valid grounds to grant the petition for annulment of judgment.

Moreover, a judgment that has become final is immutable and unalterable and can no longer be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land.[36] In addition, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[37] It serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist.[38]

Nonetheless, Section 47(b), Rule 39 of the Rules of Court explicitly provides that a judgment of the court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court,[39] to wit:

> Section 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows

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[36] *Dare Adventure Farm Corp. v. Court of Appeals*, 695 Phil. 681, 689 (2012) citing *Peña v. Government Service Insurance System (GSIS)*, 533 Phil. 670, 689-690 (2006).

[37] *Dare Adventure Farm Corp. v. Court of Appeals, id.* citing *Land Bank of the Philippines v. Arceo*, 581 Phil. 77, 86 (2008) and *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2001).

[38] *Dare Adventure Farm Corp. v. Court of Appeals, id.* citing *Apo Fruits Corporation v. Court of Appeals*, 622 Phil. 215, 231 (2009).

[39] *Dare Adventure Farm Corp. v. Court of Appeals, id.* citing *Villanueva v. Velasco*, 399 Phil. 664, 673 (2000); *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475, 495 (1998).

x x x x x x x x x

(b) In other cases, **the judgment or final order is**, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, **conclusive between the parties and their successors in interest by title subsequent to the commencement of the action** or special proceeding, litigating for the same thing and under the same title and in the same capacity; x x x [Emphases ours.]

While it is true that petitioner Calubad is not a party to Civil Case No. Q-93-18011, the foregoing provision states that the Resolution dated December 13, 2004 is conclusive and binding upon him being the successor-in-interest of Oliver who acquired title to the subject property after Civil Case No. Q-93-18011 has become final and executory. As a general rule, a person not impleaded and given the opportunity to present his or her case cannot be bound by the decision.[40] However, having acquired alleged interest over the subject property only after the finality of Civil Case No. Q-93-18011, he is bound by the judgment and the determination of rights of the original parties therein.

In other words, Calubad, being a privy to the judgment debtor, Oliver, can be reached by an order of execution.[41] Evidently, petitioner Calubad's claim over the subject property is not adverse to that of Oliver as he derived his alleged ownership or interest thereof from Oliver by virtue of a contract of loan and deed of real estate mortgage. Hence, petitioner Calubad cannot enforce his alleged interest or claim over the subject property as against Aceron who is the adjudged owner of the subject property in Civil Case No. Q-93-18011 against his predecessor-in-interest Oliver; nor exempt himself from the execution of Civil Case No. Q-93-18011 on the pretext that he is a purchaser in good faith and for value relying on the indefeasibility of a Torrens title.

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[40] *Dare Adventure Farm Corp. v. Court of Appeals, id.* at 690 citing *Muñoz v. Yabut, Jr.*, 665 Phil. 488, 570 (2011).

[41] *Church Assistance Program, Inc. v. Sibulo*, 253 Phil. 404, 410 (1989).

Furthermore, petitioner Calubad's resort to the remedy of annulment of judgment under Rule 47 is unnecessary as the same extends only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. As a non-party in Civil Case No. Q-93-18011, petitioner Calubad could not bring the action for annulment of judgment considering that the remedies of new trial, reconsideration, appeal or setting the judgment aside through a petition for relief[42] are not available to him in the first instance.

Moreover, even assuming that petitioner Calubad can avail of the relief under Rule 47, such an action would not finally determine his rights over the subject property as against the competing rights of the original parties. Annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with.[43]

Finally, an action for annulment of judgment under Rule 47 of the Rules of Court does not involve the merits of the final order of the trial court. The issues of whether the subsequent mortgage of the subject property by Oliver to petitioner Calubad and the indefeasibility of a Torrens title give petitioner a right of ownership over the subject property superior to that of Aceron are outside the scope of the present petition for review. To resolve such issues requires a review of evidence which this Court obviously cannot do in this petition. An action for annulment of judgment is an independent action where the judgment or resolution sought to be annulled is rendered and is not an appeal of the judgment or resolution therein. Thus,

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[42] *Dare Adventure Farm Corp. v. Court of Appeals*, *supra* note 36 at 691.

[43] *Dare Adventure Farm Corp. v. Court of Appeals*, *id.* citing *Antonio v. The Register of Deeds of Makati*, 688 Phil. 527, 537-539 (2012); *Barco v. Court of Appeals*, 465 Phil. 39, 64 (2004).

the issue of petitioner Calubad's alleged interest on or ownership of the subject property cannot be addressed in this petition for review.

WHEREFORE, the Petition is **DENIED**. The assailed September 19, 2007 Resolution and May 29, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 100249 are hereby **AFFIRMED**. Costs on petitioner.

SO ORDERED.

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

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 194359. September 2, 2020]

ANICIA S. LIBUNAO, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA THROUGH MISAPPROPRIATION OR CONVERSION; ELEMENTS. — Estafa through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b) of the RPC. The elements of the said crime 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 a denial of the receipt thereof; (3) that the misappropriation, 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.; TO BE CONVICTED OF ESTAFA THROUGH MISAPPROPRIATION OR CONVERSION, IT IS NECESSARY THAT THE OFFENDER HAD BOTH MATERIAL AND JURIDICAL POSSESSION OF THE MONEY, GOODS, OR OTHER PERSONAL PROPERTIES MISAPPROPRIATED; NOT PRESENT IN THE CASE AT BAR. — To be convicted of Estafa through misappropriation or conversion, it is necessary that the offender had both material and juridical possession of the money, goods, or other personal properties he misappropriated. x x x In this case, petitioner received the payments of the customers of Baliuag on behalf of the latter. In fact, as provide in the Information, petitioner received the payments of the customers of Baliuag in her capacity as cashier of the latter. Thus, petitioner only had material possession over the money paid by the customers of Baliuag. Petitioner was merely a collector of the payments and she has the obligation to immediately remit the same to Baliuag. Petitioner's function as cashier of Baliuag is akin to that of a

bank teller who has no juridical possession over the missing funds. Therefore, petitioner cannot be convicted of Estafa through misappropriation.

3. **ID.; THEFT; ELEMENTS. —** Article 308 of the RPC defines theft as that which is committed by any person, who with intent to gain but without violence, against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. The elements of the crime of theft are: (1) there was 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 with intent to gain; and (5) the taking was done without violence or intimidation against person, or force upon things.

4. **ID.; ID.; PROPER IMPOSABLE PENALTY. —** As provided for under Article 309(3) of the RPC, as amended by Republic Act No. 10951, when the value of the property stolen exceeds ₱20,000.00 but does not exceed ₱600,000.00, the penalty prescribed is *prision correccional* in its minimum and medium periods. Considering that there is no mitigating or aggravating circumstance, the penalty should be imposed in its medium period, or one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (11) months and ten (10) days. Applying the Indeterminate Sentence Law, the minimum of the period should be taken within the range of the penalty next lower to that prescribed by law, or within the ranges of *arresto mayor* medium to maximum, or two (2) months and one (1) day to six (6) months.

APPEARANCES OF COUNSEL

Kenneth Joey Maceren for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by Anicia S. Libunao (petitioner) assailing the Decision[2] dated August 10, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 31439 which affirmed with modification the Judgment[3] dated August 15, 2007 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 14, finding petitioner guilty beyond reasonable doubt of the crime of Estafa under Article 315, paragraph l(b) of the Revised Penal Code (RPC).

Petitioner was charged with Estafa under Article 315, paragraph l(b) of the RPC, under the following Information:

> That on or about and during the period covered from April 1994 to October 1995, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being an employee has defraud (*sic*) the Baliuag Marketing Co., Inc., in the following manner, to wit: the said accused by taking advantage of her position as cashier, having collected and received money in form of cash and checks in the total sum of ₱304,040.00 from several customers in payment of the products taken from the Baliuag Marketing Co., Inc., covered by various sales invoices under the express obligation on the part of the said accused to immediately account for and deliver the collections so made by her to the Baliuag Marketing Co., Inc., and once the said amount of ₱304,040.00 was in the accused's possession with intent to defraud, she did then and there willfully, unlawfully and feloniously misappropriated, misapply and convert the same to her own personal use and benefit, to the damage and prejudice of the Baliuag Marketing Co., Inc., in the aforesaid amount of ₱304,040.00, Philippine Currency.[4]

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[1] *Rollo,* pp. 23-39.

[2] Penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Bienvenido L. Reyes and Estela M. Perlas-Bernabe (now a Member of this Court); id. at 44-69.

[3] Penned by Judge Petrita Braga Dime; id. at 75-82.

[4] Id. at 73-74.

Version of the Prosecution

Baliuag Marketing Co., Inc., (Baliuag) is a corporation engaged in the business of selling among others, agricultural and chemical products. It has several branches, one of which is in San Miguel, Bulacan.[5]

Petitioner was the over-all in charge of the store in San Miguel. She was in charge of the sales and the collections. From April 1994 to October 1995, the store incurred sales losses and missing merchandise. Thus, Baliuag conducted sales and stock inventories. It was then discovered that there were several falsified receipts, sales invoices and unreported sales.[6]

Helen Macasadia (Helen), the book keeper of Baliuag, testified that she checked the sales reports of petitioner. Helen identified the following invoices which amounts were unremitted to Baliuag:

a. Sales Invoice No. 100165[7] dated October 15, 1995 in the amount of ₱27,960 in the name of Dr. Edwin Tecson;[8]

b. Sales Invoice No. 100160 in the amount of ₱196,000.00 in the name of Log Bakod Multi-Purpose Corporation;[9]

c. Sales Invoice No. 4143[10] dated May 23, 1995 in the amount of ₱29,000.00 in the name of Eva Bachoco;[11]

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[5] Id. at 76.

[6] Id.

[7] Testified as "Sales Invoice No. 100165" in TSN Volume III dated August 4, 1998, p. 7; cited as "Sales Invoice No. 00165" in the Judgement dated August 15, 2007 of the RTC and the Decision dated August 10, 2010 of the CA.

[8] *Rollo*, p. 76.

[9] Id.

[10] Testified as "Sales Invoice No. 4143" in TSN Volume III August 4, 1998, p. 14; cited as "Sales Invoice No. 4142" in the Judgement dated August 15, 2007 of the RTC and the Decision dated August 10, 2010 of the CA.

[11] *Rollo*, p. 76.

d. Sales Invoice No. 98801 dated August 28, 1995 in the amount of ₱7,800.00 in the name of Lito Alcantara;[12]

e. Sales Invoice No. 98861 dated September 6, 1995, in the amount of ₱26, 340.00 under the name of Arnel Marcelo.[13]

Further, Virginia Samonte (Virginia) testified that they also discovered some discrepancies in the following sales invoices:

a. Sales Invoice No. 95155, the real amount is ₱39,480.00 but petitioner failed to remit the amount of ₱16,740.00;[14] and

b. Sales Invoice No. 95138 in the amount of ₱5,040.00 which petitioner failed to remit to Baliuag.[15]

When asked, Virginia testified that petitioner failed to remit a total amount of ₱308,880.00.[16] The prosecutor manifested that they would amend the Information to reflect the true amount but the Information was not amended.[17]

Romeo Paladin (Romeo) testified that as for Sales Invoice No. 100165[18] in the amount of ₱27,960.00, he was surprised when Helen asked him to pay the said amount indicated in the Sales Invoice because he already paid the same. Romeo also denied that the signature on the Sales Invoice was his.[19]

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[12] Id.

[13] Id.

[14] Id. at 78.

[15] Id.

[16] Id.

[17] Id. at 79.

[18] Supra note 7.

[19] *Rollo*, p. 120.

Macario Libunao, Jr. (Macario) testified that as for Sales Invoice No. 100160 in the name of Ilog Bakod Multi-purpose Corporation, they paid their obligation to petitioner sometime in November 1995.[20] Macario assumed that the checks they paid were not applied to their obligation because a personnel of Baliuag came to their office asking for the payment of their obligation.[21]

Helen testified that insofar as Sales Invoice No. 4143[22] in the amount of ₱29,000.00 under the name of Eva Bachoco, there is a corresponding Official Receipt No. 42394 in the amount of ₱10,000.00 evidencing payment. However, the said amount was not remitted by petitioner.[23]

Insofar as Sales Invoice No. 98801 in the name of Lito Alcantara, when he was confronted with the same, he claimed that he already paid the amount of ₱7,800.00 to petitioner as evidenced by an Official Receipt, but the said payment was also not remitted to Baliuag.[24]

As for Sales Invoice No. 98861 dated September 6, 1995 in the amount of ₱26,340.00 under the name of Arnel Marcelo, when the latter was confronted with the said Sales Invoice, Arnel claimed that he already paid an amount of ₱1,929.00 as evidenced by Official Receipt No. 41517. However, when Baliuag looked for the duplicate copy of the receipt, the same is in the name of Romy Santos in the amount of ₱40,697.00.[25]

Baliuag confronted petitioner with the unremitted amounts but petitioner failed to explain the discrepancy and the unremitted amounts. Baliuag demanded that petitioner return the unremitted

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[20] TSN dated November 18, 1999, pp. 13-16.

[21] *Rollo,* p. 119.

[22] Supra note 10.

[23] *Rollo,* p. 114.

[24] *Id.*

[25] *Id.* at 115-116.

amounts. Prior to the filing of the criminal complaint, petitioner made a partial payment of ₱110,000.00.[26]

Version of the Defense

Petitioner claimed that the acts attributed to her are not true. It is simply an act of harassment because she earlier filed a complaint for illegal dismissal against Baliuag. Petitioner however admitted that she was not dismissed by Baliuag, she simply stopped reporting to work because she did not like the treatment of the management. The management changed the locks of the store, investigated some customers and was very inquisitive about her personal life.[27]

Petitioner admitted that she prepared the sales invoices but she had no participation at all with respect to the delivery of the items mentioned in the sales invoices. The procedure was after preparing the invoices, she would give the same to another co-worker who would deliver or give the items to the customer. With respect to the payments, the customer can pay to whoever was present at the store at the time of payment.[28]

Insofar as Sales Invoice No. 100160, the check given by Ms. Everina Lapaz (Everina) in the amount of ₱141,000.00 was dishonored but was replaced by Everina with cash which was deposited in the account of Baliuag. As to Sales Invoice No. 4143,[29] only the amount of ₱10,000.00 was paid to her and she remitted the same to Baliuag. For Sales Invoices No. 98801 and 98861, the amount of ₱7,800.00 and ₱26,340.00, respectively, were paid to her and she deposited the same to Baliuag.[30]

On cross-examination, petitioner admitted that she was asked to explain and to account for the unremitted amounts but she

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[26] Id. at 78-80.

[27] Id. at 80-81.

[28] Id. at 80.

[29] Supra note 10.

[30] *Rollo*, p. 81.

did not make any explanation because the records of the store were no longer with her.[31]

Ruling of the Regional Trial Court

On August 15, 2007, the RTC issued a Judgment[32] finding petitioner guilty of Estafa under Article 315, paragraph 1(b) of the RPC. The RTC ruled that the prosecution was able to present all the elements of Estafa. While petitioner claimed that she deposited the payments of the customers to Baliuag, she failed to substantiate her claim.[33]

Due to the admission of the prosecution that petitioner made a partial payment of ₱110,000.00, the RTC ruled that the same should be deducted from the total amount of ₱308,880.00. Thus, her total liability is ₱198,880.00. As such, the dispositive portion of the RTC's ruling is as follows:

> WHEREFORE, in the light of the foregoing, the court finds the accused Anicia S. Libunao, guilty beyond reasonable doubt, and is hereby sentenced to suffer the penalty of imprisonment ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years of prision mayor as maximum; to pay Baliuag Marketing Co., In., the amount of Php 198,880.00; to suffer the accessory penalties provided by law and to pay the costs.
>
> SO ORDERED.[34]

Ruling of the Court of Appeals

On August 10, 2010, the CA affirmed with modification the ruling of the RTC, thus:

> WHEREFORE, with the MODIFICATION that accused-appellant is sentenced to suffer the penalty of four (4) years and one (1) day of prision correccional as minimum to twenty (20) years of reclusion

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[31] Id.

[32] Supra note 3.

[33] *Rollo*, p. 82.

[34] Id.

temporal as maximum, the Decision now on appeal finding accused-appellant Anicia S. Libunao guilty beyond reasonable doubt of the crime of Estafa under Par. 1 (b), Article 315 of the Revised Penal Code, as amended, is hereby AFFIRMED in all other respects. No pronouncement as to costs.

SO ORDERED.[35]

Petitioner's Arguments

Petitioner argues that to be convicted of Estafa under Article 315, paragraph l(b) of the RPC, she must acquire juridical possession of the money or property she allegedly converted or misappropriated. Thus, she must first acquire both material and juridical possession of the thing or money received in order to be held liable for Estafa. Petitioner being a mere employee of Baliuag, her receipt of the payments of the customers of Baliuag was by reason of her employment. As such, she did not acquire juridical possession over the sums of money she allegedly misappropriated or converted.[36]

Petitioner further argued that the prosecution failed to prove that she misappropriated or converted the money she allegedly received from the customers of Baliuag. Petitioner merely prepared the sales invoices for the customers of Baliuag. She has no participation whatsoever as to the delivery of the items listed in the sales invoices as well as to the payment of the items purchased.[37]

While petitioner admitted that a demand was made by an officer of Baliuag for her to account or return the money she allegedly misappropriated, the demand itself cannot, by any stretch, prove the existence of misappropriation.[38]

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[35] Id. at 68.

[36] Id. at 33-35.

[37] Id. at 37.

[38] Id. at 38.

Respondent's Arguments

Respondent, through the Office of the Solicitor General (OSG), argued that the prosecution has convincingly established the existence of the elements of Estafa. *First*, petitioner prepared the sales invoices and thus received payments corresponding to the sales invoices; and *second*, the said payments were misappropriated since they were not received by Baliuag.[39]

The failure of petitioner to pay the full amount of the unremitted payments upon demand raises the presumption of misappropriation.[40] The sales invoices presented are sufficient to prove the transactions that petitioner made in behalf of Baliuag with third persons. Petitioner therefore had material and juridical possession over the money paid by the customers.[41]

Petitioner cannot deny her liability for the unremitted amounts, since she had already made a partial payment of ₱110,000.00. As provided by Section 2(f), Rule 131 of the Rules of Court, it is conclusively presumed that money paid by one to another was due to the latter.[42]

Issue

Whether petitioner is guilty beyond reasonable doubt of the crime of Estafa under Article 315, par. l(b) of the RPC.

Ruling of the Court

Petitioner did not acquire juridical possession of the money misappropriated.

Estafa through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b)[43] of the RPC. The

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[39] Id. at 145-146.

[40] Id. at 154.

[41] Id. at 158.

[42] Id. at 160-161.

[43] Art. 315. *Swindling (Estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

elements of the said crime 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 a denial of the receipt thereof; (3) that the misappropriation, conversion, or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[44]

To be convicted of Estafa through misappropriation or conversion, it is necessary that the offender had both material and juridical possession of the money, goods, or other personal properties he misappropriated. As held in the case of *Cristeta Chua-Burce v. Court of Appeals*,[45] 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. Juridical possession means possession which gives the transferee a right over the thing which the transferee may set up even against the owner. The possession of a cash custodian over the cash belonging to a bank is akin to that of a bank teller, both being mere bank employees.[46]

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1. With unfaithfulness or abuse of confidence, namely:

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(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.

[44] *Gamaro v. People,* 806 Phil. 483, 497 (2017).

[45] 387 Phil. 15 (2000).

[46] Id. at 26.

As held in a more recent case of *Cherry Ann M. Benabaye v. People of the Philippines*,[47] a sum of money received by an employee on behalf of the employer is considered to be only in the material possession of the employee, thus:

> It bears to stress that a sum of money received by an employee on behalf of an employer is considered to be only in the material possession of the employee. The material possession of an employee is adjunct, by reason of his employment, to a recognition of the juridical possession of the employer. So long as the juridical possession of the thing appropriated did not pass to the employee-perpetrator, the offense committed remains to be theft, qualified or otherwise. Hence, conversion of personal property in the case of an employee having mere 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.[48]

In this case, petitioner received the payments of the customers of Baliuag on behalf of the latter. In fact, as provided in the Information,[49] petitioner received the payments of the customers of Baliuag in her capacity as cashier of the latter. Thus, petitioner only had material possession over the money paid by the customers of Baliuag. Petitioner was merely a collector of the payments and she has the obligation to immediately remit the same to Baliuag. Petitioner's function as cashier of Baliuag is akin to that of a bank teller who has no juridical possession over the missing funds. Therefore, petitioner cannot be convicted of Estafa through misappropriation.

Nevertheless, petitioner can be convicted of Theft, as punished in Article 308 of the RPC.

While it is true that petitioner did not acquire juridical possession of the payments made by the customers of Baliuag,

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[47] 755 Phil. 145 (2015).

[48] Id. at 154-155.

[49] *Rollo*, pp. 73-74.

and hence, she cannot be convicted of Estafa through misappropriation, petitioner can nevertheless be convicted of Simple Theft, under Article 308 of the RPC, since the Information filed against her sufficiently alleged all the elements of Theft.[50] It is settled that what controls is not the designation of the offense but the description thereof as alleged in the Information.[51]

Petitioner is an accountable officer since she was the cashier and over-all in-charge of the San Miguel store of Baliuag, thus her taking of the payments of the customers can be characterized as taking with grave abuse of confidence. But since the said qualifying circumstance was not alleged in the Information, petitioner can only be held guilty of simple theft.

Article 308[52] of the RPC defines theft as that which is committed by any person, who with intent to gain but without violence, against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.

The elements of the crime of theft are: (1) there was taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4)

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[50] *Ringor v. People*, 723 Phil. 685 (2013).

[51] *Santos v. People*, 260 Phil. 519, 525 (1990).

[52] Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

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 object of the damage caused by him; and

3. Any person who shall enter an inclosed 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 cereals, or other forest or farm products.

the taking was with intent to gain; and (5) the taking was done without violence or intimidation against persons, or force upon things.[53]

In this case, the prosecution has sufficiently established that petitioner, as cashier and over-all in charge of the store in San Miguel, prepared the sales invoices of the customers of Baliuag and collected payments of the customers. In fact, customers of Baliuag testified that they already paid petitioner the amount corresponding to the questioned sales invoices. Despite receipt of the said payments, petitioner failed to remit the same to Baliuag. The fact that petitioner took the payments without the consent of Baliuag was established when petitioner failed to account for the same when demanded.

Petitioner claimed that she only prepared the sales invoices and had no participation in the delivery and payment of the goods sold. She cannot argue that she is only liable for the amount of ₱19,720.00 since only the said amount was supported by official receipts. As correctly stated by the CA, sales invoices are evidence of transactions with various customers of Baliuag and with the consummation of those documents arose the presumption that money was paid to petitioner for its issuance.[54] Sales invoices are proofs that a business transaction has been concluded. Be it noted that petitioner admittedly prepared those sales invoices. Further, she cannot deny any liability for the unremitted amounts evidenced by the sales invoices and official receipts after she made partial payment in the amount of ₱110,000.00 prior to the filing of the criminal complaint against her.

As provided for under Article 309(3) of the RPC, as amended by Republic Act No. 10951,[55] when the value of the property

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[53] *People v. Mirto,* 675 Phil. 895, 905-906 (2011).

[54] *Rollo,* p. 65.

[55] 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.

stolen exceeds ₱20,000.00 but does not exceed ₱600,000.00, the penalty prescribed is *prision correccional* in its minimum and medium periods. Considering that there is no mitigating or aggravating circumstance, the penalty should be imposed in its medium period, or one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (11) months and ten (10) days. Applying the Indeterminate Sentence Law, the minimum of the period should be taken within the range of the penalty next lower to that prescribed by law, or within the range of *arresto mayor* medium to maximum, or two (2) months and one (1) day to six (6) months.

While the prosecution claimed that the total unremitted amount is ₱308,880.00, the prosecution did not amend the Information stating that the total unremitted amount is ₱304,040.00. Since petitioner and Baliuag admitted that petitioner made a partial payment of ₱110,000.00, the said amount should be deducted from the total unremitted amount as charged in the Information. Therefore, petitioner is liable to return to Baliuag the amount of ₱194,040.00, representing the balance of the unremitted amount as charged in the Information.

WHEREFORE, the petition is **DENIED.** The Decision dated August 10, 2010 of the Court of Appeals in CA-G.R. CR No. 31439 finding petitioner Anicia S. Libunao **GUILTY** beyond reasonable doubt of the crime of Estafa under Article 315 of the Revised Penal Code is **MODIFIED**. Petitioner Anicia S. Libunao is found **GUILTY** of Theft under Article 308, in relation to Article 309(3) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor* as minimum to two (2) years of *prision correccional* as maximum. Further, petitioner Anicia S. Libunao is **ORDERED** to pay Baliuag Marketing Co., Inc. the amount of ₱194,040.00 plus six percent (6%) legal interest counted from the finality of this Decision until full payment thereof.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.,* concur.

THIRD DIVISION

[G.R. No. 205099. September 2, 2020]

HEIRS OF BONDSMAN BASILIO NEPOMUCENO, namely: DELSA N. TRASMONTE, MARILOU N. DECENA, and FE VALENZUELA; and HEIRS OF BONDSMAN REMEDIOS CATA-AG, namely AMELIA CATA-AG TUMAKIN, *Petitioners*, *v*. **HON. LAURO A.P. CASTILLO, in his capacity as Acting Presiding Judge of the Regional Trial Court, 8th Judicial Region, Branch 12 in Ormoc City, and THE PEOPLE OF THE PHILIPPINES,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL, DEFINED AND EXPLAINED; OBLIGATIONS OF THE BONDSPERSONS OR SURETIES. — "Bail [is] the security given by an accused who is in the custody of the law for [their] release to guarantee [their] appearance before any court as may be required[.]" It is furnished by either the person in custody of the law or the bondspersons, which may be in the "form of corporate surety, *property bond*, cash deposit, or recognizance."

To be released on bail means that the accused is delivered "in contemplation of law, yet not commonly in real fact, to others who become entitled to [their] custody and responsible for [their] appearance when and where agreed." Upon accepting a bail obligation, the bondspersons "become in law the jailers of their principal." They must then ensure that the accused is under their close monitoring—a duty that would remain until the bond is canceled or the surety is discharged.

2. ID.; ID.; ID.; FORFEITURE OF BAIL BOND; FAILURE TO PRESENT THE ACCUSED IN COURT CONSTITUTES A BREACH THAT WARRANTS THE FORFEITURE OF THE BOND; CASE AT BAR. — As the "jailer or custodian" of an accused, the bondspersons or sureties must procure the accused's presence whenever needed. Failure to do so constitutes a breach in the conditions of the bond, warranting its forfeiture.

. . .

Here, it is undisputed that bondspersons Basilio and Cata-ag failed to present Daniel in court for his service of sentence. Despite several extensions, the bondspersons repeatedly failed to comply with the trial court's order. As such, the trial court issued the assailed November 25, 1994 Order, which *explicitly* declared the property forfeited in favor of the Republic.

3. ID.; ID.; ID.; AN ORDER OF FORFEITURE OF THE BAIL BOND DISTINGUISHED FROM JUDGMENT ON THE BOND; CASE AT BAR. — To determine whether this is an order of forfeiture or a judgment on the bond, *Mendoza v. Alarma* is instructive:

> *An order of forfeiture of the bail bond is conditional and interlocutory, there being something more to be done such as the production of the accused within 30 days. This process is also called confiscation of bond.* In *People v. Dizon*, we held that an order of forfeiture is interlocutory and merely requires appellant "to show cause why judgment should not be rendered against it for the amount of the bond." *Such order is different from a judgment on the bond which is issued if the accused was not produced within the 30-day period. The judgment on the bond is the one that ultimately determines the liability of the surety, and when it becomes final, execution may issue at once.*

An order of forfeiture is preliminary to a judgment on the bond. Being interlocutory, it does not conclusively resolve the case. A judgment on the bond, on the other hand, is a final order "which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined."

Contrary to the lower court's ruling, the November 25, 1994 Order is not the judgment on the bond for which an execution may rightfully issue. It neither determined the bondspersons' liability under the bond nor fixed the amount for which they are accountable. Moreover, it is evident from the trial court's subsequent January 27, 1995 Order that a judgment on the bond is yet to issue.

4. ID.; ID.; ID.; ID.; TO ALLOW THE BONDSPERSONS' MOTION TO PAY THE AMOUNT OF BAIL IN

EXCHANGE FOR THE PROPERTY BOND WOULD AMOUNT TO "JUST BUYING THE FREEDOM OF THE CONVICTED ACCUSED FOR ₱50,000" AND TO REWARD THE BONDSPERSONS' DISREGARD OF THEIR OBLIGATION TO BRING THE ACCUSED TO COURT WHENEVER REQUIRED. –– While it erred in directing to execute an order of forfeiture and not a judgment on the bond, the trial court correctly dismissed the bondspersons' motion to pay the amount of bail in exchange for the property bond.

. . .

In implementing the provision on forfeiture of bail, "courts generally adopt a liberal attitude towards the [bondspersons.]" After all, the State seeks "not the monetary reparation of the [bondsperson's] default, but the *enforcement and execution* of the sentence[.]" The provision on the confiscation of the bond upon failure to surrender the accused for service of the sentence "is not based upon a desire to gain from such failure; it is to compel the [bondspersons] to enhance [their] efforts to have the person of the accused produced for the execution of the sentence[.]"

Records reveal that convict Daniel seems to be at large up to now. Bondspersons Basilio and Cata-ag, who also happen to be members of Daniel's immediate family, committed an utter "breach of guaranty" when they repeatedly failed to present him in court.

From the start, the bondspersons were remiss in their duty and were more interested in taking back the property. Instead of heightening their efforts to fulfill their undertaking, they were persistent in asking that they be allowed to instead pay the amount they justified as bail. This, as the trial court correctly observed, amounts to "just buying the freedom of the convicted accused for ₱50,000.00."

Obviously, petitioners' move cannot be allowed. In assuming the undertaking, they are expected to know of the attendant risks which, as in this case, include the forfeiture of the property bond. To allow their motion is to reward their heedless disregard of their obligation as bondspersons to bring Daniel to court whenever required.

More than 25 years have passed since the trial court ordered the bondspersons to secure Daniel's appearance on June 27, 1994. The unwarranted delay in executing Daniel's conviction could have been averted had the bondspersons faithfully complied with their guaranty. This Court is all the more inclined to deny petitioners' motion.

APPEARANCES OF COUNSEL

Escalon & Escalon Law Office for petitioners.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

An order of forfeiture is different from a judgment on the bond. It is interlocutory and merely compels the bondsperson to show cause why judgment should not be issued against them for the amount of bond. On the other hand, a judgment on the bond ultimately ascertains their liability under the bond that when it becomes final, execution may promptly issue.[1]

This Court resolves the Petition for Review on Certiorari[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which dismissed[5] the Petition for Certiorari filed by the heirs of the late bondspersons Basilio Nepomuceno (Basilio) and

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[1] *Mendoza v. Alarma*, 576 Phil. 753, 760 (2008) [Per J. Carpio, First Division].

[2] *Rollo*, pp. 4-29.

[3] Id. at 32-39. The November 23, 2011 Decision in CA-G.R. SP No. 03811 was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Victoria Isabel A. Paredes of the Twentieth Division, Court of Appeals, Cebu City.

[4] Id. at 30-31. The November 26, 2012 Resolution in CA-G.R. SP No. 03811 was penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Pedro B. Corales of the Eighteenth Division, Court of Appeals, Cebu City.

[5] Id. at 38.

Remedios Cata-ag (Cata-ag). It held that the Regional Trial Court did not gravely abuse its discretion in denying their motion to pay cash bond to replace the property bond.[6]

This controversy arose when Basilio and Cata-ag posted bail comprised of real properties[7] in favor of a certain Daniel Nepomuceno (Daniel), who was adjudged guilty of homicide in Criminal Case No. 3435-0 by Branch 12 of the Ormoc City Regional Trial Court on June 27, 1990.[8] As the records reveal, the bondspersons were "immediate members of [Daniel's] family[.]"[9]

On July 23, 1990, the bondspersons moved for the extension to file justification, which the trial court granted on July 24, 1990.[10]

Meanwhile, accused Daniel filed his appeal.[11] On June 28, 1993, however, the Court of Appeals affirmed his conviction with modification on the award of civil indemnity. His conviction attained finality and an entry of judgment followed.[12]

On June 27, 1994, in view of the transfer of records to the trial court, the bondspersons were ordered to bring Daniel to court within five days from notice.[13]

On July 13, 1994, the bondspersons asked for extension of time to comply with the order. The trial court granted their

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[6] Id. at 37.

[7] Id. at 6. Based on the Petition for Review, the properties offered by Basilio and Cata-ag as property bond are covered by Tax Declaration No. 3235 with an assessed value of ₱23,720.00 and Torrens Transfer Certificate of Title No. T-3791, respectively.

[8] Id. at 33.

[9] Id. at 94.

[10] Id. at 88.

[11] Id. at 33.

[12] Id. at 88.

[13] Id. at 33.

request by giving them another 10 days from receipt of the order.[14]

An alias warrant of arrest against Daniel followed. Meanwhile, the private complainant opposed the motion for the replacement of the property posted as bail with a cash bond.[15]

On August 19, 1994, the trial court granted another extension of 30 days in favor of Basilio and Cata-ag.[16]

On November 14, 1994, the bondspersons submitted their written justification on why they failed to bring Daniel in court. At the same time, they attached an alternative motion seeking to replace the property bond with a cash bond equivalent to the amount of bail.[17]

On November 25, 1994, the Regional Trial Court issued an Order[18] forfeiting the property bond. It reads:

O R D E R

The explanation of bondsmen is noted. Considering, however, that [the bondspersons] could not produce the body of the accused within the period given, judgment is hereby rendered in favor of the Republic of the Philippines forfeiting the property bond filed in the present case.

SO ORDERED.[19]

The bondspersons moved for reconsideration and for leave to substitute the existing bond with cash bail. On December 23, 1994, the trial court denied the motions.[20]

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[14] Id.

[15] Id. at 88.

[16] Id. at 33.

[17] Id. at 89.

[18] Id. at 93. Penned by Judge Francisco H. Escaño, Jr. of Branch 12, Regional Trial Court, Ormoc City.

[19] Id.

[20] Id. at 34.

On January 24, 1995, the bondspersons moved for reconsideration of the November 25, 1994 and December 23, 1994 Orders.[21]

On January 27, 1995, the trial court likewise denied this second motion for reconsideration. Its Order[22] reads:

O R D E R

Submitted is a Second Motion for Reconsideration reiterating movant's desire to substitute their property bond with cash bond. This Court wishes to emphasize that what the government is interested in is not the ₱50,000.00 bond but in the production of the body of the convicted accused for him to serve sentence. The Court has received reliable information that convicted accused is just in Isabel, Leyte, and notwithstanding the issuance of a warrant of arrest issued by this Court and explicit directive to the Station Commander of PNP Isabel, Leyte, for the arrest of the convicted accused, convicted accused has remained at large.

Considering, therefore, that the [bondspersons] are immediate members of the family of the accused and considering further that no actual efforts had been exerted to produce the body of the convicted accused before this Court, should the property bond be substituted with cash bond[,] it will amount to the [bondspersons] just buying the freedom of the convicted accused for ₱50,000.00, this does not enhance the faith of our people in the administration of justice.

Foregoing considered, the Motion for Reconsideration is DENIED. [The bondspersons], however, are given sixty (60) days from receipt within which to produce the body of the convicted accused and upon the expiration of which this Court will render judgment against the same bond in favor of the Republic of the Philippines.

SO ORDERED.[23]

Years passed without Daniel being detained.[24]

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[21] Id. at 89.

[22] Id. at 92.

[23] Id. at 92.

[24] Id. at 34.

On May 8, 2008, the bondspersons moved for the trial court to allow them "to pay the amount of bond in lieu of the property bond, pursuant to Supreme Court A.M. No. 05-3-06-SC[.]"[25] The prosecutor commented that he would leave the matter to the trial court's discretion.[26]

On June 24, 2008, the trial court, through Acting Presiding Judge Lauro A.P. Castillo (Castillo), denied the motion. It explained that the January 27, 1995 Order had since become final, "but due to the appointment of the former presiding judge vice the presiding judge who rendered judgment, and for reasons alien to [him], the said Order was not executed."[27] With the purported finality of the judgment on the bond, Judge Castillo directed its execution:

O R D E R

For consideration is the Motion to Allow the [Bondspersons] to pay the amount of bond in lieu of the property bond, pursuant to Supreme Court A.M. No. 05-3-06-SC, filed by [bondspersons] Basilio Nepomuceno and Remedios Cata[-]ag on May 8, 2008.

. . . . . .

In resolving the instant motion, which poses a novel query, this Court is guided by the pertinent provisions of the Rules of Court and relevant circulars of the Supreme Court, notably Administrative Circular No. 05-3-06-SC. Relevant excerpt thereof reads:

"IV. (B.) When Property Bond Forfeited:

1. Forfeiture of Property Bond. — . . .

. . . . . .

Failing in these two requisites, a judgment shall be rendered against the [bondspersons], jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the [bondspersons], unless the accused has been

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[25] Id. at 88.

[26] Id. at 89.

[27] Id.

surrendered or is acquitted. (Sec. 21, supra, with amendments.) The [bondspersons] shall have sixty (60) days from their receipt of the judgment within which to pay the amount he/[she]/they justified.

. . . . . .

As can be readily gleaned from the afore-quoted Supreme Court Administrative Circular No. 05-3-06-SC, the [bondspersons] are given sixty (60) days from their receipt of the judgment within which to pay the amount he/[she]/they justified. *A copy of the Order of the Court dated January 27, 1995, in which it denied the second motion for reconsideration, was furnished to the [bondspersons] as well as to their counsel and to the other counsels, per registry receipts attached to the back of said order. From the time of their receipt of the said order up to the time they filed their latest motion[,] which is [the] subject of this Resolution, a period of more than [t]en (10) years has lapsed. There is no question therefore that the said order has attained finality. Accordingly, such order may no longer be disturbed, no matter how correct or erroneous it may be.*

But they are not entirely without any remedy, for the relief available to them is clearly provided under the quoted provision of Adm. Circular No. 05-3-06-SC. All they need to do is avail of the same in due time.

WHEREFORE, premises considered, and for the reason that the said Order forfeiting the bond posted by the [bondspersons] Basilio Nepomuceno and Remedios Nepomuceno [sic] has attained finality and may no longer be disturbed, their motion is **DENIED**.

The Judgment on the Bond having become final, let the same be executed in accordance with [Adm.] No. 05-3-06-SC. Accordingly, the Branch Clerk of Court is hereby directed to ensure that compliance with the pertinent provisions of the said circular is observed.

SO ORDERED.[28] (Emphasis supplied)

Insisting that there was still no judgment on the bond, the bondspersons moved to reconsider.[29]

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[28] Id. at 88-90.

[29] Id. at 35.

On August 5, 2008, the trial court denied the motion. It underscored that it had already issued a judgment forfeiting the property bond in favor of the Republic on November 25, 1994, as reinforced in its June 24, 2008 Order.[30]

Thus, the heirs of bondspersons Basilio and Cata-ag filed a Petition for Certiorari[31] before the Court of Appeals, claiming that the trial court gravely abused its discretion in issuing the June 24, 2008 and August 5, 2008 Orders.[32]

They claimed that in denying their motion to pay the amount justified as bail, the trial court failed to consider the pertinent provisions of A.M. No. 05-3-06-SC and this Court's ruling in *Mendoza v. Alarma*.[33] They added that without a judgment on the bond, the trial court's implied order of execution in its June 24, 2008 Order was an absolute nullity for failure to afford due process.[34]

After the parties had exchanged pleadings,[35] the Court of Appeals on November 23, 2011 dismissed[36] the Petition for lack of merit.[37] It explained that under Rule 114, Section 21 of the Revised Rules of Criminal Procedure, the bond was already forfeited when the bondspersons failed to bring Daniel to court when first directed to do so:

In the instant case, the bond had been forfeited when the bondspersons failed to produce the body of the accused when first

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[30] Id. at 91.

[31] Id. at 67-87.

[32] Id. at 33.

[33] Id. at 72 citing *Mendoza v. Alarma*, 576 Phil. 753 (2008) [Per J. Carpio, First Division].

[34] Id. at 82.

[35] Id. at 102-114, respondent's Comment; *rollo*, pp. 115-122, petitioners' Reply; *rollo*, pp. 124-142, petitioners' Memorandum; *rollo*, pp. 143-153, respondent's Memorandum.

[36] Id. at 32-39.

[37] Id. at 38.

required to do so. The bondspersons were repeatedly given extensions of time within which to fulfill their obligation. *Failing to do so, they submitted a written explanation and moved to substitute the property bond with cash. After a lapse of more than thirty (30) days, with the bondpersons still failing to produce the accused, the court issued the November 25, 1994 Order rendering judgment on the bond.* From the said Order, the bondspersons filed a motion for reconsideration, and incorporated therein a motion to change the property bond to cash so that the former may be cancelled, which motions were both denied by the court. The bondspersons filed a second motion for reconsideration, which was still denied by the court on January 24, 1995.[38] (Emphasis supplied)

The Court of Appeals ruled that despite the wording of the January 24, 1995 Order, the trial court nevertheless maintained that its November 25, 1994 Order was a judgment on the bond, as reinforced in its June 24, 2008 Order. Thus, it declared, the bondspersons may not argue having been denied due process as they had been given the chance to explain why they failed to comply with the trial court's directive.[39]

As to the bondspersons' move to pay the amount of bond as substitute for the property bond, the Court of Appeals cited *People v. Cawaling*[40] and held that the trial court did not err in denying the motion.[41]

On November 26, 2012, the Court of Appeals denied[42] the motion for reconsideration[43] filed by the bondspersons' heirs. Hence, they filed this Petition for Review.[44]

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[38] Id. at 36-37.

[39] Id. at 37.

[40] 603 Phil. 749 (2009) [Per J. Nachura, Third Division].

[41] *Rollo*, pp. 37-38.

[42] Id. at 30-31.

[43] Id. at 40-58.

[44] Id. at 4-29. Petitioners also ask, among others, "[t]hat the Orders of the lower court dated June 24, 2018 and August 5, 2008, respectively, be annulled and set-aside."

Contrary to the Court of Appeals' ruling, petitioners assert that the November 25, 1994 Order is not a judgment on the bond but merely an order of forfeiture.[45] Pointing out that the trial court's January 27, 1995 Order gave them 60 days to bring Daniel to court, they assert that a judgment on the bond will only be issued afterward.[46] However, they argue that no judgment on the bond followed, which would supposedly determine the extent and amount of their liability.[47]

Citing *Mendoza*,[48] petitioners add that to deem the November 25, 1994 Order as a judgment on the bond would violate their right to procedural due process. They insist that the Order was an order of forfeiture, which was interlocutory and cannot attain finality. They thus claim that the June 24, 2008 Order directing an execution was an absolute nullity.[49]

As to the payment of bail amount in lieu of the property bond, petitioners claim that the Court of Appeals erred in relying on *Cawaling* instead of the pertinent provisions of A.M. No. 05-3-06-SC.[50]

Petitioners note that based on the rules and *Mendoza*, there should first be a judgment determining the amount of bail against the bondspersons before execution and public auction. As there was no judgment on the bond rendered against them and they are more than willing to pay the amount of bail ever since, they assert that a public auction is but superfluous.[51] Hence, among others, they ask this Court to issue an order permitting them to pay the amount they justified as bail, in exchange for the release of the property bond.[52]

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[45] Id. at 11-12.

[46] Id. at 15-16.

[47] Id. at 16-18.

[48] 576 Phil. 753 (2008) [Per J. Carpio, First Division].

[49] *Rollo*, pp. 17-25.

[50] Id. at 21-23.

[51] Id. at 23-26.

[52] Id. at 26.

In its Comment,[53] respondent People of the Philippines, through the Office of the Solicitor General, counters that the trial court correctly forfeited the property bond and rendered judgment against the bondspersons when they failed to surrender Daniel within the time prescribed by the Rules.[54]

Despite the tenor of the January 27, 1995 Order, respondent maintains that the trial court had already rendered a judgment on the bond as early as November 25, 1994. Moreover, when the bondspersons were given 60 days to fulfill their undertaking, more than 10 years had passed but they still failed to bring Daniel in court without plausible explanation. Respondent adds that the amount of the bond had long been established and the trial court has nothing more to do but to execute it.[55]

Disagreeing with petitioners' claim that they were denied due process, respondent maintains that the bondspersons were given all the chances to explain and even filed a number of pleadings, including motions for reconsideration. Respondent argues that petitioners were merely negligent in bringing Daniel to court.[56]

As to petitioners' move to substitute the property bond, respondent asserts that the trial court did not err in denying the motion. It underscores that up to now, the bondspersons could neither present Daniel in court nor explain such failure.[57] Allegedly, petitioners are aware that the property bond they posted should be confiscated in favor of the State, yet "they insist on not giving up their property."[58]

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[53] Id. at 162-178.

[54] Id. at 168-170.

[55] Id. at 172-173.

[56] Id. at 174-175.

[57] Id. at 175.

[58] Id. at 176.

In their Reply,[59] petitioners reiterate their earlier arguments. They emphasize that the trial court should have entertained their motion for the cash payment of ₱50,000.00, as they would be merely paying the equivalent amount imposed upon the property bond. Allegedly, not only is such motion sanctioned by pertinent rules, but it "would eradicate further usage of the State's effort, time, money, and other resources which would also result in the accumulation of the same amount of the bond."[60]

For this Court's resolution is whether or not the Court of Appeals erred in ruling that the trial court did not gravely abuse its discretion in issuing the assailed Orders. Subsumed under this issue are the following:

First, whether or not the November 25, 1994 Order is a judgment on the bond; and

Second, whether or not bondspersons Basilio Nepomuceno and Remedios Cata-ag may, in lieu of the property bond, pay the amount of bail in cash.

The Petition is partly granted.

I

"Bail [is] the security given by an accused who is in the custody of the law for [their] release to guarantee [their] appearance before any court as may be required[.]"[61] It is furnished by either the person in custody of the law or the bondspersons, which may be in the "form of corporate surety, *property bond*, cash deposit, or recognizance."[62]

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[59] Id. at 189-196. The counsel for petitioners had been required to show cause why they should not be disciplinary dealt with for their failure to file a Reply within the period prescribed; *see* also *rollo*, pp. 185-188, *Explanation and Compliance*.

[60] Id. at 194.

[61] *Leviste v. Court of Appeals*, 629 Phil. 587, 593 (2010) [Per J. Corona, Third Division].

[62] RULES OF COURT, Rule 114, Sec. 1.

To be released on bail means that the accused is delivered "in contemplation of law, yet not commonly in real fact, to others who become entitled to [their] custody and responsible for [their] appearance when and where agreed."[63] Upon accepting a bail obligation, the bondspersons "become in law the jailers of their principal."[64] They must then ensure that the accused is under their close monitoring — a duty that would remain until the bond is canceled or the surety is discharged.[65]

Rule 114, Section 2 of the then[66] prevailing 1985 Rules of Criminal Procedure provides the following conditions of the bail:

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 remain in force at all stages of the case until its final determination, unless the proper court directs otherwise;

b. *The accused shall appear before the proper court whenever so required by the court or these Rules*;

c. The failure of the accused to appear at the trial without justification despite due notice shall be deemed an express waiver of his right to be present on the date specified in the notice. In such case, the trial may proceed *in absentia*; and

d. *The accused shall surrender himself for execution of the final judgment*.

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[63] *Philippine Phoenix Surety v. Sandiganbayan*, 233 Phil. 327, 331-332 (1987) [Per J. Fernan, Second Division]. The 1964 Rules of Court is a predecessor of the then prevailing 1985 Rules of Criminal Procedure.

[64] *Id.* at 332.

[65] *Id.* at 334.

[66] Considering that the property bond posted by bondspersons Basilio and Cata-ag was approved before the Court of Appeals affirmed Daniel's conviction on June 28, 1993, we apply the pertinent provisions of the 1985 Rules of Criminal Procedure.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions herein required. Photographs (passport size) taken recently showing the face, left and right profiles of the accused must be attached thereto. (Emphasis supplied)

As the "jailer or custodian" of an accused, the bondspersons or sureties must procure the accused's presence whenever needed. Failure to do so constitutes a breach in the conditions of the bond, warranting its forfeiture.[67]

Corollary to this, Rule 114, Section 18[68] of the same Rules provides:

SECTION 18. *Forfeiture of Bail Bond. — When the presence of the accused is specifically required by the court, or these Rules, his bondsmen shall be notified to produce him before the court on a given date. If the accused fails to appear in person as required, the bond shall be declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond.* Within the said period, the bondsmen:

(a) must produce the body of their principal or give the reason for his non-production; and

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[67] *People v. Mabini Insurance & Fidelity Co., Inc.*, 242 Phil. 234, 241 (1988) [Per J. Gancayco, First Division].

[68] In Supreme Court Administrative Circular No. 12-94, this provision was replicated and renumbered as Section 21. In the 2000 Revised Rules of Criminal Procedure (as also observed in *Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*, 508 Phil. 86 (2005) [Per J. Tinga, Second Division]), the provision was merely reiterated but with the only notable change that the notice to the bondspersons shall not only provide for a specific date, but also a given time. Thus:

Section 21. *Forfeiture of Bail*. — When the presence of the accused is required by the court or these Rules, *his bondsmen shall be notified to produce him before the court on a given date* ***and time***. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. (Emphasis supplied)

(b) must explain satisfactorily why the accused did not appear before the court when first required to do so.

Falling in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bond, and the court shall not reduce or otherwise mitigate the liability of the bondsmen, except when the accused has been surrendered or is acquitted. (Emphasis supplied)

Here, when the records were remanded to the trial court upon the finality of Daniel's conviction,[69] the bondspersons were directed on June 27, 1994 to present him in court within five days from notice. Upon asking for extension, the bondspersons were given additional 10 days, followed by another 30 days. When they still failed to comply with the trial court's directive, they submitted their justification on November 14, 1994, and similarly sought to replace the property bond with cash bail.[70]

On November 25, 1994, the trial court issued the assailed Order,[71] which both the trial[72] and appellate courts[73] posited to be a judgment on the bond. Petitioners counter, however, that it is but an order of forfeiture based on the trial court's subsequent orders.[74] Allegedly, it is incomplete and does not specifically determine their liabilities under the bond.[75]

Petitioners' argument is meritorious.

When the accused fails to appear in court, the Rules provide for two situations where the trial court judge may decide against the bondspersons:

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[69] *Rollo*, p. 88.

[70] Id. at 33-34.

[71] Id. at 34.

[72] Id. at 89.

[73] Id. at 34.

[74] Id. at 12-13.

[75] Id. at 17-18.

First, the non-appearance by the accused is cause for the judge to summarily declare the bond as forfeited. *Second*, the bondsmen, after the summary forfeiture of the bond, are given thirty (30) days within which to produce the principal and to show cause why a judgment should not be rendered against them for the amount of the bond. It is only after this thirty (30)-day period, during which the bondsmen are afforded the opportunity to be heard by the trial court, that the trial court may render a judgment on the bond against the bondsmen. ***Judgment against the bondsmen cannot be entered unless such judgment is preceded by the order of forfeiture and an opportunity given to the bondsmen to produce the accused or to adduce satisfactory reason for their inability to do so.*** [76] (Emphasis supplied)

Here, it is undisputed that bondspersons Basilio and Cata-ag failed to present Daniel in court for his service of sentence. Despite several extensions, the bondspersons repeatedly failed to comply with the trial court's order. As such, the trial court issued the assailed November 25, 1994 Order, which *explicitly* declared the property forfeited in favor of the Republic:

> The explanation of bondsmen is noted. Considering, however, that [bondspersons] could not produce the body of the accused within the period given, judgment is hereby rendered in favor of the Republic of the Philippines *forfeiting the property bond filed in the present case*.[77] (Emphasis supplied)

To determine whether this is an order of forfeiture or a judgment on the bond, *Mendoza v. Alarma*[78] is instructive:

> *An order of forfeiture of the bail bond is conditional and interlocutory, there being something more to be done such as the production of the accused within 30 days. This process is also called confiscation of bond.* In *People v. Dizon*, we held that an order of forfeiture is interlocutory and merely requires appellant "to show cause why judgment should not be rendered against it for the amount of the bond." *Such order is different from a judgment on the bond*

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[76] *Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*, 501 Phil. 86, 96 (2005) [Per J. Tinga, Second Division].

[77] *Rollo*, p. 93.

[78] 576 Phil. 753 (2008) [Per J. Carpio, First Division].

which is issued if the accused was not produced within the 30-day period. The judgment on the bond is the one that ultimately determines the liability of the surety, and when it becomes final, execution may issue at once.[79] (Emphasis supplied, citations omitted)

An order of forfeiture is preliminary to a judgment on the bond. Being interlocutory, it does not conclusively resolve the case.[80] A judgment on the bond, on the other hand, is a final order "which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined."[81]

Contrary to the lower court's ruling, the November 25, 1994 Order is not the judgment on the bond for which an execution may rightfully issue. It neither determined the bondspersons' liability under the bond nor fixed the amount for which they are accountable.[82] Moreover, it is evident from the trial court's subsequent January 27, 1995 Order that a judgment on the bond is yet to issue:

> Foregoing considered, the Motion for Reconsideration is DENIED. [The bondspersons], however, *are given sixty (60) days from receipt within which to produce the body of the convicted accused and upon expiration of which this Court will render judgment against the same bond in favor of the Republic of the Philippines*.
>
> SO ORDERED.[83] (Emphasis supplied)

Regrettably, no judgment on the bond was rendered thereafter. Worse, years passed without the convicted Daniel serving his sentence.

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[79] Id. at 760.

[80] *See Crispino v. Tansay*, 801 Phil. 711 (2016) [Per J. Leonen, Second Division].

[81] *Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*, 501 Phil. 86, 96 (2005) [Per J. Tinga, Second Division].

[82] *See People v. Doctor*, 120 Phil. 953, 954 (1964) [Per J. Concepcion, First Division].

[83] *Rollo*, p. 94.

II

Believing that there was still no judgment on the bond,[84] the bondspersons moved on May 7, 2008 that they be allowed to pay the amount of bail in cash, as replacement to the property bond posted.[85] The trial court denied their motion on June 24, 2008 and explained that with the finality of the January 27, 1995 Order, execution must ensue:

> WHEREFORE, premises considered, *and for the reason that the said Order forfeiting the bond* posted by the [bondspersons] Basilio Nepomuceno and Remedios Nepomuceno [sic] has already attained finality and may no longer be disturbed, their motion is DENIED.
>
> The *Judgment on the Bond having become final, let the same be* ***executed*** *in accordance with [Adm.] No. 05-3-06-SC.* Accordingly, the Branch Clerk of Court is hereby directed to ensure that compliance with the pertinent provisions of the said circular is observed.
>
> SO ORDERED.[86] (Emphasis supplied)

On August 5, 2008, the trial court denied the bondspersons' motion for reconsideration and explained that it had already rendered a judgment forfeiting the property bond in favor of the State in its November 25, 1994 Order.[87]

On the same bases, the Court of Appeals declared that the trial court did not gravely abuse its discretion in issuing the assailed Orders:

> In the instant case, the bond had been forfeited when the bondspersons failed to produce the body of the accused when first required to do so. The bondspersons were repeatedly given extensions of time within which to fulfill their obligation. Failing to do so, they submitted a written explanation and moved to substitute the property bond with cash. *After the lapse of more than thirty (30) days, with*

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[84] Id. at 18.

[85] Id. at 34.

[86] Id. at 90.

[87] Id. at 91.

the bondspersons still failing to produce the accused, the Court issued the November 25, 1994 Order rendering judgment on the bond . . .

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Notwithstanding the language of the [January 24, 1995] Order, this Court holds that the trial court had already previously rendered judgment on the bond when it issued the November 25, 1994 Order. The petitioners cannot legally claim that they were deprived of due process as they were duly given the opportunity to explain their failure to produce the body of the accused before the court. Thus, when the court issued the herein assailed June 24, 2008 Order, it merely upheld the November 25, 1994 Order, holding that there already was a judgment on the bond.[88] (Emphasis supplied)

As petitioners correctly pointed out, the lower courts seemingly interchanged an order of forfeiture with a judgment on the bond,[89] mistakenly treating these two to be one and the same.

As it is from a judgment on the bond that a writ of execution may promptly issue,[90] the trial court was mistaken in directing an execution based on an order of forfeiture.

III

While it erred in directing to execute an order of forfeiture and not a judgment on the bond, the trial court correctly dismissed the bondspersons' motion to pay the amount of bail in exchange for the property bond.[91]

Petitioners cite[92] the following provisions of A.M. No. 05-3-06-SC, or the *Guidelines for the Forfeiture of Real Property Bonds and Disposal of the Forfeited Real Property*, to support their motion:

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[88] Id. at 37.

[89] Id. at 19-21, Petition for Review.

[90] *See Reliance Surety & Insurance Co., Inc. v. Amante, Jr.*, 501 Phil. 86, 96-97 (2005) [Per *J.* Tinga, Second Division].

[91] *Rollo*, pp. 90-91.

[92] Id. at 24-25.

B. When Property Bond Forfeited

1. *Forfeiture of Property Bond.* — When the presence of the accused is required by the Court or the Revised Rules on Criminal Procedure, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their accused and to show cause why no judgment should be rendered against them for the amount of their undertaking. The period of thirty (30) days shall start to run from the time the bondsman/men received the Order of the judge requiring him/ them to produce the accused. Within the said period, the bondsmen must:

    a. Produce the body of the accused or give the reason for his non-production; and

    b. Explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted. (Sec. 21, supra, with amendments.) *The bondsmen shall have sixty (60) days from their receipt of the judgment within which to pay the amount he/they justified*. . . .

. . . . . .

C. Procedure to be Followed in the Disposal of Forfeited Property Bond

1. *Disposal of real property bond if the value of the property is not more than Fifty Thousand Pesos (P50,000.00). — If the bondsmen fail to pay the amount of the bail within sixty (60) days as provided above*, the real property bond the value of which is not more than P50,000.00, shall be sold at public auction in accordance with the following procedure[.] (Emphasis supplied)

Petitioners assert that a public auction only ensues in case of failure to pay the amount of bond within 60 days from receiving the judgment. Since there was allegedly no judgment on the bond, their motion should have been allowed as it was the

"speediest and inexpensive affirmative relief not only to [them] but to the State as well."[93] Allegedly, a public auction is only superfluous since they and their predecessors-in-interest are willing to pay the bail amount ever since.[94]

Petitioners' argument is misplaced.

In implementing the provision on forfeiture of bail, "courts generally adopt a liberal attitude towards the [bondspersons.]"[95] After all, the State seeks "not the monetary reparation of the [bondsperson's] default, but the *enforcement and execution* of the sentence[.]"[96] The provision on the confiscation of the bond upon failure to surrender the accused for service of the sentence "is not based upon a desire to gain from such failure; it is to compel the [bondspersons] to enhance [their] efforts to have the person of the accused produced for the execution of the sentence[.]"[97]

Records reveal that convict Daniel seems to be at large up to now. Bondspersons Basilio and Cata-ag, who also happen to be members of Daniel's immediate family,[98] committed an utter "breach of guaranty"[99] when they repeatedly failed to present him in court.

From the start, the bondspersons were remiss in their duty and were more interested in taking back the property. Instead of heightening their efforts to fulfill their undertaking, they were persistent in asking that they be allowed to instead pay the amount they justified as bail. This, as the trial court correctly

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[93] Id. at 193.

[94] Id. at 194.

[95] *People v. Sanchez*, 154 Phil. 262, 266 (1974) [Per J. Muñoz Palma, First Division].

[96] Id.

[97] Id. at 266-267.

[98] *Rollo*, p. 92.

[99] *People v. Mabini Insurance & Fidelity Co., Inc.*, 242 Phil. 234, 239 (1988) [Per J. Gancayco, First Division].

observed, amounts to "just buying the freedom of the convicted accused for ₱50,000.00."[100]

Obviously, petitioners' move cannot be allowed. In assuming the undertaking, they are expected to know of the attendant risks which, as in this case, include the forfeiture of the property bond. To allow their motion is to reward their heedless disregard of their obligation as bondspersons to bring Daniel to court whenever required.

More than 25 years have passed since the trial court ordered the bondspersons to secure Daniel's appearance on June 27, 1994. The unwarranted delay in executing Daniel's conviction could have been averted had the bondspersons faithfully complied with their guaranty. This Court is all the more inclined to deny petitioners' motion.

Finally, contrary to petitioners' stance,[101] this Court's ruling in *People v. Cawaling*[102] applies.

Cawaling involves a review of the Court of Appeals' conviction of Wilfredo Cawaling (Cawaling) for murder, reversing the trial court's decision finding him guilty as mere accomplice to homicide.[103]

This Court affirmed Cawaling's conviction.[104] Incidentally, it also ruled on the "Manifestation with Motion to withdraw property bond and post cash bond in lieu thereof" filed by bondsperson Margarita Cruz.[105]

In denying the Manifestation with Motion, this Court explained:

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[100] *Rollo*, p. 92.

[101] Id. at 23.

[102] 603 Phil. 749 (2009) [Per J. Nachura, Third Division].

[103] Id. at 753-754.

[104] Id. at 778.

[105] Id. at 777.

Lastly, we dispose of a corollary incident — the Manifestation with Motion to withdraw property bond and post cash bond in lieu thereof — filed by bondsperson Margarita Cruz. In this connection, Section 22 of Rule 114 of the Rules of Court is explicit:

> SEC. 22. *Cancellation of bail.* — Upon application of the bondsmen with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.
>
> The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.
>
> In all instances, the cancellation shall be without prejudice to any liability on the bail.

With the conviction of Cawaling for murder, and the Court's consequent failure to execute the judgment of conviction because of Cawaling's flight, the motion must be denied. The posted property bond cannot be cancelled, much less withdrawn and replaced with a cash bond by movant Cruz, unless Cawaling is surrendered to the Court, or adequate proof of his death is presented.

We are not unmindful that Cruz posted the property bond simply to accommodate Cawaling, a relative, obtain provisional liberty. However, under Section 1 of Rule 114, Cruz, as a bondsman, guarantees the appearance of the accused before any court as required under specified conditions.

It is beyond cavil that, with the property bond posted by Cruz, Cawaling was allowed temporary liberty, which made it possible, quite easily, to flee and evade punishment. As it stands now, Cawaling, a convicted felon, is beyond reach of the law, and the property bond cannot be released.

IN LIGHT OF ALL THE FOREGOING, the decision of the Court of Appeals is **AFFIRMED**. Accused-appellant Wilfredo Cawaling is found **GUILTY** of Murder and ordered to pay ₱50,000.00 as indemnity and another ₱50,000.00 as moral damages, to the heirs of the victim. The Manifestation with Motion of Movant Cruz is **DENIED.**

SO ORDERED. [106] (Emphasis in the original)

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[106] *Id.* at 777-778.

As in *Cawaling*, there is nothing left to do here but to similarly deny petitioners' prayer. This Court cannot allow them to pay the amount justified as bail in exchange for the property bond.

WHEREFORE, the Petition is **PARTLY GRANTED**. The November 23, 2011 Decision and November 26, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 03811, insofar as it ruled that the November 25, 1995 Order is a judgment on the bond, is **REVERSED** and **SET ASIDE**. Petitioners' prayer that an order be issued allowing them to pay the amount justified as bail in exchange for the release of the property bond is **DENIED**.

This case is remanded to the Regional Trial Court of Ormoc City, Branch 12 to proceed with due and deliberate dispatch in accordance with this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210487. September 2, 2020]

MELYSINDA D. REYES, *Petitioner, v.* **MARIA SALOME R. ELQUIERO, represented by attorney-in-fact, DAISY ELQUIERO-BENAVIDEZ,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; WRIT OF HABEAS CORPUS; RULE ON THE CUSTODY OF MINORS. — Clearly, there was no doubt in the mind of the appellate court that the *Habeas Corpus* Case was filed by Salome with a view to obtaining custody of Irish.

. . .

To further regulate the availment of *habeas corpus* writs as a means of recovering custody, the Supreme Court promulgated the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors on April 22, 2003. Section 20 of said Rule provides:

SECTION 20. Petition for writ of habeas corpus. – A verified petition for a writ of habeas corpus involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.

. . .

The provision reiterates the ruling in *Sombong* that a *habeas corpus* proceeding essentially functions as a custody proceeding in its own right. For this reason, the last paragraph specifically provides that in *habeas corpus* custody proceedings initiated before the CA, the return may be made "to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found or hearing and decision on the merits"; and that "[u]pon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision." Crucially, as the petition is being filed under the Rule on Custody of Minors as a special form of *habeas corpus*, the other provisions of that rule are applicable to the proceeding.

2. ID.; ID.; ID.; ID.; PRE-TRIAL IS MANDATORY IN A CUSTODY-RELATED HABEAS CORPUS PROCEEDING; CASE AT BAR. — It is therefore clear that the CA 9th Division erred in reversing the San Pablo City RTC's orders for the parties to submit pleadings preparatory to a pre-trial; for pre-trial is mandatory in a custody-related *habeas corpus* proceeding. The pendency of the Muntinlupa Custody Case is of no moment, as the *Habeas Corpus* Case is a full-blown custody proceeding in its own right.

3. ID.; ID.; ID.; ID.; STANDING TO SUE FOR CUSTODY; ACTUAL RIGHT TO CUSTODY; CASE AT BAR. — The Rule on Custody of Minors simply provides that a petition for custody "may be filed by any person claiming such right." However, standing to sue for custody differs from the actual right to custody.

. . .

The order of preference laid down by Article 216 is mandatory, unless special circumstances require otherwise. In the case at bar, in default of Irish's biological parents and her deceased adoptive father, the parties claiming custody are the mother of her adoptive father and her biological aunt who is also her actual custodian.

4. CIVIL LAW; FAMILY CODE; ADOPTION; THE LEGAL RELATIONSHIP CREATED BY ADOPTION EXTENDS ONLY TO THE ADOPTER AND THE ADOPTEE. — The legal relationship created by adoption extends only to the adopter and the adoptee. For this reason, the Court, in *Teotico v. Del Val Chan*, ruled that the adopted daughter of the decedent's sister cannot inherit by intestate succession.

. . .

In the same vein, Salome cannot claim custody of Irish because the law only recognizes a familial relation insofar as Rex and Irish are concerned. The relation does not extend to any of Rex's relatives, Salome and her daughters included. On the other hand, Melysinda, as Irish's actual and current custodian, is explicitly enumerated as one of the persons eligible to exercise substitute parental authority under the Family Code.

5. ID.; CIVIL PROCEDURE; FORUM SHOPPING, REQUISITES OF. — [I]n *Villamor & Victolero Construction Co. v. Sogo Realty and Development Corp.*, the Court, speaking through

the Chief Justice, laid down the following requisites of forum shopping:

> x x x the test for determining the existence of forum shopping, is whether a final judgment in one case amounts to res judicata in another or whether the following elements of litis pendentia are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

6. ID.; ID.; ID.; WILLFUL AND DELIBERATE FORUM-SHOPPING SHALL BE A GROUND FOR THE DISMISSAL OF ALL CASES; CASE AT BAR. — As to the effect of this finding on the *Habeas Corpus* Case, Rule 7, Section 5 of the Rules of Court provides that the case or cases subsequently filed shall be dismissed without prejudice. However, if forum shopping was willfully and deliberately employed, *all cases*, including the first one filed, shall be dismissed *with prejudice*. Stated differently, if the Muntinlupa Custody Case be found a willful and deliberate attempt to obtain the same relief from different courts, the *Habeas Corpus* Case must likewise be dismissed.

. . .

The Court, upon a thorough perusal of the record, finds Salome and her representative guilty of committing willful and deliberate forum shopping. The record clearly shows that Salome not only filed a *habeas corpus* petition and a custody petition but also another case for guardianship. The suspicious timing of the filing of the *Habeas Corpus* and Muntinlupa Custody cases, the contumacious insistence upon the hair-splitting distinction between the *habeas corpus* case and the custody case, taken together with the fact that they filed three different petitions in different venues, all seeking the same essential remedy, betray to the Court Salome's willful and deliberate intent to abuse court processes just to obtain custody of a child whose relation to her is doubtful to say the least. Perforce, the *Habeas Corpus* Case must likewise be dismissed.

APPEARANCES OF COUNSEL

Gregorio T. Villanueva for petitioner.
Tomas J. Caspe for respondent.

D E C I S I O N

GAERLAN, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the April 26, 2012 Decision[1] and the December 12, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. No. 115366, which nullified two orders issued by the Regional Trial Court (RTC) of San Pablo City in a *habeas corpus* proceeding relating to the custody of a minor child.

The Facts

Petitioner Melysinda D. Reyes (Melysinda) is the biological aunt of the minor child Irish Elquiero (Irish). Irish is the biological daughter of Melysinda's brother and the legally adopted daughter of Rex R. Elquiero (Rex) who, in turn, is the son of respondent Maria Salome R. Elquiero (Salome). Upon the death of Rex in 2009, Melysinda and Salome both claimed custody of Irish.

The Habeas Corpus Case

On March 26, 2010, Salome petitioned the CA for a writ of *habeas corpus* which was docketed as CA-G.R. SP. No. 113286. Salome essentially alleged therein that: Melysinda, Rex, and Irish lived together in San Pedro, Laguna, until Rex left in August 2007 for the United States, where he died in February 2009; thereafter, Irish has remained in the custody of Melysinda; Salome last heard from Irish when the former's daughter, Daisy E.

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[1] *Rollo*, pp. 5-15; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor.

[2] Id. at 16-18; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo.

Benavidez (Daisy), visited the child in San Pablo City on March 29, 2009. Since then, Melysinda prevented Salome and her daughters Daisy and Gilda E. Kelley (Gilda) from having any contact or communication with Irish. Salome thus prayed for the issuance of a writ of *habeas corpus* to compel Melysinda "and any person acting on her behalf" to produce the body of Irish before the Court.[3]

The CA granted the petition in a Resolution dated March 31, 2010. It directed the issuance of a writ of *habeas corpus* returnable to the RTC of San Pablo City, Laguna. The appellate court observed that:

> A perusal of the records reveals that the petitioner claims custody as adoptive grandmother and substitute parent over the minor subject of the instant petition. On the other hand, the respondent who allegedly withholds lawful custody is referred to as both a girlfriend of the deceased adoptive father and the sister of the minor's biological father.[4]

On April 8, 2010, NBI Special Investigator Mark Anthony G. Diaz filed a return of the writ and the San Pablo City RTC Branch 30, conducted hearings on the matter. Afterwards, the RTC issued an Order confirming the parties' agreement to vest temporary custody of Irish with Melysinda while the case was pending.[5]

Melysinda then filed an Opposition to Petition for Writ of *Habeas Corpus* dated April 12, 2010, where she argued that: Salome had no personality to question Irish's custody; the petition was baseless as Irish was not being deprived of liberty or otherwise restrained, but instead is in the rightful care and custody of her biological aunt, whom she purportedly recognizes "as her very own mother"; Salome was guilty of forum shopping;

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[3] Id. at 6.

[4] Id.

[5] Id.

and Salome was not genuinely interested in the child's welfare, but merely hoped to benefit materially from Rex's estate.[6]

Another hearing was conducted on April 16, 2010, but Salome did not appear either in person or through a representative. Instead of requiring Salome's appearance, the RTC issued an Order requiring submission of either a compromise agreement or the parties' pre-trial briefs. Salome moved for reconsideration, arguing that petitions for *habeas corpus* are summary in nature and are thus not covered by the provision on mandatory pre-trial under A.M. No. 03-04-04-SC.[7] Melysinda filed an Opposition to Salome's motion for reconsideration, asserting that "the custody of minor (sic) has a similar purpose akin or similar to the Writ of Habeas Corpus(.)"[8] Salome's motion for reconsideration was denied in an order which she received on July 9, 2010.[9]

Aggrieved, Salome challenged the April 16, 2010 and July 9, 2010 orders before the CA, which was docketed as CA-G.R. SP No. 115366. While this petition was pending, Salome sought injunctive relief. In her pleadings, she admitted that she had filed another petition for custody of Irish before Branch 207 of the Muntinlupa RTC, which was docketed as Sp. Case No. 10-027 (hereinafter referred to as the Muntinlupa Custody Case). The records reveal that Salome had filed the case through a representative. The representative even disclosed the pendency of the *habeas corpus* proceeding in the verification of the Muntinlupa petition.[10]

Melysinda, in her opposition to Salome's prayer for injunctive relief, alleged that in addition to the Muntinlupa Custody Case, Salome filed on July 17, 2009 yet another Petition for Guardianship

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[6] Id. at 6-7.

[7] The Rule on Custody of Minors and Writs of Habeas Corpus in Relation to Custody of Minors.

[8] *Rollo*, p. 7.

[9] Id.

[10] Id. at 7-8.

of Irish before Branch 30 of the San Pablo City RTC, which was docketed as Sp. Proc. Case No. SP-1768 (09) (hereinafter referred to as the Guardianship Case). Melysinda further alleged that Salome's daughters were actively pursuing the Guardianship Case.[11]

The Muntinlupa Custody Case

The Muntinlupa Custody Case was initiated on June 15, 2010.[12] In her petition before the Muntinlupa court, Salome alleged the following: (1) her son Rex was the legal adoptive father of Irish, who was nine (9) years old at that time; (2) Melysinda was the sister of Irish's biological father; (3) Melysinda and Rex had a romantic relationship and lived together in one house along with Irish; (4) on February 17, 2009, Rex died of cardiac ailment in the United States of America; (5) Salome's daughter Daisy last saw Irish in Melysinda's custody on March 29, 2009; (5) Salome and her daughters had been deprived of Irish's custody, in spite of the fact that they were relatives of Irish's adoptive father; (6) Melysinda had no legal right to retain Irish's custody; and (7) Melysinda had no gainful employment and was exerting undue influence detrimental to Irish.[13]

In her Answer dated August 13, 2010, Melysinda countered that: (1) Salome was not related to Irish because the legal relationship created by adoption was only between the adopting parent and the adopted, and it did not extend to the adopter's relatives; (2) Irish has been in Melysinda's care and custody since the former was seven days old up to the present, and Irish considers Melysinda as her own mother; (3) Salome, in filing the petition for custody, was guilty of forum shopping since there were already pending petitions for guardianship and for writ of *habeas corpus* in relation to Irish's custody; (4) Salome and her daughters were not really interested in Irish's well-being, but in the property left behind by Rex; and (5) Salome

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[11] Id. at 8.

[12] Id. at 9-10.

[13] Id. at 5-15.

was not well known to Irish since the former had only seen the latter thrice: when she was just four months, four years, and six years old.

Melysinda filed a Motion to Dismiss dated August 24, 2010, on the following grounds: (1) the pendency of the *Habeas Corpus* Case involving before Branch 30 of the San Pablo City RTC; (2) forum shopping; (3) Salome's lack of qualifications for custody of Irish; and (4) the lack of emotional and psychological bonds between Irish and Salome.

Salome argued that the motion to dismiss should be denied because it was filed after Melysinda had already filed an answer; and there was no forum shopping since the only relief sought by the *Habeas Corpus* Case was the production of the person of Irish.

On January 11, 2011, the Muntinlupa court issued an order granting Melysinda's motion to dismiss, ruling that Salome had failed to establish any right to exercise custody over Irish considering that there was no legal relationship whatsoever between Salome and Irish. Salome moved for reconsideration, which the Muntinlupa court denied in an order dated April 12, 2011. Salome thus appealed to the CA. The case was docketed as CA-G.R. CV No. 97013.

Ruling in CA-G.R. CV No. 97013 (Muntinlupa Custody Case)

The CA 16th Division, in a Decision[14] dated September 25, 2012, denied Salome's petition, the *fallo* of which reads:

ACCORDINGLY, the appeal is DENIED for lack of merit. The Orders dated January 11, 2011 and April 12, 2011 are affirmed. Further, appellant Maria Salome R. Elquiero, represented by Daisy Elquiero-Bernadez and her lawyer Atty. Nelson H. Manalili are directed to show cause, within ten days from notice, why they should not be sanctioned for committing multiple acts of forum shopping.

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[14] Id. at 60-71; penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Edwin D. Sorongon.

SO ORDERED.[15]

The CA affirmed the Muntinlupa RTC Decision and found Salome guilty of forum shopping, *viz.*:

x x x The habeas corpus case, in relation to custody, is currently pending before RTC-Branch 30, San Pablo City. The fact that this Court had earlier issued the corresponding writ requiring appellee to produce the person of Irish in court did not terminate said case, for this Court had, thereafter, referred the case to RTC-Branch 30, San Pablo City for hearing and disposition, specifically on the issue of who should rightfully exercise custody over the person and property of Irish. Notably, the habeas corpus case involves exactly the same parties, subject matter, and issue, as in the present case.

Not only that. There is even another case for guardianship still pending before RTC-San Pablo City. There, RTC-San Pablo City appointed appellee as guardian over the person and property of Irish. Appellant opposed appellee's appointment as guardian, but she did not appeal it. To be sure, the custody case here is a replication of the guardianship case where the sole subject is custody of the person and property of Irish. It is settled, however, that a party cannot go to another forum for the purpose of setting aside the disposition of a coequal body. Applying this to the present case, RTC-Muntinlupa City cannot review, let alone, reverse the disposition of RTC-San Pablo City in the guardianship proceedings similarly involving minor Irish and her property.

In light of the following considerations, it is clear as day that appellant committed multiple acts of forum shopping, i.e., the habeas corpus case, the guardianship case, and the custody case, all involving the same subject matter, parties, and relief, albeit, packaged in different forms. x x x[16]

Furthermore, the appellate court held that Salome had no cause of action to sue for custody of Irish, because adoption does not create a legal relationship between the adoptee (in this case, Irish) and the adopter's relatives (in this case, Salome and her daughters).

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[15] Id. at 71.

[16] Id. at 65-66.

Ruling in CA-G.R. SP No. 115366
(Habeas Corpus Case)

Concurring with Salome's assertion that *habeas corpus* proceedings are summary in nature, the CA 9th Division partially granted her petition and reversed the assailed orders which required the parties to submit pleadings preparatory for a pre-trial.

The CA 9th Division admitted that the *Habeas Corpus* Case should be considered a regular *habeas corpus* case, bearing in mind that a writ of *habeas corpus* issued by an RTC is enforceable only within the court's judicial region, and that a writ of *habeas corpus* is merely an ancillary remedy in custody cases. The CA 9th Division concluded that Salome filed the *habeas corpus* petition with the CA because she knew that any writ of *habeas corpus* issued by the Muntinlupa RTC (where her custody case was pending) could not be enforced in San Pablo, Laguna (where Irish and Melysinda lived). Stated differently, there was a territorial conflict between the main case for custody and the ancillary remedy for writ of *habeas corpus*. Despite this admission, the CA 9th Division treated the *Habeas Corpus* Case "as one strictly under the Rule of Custody of Minors, not under Rule 102 of the Rules of Court," and held that the San Pablo City RTC erred in requiring the parties to submit pre-trial briefs, as *habeas corpus* proceedings are summary in nature. Furthermore, the 9th Division held that Salome was not guilty of forum shopping when she filed the *Habeas Corpus* Case before the CA. According to the CA 9th Division, the determination of Irish's custody still lay with the Muntinlupa RTC; and the *Habeas Corpus* Case was limited to the issue of whether Irish was being deprived of liberty legally. Ultimately, the CA 9th Division ordered the San Pablo City RTC to proceed with the *Habeas Corpus* Case and treat it as a regular *habeas corpus* proceeding under Rule 102.

Melysinda moved for reconsideration, which the CA 9th Division denied in the assailed resolution. Hence, this petition, which raises the following issues:

I. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN FINDING THAT THE HONORABLE REGIONAL TRIAL COURT, BRANCH 30, SAN PABLO CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE ORDERS DATED APRIL 16, 2010 AND JULY 5, 2010.

II. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN FINDING THAT [SALOME] IS NOT GUILTY OF FORUM SHOPPING.

III. THE HONORABLE COURT OF APPEALS GROSSLY ERRED AND COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT [SALOME] HAS NO VALID CAUSE OF ACTION FOR CUSTODY OF MINOR IRISH REYES ELQUIERO.

The Court's Ruling

The issues raised by the petition boil down to three questions: first, whether the *Habeas Corpus* Case should be treated as a regular *habeas corpus* petition governed primarily by Rule 102 or as a special *habeas corpus* petition which is an ancillary remedy governed by the special rules on custody; second, whether Salome is guilty of forum shopping; and third, whether Salome is entitled to seek custody of Irish.

Nature of the Habeas Corpus Case

At this point, it must be noted that the two CA rulings concur as to the purpose of the *Habeas Corpus* Case. The CA 16th Division, in ruling upon Melysinda's motion to dismiss the Muntinlupa custody case, held:

> x x x The habeas corpus case, in relation to custody, is currently pending before RTC-Branch 30, San Pablo City. The fact that this Court had earlier issued the corresponding writ requiring appellee to produce the person of Irish in court did not terminate said case, for this Court had, thereafter, referred the case to RTC-Branch 30, San Pablo City for hearing and disposition, specifically on the issue of who should rightfully exercise custody over the person and property of Irish. Notably, the habeas corpus case involves exactly the same parties, subject matter, and issue, as in the present case.

x x x x x x x x x

x x x *[t]he habeas corpus case, the guardianship case, and the custody case, all involv[e] the same subject matter, parties, and relief, albeit, packaged in different forms.*[17] (Italicize ours)

Meanwhile, the CA 9th Division, which was essentially asked to determine the nature of the *Habeas Corpus* Case, held that:

The general rule above formulated is that the remedy of habeas corpus involving custody over a child is merely ancillary to an already pending petition for such custody. *Madriñan* also illustrates habeas corpus proceedings wherein custodial rights over the same children subject of the writ were thereafter properly determined by the Court.

However, in the situation now before Us, resort to the ancillary remedy as such would not have been tenable in the Petition for Custody pending before the RTC of Muntinlupa City. In fulsome, the original Petition for the issuance of a writ of habeas corpus was an availment of the remedy in its original sense, under Rule 102 of the Rules of Court.

Indeed, while petitioner alleged substitute parental authority by virtue of her son Rex, Irish's adoptive father and the restraint of the child's liberty by respondent, Rex's girlfriend, petitioner specified in her prayer only the issuance of the writ of habeas corpus, directing respondent and any person acting on her behalf to appear before the Court, produce the body of the minor Irish Reyes Elquiero, and explain why the latter should not be set at liberty. Strictly speaking, petitioner's allegations of substitute parental authority were not even material, since any person may apply for a writ of habeas corpus on behalf of the aggrieved party.

The basic rule is that reliefs granted to a litigant are limited to those specifically prayed for in the initiatory pleading, and other reliefs may be granted only when related to the specific prayers and supported by the evidence on record. Since petitioner alluded to Rex's legal adoption of Irish yet submitted no evidence of such adoption, together with the fact that a separate action for custody was already pending before the Muntinlupa City RTC, the relief granted was rightly limited to a writ of habeas corpus in its original sense. Parenthetically,

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[17] *Id.*

what We did was to merely direct the production of the minor in court and the explanation of the latter's alleged restraint. We did not grant custody over Irish to any of the parties.

Treating the original petition as one strictly under the Rule on Custody of Minors, not under Rule 102 of the Rules of Court, the RTC gravely abused its discretion in setting it for pre-trial. Habeas corpus proceedings are summary in nature and its special rules of procedure do not mandate a full-blown trial, much less pre-trial proceedings. The determination as to who is entitled to the custody of Irish and the rights concomitant thereto is the function of the RTC of Muntinlupa City, where the petition for her custody is pending and docketed as Sp. Case No. 10-027. To be sure, it is the RTC of Muntinlupa City which is procedurally required to conduct a pre-trial conformably with the dictates of A.M. No. 03-04-04-SC. Incidentally, it is for similar reasons that We cannot find petitioner to have committed forum-shopping or violated the prohibition against multiplicity of suits.[18]

Clearly, there was no doubt in the mind of the appellate court that the *Habeas Corpus* Case was filed by Salome with a view of obtaining custody of Irish. *Sombong v. Court of Appeals* elucidates this function of *habeas corpus* in custody cases, *viz.*:

Fundamentally, in order to justify the grant of the writ of habeas corpus, the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action. This is the basic requisite under the first part of Section 1, Rule 102, of the Revised Rules of Court, which provides that "except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty."

In the second part of the same provision, however, Habeas Corpus may be resorted to in cases where "the rightful custody of any person is withheld from the person entitled thereto." Thus, although the Writ of Habeas Corpus ought not to be issued if the restraint is voluntary, we have held time and again that the said writ is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of her own free will.

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[18] Id. at 12-13. Citations omitted.

It may even be said that **in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy; rather, the writ of habeas corpus is prosecuted for the purpose of determining the right of custody over a child**.

The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, **the child's welfare is the supreme consideration**.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code 16 unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration. In the same vein, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances.

The foregoing principles considered, the grant of the writ in the instant case will all depend on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondent; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondent.[19] (Emphasis ours)

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[19] 322 Phil. 737, 749-751 (1996).

To further regulate the availment of *habeas corpus* writs as a means of recovering custody, the Supreme Court promulgated the Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors[20] on April 22, 2003. Section 20 of said Rule provides:

> SECTION 20. Petition for writ of habeas corpus. — A verified petition for a writ of habeas corpus involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.
>
> However, the petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.
>
> The petition may also be filed with the appropriate regular courts in places where there are no Family Courts.
>
> The writ issued by the Family Court or the regular court shall be enforceable in the judicial region where they belong.
>
> The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.
>
> Upon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision.

The provision reiterates the ruling in *Sombong* that a *habeas corpus* proceeding essentially functions as a custody proceeding in its own right. For this reason, the last paragraph specifically provides that in *habeas corpus* custody proceedings initiated before the CA, the return may be made "to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on

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[20] A.M. No. 03-04-04-SC.

the merits"; and that "[u]pon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision." Crucially, as the petition is being filed under the Rule on Custody of Minors as a special form of *habeas corpus*, the other provisions of that rule are applicable to the proceeding. Section 9 of the rule clearly states:

> SECTION 9. Notice of mandatory pre-trial. — Within fifteen days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order: (1) fixing a date for the pre-trial conference; (2) directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure receipt thereof by the adverse party at least three days before the date of pre-trial; and (3) requiring the respondent to present the minor before the court.
>
> The notice of its order shall be served separately on both the parties and their respective counsels.
>
> The pre-trial is mandatory.

It is therefore clear that the CA 9th Division erred in reversing the San Pablo City RTC's orders for the parties to submit pleadings preparatory to a pre-trial; for pre-trial is mandatory in a custody-related *habeas corpus* proceeding. The pendency of the Muntinlupa Custody Case is of no moment, as the *Habeas Corpus* Case is a full-blown custody proceeding in its own right.

Forum-shopping

In its assailed decision, the CA 9th Division held that the difference in reliefs afforded in the *Habeas Corpus* Case and the Muntinlupa Custody Case obviates the existence of forum shopping. On the other hand, the CA 16th Division categorically held that the Muntinlupa Custody Case constitutes forum shopping, as it seeks the same essential relief: the grant of custody of Irish. Salome, in her pleadings, essentially reiterate the reasoning of the CA 9th Division; while Melysinda echoes the conclusions of the CA 16th Division.

Fontana Development Corp. v. Vukasinovic[21] expounds on the concept of forum shopping:

> There is forum shopping when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[22]

In *Dy v. Mandy Commodities, Inc.*,[23] this Court explained why forum shopping is prohibited:

> The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached.[24]

Finally, in *Villamor & Victolero Construction Co. v. Sogo Realty and Development Corp.*, the Court, speaking through the Chief Justice, laid down the following requisites of forum shopping:

> x x x the test for determining the existence of forum shopping, is whether a final judgment in one case amounts to res judicata in another or whether the following elements of litis pendentia are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[25]

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[21] 795 Phil. 913 (2016).

[22] Id. at 920.

[23] 611 Phil. 74 (2009).

[24] Id. at 84.

[25] G.R. Nos. 218771 & 220689, June 3, 2019.

In the case at bar, Salome filed the *Habeas Corpus* Case on March 26, 2010 before the CA, which then returned and remanded the case to the San Pablo City RTC. She then filed the Muntinlupa Custody Case on June 25, 2010, barely three months after filing the *Habeas Corpus* Case. In both cases, Salome, as petitioner, impleaded Melysinda as respondent. In both cases, Salome alleged the following: 1) that she is the mother of Irish's adoptive father; 2) that Melysinda is the biological aunt of Irish and the girlfriend of Irish's adoptive father; 3) that Salome's daughter Daisy last saw Irish in Melysinda's custody on March 29, 2009; 4) that Salome and her daughters had been deprived of Irish's custody, in spite of the fact that they were relatives of Irish's adoptive father; and 5) Melysinda had no legal right to retain Irish's custody.

Furthermore, the *Habeas Corpus* Case and the Muntinlupa Custody Case seek the same essential relief: the grant of custody of Irish. We cannot subscribe to the CA 9th Division's reasoning that the *Habeas Corpus* Case merely involves the issue of Irish's confinement and legality thereof. As explained earlier, a petition for writ of *habeas corpus*, when sought in relation to the custody of a minor, is nothing but a special form of a petition for custody, which is availed of in special circumstances where

> it appears that a minor is being kept from a parent desirous of providing the necessary atmosphere conducive to the physical, moral and intellectual development of the minor by the other parent, or in similar situations involving either parents, ascendants, elder siblings or other parties, and time is of the essence x x x.[26]

Verily, the CA 16th Division had these legal principles in mind in ruling that "it is clear as day that [Salome] committed multiple acts of forum shopping, *i.e.*, the *habeas corpus* case, the guardianship case, and the custody case, all involving the same subject matter, parties, and relief, albeit, packaged in different forms." All told, it is abundantly clear that Salome committed forum shopping when she filed the Muntinlupa Custody Case.

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[26] Oscar M. Herrera, Special Proceedings and Special Rules Implementing the Family Courts Act of 1997, 410 (2005).

As to the effect of this finding on the *Habeas Corpus* Case, Rule 7, Section 5 of the Rules of Court provides that the case or cases subsequently filed shall be dismissed without prejudice. However, if forum shopping was willfully and deliberately employed, *all cases*, including the first one filed, shall be dismissed *with prejudice*.[27] Stated differently, if the Muntinlupa Custody Case be found a willful and deliberate attempt to obtain the same relief from different courts, the *Habeas Corpus* Case must likewise be dismissed.

At this point, the following facts must be considered: first, Salome's representative disclosed the pendency of the *Habeas Corpus* Case when she filed the Muntinlupa Custody Case; and second, the two cases were filed almost exactly three months apart. The short period between the filing of the two cases is not in itself a definitive sign of deliberate forum shopping, but must be read together with other evidence on record. In their compliance with the CA 16th Division's order to explain why they should not be sanctioned for committing multiple acts of forum shopping,[28] Salome and her lawyer gave the following explanation:

x x x x x x x x x

2. To clarify matters, the relief prayed for by petitioner-appellant in the habeas corpus case pending before RTC, Branch 30, San Pablo City is different from that of the instant custody case subject of this appeal. As stated in the prayer, the relief prayed for is the production of the body of Irish R. Elquiero and explaining why the latter should not be set at liberty forthwith and without delay. Whereas in this custody case, the relief prayed for is that "a judgment be issued awarding to Petitioner Maria Salome R. Elquiero the custody of minor Irish R. Elquiero.

3. With respect to the petition for guardianship over minor Irish R. Elquiero's person and property, the same was filed by respondent-appellee (not by petitioner-appellant who incidentally has a different

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[27] *Phil. Pharmawealth, Inc. v. Pfizer, Inc.*, 649 Phil. 423, 445 (2010).

[28] *Rollo*, pp. 73-75.

lawyer in said petition by the name of Atty. Caspe) prior to the habeas corpus petition and has a different relief asked for as may be perused on page 3 of said petition. In said petition for guardianship, respondent-appellee averred in paragraph 6 that "petitioner [respondent-appellee herein] had been in parental care, custody x x x of minor child Irish Reyes Elquiero x x x." So, respondent-appellee does not seek custody in this petition for guardianship as she already maintains therein that she already has custody over Irish R. Elquiero, to begin with.

4. Indeed, petitioner-appellant has not engaged in forum shopping exists where the elements of litis pendentia are present or when a final judgment in one case will amount to res judicata in the other.

5. In this case, the requirements of litis pendentia are not ALL present, to wit:

a) Identity of parties or at least representing the same interest;

b) Identity of rights and reliefs asserted and prayed for, relief being founded on same facts; and

c) Judgment which may be rendered on the other action will be res judicata in the action under consideration.

6. There is no identity of reliefs asserted in that in CA-G.R. No. 113286 (petition for habeas corpus), the relief prayed for is the production of the body of Irish R. Elquiero and explaining why the latter should not be set at liberty forthwith and without delay whereas in the instant case, the relief prayed for is that "a judgment be issued awarding to Petitioner Maria Salome R. Elquiero the custody of minor Irish R. Elquiero.

7. In the same manner, a judgment (in the habeas corpus petition) directing respondent-appellee to produce the body of Irish R. Elquiero and explain why the latter should not be set at liberty forthwith and without delay could not possibly be res judicata in the present action to award custody over said Irish R. Elquiero to herein petitioner-appellant. Or in other words, the said judgment will not amount to an adjudication of the instant action under consideration.

8. Hence, in simple terms, respondent-appellee's act of showing the child to the court is not the same as opposing the custody over said child in court.

9. Indeed, sustaining petitioner-appellant's position on the issue, this Honorable Court thru its Ninth Division rendered the earlier Decision

dated 26 April 2012 in CA-G.R. SP No. 115366 in ruling upon petitioner's Petition for Certiorari (assailing the Orders dated 16 April 2010 and 5 July 2010 of RTC-Branch 30, San Pablo City in the habeas corpus petition x x x.)[29]

The CA 16th Division, unconvinced by the foregoing, gave Salome and her lawyer a stern warning:

> We find appellant and her counsel's compliance unsatisfactory. Whatever gobbledygook they have used to justify their actions cannot erase the fact that they committed multiple acts of forum shopping which this Court has the authority to curtail and punish. x x x
>
> x x x x x x x x x
>
> We understand the lawyer's duty to serve his client and to do everything within his power to pursue his client's cause. But whatever the lawyer does for his client must be confined within the bounds of law, justice and fairness. He should never ever allow himself to be used as an instrument of injustice, let alone, one that shamelessly trifles with the rule of law and its processes. For more than anything else, every lawyer is an officer of the court whose duty is to uphold its processes, the law, and the rules that ensure order in the conduct of judicial proceedings. Atty. Nelson H. Manalili is an officer of the court, first and foremost, but he utterly failed to judiciously discharge this duty. The fact that he was not the lawyer in the guardianship case does not mean he could freely file other similar action or actions, knowing full well that based on record, his client had pursued an earlier case, for the same purpose. On the other hand, Maria Salome R. Elquiero, represented by attorney-in-fact Daisy Elquiero-Benavidez, is equally found to have failed to observe good faith and respect toward the judicial process when she stubbornly pursued a single cause through various actions in different courts. She cannot plead innocence simply because she is not a lawyer. She is an educated person who knows exactly what she so desperately wants to obtain by all means, that is, the custody of minor Irish Reyes Elquiero.
>
> **ACCORDINGLY**, Maria Salome R. Elquiero, represented by attorney-in-fact Daisy Elquiero-Benavidez and Atty. Nelson H. Manalili are found to have committed multiple acts of forum shopping

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[29] Id.

in this case and are sternly warned against committing a similar offense, which if repeated, will definitely warrant the imposition of a severe penalty.[30]

The Court, upon a thorough perusal of the record, finds Salome and her representative guilty of committing willful and deliberate forum shopping. The record clearly shows that Salome not only filed a *habeas corpus* petition and a custody petition but also another case for guardianship. The suspicious timing of the filing of the *Habeas Corpus* and Muntinlupa Custody cases, the contumacious insistence upon the hair-splitting distinction between the *habeas corpus* case and the custody case, taken together with the fact that they filed three different petitions in different venues, all seeking the same essential remedy, betray to the Court Salome's willful and deliberate intent to abuse court processes just to obtain custody of a child whose relation to her is doubtful to say the least. Perforce, the *Habeas Corpus* Case must likewise be dismissed.

Salome's right to sue for custody of Irish

The Rule on Custody of Minors simply provides that a petition for custody "may be filed by any person claiming such right."[31] However, standing to sue for custody differs from the actual right to custody. Articles 214 and 216 of the Family Code provides:

> Article 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.
>
> Article 216. In default of parents or a judicially appointed guardian, the following person shall exercise substitute parental authority over the child in the order indicated:

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[30] Id. at 80, 82-83.

[31] Section 1, A.M. No. 03-04-04-SC.

(1) The surviving grandparent, as provided in Article 214;

(2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and

(3) The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.

Whenever the appointment or a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed.

The order of preference laid down by Article 216 is mandatory, unless special circumstances require otherwise. In the case at bar, in default of Irish's biological parents and her deceased adoptive father, the parties claiming custody are the mother of her adoptive father and her biological aunt who is also her actual custodian.

The legal relationship created by adoption extends only to the adopter and the adoptee. For this reason, the Court, in *Teotico v. Del Val Chan*,[32] ruled that the adopted daughter of the decedent's sister cannot inherit by intestate succession, *viz.*:

The oppositor cannot also derive comfort from the fact that she is an adopted child of Francisca Mortera because under our law the relationship established by adoption is limited solely to the adopter and the adopted does not extend to the relatives of the adopting parents or of the adopted child except only as expressly provided for by law. Hence, no relationship is created between the adopted and the collaterals of the adopting parents. As a consequence, the adopted is an heir of the adopter but not of the relatives of the adopter.

The relationship established by the adoption, however, is limited to the adopting parent, and does not extend to his other relatives, except as expressly provided by law. **Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to marriage by reason of adoption**. Neither are the children of the adopted considered as descendants of the adopter.

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[32] 121 Phil. 392 (1965).

The relationship created is exclusively between, the adopter and the adopted, and does not extend to the relatives of either. (Tolentino, Civil Code of the Philippines, Vol. 1, p. 652)

"Relationship by adoption is *limited to adopter and adopted*, and does not extend to other members of the family of either; but the adopted is prohibited to marry the children of the adopter to avoid scandal." (An Outline of Philippines Civil law by Justice Jose B. L, Reyes and Ricardo C. Puno, Vol. 1, p. 313; *See also* Caguioa, Comments and Cases on Civil law, 1955, Vol. 1, pp. 312-313; Paras, Civil Code of the Philippines, 1959 ed., Vol. 1, p. 515)[33]

In the same vein, Salome cannot claim custody of Irish because the law only recognizes a familial relation insofar as Rex and Irish are concerned. The relation does not extend to any of Rex's relatives, Salome and her daughters included. On the other hand, Melysinda, as Irish's actual and current custodian, is explicitly enumerated as one of the persons eligible to exercise substitute parental authority under the Family Code.

IN VIEW OF THE FOREGOING PREMISES, the present petition is hereby **GRANTED**. The April 26, 2012 Decision and December 12, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 115366 are hereby **REVERSED** and **SET ASIDE**. CA-G.R. SP No. 113286 and all other proceedings connected therewith before the Regional Trial Court of San Pablo City, Laguna are hereby **DISMISSED WITH PREJUDICE**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

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[33] Id. at 402. Emphasis and underlining supplied.

SECOND DIVISION

[G.R. No. 212302. September 2, 2020]

KARL WILLIAM YUTA MAGNO SUZUKI *a.k.a.* YUTA HAYASHI, *Petitioner, v.* **OFFICE OF THE SOLICITOR GENERAL,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FOREIGN JUDGMENT; THE PHILIPPINE COURTS ARE PRECLUDED FROM DECIDING ON THE FOREIGN JUDGMENT OBTAINED BY AN ALIEN CONCERNING HIS "FAMILY RIGHTS AND DUTIES, OR HIS STATUS, CONDITION AND LEGAL CAPACITY"; AS TO THE FOREIGN JUDGMENT OF ADOPTION OF A FILIPINO CITIZEN OBTAINED BY ALIEN, IF PROVEN AS A FACT, THE PHILIPPINE COURTS ARE LIMITED TO THE DETERMINATION OF WHETHER TO EXTEND ITS EFFECT TO THE FILIPINO PARTY.— The RTC erroneously ruled that a foreign judgment of adoption of a Filipino citizen cannot be judicially recognized based on the view that such recognition would render nugatory the Philippine laws on adoption. It bears to emphasize that there are two parties involved in an adoption process: the adopter and the adoptee. The RTC in this case failed to consider that Hayashi, the adopter, is a Japanese citizen. Article 15 of the Civil Code state that "[*l*]*aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."* Owing to this nationality principle, the Philippine laws on adoption are thus binding on petitioner. However, with respect to the case of Hayashi, who is a Japanese citizen, it bears stressing that the Philippine courts are precluded from deciding on his "family rights and duties, or on [his] status, condition and legal capacity" concerning the foreign judgment to which he is a party. Thus, as to the foreign judgment of adoption obtained by Hayashi, if it is proven as a fact, the Philippine courts are limited to the determination of whether to extend its effect to petitioner, the Filipino party.

2. CIVIL LAW; THE FAMILY CODE OF THE PHILIPPINES; ADOPTION; DISCUSSED. — By definition, adoption is "the process of making a child, whether related or not to the adopter, possess in general, the rights accorded to a legitimate child." It is a juridical act, a proceeding *in rem* which creates a relationship that is similar to that which results from legitimate paternity and filiation. The process of adoption therefore fixes a status, *viz*., that of parent and child. More technically, it is an act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature. Adoption has also been defined as the taking into one's family of the child of another as son or daughter and heir and conferring on it a title to the rights and privileges of such. The purpose of the proceeding for adoption is to effect this new status of relationship between the child and its adoptive parents, the change of name which frequently accompanies adoption being more an incident than the object of the proceeding. Adoption creates a status that is closely assimilated to legitimate paternity and filiation with corresponding rights and duties that necessarily flow from it, including, but not necessarily limited to, the exercise of parental authority, use of surname of the adopter by the adopted, as well as support and successional rights.

3. ID.; ID.; ID.; LIMITATIONS; AN ALIEN IS DISQUALIFIED TO ADOPT, EXCEPT WHEN HE OR SHE SEEKS TO ADOPT THE LEGITIMATE CHILD OF HIS OR HER FILIPINO SPOUSE.— Indeed, matters relating to adoption are subject to regulation by the State. In the Philippines, the general provisions on adoption are found in Articles 183 to 193, Title VII of EO 209, Series of 1987, entitled "The Family Code of the Philippines" (Family Code). Under the Family Code, not all persons are qualified to adopt. Articles 183 and 184 provide limitations, *viz*.: x x x. Art. 184. The following persons may not adopt: x x x; (3) An alien, except: x x x. (b) *One who seeks to adopt the legitimate child of his or her Filipino spouse; or x x x.* Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoptions as may be provided by law. Based on Article 184 of the Family Code, Hayashi falls under exception (b) of item (3). He is a Japanese citizen married to Lorlie, a Filipino. Under the Philippine law, it is therefore valid and legal for Hayashi to adopt petitioner, the legitimate child of Lorlie. Further, the rules on inter-country

adoptions of Filipino children as mentioned in the last paragraph of Article 184 do not apply to him.

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; ADOPTION; REPUBLIC ACT NO. 8043 (RULES GOVERNING INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN); DOES NOT APPLY TO CASE AT BAR AS "ONLY A LEGALLY FREE CHILD" OR A CHILD WHO HAS BEEN VOLUNTARILY OR INVOLUNTARILY COMMITTED TO THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, IN ACCORDANCE WITH THE CHILD AND YOUTH WELFARE CODE, MAY BE THE SUBJECT OF INTER-COUNTRY ADOPTION. — Special laws on adoption have been passed by Congress subsequent to the promulgation of the Family Code. In 1995, RA 8043 was enacted to establish the rules governing inter-country adoptions of Filipino children. The Inter-Country Adoption Board (ICAB) was created to serve as the central authority in matters relating to inter-country adoptions. Meanwhile, in 1998, RA 8552 was passed to set out the rules and policies on domestic adoption. As already mentioned, the rules on inter-country adoption are not applicable in the case of Hayashi pursuant to Article 184(3)(b) of the Family Code. Specifically, the provisions of RA 8043 do not apply to him. Besides, as provided in Section 8 thereof, "only a legally free child may be the subject of inter-country adoption." By definition, a "legally-free child" means a child who has been voluntarily or involuntarily committed to the Department of Social Welfare and Development, in accordance with the Child and Youth Welfare Code. Petitioner is not a "legally-free child" within the contemplation of the law; hence, he may not be the subject of inter-country adoption.

5. ID.; ID.; ID.; REPUBLIC ACT NO. 8552 (RULES AND POLICIES ON DOMESTIC ADOPTION OF FILIPINO CHILDREN); THE ADOPTION BY AN ALIEN OF THE LEGITIMATE CHILD OF HIS/HER FILIPINO SPOUSE IS VALID AND LEGAL, AND SUCH FOREIGN ADOPTION DECREE, IF PROVEN AS A FACT, CAN BE JUDICIALLY RECOGNIZED IN THE PHILIPPINES. — [T]he rules on domestic adoption under RA 8552 have the following pertinent provisions with respect to eligibility: ARTICLE III *Eligibility* SECTION 7. *Who May Adopt.* —The following may adopt: x x x. (b) *Any alien possessing the same qualifications as above stated for Filipino*

nationals: x x x. *Provided, Further, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:* x x x; *or (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse;* x x x. SECTION 8. *Who May Be Adopted*. — The following may be adopted x x x. *(b) The legitimate son/daughter of one spouse by the other spouse;* x x x. Apparently, the adoption of petitioner by Hayashi may be validly effected in accordance with the provisions of RA 8552. However, the Court disagrees with the RTC's view that adoption decrees involving Filipino citizens obtained abroad cannot be judicially recognized in the Philippines for being contrary to law and public policy. As emphasized by Associate Justice Edgardo L. Delos Santos (Justice Delos Santos), the availability of RA 8552 as a means to adopt petitioner should not automatically foreclose proceedings to recognize his adoption decree obtained under Japanese law. Justice Delos Santos reminds that the principle behind the recognition and enforcement of a foreign judgment derives its force not only from our Rules of Court but from the fact that such act of recognition is considered part of what is considered as the "generally accepted principles of international law." It is characterized as such because aside from the widespread practice among States accepting in principle the need for such recognition and enforcement, the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, in various foreign jurisdictions. As already established, the adoption by an alien of the legitimate child of his/her Filipino spouse is valid and legal based on Article 184(3)(b) of the Family Code and Section 7(b)(i), Article III of RA 8552. Thus, contrary to the RTC's sweeping conclusion against foreign adoption decrees, the Court finds that the adoption of petitioner by Hayashi, if proven as a fact, can be judicially recognized in the Philippines. Justice Delos Santos aptly propounds that the rules on domestic adoption should not be pitted against the recognition of a foreign adoption decree; instead, the better course of action is to reconcile them and give effect to their respective purposes.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EFFECT OF FOREIGN JUDGMENTS OR FINAL ORDERS; THE FOREIGN JUDGMENT AGAINST A PERSON IS ALREADY PRESUMPTIVE EVIDENCE OF A RIGHT AS BETWEEN THE

PARTIES; UPON JUDICIAL RECOGNITION OF THE FOREIGN JUDGMENT, THE RIGHT BECOMES CONCLUSIVE AND THE JUDGMENT SERVES AS THE BASIS FOR THE CORRECTION OR CANCELLATION OF ENTRY IN THE CIVIL REGISTRY.— Judicial recognition of a foreign judgment is allowed under Section 48, Rule 39 of the Rules of Court, *viz.*: SEC. 48. *Effect of Foreign Judgments or Final Orders*. — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows: x x x. *(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.* x x x. To emphasize, the rule states that the foreign judgment against a person is already "presumptive evidence of a right as between the parties." Upon judicial recognition of the foreign judgment, the right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry.

7. ID.; ID.; ID.; RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE PHILIPPINE JURISDICTION, UNDERLYING PRINCIPLES DISCUSSED.—In *Mijares v. Hon. Rañada*, the Court extensively discussed the underlying principles for the recognition and enforcement of foreign judgments in the Philippine jurisdiction: There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof. *However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations.* x x x. *While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is among those generally accepted principles of international law.* x x x. *In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived*

from internationally accepted doctrines. x x x. Thus, relative to the enforcement of foreign judgments in the Philippines, it emerges that there is a general right recognized within our body of laws, and affirmed by the Constitution, to seek recognition and enforcement of foreign judgments, as well as a right to defend against such enforcement on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

8. ID.; ID.; ID.; IN THE RECOGNITION OF FOREIGN JUDGMENTS, PHILIPPINE COURTS ARE INCOMPETENT TO SUBSTITUTE THEIR JUDGMENT ON HOW A CASE WAS DECIDED UNDER FOREIGN LAW; THUS, IN A FOREIGN JUDGMENT RELATING TO THE STATUS OF ADOPTION OF A FILIPINO CITIZEN BY A CITIZEN OF A FOREIGN COUNTRY, PHILIPPINE COURTS WILL ONLY DECIDE WHETHER TO EXTEND ITS EFFECT TO THE FILIPINO PARTY; ABSENT ANY INCONSISTENCY WITH PUBLIC POLICY OR ADEQUATE PROOF OF WANT OF JURISDICTION, WANT OF NOTICE TO THE PARTY, COLLUSION, FRAUD, OR CLEAR MISTAKE OF LAW OR FACT, TO REPEL THE JUDGMENT, THE PHILIPPINE COURTS SHOULD, BY DEFAULT, RECOGNIZE THE FOREIGN JUDGMENT AS PART OF THE COMITY OF NATIONS. — It is an established international legal principle that final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious subject to certain conditions that vary in different countries. *"In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law*." They are limited to the question of whether to extend the effect of the foreign judgment in the Philippines. Thus, in a foreign judgment relating to the status of adoption involving a citizen of a foreign country, Philippine courts will only decide whether to extend its effect to the Filipino party. For this purpose, Philippine courts will only determine: (1) whether the foreign judgment is contrary to an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, *i.e.*, want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Absent any inconsistency with public policy or adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations.

9. ID.; ID.; ID.; FOR PHILIPPINE COURTS TO JUDICIALLY RECOGNIZE A FOREIGN JUDGMENT RELATING TO THE STATUS OF AN ADOPTION WHERE ONE OF THE PARTIES IS A CITIZEN OF A FOREIGN COUNTRY, THE PETITIONER ONLY NEEDS TO PROVE THE FOREIGN JUDGMENT AS A FACT; THE RECOGNITION OF THE FOREIGN JUDGMENT OF ADOPTION IS A SUBSEQUENT EVENT THAT ESTABLISHES A NEW STATUS, RIGHT, AND FACT AFFECTING PETITIONER; IF DULY PROVEN, THE FOREIGN JUDGMENT NEEDS TO BE REFLECTED IN THE PHILIPPINE CIVIL REGISTRY. — For Philippine courts to judicially recognize a foreign judgment relating to the status of an adoption where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. Thus, as held in *Fujiki v. Marinay, et al.*: x x x To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48(b) of the Rules of Court. Petitioner may prove the Japanese Family Court judgment through (1) an official publication or (2) a certification or copy attested by the officer who has custody of the judgment. If the office which has custody is in a foreign country such as Japan, the certification may be made by the proper diplomatic or consular officer of the Philippine foreign service in Japan and authenticated by the seal of office. Accordingly, the Court deems it proper to remand the case to Branch 192, RTC, Marikina City for further proceedings. To emphasize, recognition and enforcement of a foreign judgment or final order require only proof of fact of such foreign judgment or final order. Furthermore, the recognition of the foreign judgment of adoption is a subsequent event that establishes a new status, right, and fact affecting petitioner. If duly proven, the foreign judgment needs to be reflected in the Philippine civil registry.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition[1] for Judicial Recognition of Foreign Adoption Decree seeking to reverse and set aside the Order[2] dated November 21, 2013 of Branch 192, Regional Trial Court (RTC), Marikina City in JDRC Case No. 2013-2279-MK. The assailed RTC Order dismissed the Petition[3] for Judicial Recognition of Foreign Adoption Decree filed by Karl William Yuta Magno Suzuki a.k.a. Yuta Hayashi (petitioner).

The Antecedents

Petitioner was born on April 4, 1988 in Manila to Mr. Sadao Kumai Suzuki, a Japanese national, and Ms. Lorlie Lopez Magno (Lorlie), a Filipino citizen.[4] Petitioner's parents were married on December 29, 1987.[5] Based on Identification Certificate No. 08-19540,[6] issued by the Bureau of Immigration on March 31, 2008, petitioner is a Filipino citizen.

On June 12, 1997, petitioner's parents divorced.[7] On December 6, 2002, Lorlie married another Japanese national, Mr. Hikaru Hayashi (Hayashi), in San Juan City, Metro Manila.[8]

On November 9, 2004, petitioner, then 16 years old, was adopted by Hayashi based on Japanese law. This was reflected in Hayashi's *Koseki* or Family Register.[9] The *Koseki* and its

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[1] *Rollo*, pp. 10-19.

[2] *Id.* at 21-22; penned by Judge Geraldine C. Fiel-Macaraig.

[3] *Id.* at 31-33.

[4] See petitioner's Certificate of Live Birth, *id.* at 35.

[5] See Marriage Contract dated December 29, 1987, *id.* at 37.

[6] *Id.* at 36.

[7] See Certificate of Acceptance of Notification of Divorce (Report of Divorce) dated June 29, 2001, *id.* at 38.

[8] See Certificate of Marriage dated December 26, 2002, *id.* at 39.

[9] *Id.* at 41-42, 43-45.

English translation were both authenticated at the Philippine Consulate General on May 15, 2007.[10]

At 24 years old, petitioner sought to be recognized in the Philippines his adoption by Hayashi under Japanese law. Thus, on May 24, 2013, he filed a Petition[11] for Judicial Recognition of Foreign Adoption Decree before the RTC of Marikina City.

On June 4, 2013, the RTC issued an Order[12] requiring the Office of the Solicitor General (OSG) to file its comment on the petition. In its Comment/Opposition[13] dated November 4, 2013, the OSG alleged that the present legislation shows a strong intent to regulate adoption by aliens.[14] It contended that Executive Order No. (EO) 91[15] provides certain conditions before an alien may adopt Filipino citizens. Likewise, it argued that the Family Code provides limits on who are allowed to adopt Filipino citizens.[16] Moreover, it claimed that an adoption is only valid if made within the legal framework on adoption as enunciated in Republic Act No. (RA) 8043 known as the Inter-Country Adoption Act of 1995, and RA 8552 known as the Domestic Adoption Act of 1998. The OSG concluded that petitioner's adoption is not in accordance with the laws, and thus, should not be allowed.

On November 21, 2013, the RTC issued the assailed Order[17] dismissing the petition for being contrary to law and public policy. The RTC was of the view that the judicial recognition sought

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[10] *Id.* at 40.

[11] *Id.* at 31-33.

[12] *Id.* at 46.

[13] *Id.* at 50-63.

[14] *Id.* at 53-55.

[15] Amending Articles 27, 28, 29, 31, 33, and 35 of Presidential Decree No. 603, Otherwise Known as the "Child and Youth Welfare Code."

[16] *Rollo*, p. 54.

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

would render nugatory the local laws on adoption. The dispositive portion of the RTC Order reads:

> WHEREFORE, the Motion for further Proceedings is hereby DENIED, for lack of merit. The instant petition is hereby DISMISSED, for being contrary to law and public policy.
>
> SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration,[19] which the RTC denied in its Order[20] dated April 23, 2014. The RTC was convinced that RA 8043 (Inter-Country Adoption Act of 1995) and RA 8552 (Domestic Adoption Act of 1998) govern all adoptions of Filipino citizens.[21]

Furthermore, the RTC ruled that even assuming that the adoption of petitioner is valid under the Japanese law, Philippine courts are not automatically obliged to recognize its validity. The RTC stated that under Section 48, Rule 39 of the Rules of Court, there must be a "judgment or final order of a tribunal of a foreign country." The RTC noted that the petition merely alleges the fact of registration of petitioner's adoption in the Family Register of Hayashi and fails to present any judgment or final order issued by a Japanese tribunal.[22]

Aggrieved, petitioner, on pure questions of law, directly filed before the Court the present petition for review on *certiorari* under Rule 45.

On August 7, 2017, the Court issued a Resolution[23] requiring the parties to submit their respective memoranda within 30 days from notice.

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[18] *Id.* at 22.

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

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

[21] *Id.* at 29.

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

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

In his Memorandum,[24] petitioner claimed that: (1) the National Statistics Office[25] Memorandum Circular No. 2007-008[26] dated September 24, 2007 which establishes the guidelines for the registration in the civil registry of foreign judgments/orders, includes adoption in its coverage; (2) Rule 53 of Administrative Order No. 1, Series of 1993,[27] issued by the Office of the Civil Registrar-General (OCRG), states that a decree of adoption issued by a foreign court is acceptable for registration in the Philippines and can be issued only in the Office of the Civil Registrar of Manila; (3) Rule 9 of Circular No. 90-2[28] dated March 28, 1990, also issued by the OCRG, allows a decree of adoption issued by a foreign court to be accepted for registration in the Philippines; and (4) that the modern trend is to encourage adoption and that every reasonable intendment should be sustained to promote such objective.

On the other hand, the OSG in its Memorandum[29] reiterated that: (1) petitioner's adoption is subject to the Philippine laws; (2) the Philippine laws manifest a strong legislative intent to regulate adoption; (3) an adoption is valid only if made within the framework enunciated in RA 8043 and RA 8552; (4) petitioner's adoption was not performed under RA 8043; and (5) the adoption was not made pursuant to RA 8552.[30]

The present petition relies upon the following ground:

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[24] *Id.* at 110-117.

[25] Now Philippine Statistics Authority.

[26] Guidelines in the Annotation of Civil Registry Documents Involving Foreign Judgments/Orders.

[27] Implementing Rules and Regulations Act No. 3753 and Other Laws on Civil Registration; Volume 89, Number 2, Official Gazette, January 11, 1993.

[28] Registration of Adoption and the Rescission or Revocation of Adoption.

[29] *Rollo*, pp. 136-150.

[30] *Id.* at 137-138.

THE RTC ERRED IN RULING THAT UNDER PHILIPPINE JURISDICTION A JUDICIAL RECOGNITION OF A FOREIGN DECREE OF ADOPTION IS NOT ALLOWED.[31]

Our Ruling

The petition is meritorious.

The RTC erroneously ruled that a foreign judgment of adoption of a Filipino citizen cannot be judicially recognized based on the view that such recognition would render nugatory the Philippine laws on adoption. It bears to emphasize that there are two parties involved in an adoption process: the adopter and the adoptee. The RTC in this case failed to consider that Hayashi, the adopter, is a Japanese citizen.

Article 15 of the Civil Code states that "[*l*]*aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad*." Owing to this nationality principle, the Philippine laws on adoption are thus binding on petitioner. However, with respect to the case of Hayashi, who is a Japanese citizen, it bears stressing that the Philippine courts are precluded from deciding on his "family rights and duties, or on [his] status, condition and legal capacity" concerning the foreign judgment to which he is a party.[32] Thus, as to the foreign judgment of adoption obtained by Hayashi, if it is proven as a fact, the Philippine courts are limited to the determination of whether to extend its effect to petitioner, the Filipino party.

By definition, adoption is "the process of making a child, whether related or not to the adopter, possess in general, the rights accorded to a legitimate child."[33] It is a juridical act, a

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[31] *Id.* at 11.

[32] *Fujiki v. Marinay, et al.*, 712 Phil. 524, 556-557 (2013).

[33] *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, 494 Phil. 515, 525 (2005), citing Paras, *Civil Code of the Philippines Annotated, Vol. I, Fifteenth Edition*, 2002, p. 685.

proceeding *in rem* which creates a relationship that is similar to that which results from legitimate paternity and filiation.[34] The process of adoption therefore fixes a status, *viz.*, that of parent and child.[35] More technically, it is an act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature.[36]

Adoption has also been defined as the taking into one's family of the child of another as son or daughter and heir and conferring on it a title to the rights and privileges of such. The purpose of the proceeding for adoption is to effect this new status of relationship between the child and its adoptive parents, the change of name which frequently accompanies adoption being more an incident than the object of the proceeding.[37]

Adoption creates a status that is closely assimilated to legitimate paternity and filiation with corresponding rights and duties that necessarily flow from it, including, but not necessarily limited to, the exercise of parental authority, use of surname of the adopter by the adopted, as well as support and successional rights.[38]

Indeed, matters relating to adoption are subject to regulation by the State.[39] In the Philippines, the general provisions on adoption are found in Articles 183 to 193, Title VII of EO 209, Series of 1987, entitled "The Family Code of the Philippines" (Family Code). Under the Family Code, not all persons are qualified to adopt. Articles 183 and 184 provide limitations, *viz.*:

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[34] *Id.*, citing Pineda, *The Family Code of the Philippines Annotated*, 1989 Edition, pp. 272-273, citing 4 Valverde, 473.

[35] *Rep. of the Phils. v. Court of Appeals*, 284-A Phil. 643, 658 (1992).

[36] *Id.*

[37] *Id.*, citing 1 AM Jur., Adoption of Children 621-622.

[38] *Republic of the Phils. v. Court of Appeals*, 298 Phil. 172, 176 (1993).

[39] *Lahom v. Sibulo*, 453 Phil. 987, 998 (2003). Citation omitted.

Art. 183. A person of age and in possession of full civil capacity and legal rights may adopt, provided he is in a position to support and care for his children, legitimate or illegitimate, in keeping with the means of the family.

x x x x x x x x x

In addition, the adopter must be at least sixteen years older than the person to be adopted, unless the adopter is the parent by nature of the adopted, or is the spouse of the legitimate parent of the person to be adopted.

Art. 184. The following persons may not adopt:

(1) The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relation;

(2) Any person who has been convicted of a crime involving moral turpitude;

(3) An alien, except:

(a) A former Filipino citizen who seeks to adopt a relative by consanguinity;

(b) *One who seeks to adopt the legitimate child of his or her Filipino spouse; or*

(c) One who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter.

Aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoptions as may be provided by law. (Italics supplied.)

Based on Article 184 of the Family Code, Hayashi falls under exception (b) of item (3). He is a Japanese citizen married to Lorlie, a Filipino. Under the Philippine law, it is therefore valid and legal for Hayashi to adopt petitioner, the legitimate child of Lorlie. Further, the rules on inter-country adoptions of Filipino children as mentioned in the last paragraph of Article 184 do not apply to him.

Special laws on adoption have been passed by Congress subsequent to the promulgation of the Family Code. In 1995, RA 8043[40] was enacted to establish the rules governing inter-country adoptions of Filipino children. The Inter-Country Adoption Board (ICAB) was created to serve as the central authority in matters relating to inter-country adoptions.[41] Meanwhile, in 1998, RA 8552[42] was passed to set out the rules and policies on domestic adoption.

As already mentioned, the rules on inter-country adoption are not applicable in the case of Hayashi pursuant to Article 184 (3)(b) of the Family Code. Specifically, the provisions of RA 8043 do not apply to him. Besides, as provided in Section 8 thereof, "only a legally free child may be the subject of inter-country adoption." By definition, a "legally-free child" means a child who has been voluntarily or involuntarily committed to the Department of Social Welfare and Development, in accordance with the Child and Youth Welfare Code.[43] Petitioner is not a "legally-free child" within the contemplation of the law; hence, he may not be the subject of inter-country adoption.

On the other hand, the rules on domestic adoption under RA 8552 have the following pertinent provisions with respect to eligibility:

ARTICLE III

Eligibility

SECTION 7. *Who May Adopt*. — The following may adopt:

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[40] Entitled "An Act Establishing the Rules to Govern Inter-Country Adoption of Filipino Children, and for Other Purposes," approved on June 7, 1995.

[41] See Article II, RA 8043.

[42] Entitled "An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes," approved on February 25, 1998.

[43] See Section 3, Article I, RA 8043.

(a) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable of caring for children, at least sixteen (16) years older than the adoptee, and who is in a position to support and care for his/her children in keeping with the means of the family. The requirement of sixteen (16) year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee, or is the spouse of the adoptee's parent;

(b) *Any alien possessing the same qualifications as above stated for Filipino nationals: Provided, That his/her country has diplomatic relations with the Republic of the Philippines, that he/she has been living in the Philippines for at least three (3) continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered, that he/she has been certified by his/her diplomatic or consular office or any appropriate government agency that he/she has the legal capacity to adopt in his/her country, and that his/her government allows the adoptee to enter his/her country as his/her adopted son/daughter: Provided, Further, That the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following:*

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or

(ii) *one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; or*

(iii) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse; or

(c) The guardian with respect to the ward after the termination of the guardianship and clearance of his/her financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, However, that the other spouse has signified his/her consent thereto; or

(iii) if the spouses are legally separated from each other.

In case husband and wife jointly adopt, or one spouse adopts the illegitimate son/daughter of the other, joint parental authority shall be exercised by the spouses.

SECTION 8. *Who May be Adopted*. — The following may be adopted:

(a) Any person below eighteen (18) years of age who has been administratively or judicially declared available for adoption;

(b) *The legitimate son/daughter of one spouse by the other spouse*;

(c) An illegitimate son/daughter by a qualified adopter to improve his/her status to that of legitimacy;

(d) A person of legal age if, prior to the adoption, said person has been consistently considered and treated by the adopter(s) as his/her own child since minority;

(e) A child whose adoption has been previously rescinded; or

(f) A child whose biological or adoptive parent(s) has died: *Provided*, That no proceedings shall be initiated within six (6) months from the time of death of said parent(s). (Italics supplied.)

Apparently, the adoption of petitioner by Hayashi may be validly effected in accordance with the provisions of RA 8552. However, the Court disagrees with the RTC's view that adoption decrees involving Filipino citizens obtained abroad cannot be judicially recognized in the Philippines for being contrary to law and public policy.

As emphasized by Associate Justice Edgardo L. Delos Santos (Justice Delos Santos), the availability of RA 8552 as a means to adopt petitioner should not automatically foreclose proceedings

to recognize his adoption decree obtained under Japanese law. Justice Delos Santos reminds that the principle behind the recognition and enforcement of a foreign judgment derives its force not only from our Rules of Court but from the fact that such act of recognition is considered part of what is considered as the "generally accepted principles of international law."[44] It is characterized as such because aside from the widespread practice among States accepting in principle the need for such recognition and enforcement, the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, in various foreign jurisdictions.[45]

As already established, the adoption by an alien of the legitimate child of his/her Filipino spouse is valid and legal based on Article 184(3)(b) of the Family Code and Section 7(b)(i), Article III of RA 8552. Thus, contrary to the RTC's sweeping conclusion against foreign adoption decrees, the Court finds that the adoption of petitioner by Hayashi, if proven as a fact, can be judicially recognized in the Philippines. Justice Delos Santos aptly propounds that the rules on domestic adoption should not be pitted against the recognition of a foreign adoption decree; instead, the better course of action is to reconcile them and give effect to their respective purposes.

Judicial recognition of a foreign judgment is allowed under Section 48, Rule 39 of the Rules of Court, *viz.*:

> SEC. 48. *Effect of Foreign Judgments or Final Orders.* — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

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[44] See *Bank of the Philippine Islands Securities Corp. v. Guevara*, 755 Phil. 434, 454 (2015), citing *Mijares v. Hon. Rañada*, 495 Phil. 372, 393 (2005).

[45] *Id.* at 455.

> *(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.*
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (Italics supplied.)

To emphasize, the rule states that the foreign judgment against a person is already "presumptive evidence of a right as between the parties." Upon judicial recognition of the foreign judgment, the right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry.[46]

In *Mijares v. Hon. Rañada*,[47] the Court extensively discussed the underlying principles for the recognition and enforcement of foreign judgments in the Philippine jurisdiction:

> There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof. *However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations.* The 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). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.
>
> *While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is among those generally accepted principles of international law.* As earlier demonstrated, there is a widespread

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[46] *Fujiki v. Marinay, et al., supra* note 32 at 557.

[47] 495 Phil. 372 (2005).

practice among states accepting in principle the need for such recognition and enforcement, albeit subject to limitations of varying degrees. The fact that there is no binding universal treaty governing the practice is not indicative of a widespread rejection of the principle, but only a disagreement as to the imposable specific rules governing the procedure for recognition and enforcement.

Aside from the widespread practice, it is indubitable that the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, adopted in various foreign jurisdictions. *In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines.* Again, there may be distinctions as to the rules adopted by each particular state, but they all prescind from the premise that there is a rule of law obliging states to allow for, however generally, the recognition and enforcement of a foreign judgment. The bare principle, to our mind, has attained the status of *opinio juris* in international practice.

This is a significant proposition, as it acknowledges that the procedure and requisites outlined in Section 48, Rule 39 derive their efficacy not merely from the procedural rule, but by virtue of the incorporation clause of the Constitution. Rules of procedure are promulgated by the Supreme Court, and could very well be abrogated or revised by the high court itself. Yet the Supreme Court is obliged, as are all State components, to obey the laws of the land, including generally accepted principles of international law which form part thereof, such as those ensuring the qualified recognition and enforcement of foreign judgments.

Thus, relative to the enforcement of foreign judgments in the Philippines, it emerges that there is a general right recognized within our body of laws, and affirmed by the Constitution, to seek recognition and enforcement of foreign judgments, as well as a right to defend against such enforcement on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.[48] (Italics supplied.)

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[48] *Id.* at 395-397. Citations omitted.

It is an established international legal principle that final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious subject to certain conditions that vary in different countries.[49] "*In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law*."[50] They are limited to the question of whether to extend the effect of the foreign judgment in the Philippines.[51] Thus, in a foreign judgment relating to the status of adoption involving a citizen of a foreign country, Philippine courts will only decide whether to extend its effect to the Filipino party.

For this purpose, Philippine courts will only determine: (1) whether the foreign judgment is contrary to an overriding public policy in the Philippines; and (2) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, *i.e.*, want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.[52] Absent any inconsistency with public policy or adequate proof to repel the judgment, Philippine courts should, by default, recognize the foreign judgment as part of the comity of nations.[53]

For Philippine courts to judicially recognize a foreign judgment relating to the status of an adoption where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. Thus, as held in *Fujiki v. Marinay, et al.*:[54]

x x x To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24

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[49] *Bank of the Philippine Islands Securities Corp. v. Guevara*, 755 Phil. 434, 455-456 (2015), citing *St. Aviation Services Co., Pte., Ltd. v. Grand Int'l. Airways, Inc.*, 535 Phil. 757, 762 (2006).

[50] *Fujiki v. Marinay, et al.*, *supra* note 32 at 556.

[51] *Id.* at 557.

[52] *Id.*; see also Section 48, Rule 39, Rules of Court.

[53] *Id.*

[54] 712 Phil. 524 (2013).

and 25, in relation to Rule 39, Section 48(b) of the Rules of Court. Petitioner may prove the Japanese Family Court judgment through (1) an official publication or (2) a certification or copy attested by the officer who has custody of the judgment. If the office which has custody is in a foreign country such as Japan, the certification may be made by the proper diplomatic or consular officer of the Philippine foreign service in Japan and authenticated by the seal of office.[55]

Accordingly, the Court deems it proper to remand the case to Branch 192, RTC, Marikina City for further proceedings. To emphasize, recognition and enforcement of a foreign judgment or final order require only proof of fact of such foreign judgment or final order. Furthermore, the recognition of the foreign judgment of adoption is a subsequent event that establishes a new status, right, and fact affecting petitioner. If duly proven, the foreign judgment needs to be reflected in the Philippine civil registry.

WHEREFORE, the petition is **GRANTED**. The Orders dated November 21, 2013 and April 23, 2014 of Branch 192, Regional Trial Court, Marikina City in JDRC Case No. 2013-2279-MK are **REVERSED** and **SET ASIDE**. The Regional Trial Court is **ORDERED** to **REINSTATE** the petition for further proceedings in accordance with this Decision.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[55] *Id.* at 544-545.

THIRD DIVISION

[G.R. No. 217610. September 2, 2020]

BAKBAK (1 AND 2) NATIVE CHICKEN RESTAURANT, represented by the owner ROSSELLE G. BARCO, *Petitioner*, *v.* **SECRETARY OF FINANCE, COMMISSIONER OF INTERNAL REVENUE, AND/OR RESPONSIBLE OFFICERS, namely: NESTOR S. VALEROSO, REGIONAL DIRECTOR,**[*] *Respondents*.

SYLLABUS

1. REMEDIAL LAW; COURT OF TAX APPEALS; JURISDICTION; JURISDICTION TO RULE ON THE CONSTITUTIONALITY OF A TAX LAW; CASE AT BAR. — In the case of *Banco de Oro v. Republic of the Philippines,* We have pronounced in no uncertain terms that the Court of Tax Appeals shall have the jurisdiction to rule on the constitutionality or validity of a tax law as well as tax regulations or administrative issuances, . . .

However, at the time that Bakbak filed the complaint dated March 9, 2009 to the RTC, the prevailing doctrine was that espoused in *British American Tobacco v. Camacho* . . . .

Since at the time of the filing of the complaint the prevailing dictum was that only regular courts had jurisdiction to pass upon the constitutionality or validity of tax laws and regulations, the complaint was properly lodged before the RTC and appealed to the CA.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); ASSESSMENT; PROCEDURE IN PROTESTING AN ASSESSMENT; FOR SECTION 228 OF THE NIRC TO TAKE EFFECT, THE ASSESSMENT MUST FIRST BE SERVED AND RECEIVED BY THE TAXPAYER. —

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[*] Felix B. Pepito, Chief of the Legal Division; Lita I. Chin, Chief of the Assessment Division; Leo O. Gonzales, Chief of the Special Investigation, and its subordinates, as follows: SP I Rex Vincent Perido, SP II Gervacio B. Angco, SP III Dennis C. Dimalanta, and RO III Nelia Monica J. Ramintas.

Section 228 of the NIRC provides for the procedure in protesting an assessment. It falls under the Title on Remedies provided to a taxpayer . . . .

Clearly, for the provisions of Section 228 to take effect, there must first be an assessment. Jurisprudence has described an assessment as a notice that contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and protests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

. . . Section 228 is itself clear that an assessment must be in writing and the legal and factual basis thereof shall be clearly laid down.

3. ID.; ID.; ID.; REVENUE MEMORANDUM NOS. 20-2002 AND 31-2002 DID NOT AMEND SECTION 228 ON THE PROCEDURE FOR PROTESTING AN ASSESSMENT. — The issue in this case is whether Revenue Memorandum Order Nos. 20-2002 and 31-2002 are invalid for being inconsistent with Section 228 of the NIRC.

. . .

As can be seen from the wordings of RMO Nos. 20-2002 and 31-2002, the subject matter pertains to the implementation of the power of the CIR to order the closure of the business of a taxpayer for violations provided under Section 115. RMO Nos. 20-2002 and 31-2002 did not in any way amend the provisions of Section 228 of the NIRC on the procedure for protesting an assessment. Section 115 and Section 228 pertain to entirely different matters.

APPEARANCES OF COUNSEL

The Law Firm of Torreon & Partners for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 26, 2014 and Resolution[3] dated February 12, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 02567-MIN filed by Bakbak (1 and 2) (Bakbak) Native Chicken Restaurant represented by Rosselle G. Barco (Rosselle) against the Secretary of Finance and Commissioner of the Internal Revenue (CIR) and/or its responsible officers.

Facts of the Case

Bakbak is a food business enterprise and retailer of fermented liquor.[4] On April 16, 2008, the Special Investigation Division (SID) of the Bureau of Internal Revenue (BIR) headed by Leo Gonzales (Gonzales), together with Rex Vincent Perido, Gervacio Angco (Angco), Dennis Dimalanta, and Nelia Ramintas (Ramintas), proceeded to Bakbak and presented to Federico Barco (Federico), father of Rosselle, owner of Bakbak, a copy of the Mission Order No. 00044789 to conduct surveillance pursuant to the "*Oplan Kandado*."[5] *Oplan Kandado* is a flagship program of the BIR aimed at strengthening the imposition of prescribed administrative sanctions for non-compliance with Value-Added Tax (VAT) requirements.[6] The issuance of the Mission Order was based on reports that Bakbak has not been

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[1] *Rollo*, pp. 3-53.

[2] Penned by Associate Justice Henri Jean-Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Edgardo A. Camello and Jhosep Y. Lopez; id. at 54-70.

[3] Penned by Associate Justice Henri Jean-Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Edgardo A. Camello and Pablito A. Perez; id. at 49-53.

[4] Id. at 55.

[5] Id. at 99.

[6] Id. at 118.

issuing invoices or receipts for its sales and that despite earning more than the VAT threshold, it only issues non-VAT invoices.[7]

Pursuant to the Mission Order, the SID conducted overt surveillance on Bakbak from April 17 to 26, 2008 and found that by adding the daily sales receipts during the ten-day period, the sales amounted to ₱524,568.00 which translates to daily average sales of ₱52,456.80,[8] This figure is in stark contrast with the declared gross income of Bakbak in taxable year 2006 which amounted to ₱120,000.00 only, and wherein a measly amount of ₱500.00 as income tax was paid.[9]

Meanwhile, upon learning that Federico has a farm in Arakan, North Cotabato, Gonzales and Angco met with him there. In the course of their conversation and to Federico's mind, Gonzales was trying to solicit from Federico 10 hectares of land, which the latter tried to dodge. On April 30, 2008, another meeting was arranged between Federico and Gonzales where the latter explained how the alleged tax liability of Bakbak ballooned to more than ₱1,000,000.00 for the taxable years 2006-2008. Gonzales asked Federico how much he is willing to give to avoid paying the substantial amount of tax liability. Federico answered that he could only give a much lower amount than the alleged more than ₱1,000,000.00 tax liability, to which Ramintas quipped, "*Magsabi ka na, ang dami mong pera eh*."[10]

This was followed by another meeting on May 6, 2008 where Gonzales allegedly proposed to Federico that he may pay the lowered amount of ₱700,000.00 but only ₱90,000.00 shall be receipted. They met again on May 27, 2008 where Gonzales told Federico that the Mission Order shall expire in a month. No conclusion was reached in any of those meetings.[11]

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[7] Id. at 119.

[8] Id.

[9] Id. at 56.

[10] Id. at 11.

[11] Id. at 57.

In a letter dated July 17, 2008, the BIR informed Rosselle of the results of the 10-day surveillance on Bakbak as well as the under-declaration of its gross sales for taxable year 2006 and non-payment of percentage tax. It was also stated therein that under-declaration entails a penalty of 30% under Sections 115 and 248 of the National Internal Revenue Code (NIRC). Rosselle was then required to present her side on the matter and make necessary corrections on the gross sales and pay the correct taxes. It was stated in the letter that the failure of Rosselle to heed said requirement shall trigger the elevation of the case to the BIR-National Office and possible recommendation for the closure of Bakbak.[12]

Rosselle and Federico disputed the findings of the SID contending that the sales evidenced by the Cash Register Machine receipts and sales invoices representing only one transaction were recorded as two separate transactions. They also assert that during the surveillance, Bakbak benefitted from the massive advertisement and promotional campaign of San Miguel Brewery of its products with Bakbak, hence, the increase in its sales.[13] However, Bakbak failed to comply with what were required of it under the letter.

A second notice dated September 24, 2008 was received by Federico and Rosselle giving them five days to submit their books of accounts and supporting documents enumerated in the notice.[14] A third and final notice dated October 2, 2008 was also sent giving them five days to respond. Federico called Gonzales to complain about the five-day period considering the voluminous documents required from them. On December 4, 2008, Rosselle received a subpoena *duces tecum* directing her to submit books of accounts and supporting documents and to appear before the Legal Division of the BIR.[15] She also received a memorandum from the BIR Regional Director dated December

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[12] Id. at 56.

[13] Id.

[14] Id. at 57.

[15] Id.

3, 2008 regarding the surveillance conducted in Bakbak and its violation of Section 115 of the NIRC. On December 11, 2008, another letter was received by Rosselle from the Chief of the Legal Division giving her 48 hours to explain the under-declaration of gross sales.[16]

In a letter dated December 24, 2008, Rosselle expressed her willingness to comply with the notices but explained that she is having financial difficulties at that time. She offered a compromise settlement. This was reiterated in another letter dated January 20, 2009.[17]

In a Letter of Authority dated February 3, 2009, the Regional Director authorized the SID to examine the books of accounts and other accounting records for VAT liabilities of Bakbak for the period covering January 1, 2008 to December 31, 2008.[18]

Consequently, another first notice was issued to Rosselle giving her five days to submit books of accounts and supporting documents. In response, Rosselle requested 30 days to accomplish the needed records.[19] However, a resolution approving the issuance of 5-day VAT compliance notice was sent to Rosselle stating that she is non-VAT registered but filed two monthly VAT returns for May and June 2008. Rosselle also received a five-day VAT compliance notice directing her to register as a VAT taxpayer and comply with the requirements of a VAT registered person.[20]

In a letter dated February 25, 2009, Rosselle alleged that she attempted to register as a VAT establishment but was not accepted; that she has been filing VAT returns since May 2008; that the period of five days given to her is not enough to comply;

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[16] Id. at 58.

[17] Id.

[18] Id.

[19] Id. at 58.

[20] Id. at 59.

and that she requested another 10 days; and she is willing to pay the tax liability but requested a re-evaluation.[21]

In reply thereto, the BIR reiterated the result of its 10-day surveillance; the non-payment of Bakbak of VAT from April 2008 and prior years; and the non-compliance to the directive to submit books of account and other accounting records. The same letter also stated that a recommendation to the CIR may be made for the closure of Bakbak.[22]

Fearing for the closure of Bakbak, Rosselle filed with the Regional Trial Court (RTC) on March 9, 2009 an action for the Declaration of Nullity/Constitutionality of Revenue Memorandum Order (RMO) Nos. 20-2002 and 31-2002, the circulars which contain the rules for the closure of an establishment for violation of Section 115 of the NIRC on VAT.[23] According to Rosselle, the subject RMOs violated her right to due process for giving her only five days to respond instead of 30 days under Section 228 of the NIRC.

The CIR countered that the guidelines in the questioned RMOs do not form part of the procedure for protesting an assessment under Section 228 of the NIRC. Instead, the RMOs prescribe for guidelines on the implementation of Section 115 of the NIRC on the Title on VAT.[24]

On February 2, 2010, the RTC rendered its Decision[25] declaring the RMOs void and unconstitutional.[26] During the pendency of the case in the RTC, RMO No. 3-2009 was issued by BIR, which consolidated RMO Nos. 20-2002 and 31-2002, with other RMOs.[27]

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[21] Id. at 59.

[22] Id.

[23] Id. at 60.

[24] Id. at 102.

[25] Penned by Judge George E. Omelio; id. at 98-106.

[26] Id. at 105.

[27] Id. at 121.

According to the RTC, the subject RMOs were not in accordance with Section 228 of the NIRC in that, Section 228 gave the taxpayer 30 days to protest the assessment made upon it while the RMOs gave only five days for the taxpayer to respond.[28] Hence, the promulgation of the RMOs diminished and altered the substantive right of Bakbak under Section 228 of the NIRC to protest the assessment within 30 days and not just five days as required under the questioned RMOs.[29]

The RTC explained that the issuances of the BIR must conform to the existing laws and statutes. The governmental agencies must not enlarge, alter, or restrict the provisions of the laws in issuing implementing rule, regulation or procedure.[30]

The RTC also voided RMO No. 3-2009 in so far as it codified RMO Nos. 20-2002 and 31-2002.[31]

The CIR moved for reconsideration which was also denied in an Order[32] dated May 26, 2010.

Aggrieved, the CIR elevated the case to the CA.

The CA rendered its Decision[33] dated March 26, 2014 granting the appeal and setting aside the ruling of the RTC.

According to the CA, it was error for the RTC to nullify RMO 3-2009 as well because the latter not only codified the two questioned RMOs but also contained certain provisions that were never part of the questioned RMOs.[34]

Be that as it may, the CA ruled that Section 228 of the NIRC speaks of protesting an assessment. An assessment contains

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[28] Id. at 102-103.

[29] Id. at 104.

[30] Id. at 103.

[31] Id. at 105.

[32] Id. at 107.

[33] Supra note 2.

[34] *Rollo*, p. 64.

not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Hence, the provisions of Section 228 shall only be operational when there is already an assessment.[35]

The CA summarized the letters and notices sent by the BIR to Rosselle in the following manner:

Letter dated July 17, 2008	Rosselle was informed of the results of the surveillance. Based on the results and the amount she paid for taxable year 2006, there is an under-declaration of her gross sales. She was also informed that based on the records, she made no payment of percentage taxes. She was given 5 days from receipt to present her side and make necessary corrections.
Second Notice dated September 24, 2008	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2007.
Third Notice dated October 2, 2008	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2007.
Memorandum dated December 3, 2008 Re: Violation of Section 115 of the NIRC	The Memo was addressed to the Regional Director. It stated the results of the surveillance vis-à-vis the annual gross sales declared for 2007 and finding that: (1) there is an under-declaration of taxable income; and (2) non-registration as a VAT taxpayer.
Letter dated December 8, 2008	Rosselle was informed of the results of the surveillance vis-à-vis her 2007 annual tax income return which shows an under-declaration of her taxable sales. She was given 48 hours to explain under oath why she should not be dealt with

[35] Id. at 65.

	administratively, for suspension of business or temporary closure, and/or for criminal liability under the Tax Code.
Letter of Authority dated February 3, 2009	Authorizing the SID to examine Rosselle's books of accounts and other accounting records for VAT liabilities for 2008.
First Notice dated February 3, 2009 Re: VAT	Rosselle was given 5 days from receipt to submit her books of accounts and supporting documents for the year 2008.
Resolution Approving the Issuance of the 5-Day VAT Compliance Notice	The Board granted the issuance of the 5-day VAT compliance notice considering that there was an under-declaration of Rosselle's taxable income and that she is a non-VAT taxpayer.
5-Day VAT Compliance Notice dated February 18, 2009	Rosselle was asked to comply with the Tax Code: (1) register as a VAT taxpayer; (2) comply with the requirements of a VAT-registered person. She was given 5 days from receipt to rectify.
Letter dated February 27, 2009	The letter refuted the arguments of Rosselle's letter reply to the 5-day VAT compliance notice. She was informed that she violated Section 115 (b), (a1), (a2), and (a3). Her request for immediate reevaluation was denied. The letter ended that "the recommendation may be made to the Commissioner of Internal Revenue for the temporary closure of your establishment until you shall have complied with the requirements of the Five-Day VAT Compliance Notice sent to you."[36]

[36] Id. at 65-67.

In assessing the letters, the CA concluded that the letters and notices sent by the CIR to Rosselle are not assessments. The communications merely required her to submit her books of accounts and supporting documents or to comply with the requirements of the NIRC. Also, the subject of the letters pertains to matters under Section 114 of the NIRC on the return and payment of VAT and Section 115 which gives the CIR the power to suspend the business operations of a taxpayer for failure to comply with Section 114. The subject of the letters was issued also in connection with Section 237 on the requirement to issue of receipts or sales or commercial invoices and Section 238 on the need to print receipts or sales or commercial invoices. The letters and notices to Rosselle pertain to the proper administration of taxes and not assessment.[37]

The CA noted that since the assailed RMOs implement Section 115 of the NIRC, Rosselle cannot insist that the periods under Section 228 shall be applied. Besides, even in the letters sent to her, Rosselle was given the opportunity for her to rectify the under-declaration of income as well as register as VAT taxpayer, but she failed to do so.[38]

Bakbak filed a motion for reconsideration but it was denied as well.

This time aggrieved, Bakbak filed a Petition for Review on *Certiorari*[39] before this Court insisting that the meetings called upon by Gonzales and his SID team to discuss the payment of alleged deficiency taxes is in the form of an assessment which would trigger the application of the periods given in Section 228 of the NIRC.[40] Bakbak also argues that Sections 115 and 228 of the NIRC should be construed together.[41]

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[37] Id. at 67.

[38] Id. at 69.

[39] Id. at 3-46.

[40] Id. at 22.

[41] Id. at 27.

Hence, for being contrary to Section 228, the assailed RMOs should be declared invalid and unconstitutional.[42]

In its Comment,[43] the CIR, through the Office of the Solicitor General (OSG), counters that the activities of certain BIR employees in the aforesaid meetings with Federico were irregular and were already subject of criminal and administrative proceedings. Thus, the irregular activities of the BIR officials should be better threshed out in the proper forum.[44] These meetings cannot be considered demand for payment of taxes under the NIRC which would be tantamount to an assessment and which would trigger the application of the provisions of Section 228.[45] The OSG points out that Rosselle and Federico were actually fully aware and even complicit to the illegal activities of the BIR officers.[46] Reiterating its argument that RMO Nos. 20-2002 and 31-2002 do not form part of the procedure for protesting an assessment, the OSG states that Section 228 of the NIRC and Section 115, which the subject RMOs are implementing, pertain to different procedures in revenue collection and administration.[47] The OSG also cited the differences between a five-day VAT Compliance Notice and a Final Assessment Notice.[48]

Bakbak filed its Reply[49] reiterating its arguments already raised in the petition.

Issue

The issue in this case is whether Revenue Memorandum Order Nos. 20-2002 and 31-2002 are invalid for being inconsistent with Section 228 of the NIRC.

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[42] Id. at 45.

[43] Id. at 118-147.

[44] Id. at 125-126.

[45] Id. at 130.

[46] Id. at 132.

[47] Id. at 136.

[48] Id. at 137-138.

[49] Id. at 163-175.

Ruling of the Court

The petition is not meritorious.

The filing of the case to the RTC questioning the validity of the RMOs was proper.

Before going into the substantive issue in this case, there is a need to discuss whether the filing of the action in the RTC questioning the constitutionality of the subject RMOs is proper.

In the case of *Banco de Oro v. Republic of the Philippines*,[50] We have pronounced in no uncertain terms that the Court of Tax Appeals shall have the jurisdiction to rule on the constitutionality or validity of a tax law as well as tax regulations or administrative issuances, *viz*:

x x x x x x x x x

> The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all natters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.
>
> This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

x x x x x x x x x[51]

However, at the time that Bakbak filed the complaint dated March 9, 2009 to the RTC, the prevailing doctrine was that espoused in *British American Tobacco v. Camacho*[52] which provided that:

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[50] 793 Phil. 97, 123-124 (2016).

[51] Id.

[52] 584 Phil. 489, 511 (2008).

x x x x x x x x x

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does **not include cases where the constitutionality of a law or rule is challenged**. Where what is assailed is the **validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function**, the **regular courts have jurisdiction to pass upon the same**. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. 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.[53]

x x x x x x x x x

Since at the time of the filing of the complaint the prevailing dictum was that only regular courts had jurisdiction to pass upon the constitutionality or validity of tax laws and regulations, the complaint was properly lodged before the RTC and appealed to the CA.

Sections 228 and 115 of the NIRC pertain to two different matters.

Be that as it may, Section 228 of the NIRC provides for the procedure in protesting an assessment. It falls under the Title on Remedies provided to a taxpayer, to wit:

Sec. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should

[53] Id.

be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

x x x x x x x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be **protested administratively** by filing a request for reconsideration or reinvestigation within **thirty (30) days from receipt of the assessment** in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

x x x x x x x x x x (Emphasis supplied)

Clearly, for the provisions of Section 228 to take effect, there must first be an assessment. Jurisprudence has described an assessment as a notice that contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and protests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.[54]

Not all notices and letters coming from the BIR can be deemed assessments. As concluded by the CA, the letters sent to Bakbak were not in the nature of an assessment which may be protested against under Section 228 of the NIRC. We likewise agree with the CA that the meetings which allegedly happened between Federico and the erring officials of the BIR where the latter asked from the former payment of the alleged tax deficiency

[54] *CIR v. Pascor Realty and Development Corp.*, 368 Phil. 716 (1999).

of Bakbak cannot be considered a final assessment notice. Section 228 is itself clear that an assessment must be in writing and the legal and factual basis thereof shall be clearly laid down. None of these formalities and required contents of an assessment are present in this case.

On the other hand, Section 115 which is found under the Title on VAT, gives upon the CIR the power to suspend business operations of a taxpayer for the following violations:

x x x x x x x x x

(a) In the case of a VAT-registered Person. —

(1) Failure to issue receipts or invoices;

(2) Failure to file a value-added tax return as required under Section 114; or

(3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.

(b) Failure of any Person to Register as Required under Section 236.

The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order. (Emphasis supplied)

The pertinent provisions of RMO No. 20-2002 which implements Sections 113, 114, 115, 236, 237 and 238 of the NIRC are as follows:

(2) Section II(4)(B). —

(B) Confrontational Requirements. —

1. Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office. The findings of the investigating office shall be reviewed by a Review Board composed of the following:

x x x x x x x x x

The Review Board must act on the report within seven (7) days from receipt thereof. The chairperson of the Board may always seek the assistance of any Revenue Official and Employee, in the interest of public service. The reviewing board shall convene, upon the initiative of the chairperson, whenever necessary. If the report is approved by the Review Board, the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, as chair, shall immediately require, through the Chief, Legal Division or ACIR, Legal Service, the taxpayer to refute the apprehension and to explain under oath within **forty-eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment**, and/or criminally, for violation of pertinent provisions of the Tax Code. Thus, the 48-Hour Notice shall be signed by the Chief, Legal Division or ACIR, Legal Service, as the case may be, appending thereto the report of the investigating office as approved by the Review Board.

2. Upon submission of the explanation or if none is submitted on or before the deadline, the Review Board headed by the Regional Director or the ACIR, Enforcement Service/LTS, shall decide whether or not to terminate or indorse the docket of the case to the ACIR, Legal Service, with specific recommendation on whether or not to pursue administrative or criminal action against the taxpayer.

3. Upon evaluation of the evidence presented and arguments of the parties involved, the ACIR-Legal Service shall make the necessary recommendation for the approval of the DCIR-Legal and Inspection Group unless the CIR delegates the approval thereof to another subordinate official. **If the recommendation is for the issuance of the 10-Day VAT Compliance Notice**, the same shall be prepared by the ACIR-Legal Service for the signature of the DCIR-Legal and Inspection Group (unless the CIR delegates the signing thereof to another subordinate official). **The 10-day VAT Compliance Notice with details of the findings of the investigating office as approved by the Review Board shall be served immediately to the taxpayer by the Regional Director/ACIR-LTS/ACIR-Enforcement Service**, whoever is the appropriate official who has jurisdiction over the case. The taxpayer may again **refute the allegations and findings of the BIR within five (5) days from receipt of the notice**. The BIR originating office shall respond to the letter or protest of the taxpayer within five (5) days from receipt thereof. The response letter shall be signed by the Head of the Review Board. Upon receipt by the

BIR of the protest, the running of the 10-Day compliance period is deemed suspended and shall begin to run only upon receipt by the taxpayer of the resolution on the protest.

Section II(4)(C)

(C) Execution and Enforcement. —

1. Where a **taxpayer refuses, neglects, or fails to comply with the terms of the 10-day VAT Compliance Notice** or to satisfactorily refute the findings of the BIR, the Review Board chaired by the Regional Director/ACIR-Enforcement Service/ACIR-LTS, shall prepare a report **recommending the closure of the establishment** for the approval of the DCIR-Legal and Inspection Group. On the basis of the approval made by the DCIR-Legal and Inspection Group, the Regional Director/ACIR—Enforcement Service/ACIR-LTS shall prepare, sign, and execute the Closure Order. The service of the Closure Order shall be accompanied with the report of the Review Board as approved by the DCIR-Legal and Inspection Group indicating therein the computed tentative amount of under declaration of gross sales/ receipts/other taxable base as a result of the violations committed.

However, if in the meantime the taxpayer corrects the violation pursuant to Section IV hereof, the Regional Director or the ACIR, Enforcement Service/Large Taxpayer Service who signed the closure order shall desist from implementing the closure order and shall communicate such information to the Deputy Commissioner — Legal and Inspection Group who approved the recommendation of the Review Board for the issuance of the closure order.

2. The execution of the closure order shall consist in the physical closing of the doors or other means of ingress unto the establishment and the sealing thereof with the BIR official seal. (Emphasis supplied)

RMO No. 31-2002 in part provides that:

Section 3. Guidelines and Procedures. — While the general provisions on the administrative sanction of suspension/temporary closure of business have been clearly laid down in RMO 57-2000 as amended by RMO 20-2002, the following modifications shall be observed in respect to the institution of closure order pursuant to this Order:

(1) The Letter Notice and follow-up letters sent and duly received by the taxpayer concerned shall be considered as sufficient compliance

with the 48-Hour Notice provided for under RMO 57-2000 and RMO 20-2002;

(2) In view of the long period of time attended to such taxpayers to comply with their obligations as indicated in the Letter Notice that was served, up to the time that follow-up letters have been sent, a **5-Day VAT Compliance Notice shall be issued in lieu of the 10-Day VAT Compliance Notice**. The approval and the signing of the 5-Day VAT Compliance Notice is hereby delegated to the Regional Director having jurisdiction over the taxpayer concerned;

(3) The signing of Closure Order and lifting thereof shall be delegated to the Regional Director having jurisdiction over the taxpayer concerned;

(4) The procedures for the institution of closure proceedings shall be as follows:

(a) The Technical Working Group (TWG) in the National Office shall transmit the case file to the RDO and the RDO, upon receipt thereof, shall complete documentation of the case file in preparation for the closure proceedings;

(b) Once the case file has been fully documented, the RDO shall submit a report to the Regional Director recommending the action of closure of the concerned establishment based on guidelines provided for under this Order. In instances where it is found that the case does not qualify for closure proceedings, a memorandum for the recommended next course of action to be undertaken shall be submitted by the RDO to the TWG in the National Office, for further evaluation;

(c) Upon approval thereof by the Regional Director, a Mission Order shall be signed by the Regional Director ordering the service of a 5-Day VAT Compliance Notice to the concerned taxpayer by the RDO;

(d) The 5-Day Compliance Notice shall state the particular provision of Section 115 that was violated by the taxpayer with specific reference to the amount of sales discrepancy discovered by the RELIEF System and shall further require the taxpayer to pay an amount equivalent to 3% (in case of seller of goods)/6% (in case of seller of service) of the under declared sales/receipts or 110% of the adjusted basic tax due (alter considering under declaration), whichever is higher, using BIR Payment Form No. 0605. In addition, the RDO shall recommend an audit of the case by the Tax Fraud Division of the

National Office unless taxpayer likewise pays the minimum income tax payment as prescribed in the VAAP regulations (Revenue Regulations Nos. 12-2002, 17-2002 and 18-2002);

(e) In case of **failure to respond to the 5-Day VAT Compliance Notice, Closure Order shall be prepared by the RDO** and shall be recommended by the Chief, Legal Division for the final approval of the Regional Director;

x x x x x x x x x (Emphasis supplied)

As can be seen from the wordings of RMO Nos. 20-2002 and 31-2002, the subject matter pertains to the implementation of the power of the CIR to order the closure of the business of a taxpayer for violations provided under Section 115. RMO Nos. 20-2002 and 31-2002 did not in any way amend the provisions of Section 228 of the NIRC on the procedure for protesting an assessment. Section 115 and Section 228 pertain to entirely different matters.

As a final note, Bakbak was given numerous chances to respond and rectify its under-declaration and non-registration as VAT entity. The first letter sent to Bakbak requiring it to submit its books of accounts and other accounting records was dated July 2008 while the last letter recommending its closure for failure to comply with Section 115 of the NIRC was sent in February 2009. Despite the long period of time given to it by the BIR, Bakbak still failed to comply with the directives of the Bureau. It cannot now question that the assailed RMOs are unconstitutional just because they were made to apply against it.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 26, 2014 and the Resolution dated February 12, 2015 of the Court of Appeals in CA-C.R. CV No. 02567-MIN is **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.,* concur.

THIRD DIVISION

[G.R. No. 218543. September 2, 2020]

SIERRA GRANDE REALTY CORPORATION, *Petitioner, v.* **HON. MARIA ROSARIO B. RAGASA, Chairperson, in her capacity as Presiding Judge of the Regional Trial Court of Pasay, Branch 108, ELMER TAN, NANCY TAN, BERNARDINO VILLANUEVA, GOLDEN APPLE REALTY CORPORATION, and ROSVIBON REALTY CORPORATION,** *Respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; POWERS; THE POWER OF A CORPORATION TO SUE AND BE SUED IS EXERCISED BY THE BOARD OF DIRECTORS. — As a general rule, "a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course."

2. ID.; ID.; ID.; ID.; ID.; EXCEPTION. — By way of exception, the Court, in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, recognized that certain officials or employees of a company could sign the verification and certification without need of a board resolution, such as, but not limited to: the Chairperson of the Board of Directors, the President of a corporation, the General Manager or Acting General Manager, Personnel Officer, and an Employment Specialist in a labor case.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; UNDER THE PRINCIPLE OF HIERARCHY

OF COURTS, DIRECT RESORT TO THE SUPREME COURT IS IMPROPER BECAUSE THE SUPREME COURT IS A COURT OF LAST RESORT AND MUST REMAIN TO BE SO IN ORDER FOR IT TO SATISFACTORILY PERFORM ITS CONSTITUTIONAL FUNCTIONS. — This Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the CA and with the RTCs in proper cases within their respective regions. However, this concurrence of jurisdiction does not grant a party seeking any of the extraordinary writs the absolute freedom to file his/her petition with the court of his/her choice. Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its dockets. Therefore, as a rule, petitions for the issuance of such extraordinary writs against a regional trial court should be filed with the CA.

4. ID.; ID.; ID.; ID.; EXCEPTIONS. — Nonetheless, the doctrine of hierarchy of courts is not an iron-clad rule as it in fact admits the jurisprudentially established exceptions thereto, *viz.*: (a) direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this Court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government; (b) when the issues involved are of transcendental importance; (c) cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter; (d) the constitutional issues raised are better decided by this court; (e) the time element; (f) the filed petition reviews the act of a constitutional organ; (g) petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; 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. It is not

necessary that all of these exceptions must occur at the same time to justify a direct resort to this Court.

5. ID.; SUMMARY PROCEDURE; IN ACTIONS FOR UNLAWFUL DETAINER, THE ISSUANCE OF THE WRIT OF EXECUTION PENDING APPEAL IS A MINISTERIAL DUTY ON THE PART OF THE COURT. — Actions for unlawful detainer are governed primarily by the Revised Rules on Summary Procedure and suppletorily by the Rules of Court. x x x [T]he issuance of the writ of execution pending appeal is a clear ministerial duty on the part of the RTC. It neither exercises official discretion nor judgment. Further, the use of the word "shall" in both provisions underscores the mandatory character of the rule espoused therein. It was, therefore, error on the part of Judge Ragasa to even mention "good reasons" as the same is only required in discretionary execution.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Jesus M. Cledera for Rosvibon Realty Corp.
Arquillo Dela Cruz & Arquillo Law Offices for respondents Elmer Tan & Golden Apple Realty Corp.

D E C I S I O N

GAERLAN, *J.*:

Imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Presiding Judge Maria Rosario B. Ragasa (Judge Ragasa) of the Regional Trial Court (RTC) of Pasay City, Branch 108, petitioner Sierra Grande Realty Corporation (Sierra Grande) has directly come to this Court via a petition for *certiorari*[1] under Rule 65 of the Rules of Court to assail and to seek the annulment and setting aside of two issuances in Civil Case No. M-PSY-12-15305-CV-R00-00, to wit:

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[1] *Rollo,* pp. 3-20.

1. Order[2] dated October 29, 2014 denying petitioner's motion for execution pending appeal; and

2. Order[3] dated April 8, 2015 denying petitioner's motion for reconsideration of the first.

The facts pertinent to this case are as follows:

On October 25, 2012, Sierra Grande lodged a complaint for unlawful detainer before the Metropolitan Trial Court (MeTC) of Pasay City against private respondents Elmer Tan (Elmer), Nancy Tan (Nancy), Bernardino Villanueva, Golden Apple Realty Corporation (Golden Apple) and Rosvibon Realty Corporation (Rosvibon).[4] The case was docketed as Civil Case No. M-PSY-12-15305CV and was raffled to Branch 47. Due to a failed judicial dispute resolution, it was re-raffled to Branch 46.[5]

Sierra Grande alleged, among others, that: (a) it is the registered owner of a property located at No. 2280 Roberts Street, Pasay City, covered by Transfer Certificate of Title (TCT) No. 19801 (Roberts property); (b) the property was purchased in 1975 by one of its incorporators, the late Sochi Villanueva (Sochi), to house his ailing mother; (c) Sochi's brothers, Richard Villanueva (Richard) and Bernardino Villanueva (Bernardino), were allowed to temporarily stay in the property; (d) Richard moved out of the property in 1979;[6] (e) in 1984, Elmer and Nancy were also allowed to occupy the property after having been evicted from an apartment in Ermita, Manila;[7] (f) when Sochi passed away in 1985, Bernardino, Elmer and Nancy conspired with other individuals to simulate contracts to sell

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[2] Id. at 21-22.

[3] Id. at 23-24.

[4] Id. at 49.

[5] Id.

[6] Id.

[7] Id. at 49-50.

and deeds of absolute sale over portions of the property in favor of Golden Apple and Rosvibon;[8] (g) in the case entitled *Golden Apple Realty and Devt. Corp. v. Sierra Grande Realty Corp., et al.*,[9] this Court invalidated the contracts to sell and deeds of absolute sale on the ground of fraud; (h) the Court's decision in the said case became final and executory; (i) on September 28, 2012, it sent a letter to private respondents demanding them to vacate the property and peacefully turn over its possession; and (j) notwithstanding receipt of the letter, private respondents refused to heed its demand; consequently, it was constrained to file the complaint.[10]

In their answer, private respondents denied Sierra Grande's allegations. They claimed that the complaint states no genuine cause of action for unlawful detainer since they never received the demand to vacate. They averred that the property was heavily mortgaged to Manphil Investment Corporation and that they were the ones who redeemed the same for and in behalf of petitioner, as evidenced by the annotation on TCT No. 19801 under Entry No. 06-48179. Thus, they asserted that they have a right to the property.[11]

In its Decision[12] dated September 10, 2013, the MeTC found that Sierra Grande was the lawful owner of the Roberts property and that private respondents were occupying the property by mere tolerance. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against all defendants namely Elmer Tan, Nancy Tan, Bernardino Villanueva, Golden Apple Realty and Rosvibon Realty Corporation and all person[s] claiming rights under them to:

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[8] Id. at 50.

[9] 640 Phil. 62 (2010).

[10] *Rollo,* p. 50.

[11] Id. at 51.

[12] Id. at 49-58; penned by Presiding Judge Restituto V. Mangalindan, Jr.

1. immediately vacate and surrender to plaintiff the possession of the subject premises;
2. pay attorney's fee in the amount of Php20,000.00, and
3. pay the cost of suit.

SO ORDERED.[13]

On appeal to the RTC, Judge Ragasa rendered a Decision[14] dated April 30, 2014, affirming *in toto* the MeTC Decision.

Dissatisfied, private respondents sought reconsideration thereof, which was denied in an Order dated August 15, 2014 for lack of merit.[15]

On September 10, 2014, Sierra Grande filed a motion for execution pending appeal.[16] In denying the said motion, Judge Ragasa, in her Order[17] dated October 29, 2014, ratiocinated in this wise:

> Execution pending appeal is the exception to the general rule. As such exception, the Court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. "Good reasons" it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity x x x.
>
> Thus, it is the honest belief of this Court that it would be prudent to wait the final resolution of the petition for review now pending with the Court of Appeals. The Court therefore defers the issuance of an order of execution.

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[13] Id. at 58.

[14] Id. at 59-60.

[15] Id.

[16] Id. at 25-29.

[17] Id. at 21-22.

WHEREFORE, the pending motion for execution pending appeal is hereby denied.

SO ORDERED.

Aggrieved, Sierra Grande moved for reconsideration[18] of the aforesaid Order, but to no avail. In an Order[19] dated April 8, 2015, Judge Ragasa stood pat on her ruling and reiterated her stand to wait for the final resolution of the case then pending with the Court of Appeals (CA).

Hence, the instant petition.

Our Ruling

The petition is meritorious.

A *certiorari* proceeding is, by nature, an original and independent action, and therefore not considered as part of the trial that had resulted in the rendition of the judgment or order complained of.[20] On this score, there is a need for the Court to acquire jurisdiction over the person of the parties to the case before it can resolve the same on the merits.[21] The Court acquired jurisdiction over the person of petitioner Sierra Grande upon the filing of the *certiorari* petition. Meanwhile, Section 4, Rule 46 of the Rules of Court, in relation to Section 2,[22] Rule 56 of the same Rules, mandates that "[t]he court shall acquire jurisdiction

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[18] Id. at 31-40.

[19] Id. at 23-24.

[20] *Reicon Realty Builders Corporation v. Diamond Dragon Realty and Management, Inc.*, 753 Phil. 251, 262 (2015).

[21] *Province of Leyte v. Energy Development Corporation*, 761 Phil. 466, 472 (2015).

[22] Section 2. *Rules applicable.* — The procedure in original cases for *certiorari*, prohibition, *mandamus, quo warranto* and *habeas corpus* shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;

x x x x

over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction."

In the case at bar, records reveal that the Court served its Resolution[23] dated August 3, 2015 indicating its initial action on Sierra Grande's *certiorari* petition, *i.e.*, requiring the respondents to file a comment to the petition within 10 days from notice. Elmer and Golden Apple, on one hand, and Rosvibon, on the other, complied with the directive by filing their respective comments.[24] Despite notice, Bernardino chose not to file his own comment. Nancy, however, could not be served with a copy of the Resolution as her whereabouts are unknown.

This Court notes that when petitioner filed the motion for execution pending appeal on September 10, 2014, private respondents had yet to interpose an appeal before the CA. As mentioned in the CA Decision[25] dated September 30, 2015, only Elmer, Golden Apple and Rosvibon filed their petitions for review to challenge the decision of the RTC affirming *in toto* the decision of the MeTC in the unlawful detainer case.[26] It appears that Bernardino and Nancy did not appeal; hence, as to them, the RTC decision had already become final and executory. In view of this supervening circumstance, the resolution of the instant case as to the propriety of the denial of the motion for execution pending appeal no longer concerns them. Ergo, the Court can dispose of the case on the merits even without acquiring jurisdiction over the person of Nancy.

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

[24] Comment dated December 8, 2015 filed by Elmer and Golden Apple Realty Corporation, id. at 71-81; Comment dated December 14, 2015 filed by Rosvibon, id. at 92-98.

[25] Id. at 128-149; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Villanueva.

[26] Id. at 134.

In their comments, private respondents Elmer, Golden Apple and Rosvibon insist that Sierra Grande has no capacity to sue as a juridical person in view of the revocation of its certificate of registration.[27] In addition, Elmer and Golden Apple question the authority of Frank Villanueva (Frank) to sign the verification and certification against forum shopping in the *certiorari* petition and, ultimately, to sue on behalf of Sierra Grande in the absence of a board resolution authorizing him to do so.[28]

We uphold the capacity of Sierra Grande to institute the present petition. The Securities and Exchange Commission (SEC) initially revoked its certificate of registration on May 27, 2003 for the non-filing of the required reports, but the order of revocation was eventually lifted on December 20, 2012. Its certificate of registration was revoked again on June 21, 2013 for failure to comply with the directives of the SEC within the given period.[29] Pursuant to Section 122[30] of the Corporation Code, Sierra Grande had three years therefrom, or until June 21, 2016, to prosecute in its name any suit by or against it. Here, the petition was filed on June 29, 2015, well within the period set by law.

As a general rule, "a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution

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[27] Id. at 76, 94-97.

[28] Id. at 76.

[29] Id. at 138.

[30] Sec. 122. *Corporate Liquidation.* — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

x x x x.

or its by-laws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course."[31]

By way of exception, the Court, in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[32] recognized that certain officials or employees of a company could sign the verification and certification without need of a board resolution, such as, but not limited to: the Chairperson of the Board of Directors, the President of a corporation, the General Manager or Acting General Manager, Personnel Officer, and an Employment Specialist in a labor case.[33] Thus, the position held by Frank, as General Manager of Sierra Grande, qualifies him to sign the verification and certification against forum shopping in the petition before us, albeit without a board resolution.

We likewise affirm Frank's authority to sue on behalf of petitioner. Similar to the case of *Societe des Produits Nestle, S.A. v. Puregold Price Club, Inc.*,[34] there was no board resolution and/or secretary's certificate appended to the petition, but there was a power of attorney, Special Power of Attorney (SPA)[35] in this case, appointing Frank as attorney-in-fact of Sierra Grande, with authority to file the petition. Unlike in the Nestle case where the power of attorney was signed by a single individual whose authority to execute the same was questionable, the SPA was executed and signed by majority of the directors of Sierra Grande. To our mind, it constitutes as an act of the

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[31] *Esguerra, et al. v. HOLCIM Phil., Inc.*, 717 Phil. 77, 90 (2013).

[32] 568 Phil. 572 (2008), as cited in *Sps. Lim v. Court of Appeals, et al.*, 702 Phil. 634 (2013).

[33] Id. at 581.

[34] 817 Phil. 1030 (2017).

[35] *Rollo*, pp. 16-17.

board of directors contemplated under the law and suffices to clothe Frank with authority to represent Sierra Grande in these proceedings.

Elmer and Golden Apple further contend that the petition should have been filed with the CA.[36] They posit that petitioner failed to justify a direct resort to this Court.

This Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the CA and with the RTCs in proper cases within their respective regions. However, this concurrence of jurisdiction does not grant a party seeking any of the extraordinary writs the absolute freedom to file his/her petition with the court of his/her choice.[37] Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its dockets.[38] Therefore, as a rule, petitions for the issuance of such extraordinary writs against a regional trial court should be filed with the CA.

Nonetheless, the doctrine of hierarchy of courts is not an iron-clad rule as it in fact admits the jurisprudentially established exceptions thereto, *viz.:* (a) direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this Court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government; (b) when the issues involved are of transcendental importance; (c) cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide

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[36] Id. at 77.

[37] *Cabarles v. Judge Maceda,* 545 Phil. 210, 233 (2007).

[38] *Dy v. Judge Bibat-Palamos, et al.,* 717 Phil. 776, 782 (2013).

the lower courts on this matter; (d) the constitutional issues raised are better decided by this court; (e) the time element; (f) the filed petition reviews the act of a constitutional organ; (g) petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; 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.[39] It is not necessary that all of these exceptions must occur at the same time to justify a direct resort to this Court.[40]

We find that the instant case falls under one of the exceptions cited above, particularly the time element or the exigency of the situation being litigated. It must be emphasized that the present controversy between the parties stemmed from an ejectment case which is, by nature and design, a summary procedure and should have been resolved with expediency.[41]

Also, this Court has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition.[42] Here, the issue raised by Sierra Grande in its petition, as to the propriety of issuing a writ of execution pending appeal, involves a pure question of law. Under the circumstances, petitioner's direct resort to this Court is proper.

Having addressed the procedural issues, we now proceed to the sole substantive issue of whether public respondent Judge

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[39] *Ifurung v. Carpio-Morales,* G.R. No. 232131, April 24, 2018, 862 SCRA 684, 707.

[40] *The Diocese of Bacolod v. COMELEC, et al.,* 751 Phil. 301, 335 (2015).

[41] *Intramuros Administration v. Offshore Construction Development Company,* G.R. No. 196795, March 7, 2018, 857 SCRA 549, 569.

[42] *The Diocese of Bacolod v. COMELEC, et al.,* supra.

Ragasa committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders.

The orders that petitioner seeks to annul and set aside are orders denying its motion for execution pending appeal. Being interlocutory, they are not appealable.[43] But a petition for *certiorari* may be filed to assail an interlocutory order if it is issued without jurisdiction, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Rules 65 of the Rules of Court expressly provides:

> Section 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts 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.
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> 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 third paragraph of Section 3, Rule 46. (1a)

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[43] RULES OF COURT, Rule 41, Section 1.

> Section 1. *Subject of appeal.* — An appeal may be taken from a judgment or final that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> x x x x
>
> (c) An interlocutory order;
>
> x x x x
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Sierra Grande argues that Judge Ragasa committed grave abuse of discretion amounting to lack or excess of jurisdiction when she denied its motion for execution pending appeal despite the clear provisions of the Rules of Court and prevailing jurisprudence requiring execution pending appeal in ejectment cases. On the other hand, Elmer and Golden Apple heavily rely on the case of *Eudela v. Court of Appeals*[44] in maintaining that the respondent judge was correct in denying the motion for execution pending appeal filed by petitioner.

Private respondents' reliance on the said case is misplaced. It bears stressing that the *Eudela* case refers to execution pending appeal under Section 2, Rule 39 of the Rules of Court in an action for injunction, specific performance and damages. In contrast, this Court reminds private respondents that this case originated from a complaint for unlawful detainer filed by Sierra Grande against them. Actions for unlawful detainer are governed primarily by the Revised Rules on Summary Procedure and suppletorily by the Rules of Court.

In this connection, Section 21 of the Revised Rules on Summary Procedure states:

> Sec. 21. *Appeal.* — The judgment or final order shall be appealable to the appropriate regional trial court which shall decide the same in accordance with Section 22 of Batas Pambansa Big. 129. The decision of the regional trial court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

This is reflected in Section 21, Rule 70 of the Rules of Court:

> Section 21. *Immediate execution on appeal to Court of Appeals or Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. (10a)

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[44] 286 Phil. 683(1992).

Based on the foregoing provisions, the issuance of the writ of execution pending appeal is a clear ministerial duty on the part of the RTC. It neither exercises official discretion nor judgment. Further, the use of the word "shall" in both provisions underscores the mandatory character of the rule espoused therein. It was, therefore, error on the part of Judge Ragasa to even mention "good reasons" as the same is only required in discretionary execution. The case of *ALPA-PCM, Inc. v. Bulasao, et al.*[45] is instructive:

> The above rule, without any qualification whatsoever, has decreed the immediately executory nature of decisions of the RTC rendered in the exercise of its appellate jurisdiction, involving cases falling under the Revised Rules on Summary Procedure. **It requires no further justification or even "good reasons" for the RTC to authorize execution, even if an appeal has already been filed before the CA**. Indeed, the provision does not even require a bond to be filed by the prevailing party to allow execution to proceed. **The rationale for this is the objective of the Revised Rules on Summary Procedure to achieve an expeditious and inexpensive determination of cases governed by it.** This objective provides the "good reason" that justifies immediate execution of the decision, if the standards of Section 2, Rule 29 of the Rules of Court on execution pending appeal, as what ALPA-PCM insists, are considered.[46] (Emphasis supplied)

Grave abuse of discretion exists when an act is: (1) done contrary to the Constitution, the law or jurisprudence, or (2) executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[47] In this case, the assailed Orders denying petitioner's motion for execution pending appeal run contrary to Section 21 of the Revised Rules on Summary Procedure, Section 21, Rule 70 of the Rules of Court, as well as this Court's

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[45] 684 Phil. 451(2012).

[46] Id. at 457-458.

[47] *Imperial v. Armes*, G.R. No. 178842, January 30, 2017 citing *Air Transportation Office v. Court of Appeals*, G.R. No. 173616, June 25, 2014, 727 SCRA 196.

pronouncement in the case of *ALPA-PCM, Inc.* Thus, Judge Ragasa committed grave abuse of discretion when she issued the assailed Orders dated October 29, 2014 and April 8, 2015 in Civil Case No. M-PSY-12-15305-CV-R00-00.

We must stress that what is in issue is only the propriety of issuing a writ of execution pending appeal. It is not conclusive on the right of possession of the land and shall not have any effect on the merits of the ejectment suit still on appeal. Moreover, it must be remembered that ejectment cases are summary in nature for they involve perturbation of social order which must be restored as promptly as possible.[48]

WHEREFORE, premises considered, the petition for *certiorari* is **GRANTED.** Accordingly, the Orders dated October 29, 2014 and April 8, 2015 issued by public respondent Presiding Judge Maria Rosario B. Ragasa of the Regional Trial Court of Pasay City, Branch 108, in Civil Case No. M-PSY-12-15305-CV-R00-00 are **ANNULLED and SET ASIDE.**

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Carandang,* and *Zalameda, JJ.,* concur.

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[48] *Uy v. Santiago,* G.R. No. 131237, July 31, 2000.

THIRD DIVISION

[G.R. No. 219936. September 2, 2020]

OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE (FIO), *Petitioners, v.* **ALDO BADANA ESMEÑA,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN (OMB); OMB'S RULES OF PROCEDURE; APPEALS FROM OMB'S DECISIONS. — [R]espondent prematurely filed a petition for review with the CA instead of awaiting the resolution of his omnibus motion.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

> Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, **the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.**

Clearly, only after receipt of the order denying the motion for reconsideration may a petition for review under Rule 43 be filed in the CA.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIBERAL APPLICATION OF TECHNICAL RULES; THE RIGHT TO APPEAL SHALL NOT BE INVALIDATED WHEN MERITORIOUS ON ITS FACE AND IN THE INTEREST OF SUBSTANTIAL JUSTICE. — The Court has, in the past, relaxed the application of technical rules when a rigid

application of the same will result in a manifest failure or miscarriage of justice. In respondent's case, it was patently clear that he was not accorded due process in the OMB proceedings. . . .

The CA, then, was well within its authority to review the case. The right to appeal should not be invalidated through a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal. Thus, no reversible error can be attributed to the CA for giving due course to, and thereafter, resolving the administrative Decision of the OMB.

3. ID.; ID.; JURISDICTION OVER CASES INVOLVING OMBUDSMAN'S DECISIONS OR ORDERS; THE JURISDICTION OF THE COURT OF APPEALS OVER APPEALS FROM THE DECISIONS OF THE OMB EXTENDS TO ADMINISTRATIVE DISCIPLINARY CASES ONLY, NOT TO CRIMINAL OR NON-ADMINISTRATIVE CASES. — [T]he CA indeed erred in setting aside the OMB's Resolution in the criminal case. The CA went beyond its jurisdiction when it also took cognizance of the OMB's Resolution in OMB-C-C-08-0575-K finding probable cause to charge respondent in the criminal case for violating Article 171, par. 4 of the RPC (Making Untruthful Statements in a Narration of Facts).

Pursuant to *Fabian v. Desierto*, appeals from the decisions of the OMB in administrative disciplinary cases should be taken to the CA via petition for review under Rule 43 of the Rules of Court.

However, in *Duyon v. Court of Appeals* and *Golangco vs. Fung*, the Court stressed that the CA's jurisdiction over appeals from orders, directives and decisions of the OMB extends to administrative disciplinary cases only. The CA cannot review the orders, directives or decisions of the Office of the OMB in criminal or non-administrative cases.

4. ID.; ID.; ID.; THE OMB'S ORDERS OR RESOLUTIONS IN CRIMINAL CASES CAN ONLY BE REVIEWED BY THE SUPREME COURT VIA PETITION FOR CERTIORARI UNDER RULE 65. — In *Gatchalian v. Office of the Ombudsman,* the Court further clarified that the OMB's orders

or resolutions finding probable cause in criminal cases can only be reviewed by this Court via a special civil action for *certiorari* under Rule 65.

Consequently, the CA's order reversing the OMB's Resolution finding probable cause against respondent was void and, therefore, cannot be considered final, the entry of judgment notwithstanding. A void judgment never becomes final.

5. ID.; CRIMINAL PROCEDURE; JURISDICTION; ONCE THE INFORMATION IS FILED IN COURT, THE COURT ACQUIRES JURISDICTION OF THE CASE. — [O]nce the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. Thus, the trial court is ordered to proceed with dispatch in resolving respondent's motion to dismiss.

APPEARANCES OF COUNSEL

Ombudsman Office of the Legal Affairs for petitioners.
Ho & Guerrero Law for respondent.

D E C I S I O N

ZALAMEDA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition), filed by petitioners Office of the Ombudsman (OMB) and Field Investigation Office (FIO) (collectively, petitioners), seeks the nullification of the Decision[2] dated 30 April 2013 and Resolution[3] dated 27 July 2015 of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 12-31.

[2] Id. at 33-41; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of 12th Division, Court of Appeals, Manila.

[3] Id. at 43-47; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Priscilla J. Baltazar-Padilla (now a Member of this Court) and Eduardo B. Peralta, Jr. of the Special Former 12th Division, Court of Appeals, Manila.

SP No. 121638. Petitioners also pray for the recall of the Entry of Judgment[4] in the same case.

Respondent Aldo Badana Esmeña (respondent) filed a petition for review before the CA to assail petitioners' Decision[5] in the administrative case docketed as OMB-C-A-08-0609-K and the Resolution[6] in the criminal case docketed as OMB-C-C-08-0575-K.

In the administrative case, the OMB found respondent guilty of Simple Dishonesty and imposed the penalty of suspension from government service for six (6) months.[7] Meanwhile, in its resolution in the criminal case, the OMB recommended the filing of an Information against respondent for Making Untruthful Statements in a Narration of Facts, penalized under Article 171, paragraph (par.) 4 of the Revised Penal Code (RPC).[8]

Antecedents

Respondent was the former Officer-in-Charge of the Bureau of Internal Revenue (BIR) Regional District Office (RDO) No. 22 in Baler, Aurora.[9] In an anonymous letter[10] dated 06 January 2007, the OMB was informed of respondent's habitual absence from work. Acting thereon, the OMB sent two (2) graft investigators to RDO No. 22 on 07 June 2007 but respondent failed to show up the whole day.[11] The OMB then subpoenaed

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[4] Id. at 44.

[5] Id. at 89-98; penned by Graft Investigation and Prosecution Officer II Robert V. Marcelo on 16 March 2011 and recommended for approval by Acting Director Rolando B. Zoleta on 08 April 2011.

[6] Id. at 99-107; penned by Graft Investigation and Prosecution Officer II Robert V. Marcelo on 16 March 2011, recommended for approval by Acting Director Rolando B. Zoleta on 08 April 2011, and approved by Acting Ombudsman Orlando C. Casimiro on 23 May 2011.

[7] Id. at 96.

[8] Id. at 104, 106-107.

[9] Id. at 35.

[10] Id. at 87-88.

[11] Id. at 17.

respondent's records and discovered that his Daily Time Record (DTR) falsely reflected that he went to work on the said date – he reported for work at 7:09 a.m., took his lunch break at 12:00 noon, returned to the office at 12:47 p.m., and left the office at 5:13 p.m.[12]

Consequently, the FIO filed a Complaint[13] against respondent for violation of:

(1) Article 171, par. 4[14] of the RPC;

(2) Section 46 (b),[15] Chapter 7, Title I, Book V of Executive Order No. 292 or the Administrative Code of 1987; and

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[12] *Id.* at 35-36.

[13] *Id.* at 81-86.

[14] ARTICLE 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

4. Making untruthful statements in a narration of facts;

[15] SECTION 46. Discipline: General Provisions. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty;

x x x

(4) Misconduct;

x x x

(13) Falsification of official document;

x x x

(27) Conduct prejudicial to the best interest of the service;

x x x

(3) Section 4 (A) (a)[16] of Republic Act No. (RA) 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.[17]

Thereafter, the OMB sent an order directing respondent to file his counter-affidavit, through registered mail, to his former office in Baler, Aurora. When the order was returned unserved, the OMB sent another one to respondent's former office in the City of San Fernando, Pampanga.[18] Respondent, however, failed to receive both orders, as he had already transferred to the BIR central office on 08 January 2010.[19]

Ruling of the Ombudsman

Notwithstanding respondent's failure to participate in the proceedings, the OMB issued a Decision[20] dated 16 March 2011, finding respondent guilty of Simple Dishonesty for falsifying his DTR, thus:

WHEREFORE, judgment is hereby rendered finding respondent Former OIC ALDO BADANA ESMEÑA of RDO No. 22, presently assigned at the Office of the Regional Director, Revenue Region No. 4, City of San Fernando, Pampanga, guilty of Simple Dishonesty.

Respondent **Aldo Badana Esmeña** is hereby meted the penalty of **Suspension for SIX (6) MONTHS** in the Government Service pursuant to Section 10, Rule III, Administrative Order No. 07, as

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[16] SECTION 4. Norms of Conduct of Public Officials and Employees. — (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) Commitment to public interest. — Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

[17] Id.

[18] *Rollo*, pp. 90-91.

[19] Id. at 114 and 121.

[20] Id. at 89-98.

amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.

The Honorable Secretary of the Department of Finance, Secretary Cesar Purisima, is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006 dated 11 April 2006 and to promptly inform this Office of the action taken hereon.

SO DECIDED.[21]

On the same day, the OMB issued a Resolution,[22] finding the existence of probable cause to charge respondent with Making Untruthful Statements in a Narration of Facts, punishable under Article 171, par. 4 of the RPC, to wit:

WHEREFORE, premises considered, it is respectfully recommended that an **Information** for violation of Article 171, par. 4, of the Revised Penal Code, be accordingly ***FILED*** in the proper court against respondent Former OIC **ALDO BADANA ESMEÑA** of RDO No.22, presently assigned at the Office of the Regional Director, Revenue Region No. 4, City of San Fernando, Pampanga.

SO RESOLVED.[23]

On 12 August 2011, respondent filed an Omnibus Motion,[24] seeking reconsideration of the OMB decision in the administrative case on the ground of lack of due process. He argued that he was not validly served with the notices directing him to file his counter-affidavit. Likewise, he only received a copy of the decision on 11 August 2011.[25]

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[21] Id. at 96-97.

[22] Id. at 99-107.

[23] Id. at 106-107.

[24] Id. at 108-120.

[25] Id. at 109 and 129.

Without waiting for the resolution of his omnibus motion, however, respondent filed a Petition for Review[26] with the CA, assailing both the decision in the administrative case and the resolution in the criminal case. He maintained that his right to due process was violated when the case against him was resolved without notice and hearing.[27]

Ruling of the CA

In its Decision[28] dated 30 April 2013, the CA reversed and set aside the assailed decision and resolution of the OMB. It found that respondent was indeed denied due process because he was not afforded a chance to present evidence on his behalf.[29]

Petitioners subsequently filed a Manifestation and Motion (in lieu of Motion for Reconsideration on the Decision dated 30 April 2013),[30] (Manifestation and Motion) alleging that before the issuance of the CA decision, the Office of the Deputy Ombudsman for Luzon (OMB-Luzon) issued an Order[31] granting respondent's Omnibus Motion to set aside the OMB decision in the administrative case. Thus, petitioners prayed that the case before the CA be considered closed and terminated.

Respondent, for his part, insisted on the issuance of an entry of judgment, considering that the CA Decision had already attained finality since petitioners did not file a motion for reconsideration.[32]

In its Resolution[33] dated 12 February 2014, the CA merely noted petitioners' Manifestation and Motion, and pointed out

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[26] Id. at 128-137.

[27] Id. at 132.

[28] Id. at 33-41.

[29] Id. at 40.

[30] Id. at 53-59.

[31] Id. at 60-64.

[32] Id. at 44.

[33] Id. at 66-67.

that if it had been furnished a copy of the aforesaid Order granting respondent's Omnibus Motion, respondent's petition for review would have been rendered moot and academic. Also, considering that the OMB did not file any motion for reconsideration of the Decision dated 30 April 2013, the same had become final and executory. Thus, respondent's prayer was granted and Entry of Judgment was made two days later.[34]

Petitioners subsequently filed an Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment,[35] arguing that the CA had no appellate jurisdiction over the resolution of the OMB in the criminal case. On 27 July 2015, the CA issued its Resolution, the dispositive portion of which states:

ACCORDINGLY, the Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment is hereby **DENIED**.

SO ORDERED.[36]

The CA explained that its Decision became final and executory on 01 June 2013 since petitioners opted to file a Manifestation and Motion instead of a motion for reconsideration. The CA said that upon the lapse of the period to file a motion for reconsideration, the final judgment begins to carry the effect of *res judicata*. Hence, the CA had lost jurisdiction over the case, except for purposes of execution.[37]

Hence, petitioners filed the instant petition before the Court.

Initially, the Court denied the petition for failure of petitioners to show any reversible error in the assailed judgment. However, the Court granted petitioners' Motion for Reconsideration and reinstated the petition in a Resolution[38] dated 20 April 2016.

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[34] Id. at 44.

[35] Id. at 68-80.

[36] Id. at 46-47.

[37] Id. at 45-46.

[38] Id. at 183.

Issues

Petitioners now claim that:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN ISSUING ITS DECISION DATED 30 APRIL 2013 AND IN HOLDING THAT THE OMBUDSMAN'S RESOLUTION DATED 16 MARCH 2011 IN CRIMINAL CASE (OMB-C-C-08-0575-K) IS NULL AND VOID.

II

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT ENTERTAINED THE APPEAL DESPITE THE PENDENCY OF RESPONDENT'S OMNIBUS MOTION FOR RECONSIDERATION WITH THE OFFICE OF THE OMBUDSMAN FOR LUZON.

III

THE CA DECISION WHICH SET ASIDE THE OMBUDSMAN'S RESOLUTION DATED 16 MARCH 2011 IS NULL AND VOID, HENCE HAS NOT ATTAINED FINALITY.[39]

Ruling of the Court

Petitioners argue that the CA erred in entertaining respondent's petition for review when it had no jurisdiction over the criminal case. Furthermore, respondent's omnibus motion was still pending with the OMB-Luzon when the petition was filed with the CA. Consequently, the CA ruling is void and cannot attain finality.

The petition is partly meritorious.

Indisputably, respondent prematurely filed a petition for review with the CA instead of awaiting the resolution of his omnibus motion.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

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[39] Id. at 19-20.

Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, **the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.** (Emphasis supplied)

Clearly, only after receipt of the order denying the motion for reconsideration may a petition for review under Rule 43 be filed in the CA.

Notably, however, the OMB-Luzon eventually granted respondent's omnibus motion. The OMB-Luzon found that respondent's re-assignment to different revenue offices of the BIR made it impossible for him to receive the orders and file the required counter-affidavit. Recognizing respondent's plight, the OMB-Luzon gave him another chance to answer the administrative charge against him. **Hence, the propriety of the OMB's Decision in the administrative case (OMB-C-A-08-0609-K) is already moot**.

Be that as it may, the CA could not be faulted for giving due course to respondent's petition, although it should have confined itself to reviewing the Decision in the administrative case.

The Court has, in the past, relaxed the application of technical rules when a rigid application of the same will result in a manifest failure or miscarriage of justice. In respondent's case, it was patently clear that he was not accorded due process in the OMB proceedings. The OMB conducted the proceedings without proper notice to respondent, depriving him of the opportunity to defend himself. Likewise, respondent did not immediately receive a copy of the OMB's Decision and Resolution. Furthermore, despite the pendency of respondent's Omnibus Motion, the OMB insisted on implementing its Decision and Resolution.[40]

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[40] Id. at 40.

The CA, then, was well within its authority to review the case. The right to appeal should not be invalidated through a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal.[41] Thus, no reversible error can be attributed to the CA for giving due course to, and thereafter, resolving the administrative Decision of the OMB.

Further, the Court notes that the OMB was not faultless. Despite the OMB's issuance of the Resolution setting aside its Decision in OMB-C-A-08-0609-K as early as 2011, or two years before the assailed CA Decision, it did not bother to inform the CA of said development. Neither did the OMB file a motion for reconsideration of the CA's Decision dated 30 April 2013. Irrefutably, the CA's ruling as to the administrative charges against respondent had been rendered moot and academic.

On the other hand, **the CA indeed erred in setting aside the OMB's Resolution in the criminal case**. The CA went beyond its jurisdiction when it also took cognizance of the OMB's Resolution in OMB-C-C-08-0575-K finding probable cause to charge respondent in the criminal case for violating Article 171, par. 4 of the RPC (Making Untruthful Statements in a Narration of Facts).

Pursuant to *Fabian v. Desierto*,[42] appeals from the decisions of the OMB in administrative disciplinary cases should be taken to the CA via petition for review under Rule 43 of the Rules of Court.

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[41] See *B.E. San Diego, Inc. v. Bernardo*, G.R. No. 233135, 05 December 2018, citing *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610-637 (2011); G.R. No. 168973, 24 August 2011.

[42] G.R. No. 129742, 16 September 1998; 356 Phil. 787 (1998) cited in *Crebello v. Office of the Ombudsman*, G.R. No. 232325, 10 April 2019.

However, in *Duyon v. Court of Appeals*[43] and *Golangco vs. Fung*,[44] the Court stressed that the CA's jurisdiction over appeals from orders, directives and decisions of the OMB extends to administrative disciplinary cases only. The CA cannot review the orders, directives or decisions of the Office of the OMB in criminal or non-administrative cases.

In *Gatchalian v. Office of the Ombudsman*,[45] the Court further clarified that the OMB's orders or resolutions finding probable cause in criminal cases can only be reviewed by this Court via a special civil action for *certiorari* under Rule 65.

Consequently, the CA's order reversing the OMB's Resolution finding probable cause against respondent was void and, therefore, cannot be considered final,[46] the entry of judgment notwithstanding. A void judgment never becomes final. As the court had previously held:[47]

> The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) **void judgments**."[48] (Emphasis supplied)

In any event, the Court emphasizes that the criminal Information against respondent had already been filed in court,

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[43] 748 Phil. 375-391 (2014); G.R. No. 172218, 26 November 2014.

[44] 535 Phil. 331-345 (2006), G.R. Nos. 147640 & 147762, 16 October 2006.

[45] G.R. No. 229288, 01 August 2018.

[46] See *Lanto v. Commission on Audit*, 808 Phil. 1025-1041 (2017); G.R. No. 217189, 18 April 2017.

[47] *Imperial v. Armes*, 804 Phil. 439-477 (2017); G.R. Nos. 178842 & 195509, 30 January 2017.

[48] *Gonzales v. Solid Cement Corporation*, 697 Phil. 619-643 (2012); G.R. No. 198423, 23 October 2012, cited in *Imperial v. Armes*, 804 Phil. 439-477 (2017); G.R. Nos. 178842 & 195509, 30 January 2017.

docketed as Criminal Case No. 4643 and entitled, "People of the Philippines v. Aldo Badana Esmena."[49] Apparently, respondent filed a motion to dismiss dated 10 July 2013 before Branch 90, Regional Trial Court of Baler, Aurora, where the case is currently pending, on the ground that the CA issued the assailed decision dated 30 April 2013. The trial court, however, deferred resolution on the motion to dismiss pending the CA's ruling on the Omnibus Motion for Partial Reconsideration and to Recall Entry of Judgment. **Based on the records, however, and despite the CA's denial of the said Omnibus Motion, the trial court has yet to resolve respondent's motion to dismiss. Neither party endeavored to appraise the Court on any development in the said case**. In any event, it is undeniable that once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court.[50] Thus, the trial court is ordered to proceed with dispatch in resolving respondent's motion to dismiss.

WHEREFORE, the foregoing premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision dated 30 April 2013 of the Court of Appeals in CA-G.R. SP No. 121638 is **AFFIRMED with MODIFICATION** that the portion reversing the Office of the Ombudsman's Resolution dated 16 March 2011 in OMB-C-C-08-0575-K, is **REVERSED and SET ASIDE**. The Resolution of the Office of the Ombudsman dated 16 March 2011 in OMB-C-C-08-0575-K is **VACATED** and **SET ASIDE**.

Accordingly, Resolution dated 27 July 2015 is **REVERSED and SET ASIDE**. The Entry of Judgment issued on 14 February 2014 by the Court of Appeals in CA-G.R. SP No. 121638 is **RECALLED**. Branch 90, Regional Trial Court of Baler, Aurora,

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[49] *Rollo*, pp. 179-181.

[50] *De Lima v. Reyes*, 776 Phil. 623-653 (2016); G.R. No. 209330, 11 January 2016.

is **ORDERED** to proceed with the motion to dismiss in Criminal Case No. 4643, entitled, *People of the Philippines v. Aldo Badana Esmena*," with dispatch.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Carandang,* and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 219964. September 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ROBERTO ACUIN y DIONALDO and SALVACION ALAMARES y COSTELO,** *Accused-Appellants*.

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); QUALIFIED TRAFFICKING IN PERSONS; TRAFFICKING OF MINORS IS CONSIDERED QUALIFIED TRAFFICKING; CASE AT BAR. — Section 4 of the law penalizes the following, among others, as acts of trafficking in persons:

> SECTION 4. *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
>
> (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.]

Further, the act of trafficking a child is considered as qualified trafficking under the law.

In this case, the prosecution sufficiently established, through witness testimony, that minors BBB, CCC, and DDD were lured by Acuin's false promise of employment as dancers in a fiesta in Laguna to eventually be sexually exploited at Alamares' night club in Daraga, Albay instead.

2. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY; CASE AT BAR. — [T]his Court find[s]accused-appellants Roberto Acuin and Salvacion Alamares guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons, and sentenc[es] them to

suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.

The award of damages is **MODIFIED** as follows:

Roberto Acuin and SalvacionAlamares are ordered to pay each of the private complainants:

(1) ₱500,000.00 as moral damages; and

(2) ₱100,000.00 as exemplary damages.

All damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES, WHEN AFFIRMED BY THE COURT OF APPEALS, DESERVES THE HIGHEST RESPECT. — It is well-settled that factual findings of the trial court, including its assessment of the credibility of witnesses as well as the probative weight of their testimonies, are given the highest respect. As a general rule, when the Regional Trial Court's conclusions and factual findings have been affirmed by the Court of Appeals, this Court will not re-examine the same.

. . .

Accused-appellants have failed to present any cogent reason to reverse the findings of the Court of Appeals and the Regional Trial Court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for complainant-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

LEONEN, *J.*:

This resolves an Appeal[1] from the Court of Appeals Decision[2] in CA-G.R. CR-HC No. 05545, affirming the conviction of Roberto Acuin y Dionaldo (Acuin) and Salvacion Alamares y Costelo (Almares) for Qualified Trafficking in Persons, in violation of Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003.

Two Informations were filed against accused-appellants Acuin, Alamares, and their co-accused Charmela Barrameda (Barrameda) and Gina Ajero (Ajero), charging them as follows:

Criminal Case No. 134741:

That, on or about February 1, 2007, in the City of Taguig, Philippines, the above-named accused, ROBERTO ACUIN, a.k.a. Wowie, in conspiracy with CHARMELA BARRAMEDA, SALVACION ALAMARES and GINA AJERO and with one another, and by means of fraud, deception, abuse of power or position, force, threats and coercion, taking advantage of the vulnerability of the person and for the purpose of exploitation, such as prostitution and other forms of sexual exploitation, forced labor or services, servitude but under the pretext of legitimate employment and good pay, did then and there willfully, unlawfully and knowingly recruit "AAA", with or without the consent of the latter, who is a resident of Taguig City at the time of the commission of the crime, hence, within the jurisdiction of the Honorable Court and thereafter TRANSPORTED and TRANSFERRED her to Hannah Bee Videoke Club in Daraga, Albay, belonging to or managed by accused CHARMELA BARRAMEDA, ROBERTO ACUIN a.k.a. Wowie, SALVACION ALAMARES and GINA AJERO;

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[1] *Rollo*, pp. 13-14. The appeal was filed under Rule 124, Section 13 (c) of the Rules of Court.

[2] Id. at 2-12. The November 7, 2014 Decision was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Normandie B. Pizarro and Victoria Isabel A. Paredes of the Seventeenth Division, Court of Appeals, Manila.

And in pursuit of the aforesaid conspiracy of all the accused, for the purpose of prostitution or other forms of exploitation, said accused did then and there willfully, unlawfully and knowingly RECEIVE, HARBOR and EMPLOY "AAA", for sexual exploitation and as prostitutes at the said place, to her damage and prejudice;

That the crime was attended by the qualifying circumstance, committed by a syndicate.

CONTRARY TO LAW.[3]

Criminal Case No. 134741-A:

That, on or about February 1, 2007, in the City of Taguig, Philippines, the above-named accused, ROBERTO ACUIN, a.k.a. Wowie, in conspiracy with CHARMELA BARRAMEDA, SALVACION ALAMARES and GINA AJERO and with one another, and by means of fraud, deception, abuse of power or position, force, threats and coercion, taking advantage of the vulnerability of the persons and for the purpose of exploitation, such as prostitution and other forms of sexual exploitation, forced labor or services, servitude but under the pretext of legitimate employment and good pay, did then and there willfully, unlawfully and knowingly recruit "BBB", "CCC" and "DDD", with or without the consent of the latter, who is a resident of Taguig City at the time of the commission of the crime, hence, within the jurisdiction of the Honorable Court and thereafter TRANSPORTED and TRANSFERRED them to Hannah Bee Videoke Club in Daraga, Albay, belonging to or managed by accused CHARMELA BARRAMEDA, ROBERTO ACUIN a.k.a. Wowie, SALVACION ALAMARES and GINA AJERO;

And in pursuit of the aforesaid conspiracy of all the accused, for the purpose of prostitution or other forms of exploitation, said accused did then and there willfully, unlawfully and knowingly RECEIVE, HARBOR and EMPLOY "AAA", "BBB" and "CCC", for sexual exploitation and as prostitutes at the said place, to their damage and prejudice;

That the crime was attended by the qualifying circumstances of minority, complainants, being 15 to 16 years of age, and that the crime was committed by a syndicate.

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[3] CA *rollo*, pp. 27-28.

CONTRARY TO LAW.[4]

Alamares and Ajero were arraigned on June 5, 2007 and pleaded not guilty. Acuin was subsequently apprehended, and pleaded not guilty as well during his arraignment on November 25, 2008. Thereafter, pre-trial conference was conducted, and trial then ensued.[5]

The version of the prosecution is as follows:

On February 1, 2007, somewhere in the Bicutan-Taguig area, Acuin offered private complainants, CCC, DDD, and BBB, then 15, 16, and 17 years old, respectively, work as dancers in a fiesta in Laguna, and promised them each ₱9,000.00 a month. CCC, DDD, and BBB accepted the offer. Acuin also offered AAA, then 28 years old, a job as a cashier for ₱400.00 a day, which she also accepted. AAA, BBB, CCC, DDD, together with Mara Gonzalez, Stephanie Anos, Rotchie Sayas, and Mingie Sayas, all met at Acuin's house later that day. Then, together with Acuin, they rode a jeepney from Parañaque, and later transferred to a bus.[6]

Although Acuin told AAA, BBB, CCC, and DDD that the bus was heading to Laguna, the bus stopped at Bicol. Acuin did not answer when asked what they were doing in Bicol.[7]

After arriving at the Bicol bus station, Acuin took AAA, BBB, CCC, and DDD to the Pink Hannah Bee Videoke and Disco Club (Hannah Bee Videoke), and introduced its owner, Alamares, who paid for the bus fares. Alamares asked them to call her "Mommy,"[8] and fed them food from her canteen. When she asked their ages, they told her how young they were. She then instructed them to tell people, if asked, that they were

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[4] Id. at 28-29.

[5] Id. at 29-30.

[6] Id. at 30.

[7] Id.

[8] Id.

already at least 18 years old.[9] She also gave them money a few hours after they arrived, and subsequently informed them that they had to repay her.[10]

Alamares then informed them that they would work as Guest Relations Officers at the bar. During their employment at the club, Alamares would hand the girls to customers, guard their bedrooms while they were inside, and scold them if they did not follow her instructions, such as telling them to dance, or to go to their customers. Alamares would also give the girls money to buy provocative clothes. Moreover, Acuin and Alamares would often deal with customers, and offer women to the customers as entertainment.[11]

On their first night at the club, Alamares gave them ₱500.00 to buy miniskirts and backless shirts to wear while dancing. Acuin guarded them at the market, where they bought the clothes. Thereafter, Acuin told them they would dance at a bar, taught them a "fiesta" dance, and how to dance at the bar. After they learned their dances, Alamares and Acuin instructed them to bathe.[12] Acuin then directed them to the dancing area to entertain customers in the club. The girls saw other women dancing naked at the bar. Acuin instructed the girls to dance naked, but they refused.[13]

On that same night, Alamares and Acuin introduced the girls to Ajero, who was working as a cashier and also offering the girls to customers. Ajero was in charge of the "VIP rooms" inside the club, where a customer would take a General Relations Officer, alone, and where the General Relations Officer would give the services the customer requested, including sexual intercourse. CCC testified that Ajero also instructed the girls

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[9] Id. at 31.

[10] Id.

[11] Id.

[12] Id.

[13] Id. at 32.

while they worked, and encouraged her to dance naked and to entertain the customers, who would pay her for her services.[14]

The girls never received the salary Acuin promised, and were told that they owe Alamares for the canteen food they ate.[15]

After two days at the club, with the help of the other girls, AAA managed to escape while Alamares was preoccupied. When Alamares realized that AAA was missing, she uttered profanities and threats in front of the other girls, saying that she was capable of killing AAA.[16]

AAA went home immediately and told their parents what had happened, and how they had been brought to the club in Daraga, Albay. Her parents then sought help from QTV-11, and a QTV-11 employee brought them to the National Bureau of Investigation (NBI). There, Special Investigator Eduardo Villa (Villa) of the bureau's Anti Human Trafficking Division conducted a briefing to rescue the other girls from the club.[17]

On February 8, 2007, at around 1:30 a.m., Anti Human Trafficking Division operatives, together with the girls' parents and a QTV-11 crew, proceeded to Daraga, Albay, where they coordinated with the local police to conduct the raid. Special Investigators Cyruz Aluzan and Danilo Garay were dispatched at about 1:45 a.m. to act as customers at the club, where they would contract the services of the minors; then, once they were able to enter a VIP room with a minor, they would give the rest of the team a go-ahead signal.[18]

One of the agents entered the bar and became Mara's customer. He spoke to Mara and Stephanie Ann. After confirming their ages, he went to the comfort room, then called the rest of the

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[14] Id.

[15] Id.

[16] Id. at 33.

[17] Id.

[18] Id. at 33-34.

operatives using his cell phone, who were waiting outside.[19]

After Villa received the signal, all the operatives entered the club and confirmed the presence of minors who were employed as General Relations Officers. They announced that they were NBI agents and declared that they had found seven minors in the club, including BBB, CCC, and DDD.[20]

The operatives arrested Alamares and Ajero after the rescued girls identified them as the bar's cashier and manager. Acuin, however, escaped through a backdoor. Upon inquiry, Alamares said she was the club's "caretaker," but said that a certain Charmela Barrameda was the owner.[21]

Thereafter, the NBI agents, together with AAA, the rescued girls, some of the girls' parents, Alamares, and Ajero all proceeded to the NBI Headquarters in Manila. The investigators prepared the Joint Affidavit of Arrest, the transmittal to the Department of Justice, and the statements of the rescued victims. Alamares and Ajero were processed at the headquarters.[22]

The version of the defense is as follows:

Alamares testified that she used to manage a canteen in Daraga, Albay, located next to Hannah Bee Videoke. Her son was the cook, and her daughter assisted her. Their clientele consisted mostly of people who work at the club, and tricycle drivers. Alamares and the club workers had an arrangement where she would collect payment for food at around closing time from the club's floor manager, who she named as Noemi Del Rosario on cross examination.[23]

Alamares further testified that the bar was owned by

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[19] Id. at 34.

[20] Id.

[21] Id.

[22] Id.

[23] Id. at 35.

Barrameda, and presented photocopies of documents to support this claim. She said she first saw AAA, BBB, CCC, and DDD inside the club, and that they ate at her canteen five times. She did not know what kind of work they did in the club. She said that she was sleeping in the canteen when she was arrested by the operatives, and that they pointed a gun at her, dragged her into a van, and took her to Manila.[24]

Acuin testified that he was a dance instructor from 1998 to 2004, and then entered the vegetable business until 2006. When the business did not prosper, he went to Daraga, Albay, where he was hired by Alamares as a dance instructor for ₱400.00 per day. He denied recruiting AAA, BBB, CCC, and DDD for Hannah Bee Videoke, and said that AAA was the one who brought them to the club and introduced him to the other girls. He learned that the girls were minors, but they said that their parents allowed them to work at the club.[25]

Further, he denied having worked as the floor manager, and named Noemi and Mely. He denied having been to the club in the evening, as his hours were usually from 1:00 to 5:00 p.m. only. He learned of AAA's escape plan, and told her to bring BBB, CCC, and DDD with her since she had recruited them, but they did not react to this suggestion.[26]

Acuin testified that Ajero was the cashier. He said that on the day of the raid, at dawn, he was at his residence in his brother-in-law's house. He learned through Alamares' son that the former had been arrested, and he did not know that charges had been filed against him, too. Sometime in February, 2007, Acuin returned to Bulacan, where he was subsequently arrested.[27]

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[24] Id. at 35.

[25] Id. at 36.

[26] Id.

[27] Id.

During cross-examination, Acuin said that Alamares introduced herself to him as the club owner and hired him as a dance instructor on October 5, 2006. She had him report to her every day before he started his shift. He said that he had no quarrels with AAA, BBB, CCC, and DDD, and did not know why they implicated him in the case.[28]

Ajero testified that she had to work as a cashier at the club after her dried fish stall got destroyed in a typhoon. Alamares, who used to buy dried fish from her, hired her as cashier. She computed the customers' bills, and was paid ₱150.00 or ₱100.00 each day. To her knowledge, Alamares also owned the canteen beside the club. Further, Ajero said that she could not see everything that the club customers and workers did in the disco area and the bar. She said that Alamares would occasionally pass by the cashier counter to remind her to do her job. Every night, Ajero would turn over the collections to Alamares.[29]

Ajero learned that Acuin was the club's floor manager. She said that she only met AAA, BBB, CCC, and DDD at the NBI office. On cross-examination, Ajero said that Barrameda is Alamares' daughter-in-law, and that Barrameda helped in the club operations. Ajero also said that the Mayor's permit and other licenses to operate were issued in Alamares' name and posted on the wall of the club. She said that she did not initially tell the truth about Alamares because she had been threatened.[30]

In a February 27, 2012 Decision,[31] the Regional Trial Court found Acuin and Alamares guilty beyond reasonable doubt of the offense charged. It found the testimonies of BBB, CCC, and DDD credible, and concluded that:

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[28] Id.

[29] Id.

[30] Id. at 36-37.

[31] Id. at 27-42. The Decision in Crim. Case Nos. 134741 & 134741-A was penned by Judge Lorifel Lacap Pahimna of the Regional Trial Court of Pasig City, Branch 69.

The prosecution proved that Acuin by means of deception recruited the private complainants BBB, CCC and DDD, all minors to dance in a town fiesta in Laguna with a promise of good pay. Due to their youth, adventurous spirit and vulnerability, they all consented to the false job offered. However, Acuin transported them to Daraga, Albay for the purpose of prostitution, other sexual exploitation and forced labor. In Daraga, Albay, they were introduced to Alamares who received, hired, harbored and maintained them at Hannah Bee Videoke Bar. BBB, CCC and DDD identified Alamares as the owner and operator of the said Club. Even defense witnesses John Lobete, Allan Badiola who were formerly waiters of the Club and co-accused Acuin and Ajero pointed to her as the owner and operator of the Club. Acuin also maintained the minors being the floor manager. Despite Acuin's pretension of being a dance instructor of the Club, defense witnesses John Lobete and Allan Badiola confirmed the role of Acuin as floor manager. His co-accused Ajero and Alamares stressed his work as managing sets of G.R.O's from the club.[32]

However, the Regional Trial Court acquitted Ajero, noting that the statements of BBB, CCC, and DDD did not implicate her in the offense.[33]

Further, AAA, the complainant in Criminal Case No. 134741, did not testify, and the Regional Trial Court found that the prosecution was not able to sufficiently prove the liability of any of the accused in that case. The dispositive portion of the Decision reads:

WHEREFORE, finding Salvacion Alamares and Roberto Acuin guilty beyond reasonable doubt of Qualified Trafficking in Persons (R.A. 9208, otherwise known as "The Anti-Trafficking in Persons Act of 2003") in Crim. Case No. 134741-A, this court hereby sentences each accused to suffer the penalty of life imprisonment and to pay a fine of Two Million Pesos (PhP2,000,000.00) and PhP50,000.00 as moral damages to each of the private offended parties (BBB, CCC and DDD).

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[32] Id. at 40.

[33] Id. at 41-42.

Meanwhile, accused Gina Ajero is Acquitted for insufficiency of evidence.

In Crim. Case No. 134741, all accused are Acquitted for insufficiency of evidence.

SO ORDERED.[34]

Alamares and Acuin appealed to the Court of Appeals.[35] In their appellants' brief, they argued that the prosecution failed to prove their guilt beyond reasonable doubt.[36] They insisted that the witnesses' testimonies were incredible and inconsistent with human experience, and therefore, could not be the basis for their conviction.[37]

In a November 7, 2014 Decision,[38] the Court of Appeals affirmed the Regional Trial Court's findings *in toto*. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Decision dated 27 February 2012 of the Regional Trial Court, Branch 69 of Pasig City is **AFFIRMED**.

SO ORDERED.[39] (Emphasis in the original)

Alamares and Acuin filed a Motion for Reconsideration,[40] which the Court of Appeals denied.[41]

Thus, Acuin and Alamares filed a Notice of Appeal.[42]

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[34] Id.

[35] Id. at 43-46.

[36] Id. at 73.

[37] Id. at 74.

[38] Id. at 139-149.

[39] Id. at 148-149.

[40] Id. at 157.

[41] Id. at 171-173.

[42] Id. at 174.

In an April 29, 2015 Resolution,[43] the Court of Appeals gave due course to Acuin and Alamares' Notice of Appeal, and elevated the records of the case to this Court. This Court required both parties to submit their supplemental briefs,[44] and both parties filed their respective manifestations (in lieu of supplemental briefs) on January 13, 2016[45] and February 4, 2016.[46]

After carefully considering the parties' arguments and the records of this case, this Court resolves to dismiss the appeal for failure to show that the Court of Appeals committed any reversible error in the assailed Decision as to warrant the exercise of this Court's appellate jurisdiction.

Section 3 (a) of Republic Act No. 9208 defines "trafficking in persons" as follows:

SECTION 3. *Definition of Terms*. — . . .

(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.

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[43] Id. at 178.

[44] *Rollo*, p. 20.

[45] Id. at 26-30.

[46] Id. at 31-34.

In relation to this, Section 4 of the law penalizes the following, among others, as acts of trafficking in persons:

> SECTION 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
>
> (a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.]

Further, the act of trafficking a child is considered as qualified trafficking under the law.[47]

In this case, the prosecution sufficiently established, through witness testimony, that minors BBB, CCC, and DDD were lured by Acuin's false promise of employment as dancers in a fiesta in Laguna to eventually be sexually exploited at Alamares' night club in Daraga, Albay instead. Thus, we quote the Court of Appeals:

> Here, it has been convincingly established that complainants were minors from Metro Manila who were lured by appellant's promise of money to work in a bar as GROs. In fact, when the NBT-AHTRAD raided the Hannah Bee bar, in the early morning of 08 February 2007, complainants were actually found and rescued therefrom. Being minors, they are not capacitated to give their informed consent to their employment, much less, to work in a shadowy bar where they are made to entertain male customers. Such situation squarely falls under the definition of trafficking of persons.
>
> Under Sections 3(a) and 4 of R.A. No. 9208, "trafficking in persons" is not only limited to transportation of victims, but also includes the act of recruitment of victims for trafficking. Mere recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation is considered "trafficking in persons." When the trafficked person is a child or a person below 18 years of age, it is considered qualified trafficking in persons and ay person found guilty

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[47] Republic Act No. 9208 (2002), Sec. 6 (a).

thereof suffers the penalty of life imprisonment and a fine of not less than Two Million Pesos but not more than Five Million Pesos.[48] (Citations omitted)

In their brief before the Court of Appeals, accused-appellants insist that the testimonies of BBB, CCC, and DDD were not credible, because when they were on the bus to Bicol, none of them even asked why they were going there, instead of Laguna, as allegedly promised by Acuin. Accused-appellants maintain it is unbelievable that a person traveling would not check the bus sign before boarding. Accused-appellants also point out that BBB, CCC, and DDD admitted that accused-appellants did not physically threaten them, and that they nonetheless stayed in Bicol. DDD even testified during cross-examination that they stayed in Hannah Bee to keep earning, and that she would choose to continue working there, if given the chance. Further, CCC testified that the bar had no security guards, only janitors. Yet, they did not run away. DDD testified that they stayed because they had no money.[49]

Accused-appellants' contentions are unconvincing.

It is well-settled that factual findings of the trial court, including its assessment of the credibility of witnesses as well as the probative weight of their testimonies, are given the highest respect. As a general rule, when the Regional Trial Court's conclusions and factual findings have been affirmed by the Court of Appeals, this Court will not re-examine the same.[50]

Furthermore, the Court of Appeals cited testimony of the witnesses which address accused-appellants' arguments. We quote:

In this case, CCC was able to explain that when the group arrived at the bus station, they passed by the side of the bus so they were not

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[48] *Rollo*, p. 10.

[49] CA *rollo*, pp. 74-75.

[50] *People v. Castel*, 593 Phil. 288 (2008) [Per J. Reyes, R.T., En Banc].

able to read the sign board indicating the actual destination. BBB also testified that they were not yet familiar with their supposed destination which is Laguna, and moreover, they slept for the duration of the bus ride, so that they did not notice the places which they were passing. They have trusted appellant Acuin, being a relative of a common friend, and did not ask questions during the bus ride. They could not leave the bar because they did not have any money with them. DDD explained that Acuin kept silent when they later tried to ask why they arrived in Albay, instead of Laguna. They no longer protested afterwards because they do not really know appellant Acuity well enough and they were apprehensive of what might befall them since they were strangers in Albay. In fact, they have never been to Laguna or to a place beyond Taguig.[51] (Citation omitted)

Accused-appellants have failed to present any cogent reason to reverse the findings of the Court of Appeals and the Regional Trial Court.

However, the damages must be adjusted to be at par with prevailing jurisprudence.[52]

WHEREFORE, this Court **AFFIRMS** the November 7, 2014 Decision of the Court of Appeals affirming the February 27, 2012 Decision of the Regional Trial Court of Pasig City, finding accused-appellants Roberto Acuin and Salvacion Alamares guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons, and sentencing them to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00.

The award of damages is **MODIFIED** as follows:

Roberto Acuin and Salvacion Alamares are ordered to pay each of the private complainants:

(1) ₱500,000.00 as moral damages; and

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[51] *Rollo*, pp. 10-11.

[52] *People v. Casio*, 749 Phil. 458 (2014) [Per J. Leonen, Second Division], citing *People v. Lalli y Purih*, 675 Phil. 126 (2011) [Per J. Carpio, Second Division].

(2) ₱100,000.00 as exemplary damages.

All damages awarded shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.[53]

SO ORDERED.

Gesmundo, *Carandang*, *Zalameda*, and *Delos Santos*,[*] *JJ.*, concur.

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[53] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

[*] Additional Member per S.O. No. 2753.

THIRD DIVISION

[G.R. No. 222768. September 2, 2020]

JOSEFINA ARINES-ALBALANTE and JUANA ARINES, *Petitioners*, *v.* **SALVACION REYES and ISRAEL REYES,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN TENANCY; DISPOSSESSION OF TENANTS; A PERSON IN POSSESSION OF A PROPERTY CANNOT BE EJECTED BY FORCE, VIOLENCE OR TERROR – NOT EVEN BY THE OWNERS. — It has been ruled that notwithstanding the actual condition of the title to the property, a person in possession cannot be ejected by force, violence or terror – not even by the owners. If such illegal manner of ejectment is employed, the party who proves prior possession can recover possession even from the owners themselves. In this case, regardless of whether Josefina is a tenant or had ceased to be one because of non-compliance with her tenancy obligations, respondents had no right to take the law into their hands and forcibly eject Josefina from the land. Josefina is entitled to remain in possession thereof until she is *lawfully* ejected therefrom.

2. ID.; ID.; TENANCY RELATIONSHIP, REQUISITES OF; ONLY DE JURE TENANTS ARE ENTITLED TO SECURITY OF TENURE AND COVERAGE UNDER TENANCY LAWS. — The elements to constitute a tenancy relationship are the following: (1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee.

There must be substantial evidence on the presence of all these requisites; otherwise, there is no *de jure* tenant. Only those who have established *de jure* tenant status are entitled to security of tenure and coverage under tenancy laws.

3. ID.; ID.; ID.; TENANCY RELATIONSHIP, NOT EXTINGUISHED BY THE DEATH OF THE LANDOWNER OR THE AGRICULTURAL LESSEE; CASE AT BAR. — There is no dispute that Josefina's father, Sergio Arines, was the original tenant of the landholding as shown in the leasehold contract (*i.e.*, Provincial Rental Contract) between Sergio Arines and Salvacion. It is settled that tenancy relationship is not extinguished by the death of the landowner or the agricultural lessee. If either party dies, the tenancy continues to bind the landowner (or their heirs) in favor of the tenant (or their surviving spouse/descendant). Hence, upon the death of Sergio Arines in 1997, his daughter Josefina had the right to succeed him to cultivate the land under the same terms of tenancy.

4. ID.; ID.; ID.; SECURITY OF TENURE OF AGRICULTURAL LESSEES; CASE AT BAR. — R.A. 3844, which abolished share tenancy throughout the Philippines and established the agricultural leasehold system by operation of law, gave agricultural lessees security of tenure. . . .

Given the foregoing, Josefina has the right to continue in the enjoyment and possession of the subject landholding until the time when her dispossession has been authorized by the court in a judgment that is final and executory.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioners.
L.A.M. Caayo & Notary Offices for respondents.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated December 1, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 125265, which reversed and set aside the Decision[3] dated November 21, 2011 of the Department of Agrarian Reform Adjudication Board (DARAB) and dismissed Josefina Arines-Albalante (Josefina) and Juana Arines' (collectively, petitioners) complaint in DARAB Case No. V-RC-062-CS-03. Likewise assailed is the Resolution[4] dated January 19, 2016 of the CA, which denied petitioners' motion for reconsideration.

Facts of the Case

This case stemmed from a complaint for illegal ejectment filed by Josefina, represented by her sister-in-law Juana Arines, against respondents Salvacion Reyes (Salvacion) and Israel Reyes (collectively, respondents) before the Provincial Agrarian Reform Adjudication Board (PARAD), San Jose, Pili, Camarines Sur.[5]

Josefina is the daughter of Sergio Arines, the original tenant of the subject rice holding known as Lot 5543 consisting of one hectare, more or less, located at Sta. Isabel, Buhi, Camarines

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[1] *Rollo*, pp. 3-12.

[2] Penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Normandie B. Pizarro and Danton Q. Bueser; id. at 29-37.

[3] Penned by Member Jim G. Coleto, with the concurrence of Chairperson Virgilio R. Delos Reyes and members Anthony N. Parungao, Gerundio C. Madueño, Mary Frances Pesayco-Aquino, and Ma. Patricia Rualo-Bello; id. at 19-25.

[4] Penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Normandie B. Pizarro and Danton Q. Bueser; id. at 38-39.

[5] Id. at 20.

Sur. The subject landholding has a lease rental of 20 cavans per harvest. During his lifetime, Sergio remitted the landowner's share to respondent Salvacion who received it personally or through her representative. No receipts were issued by the landowners. Sergio Arines died in 1997.[6]

Josefina alleged that sometime in May 2003, Salvacion verbally advised her to desist from cultivating the subject land and surrender possession thereof to them. When Josefina refused to heed the demand, respondents, with the assistance of several workers, forcibly entered the land and undertook its cultivation. Despite repeated demands, respondents refused to return possession of the land to Josefina.[7]

Josefina brought the issue before the Barangay Agrarian Reform Committee (BARC) Chairperson for possible amicable settlement. The BARC recommended to the Municipal Agrarian Reform Office (MARO) for mediation but to no avail. Hence, Josefina filed this case for illegal ejectment and reinstatement to the possession of the subject landholding with payment of their unrealized production of 60 cavans per cropping.[8]

By way of special and affirmative defenses, respondents claimed that Josefina is without legal capacity to sue and be sued as she is a deaf-mute.[9] Juana Arines, on the other hand, has not been legally authorized to represent Josefina. Respondents averred that petitioners are not the registered tenants of Salvacion, and neither did they legally succeed their alleged predecessor-in-interest, Sergio Arines, as the latter had abandoned the land. No one of the children of the late Sergio Arines — some of whom are abroad — have actually and personally cultivated the subject land considering that the farm had always been subleased to third parties. Respondents posited that petitioners

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[6] Id.

[7] Id.

[8] Id.

[9] Id. at 15.

breached the stipulations in the Provincial Rental Contract.[10] They claimed that Sergio Arines did not deliver dry and clean palay as those delivered were wet and decayed palay, and that petitioners had occupied 1.5 hectares of their landholding. Respondents averred that as of June 6, 2003, the late Sergio Arines incurred arrearages for irrigation fees in the amount of ₱118,108.87. Respondents prayed for the dismissal of the complaint and declare petitioners as non-tenants of the landholding in question.[11]

Ruling of the PARAD

After submission of the parties' position papers, the Provincial Adjudicator of San Jose, Pili, Camarines Sur rendered a Decision[12] dated December 16, 2004, granting the complaint. The dispositive portion reads:

> WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the complainants, and other issue as follows:
>
> 1. Ordering the respondents to reinstate complainant Josefina Arines-Alba[l]ate as agricultural lessee of the subject landholding, and for the former to maintain and respect the latter's possession and cultivation of the same;
>
> 2. Ordering the respondents to pay the complainants sixty (60) cavans of palay per cropping, from the time of the institution of this action up to its final termination.
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> SO ORDERED.[13]

The Provincial Adjudicator ruled that respondents took the law in their own hands. If they have legal grounds and substantial evidence to support them, they should invoke the aid of a forum of competent jurisdiction, in this case, the Office of the Provincial

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[10] Id.

[11] Id. at 21.

[12] Id. at 14-17.

[13] Id. at 16.

Adjudicator, to address their cause.[14] Petitioners were dispossessed by respondents from their landholdings without authorization or order. The affirmative and special defenses of respondents, if found to be true, may be considered grounds for ejectment of petitioners.[15]

Respondents moved for reconsideration but the motion was denied in the Order dated March 10, 2005.[16]

Ruling of the DARAB

On appeal, the DARAB affirmed *in toto* the Decision[17] of the Adjudicator in its Decision[18] dated November 21, 2011. The DARAB enunciated the principle in agrarian law that the ejectment of tenant must be premised on a ground/s provided for by law. In the absence of any lawful ground for ejectment, the tenant/lessee must be reinstated because she is basically clothed with security of tenure.[19] In this case, respondents' counter-allegations of abandonment and non-payment of rentals were not supported by substantial evidence. The filing of reinstatement case by Josefina negated any concluding statement of voluntary abandonment on their part.[20] Also, respondents should have demanded the delivery of the fair or regular share of dry and clean palay or harvests from their own land or at most, filed the corresponding case for ejectment before the Adjudicator. Respondents must not put the law into their hands by unjustly ejecting petitioners from the landholding and taking its possession or the cultivation thereof without due process of law.[21]

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[14] Id. at 16.

[15] Id.

[16] Id. at 18.

[17] Id. at 14-17.

[18] Id. at 19-25.

[19] Id. at 22.

[20] Id. at 22-23.

[21] Id. at 23-24.

Respondents elevated the case to the CA via a petition for review under Rule 43 of the Rules of Court.

Ruling of the Court of Appeals

On December 1, 2014, the CA reversed and set aside the Decision of the DARAB and dismissed petitioners' complaint for illegal ejectment. The CA ruled that Josefina has not established any right to tenancy of the subject farm holding. Citing Section 9 of Republic Act No. (R.A.) 3844 that in case of the death of the agricultural lessee, it is the lessor who is given the option to choose the person to succeed in the cultivation of the landholding from the lessee's heirs, in the following order: (1) the surviving spouse; (2) the eldest direct descendant by consanguinity; and (3) the next eldest descendant or descendants in the order of their age. In case the agricultural lessor fails to exercise his choice within one month from such death, the priority shall be in accordance with the aforesaid order.[22] The CA stated that respondents, as landowners, did not signify their choice as to who will succeed as lessee; thus, the surviving spouse of Sergio Arines is deemed to be the successor after his death in 1997. There is no proof that the widow of Sergio Arines had actually and personally tilled the farm and neither is there proof that Josefina is the eldest child of Sergio Arines.[23] Further, the CA declared that the element of consent by the landowner is lacking; personal cultivation is absent; and there is no sharing in the produce.[24]

Petitioners moved for reconsideration but their motion was denied in the Resolution dated January 19, 2016.[25]

Hence, this Petition for Review on *Certiorari* under Rule 45 filed by petitioners anchored on the following grounds:

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[22] Id. at 34-35.

[23] Id. at 35.

[24] Id. at 36.

[25] Id. at 38-39.

The Honorable Court of Appeals erred in holding that Josefina Arines-Albalate has not proven her right as tenant of the subject land and the Juana Arines is not a party-in-interest as she has no blood relation to Sergio Arines.

The Honorable Court of Appeals erred in holding that Section 9 of R.A. No. 3844 was not followed in choosing the person who will succeed in the cultivation of the subject land.

The Honorable Court of Appeals erred in holding that the elements of consent, personal cultivation and sharing in the produce for tenancy relationship to exist are lacking.[26]

Arguments of Petitioners

Petitioners contend that the CA erred in holding that Josefina has not proven her right as tenant of the landholding and that Juana Arines is not a party-in-interest as she has no blood relation to Sergio Arines. They stressed that respondents recognized Sergio Arines as the rightful tenant of the land, as they even offered as exhibit the leasehold contract between Sergio Arines and respondent Salvacion Reyes. Thus, when Sergio Arines died, Josefina, his daughter, has the right to succeed him as tenant of the landholding pursuant to Section 9 of RA 1199.[27] Further, Josefina had proven the fact of tenancy when she presented and offered in evidence before the PARAD the Certification of the Punong Barangay that she is indeed the tenant of the subject land; the Affidavit executed by a fellow tenant adjoining the land stating that Josefina is in actual cultivation of the property owned by Reyes; and the Certification from the National Irrigation Authority stating the unpaid account for irrigation fees also in the name of tenant Josefina. Thus, by law and evidence, Josefina was able to establish that she is the rightful tenant of the subject property. However, since Josefina is a deaf-mute, she was being assisted in the cultivation of the land by Juana Arines, being an immediate member of the farm

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[26] Id. at 6.

[27] Id.

household, who also joined her as party to the instant case.[28] However, Juana died during the pendency of the case before the CA; hence, the issue pertaining to her legal personality has become moot and academic.[29]

As to the order of succession in the cultivation of the land in case of death of the tenant, petitioners claim that it is the agricultural lessor who should exercise the right to choose the successor of the deceased tenant within one month from the latter's death. In this case, it took six years before respondents decided to forcibly eject the tenant of the land. They did not even file an ejectment case as required under Section 37 of RA No. 3844.[30]

Finally, petitioners aver that they have proven the elements of consent, actual cultivation and sharing of produce. As such, they have the right to be reinstated as tenant of the landholding forcibly taken away by respondents.[31]

Comment of Respondents

Respondents insist that Josefina has not proven her right as tenant of the subject farmland. Also, they reiterate that Josefina is without legal capacity to sue and be sued as she is a deaf-mute. Juana Arines is neither a member of Josefina's immediate family nor an attorney-in-fact of Josefina.[32] Respondents contend that they are not guilty of illegal ejectment. Their entry into the subject landholding was on the advice of the MARO of Buhi, Camarines Sur. Further, petitioners have no document to show that respondents were being paid rentals due from them. The burden of proving payment rests on petitioners.[33] Respondents maintain that no tenancy relationship existed

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[28] Id. at 7.

[29] Id. at 8.

[30] Id.

[31] Id. at 8-9.

[32] Id. at 90.

[33] Id. at 94-95.

between respondent Salvacion and petitioner Josefina because: (1) Josefina has not been instituted as tenant of the landholding; (2) there was no consent on the part of Salvacion to establish tenancy relationship with Josefina; (3) Josefina had abandoned the landholding; hence, she had no personal cultivation of the landholding; and (4) Josefina did not give Salvacion's share in the harvest.[34]

Ruling of the Court

The petition is meritorious.

The resolution of the present controversy hinges on these issues: (1) whether Josefina was illegally ejected by respondents from the subject landholding; and (2) whether Josefina is a tenant of the landholding and should be reinstated as such.

There is no dispute that Josefina was ejected from her possession and cultivation of the subject landholding. Respondents even admit their entry into the land but justify the same by invoking the blessing of the MARO of Buhi — alleging that it was upon the advice of MARO that they entered the subject landholding.

The Court finds that the PARAD and DARAB are correct when they ruled that respondents took the law into their hands by unjustly ejecting Josefina from the landholding and taking its possession and cultivation of the land without due process of law. If respondents have legal grounds to eject Josefina, as what they alleged in their affirmative and special defenses, they should have invoked the aid of a forum of competent jurisdiction to address their cause.

As held in *Pajuyo v. CA*:

> The underlying philosophy behind ejectment suits is to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his. The party deprived of possession must not

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[34] Id. at 96.

take the law into his own hands. Ejectment proceedings are summary in nature so the authorities can settle speedily actions to recover possession because of the overriding need to quell social disturbances.[35]

It has been ruled that notwithstanding the actual condition of the title to the property, a person in possession cannot be ejected by force, violence or terror — not even by the owners. If such illegal manner of ejectment is employed, the party who proves prior possession can recover possession even from the owners themselves.[36] In this case, regardless of whether Josefina is a tenant or had ceased to be one because of non-compliance with her tenancy obligations, respondents had no right to take the law into their hands and forcibly eject Josefina from the land. Josefina is entitled to remain in possession thereof until she is *lawfully* ejected therefrom.

Hence, notwithstanding the CA's finding that Josefina is not a tenant of the landholding, a complaint for ejectment should have been filed by respondents before the PARAD and only after an ejectment order has been issued that Josefina can be lawfully evicted from the subject land.

Besides, this Court finds that Josefina is a tenant of the landholding and, thus, should be reinstated therein. The CA erred in holding that Josefina has not established any right to tenancy of the subject landholding. Citing Section 9 of R.A. 3844, the CA held that there is no proof that the surviving spouse of Sergio Arines who is deemed to be the successor after his death in 1997, had actually and personally tilled the farm and neither is there proof that Josefina is the eldest child of Sergio Arines. The CA declared that the element of consent by the landowner is lacking; personal cultivation is absent; and there is no sharing in the produce.

The elements to constitute a tenancy relationship are the following: (1) the parties are the landowner and the tenant or

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[35] *Pajuyo v. Court of Appeals*, 474 Phil. 557, 580-581 (2004).

[36] *Heirs of Laurora v. Sterling Technopark III*, 449 Phil. 181, 187 (2003).

agricultural lessee; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or agricultural lessee.[37]

There must be substantial evidence on the presence of all these requisites; otherwise, there is no *de jure* tenant. Only those who have established *de jure* tenant status are entitled to security of tenure and coverage under tenancy laws.[38]

Josefina was able to discharge her burden that she has tenancy relation with Salvacion. There is no dispute that Josefina's father, Sergio Arines, was the original tenant of the landholding as shown in the leasehold contract (*i.e.*, Provincial Rental Contract) between Sergio Arines and Salvacion. It is settled that tenancy relationship is not extinguished by the death of the landowner or the agricultural lessee. If either party dies, the tenancy continues to bind the landowner (or their heirs) in favor of the tenant (or their surviving spouse/descendant).[39] Hence, upon the death of Sergio Arines in 1997, his daughter Josefina had the right to succeed him to cultivate the land under the same terms of tenancy. Section 9 of R.A. 3844, cited by the CA, only provides the *order of priority*, upon whom the agricultural lessor should choose if he/she will exercise his/her choice or if he/she fails to do so within the period given. Nothing can be implied therein that a direct descendant of the registered tenant/agricultural lessee is *prohibited* from continuing the personal cultivation of the landholding. Josefina is a successor-in-interest to a tenanted land over which an agricultural leasehold has been established. Thus, the consent given by Salvacion to constitute

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[37] *Automat Realty and Development Corporation v. Spouses Dela Cruz, Sr.*, 744 Phil. 731, 743 (2014).

[38] Id.

[39] *Estrella v. Francisco*, 788 Phil. 321, 330 (2016).

Sergio Arines as the tenant/agricultural lessee of the subject landholding binds Josefina who, as successor-in-interest of Sergio Arines, steps into the latter's shoes, acquiring not only his right but also his obligations.[40]

Respondents contend in their *Answer* that the family of Arines had incurred arrearages for irrigation in the amount ₱118,108.87 as of June 6, 2003. They further allege that Josefina never delivered dry and clean palay as provided in their rental contract but those delivered were wet and decayed palay.[41] From these averments of respondents, it is safe and logical to conclude that Josefina has continued personal cultivation of the landholding and that there is sharing of harvest between Josefina and Salvacion. Josefina had been sharing the harvest to Salvacion only that those delivered by her were wet and decayed palay and not dry and clean palay. Receipts of rentals need not be presented in view of this admission by respondents of the sharing of harvest by Josefina.

In this case, the Court is only tasked to determine whether Josefina was illegally ejected from the landholding and whether Josefina, after it is established that she is a *de jure* tenant, should be reinstated therein. The issues as to whether: (1) there was abandonment by Sergio Arines of the landholding; (2) petitioners are guilty of subleasing the tenanted premises to third persons; (3) petitioners are guilty of non-payment of irrigation fees; and (4) petitioners failed to pay rentals, are matters which should be resolved in an ejectment case. These are lawful causes for the ejectment of an agricultural lessee which the agricultural lessor has the burden to prove.[42]

R.A. 3844, which abolished share tenancy throughout the Philippines and established the agricultural leasehold system

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[40] *See Endaya v. Court of Appeals*, 289 Phil. 549 (1992).

[41] *Rollo*, p. 23.

[42] R.A. 3844, Section 37. *Burden of Proof.* — The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

by operation of law, gave agricultural lessees security of tenure. Section 7 thereof provides:

> The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

Given the foregoing, Josefina has the right to continue in the enjoyment and possession of the subject landholding until the time when her dispossession has been authorized by the court in a judgment that is final and executory.[43]

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated December 1, 2014 and the Resolution dated January 19, 2016 of the Court of Appeals in CA-G.R. SP No. 125265 are **REVERSED** and **SET ASIDE**. The Decision dated November 21, 2011 of the Department of Agrarian Reform Adjudication Board which affirmed *in toto* the Provincial Agrarian Reform Adjudication Board Decision dated December 16, 2004 is hereby **REINSTATED**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

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[43] *See* R.A. 3844, Sec. 36.

THIRD DIVISION

[G.R. No. 224112. September 2, 2020]

REPUBLIC OF THE PHILIPPINES represented by the ANTI-MONEY LAUNDERING COUNCIL (AMLC), *Petitioner, v.* **BLOOMBERRY RESORTS AND HOTELS, INC. (SOLAIRE) AND BANCO DE ORO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASE, DEFINED; EXCEPTIONS TO THE MOOT AND ACADEMIC PRINCIPLE. — We agree with BRHI that the petition has become moot and academic. In the case of *Osmeña, III v. SSS*, We defined a moot and academic case, to wit:

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. . . .

The case of *David v. Macapagal-Arroyo* earlier gave the two other exceptions to the moot and academic principle: (a) if there is grave violation of the Constitution; and (b) the exceptional character of the situation and the paramount public interest is involved.

2. ID.; ID.; ID.; ANTI-MONEY LAUNDERING ACT (R.A. NO. 9160, AS AMENDED); FREEZE ORDER; MAXIMUM PERIOD FOR THE EFFECTIVITY THEREOF AND RATIONALE THEREFOR; WHERE THE FREEZE ORDERS' MAXIMUM EFFECTIVITY PERIOD OF SIX MONTHS HAS ELAPSED, THE ADJUDICATION OF THE CASE HAS BECOME MOOT AND ACADEMIC. — [A]s early as 2005, A.M. No. 05-11-04-SC or the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, Or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense Under R.A. 9160, as amended, has already

specified that any extension for the issuance of freeze order should not exceed six months. The rationale for giving a maximum period for the effectivity of a freeze order is aptly explained by the Court in *Ligot v. Republic, viz.*:

> A freeze order is an extraordinary and interim relief issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of RA No. 9160, as amended.
> . . .
>
> Clearly, a Freeze Order may not be issued indefinitely, lest the same be characterized as a violation of the person's right to due process and to be presumed innocent of a charge. In this case, the Freeze Order was issued by the CA on March 15, 2016. Even assuming that the CA erred in failing to issue an extension of the Freeze Order, nevertheless, a period of more than six months has already elapsed. If we grant the petition now, it has been more than four years from the issuance of the Freeze Order. This development squarely falls under the principle of a moot and academic issue as We have earlier defined. The adjudication of this case has no practical use and value owing also to the fact that as manifested by the BDO, upon receipt of the CA Resolution dated March 15, 2016 granting BRHI's motion to lift the freeze order, BDO has complied with the order to unfreeze BRHI's Account No. 6280225150.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Picazo Buyco Tan Fider & Santos Law Office for respondent Bloomberry Resorts and Hotels, Inc.
BDO Legal Services Group for respondent Bank.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari* With Prayer for the Issuance of a Temporary Restraining Order or

Status *Quo Ante* Order[1] under Rule 45 of the Rules of Court, assailing the Resolution[2] dated April 15, 2016 of the Court of Appeals (CA) in CA-G.R. AMLA Case No. 00152 denying the Urgent Motion for Additional Period of Freeze Order and Urgent Motion for Status Quo Order filed by the Republic of the Philippines as represented by the Anti-Money Laundering Council (AMLC) and granting the Urgent Motion to Lift Freeze Order[3] filed by Bloomberry Resorts and Hotels, Inc.

Antecedents

In February 2016, news outlets and the media broke the story of the hacking of the account of Bangladesh Bank with the Federal Reserve Bank of New York (New York Fed) where somehow, US$81,000,000.00 found its way to the Philippine Banking System.[4]

In a letter dated February 16, 2016, Bangladesh Bank Governor Atiur Rahman (Governor Rahman) sought the assistance of Bangko Sentral ng Pilipinas Governor Amando M. Tetangco, Jr. (Governor Tetangco) regarding the loss of millions of US dollars from Bangladesh Bank's Account No. 021083190 with the New York Fed. According to Governor Rahman, some fraudulent payment transactions were made to the New York Fed in favour of Rizal Commercial Banking Corporation (RCBC) involving US$81,000,000.00. Governor Rahman requested Governor Tetangco to conduct an immediate inquiry into the matter and asked for help for the recovery of the money.[5]

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[1] *Rollo*, pp. 3-37.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino; id. at 45-55.

[3] Id. at 120-132.

[4] *See* id. at 430.

[5] Id. at 435-436.

Based on the Incident Report[6] prepared by the Bangladesh Bank, the beneficiaries of the fraudulent transfer, having accounts with the RCBC are the following:

Beneficiary Name	Amount (USD)
Michael F. Cruz	6,000,039.12
Jessie Christopher M. Lagrosas	30,000,039.12
Alfred S. Vergara	20,000,000.00
Enrico T. Vasquez	25,001,583.88
Total	**81,001,662.12**[7]

On February 16, 2016, Mohammad Abdur Rab and Mohammad Jaker Hossain, the Joint Director of the Bangladesh Financial Intelligence Unit (BFIU) and the Deputy General Manager, Accounts and Budgeting Department of Bangladesh Bank, respectively, visited the AMLC Secretariat, presented the facts of their case and sought for assistance.[8] On investigation, it was found that the following events transpired leading to the transfer of US$29,000,000.00 to the Banco de Oro (BDO) Account No. 6280225150 of BRHI:

On February 4, 2016, an unauthorized user issued 35 SWIFT[9] payment instructions to the New York Fed involving US$951,000,000.00. The New York Fed did not execute 30 payment instructions for lack of beneficiary details. Five remaining payment instructions, including the transfers to Michael F. Cruz, Jessie Christopher M. Lagrosas, Alfred S. Vergara, and Enrico T. Vasquez, were cleared.[10] The other one

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[6] Id. at 74-85.

[7] Id. at 436.

[8] Id. at 436-437.

[9] The *Society of Worldwide Interbank Financial Telecommunications* (SWIFT) is a global communication network that facilitates 24-hour secure international exchange of payment instructions between banks, central banks, multinational corporations and major securities firms.

[10] *Rollo*, p. 437.

was put on hold because of the discrepancy in the beneficiary's name. On February 8, 2016, a public non-working holiday in the Philippines because of the Chinese New Year, Bangladesh Bank sent "stop payment" requests to RCBC. However, RCBC was able to respond only on February 9, 2016 and placed on hold the remaining proceeds amounting to just US$68,305.00.[11]

The remittances to the four account holders of RCBC were either transferred or withdrawn on the same day (February 5, 2016) or on the next working day (February 9, 2016).[12]

Because of the huge amount of money transferred to the accounts of Michael F. Cruz, Jessie Christopher M. Lagrosas, Alfred S. Vergara, and Enrico T. Vasquez originating from the same payment instructions, the AMLC conducted initial investigations including the account of a certain William So Go (Go) and Kam Sin Wong.[13] It was found that the withdrawals from the four RCBC bank accounts were eventually transferred to Go's account amounting to US$65,668,664.37. This amount was credited to PhilRem Service Corporation's account (PhilRem), a remittance company, upon Go's instructions. The other US$15,215,977.26 was also credited to PhilRem's account on the same day. In other words, the US$81,000,000.00 was transferred from the four account holders of RCBC, to Go's account and eventually to PhilRem.[14]

PhilRem was informed by Go that he intended to take advantage of the influx of Chinese casino players for the Chinese New Year. Hence, upon Go's instructions, PhilRem delivered: (1) US$29,000,000.00 to Bloomberry Resorts and Hotels, Inc.'s (BRHI) BDO Account No. 6280225150; (2) US$21,245,500.00 to Eastern Hawaii Leisure Company; and (3) US$30,639,141.63 to Weikang Xu.[15]

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[11] Id. at 438.

[12] Id. at 439.

[13] Id.

[14] Id. at 440.

[15] Id. at 440-441.

Upon finding of probable cause that BRHI's BDO Account No. 6280225150 was related to the unlawful activity of hacking, the AMLC issued a resolution[16] authorizing the AMLC Secretariat to file, through the Office of the Solicitor General (OSG), an *ex parte* petition for the issuance of a freeze order against the subject account.[17] On March 15, 2016, the CA issued the freeze order effective for 30 days. At that time, the BRHI's BDO Account contained ₱1,377,354,671.23.[18] In its Resolution, the CA was convinced that there was ample basis to believe that the bank account in the name of BRHI with BDO was related to or involved in unlawful activities or offenses of money laundering under Republic Act No. (R.A.) 9160, as amended.[19] However, considering that BRHI is widely regarded as a legitimate business entity that caters to the needs of the public concerning leisure and entertainment, the CA limited the duration of the Freeze Order to 30 days only.[20]

On March 17, 2016, the AMLC also filed an application for bank inquiry with the CA which was granted in a Resolution[21] dated March 18, 2016. The CA held that based on the totality of the facts and circumstances surrounding BDO Account No. 6280225150 in the name of BRHI, there is at least a *prima facie* ground to believe that the BDO account is related to an unlawful activity such as hacking or cracking within the purview of R.A. 9160, as amended.[22] Hence, the CA granted the application for bank inquiry to enable the AMLC to obtain material relevant information on the transactions involving BDO Account No. 6280225150.[23]

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[16] Id. at 288-293.

[17] Id. at 293.

[18] Id. at 46.

[19] Id. at 111.

[20] Id. at 114.

[21] Id. at 232-238.

[22] Id. at 235.

[23] Id. at 237.

The Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee) hearings also yielded the same finding that BRHI received fund transfers from PhilRem in the total amount of ₱1,365,000,000.00 (equivalent to US$29,000,000.00).[24] This amount was traced as having been sourced from the stolen funds of Bangladesh Bank.[25]

For its part, BRHI claims that it is the casino operator of Solaire Resort and Casino (Solaire) located at the Entertainment City in Parañaque. As a casino operator, it is not a covered institution under the Anti-Money Laundering Act of 2001 (AMLA) at the time the incident happened.[26]

BRHI explained that the subject BDO account is a bank account for peso payments or deposits/remittances to BRHI. The details of the bank account are given to junket operators, premium players or high rollers to enable them to deposit money that they will use to engage in gaming in Solaire. A junket operator is a person or entity that markets and arranges casino games to foreign casino players providing them with credits and other services, and bringing them to Solaire to play casino games, and in return, they receive commissions.[27]

Premium players are high rollers or very important customers who play on a rolling chip program or higher limit games. Premium players are required to put up "front money" before they can play in Solaire. Front money is the capital that the premium player deposits in an account with the casino. This front money is exchanged with non-negotiable chips which can only be played and cannot be encashed. Premium players are required to play and roll their front money in order to earn rebates or commissions from the casino. The funds that a premium

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[24] Id. at 442.

[25] Id. at 443.

[26] Id. at 383.

[27] Id.

player deposits into the bank account of the casino become payment to the casino for purchase of non-negotiable chips; hence, owned by the casino.[28]

On February 5, 2016, a Chinese national from Macau named Ding Zhize (Ding) advised BRHI that he and his companions will remit millions of dollars to Solaire to be used by a group of Chinese players who intended to play during the Chinese New Year. Ding was introduced to BRHI by Wang Xin (Wang) and Gao Shuhua (Gao) who were known high rollers and who had previously played in Solaire.[29] Hence, on February 5 and 10, 2016, BRHI received from the BDO account of PhilRem the total amount of ₱1,365,000,000.00. This amount was used by the group of Ding as front money to play in Solaire.[30]

BRHI claims that at the time of the remittance, there was no reason for it to suspect that the amount could be related to any unlawful activity as the same was received and deposited in the account of BRHI in the regular course of business. The deposit of ₱1,365,000,000.00 was not unusual because being a casino, BRHI regularly deals with large amounts of money. Also, the deposit coincided with the Chinese New Year which is a known season for Chinese high rollers to splurge.[31]

When the amount of money was deposited in the account of BRHI, it was exchanged for value – the non-negotiable chips. By February 29, 2016, the whole amount was fully used to play and had been converted to non-negotiable chips.[32]

On February 29, 2016, news articles broke out about the hacking of the Bangladesh Bank account and mentioned Solaire. On March 10, 2016, BRHI deemed it prudent to take reasonable measures to curtail any damage that said allegations, if the same

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[28] Id. at 384.

[29] Id.

[30] Id. at 385.

[31] Id. at 386.

[32] Id. at 387.

turned out to be true, would cause. Hence, BRHI froze whatever remaining balance the Ding group had in their accounts and their members were barred from playing in Solaire. However, all that remained from the accounts of the Ding group amounted to ₱107,350,602.00 plus cash in various currencies amounting to ₱1,347,069.00.[33]

Upon receipt of the freeze order issued by the CA, BRHI filed an Urgent Motion to Lift Freeze Order[34] while the AMLC filed an Urgent Motion for Additional Period of Freeze Order.[35]

On April 15, 2016, the CA issued the assailed Resolution[36] granting the *Urgent Motion to Lift Freeze Order* filed by BRHI and directing the BDO to unfreeze Account No. 628022510 in the name of BRHI. The disquisition of the CA is reproduced below, to wit:

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Our initial findings that there exists probable cause to justify the issuance of an *Ex Parte* Freeze Order against Solaire would no longer hold in view of the AMLC's failure to establish within the period given that the Subject Account was acquired through unlawful means or illegal activity. Its argument that the proceeds of the Subject Account form part of the funds stolen from Bangladesh Bank remains within the realms of speculation. Even now, the AMLC could not give a link, direct or indirect, that would connect to the proposition, nay suspicion, that the proceeds of the Subject Account form part of the funds stolen from the Bangladesh Bank. Worse, it miserably failed to demonstrate that the circumstances surrounding the funding of the said account. Although the AMLC admitted that the Subject Account was in the name of Solaire, a legitimate casino operator, it *sic* adamandly characterized the frozen funds as proceeds of an unlawful activity. Again, this argument, bordering on mere insinuation, does not convincingly shed light on the alleged illegal character of

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[33] Id. at 390.

[34] Id. at 120-132.

[35] Id. at 176-182.

[36] Supra note 2.

the Subject Account. Thus, absent a clear and more definite showing that the Subject Account which was initially frozen contains the same funds stolen from Bangladesh Bank, We cannot accede to AMLC's request for an extension of the effectivity of the *Ex Parte* Freeze Order.

Solaire, on the other hand, persuasively explained that the monies, initially frozen, already form part of its corporate funds, inclusive of payments and deposits of other junket and premium clients and not the money purportedly taken from Bangladesh Bank. The funds in the Subject Account were already 'converted or used' by a certain Ding to purchase non-negotiable chips in Solaire which in turn were played in the latter's various playing programs and in the process, were eventually transferred to other junket operators/players under the auspices of Ding even prior to the issuance of the Freeze Order. This may appear self-serving and complex even to those unfamiliar with how a casino operation works, but We accord probative merit to this claim given movant AMLC's abject failure, thus far, to rise above the speculative nature of its submission against Solaire. Thus, Solaire's assertion that the funds in the Subject Account were utilized in the normal and regular operation of its casino business, thus, not tainted with irregularity nor illegality, which is contrary to the AMLC's claim, has to be accorded due credence.

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Aggrieved, the AMLC filed its Petition for Review on *Certiorari* With Prayer for the Issuance of a Temporary Restraining Order or Status *Quo Ante* Order dated May 3, 2016.[38] We issued a Temporary Restraining Order on May 19, 2016 and directed BRHI to Comment on the Petition. BRHI filed its Comment[39] and thereafter, the AMLC filed its Reply.[40] BDO also filed a manifestation that in compliance with the CA's Resolution, it has already lifted the Freeze Order over the account

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[37] *Rollo*, pp. 53-54.

[38] Id. at 3-37.

[39] Id. at 308-328.

[40] Id. at 337-355.

even before receiving the TRO issued by the Court. The parties were directed to file their respective memoranda.[41]

In its Memorandum[42] dated April 6, 2017, the AMLC insists that contrary to BRHI and BDO's assertions, the assailed Resolution is not a *fait acompli*.[43] Upon receipt of BDO of the TRO, it should have re-froze BRHI's subject account.[44] The AMLC maintains that the initial finding of probable cause should stand because the verified petition for freeze order and its supporting documents were unrebutted by BRHI.[45] According to the AMLC, it had sufficiently demonstrated that the amount totalling to ₱1,365,000,000.00 that was deposited by PhilRem to BRHI's BDO account came from the unauthorized international inward remittances from the account of Bangladesh Bank in the New York Fed.[46] The AMLC chronologically presented every transfer of funds starting from the unauthorized payment instructions that triggered the remittance of the US$81,000,000.00 to the four spurious accounts in RCBC which was consolidated in similar spurious account of Go. The entire amount was credited to PhilRem's account which transferred ₱1,365,000,000.00 to BRHI's account. This trail leads to no other conclusion but the fact that the subject account is related to an unlawful activity.[47] Since money is essentially fungible and can easily be commingled with other moneys, a deposit that can be traced to an unlawful activity is considered tainted and despite the passage of time or further commingling with other funds, it remains tainted.[48] The AMLC also countered

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[41] Id. at 304-305.

[42] Id. at 430-486.

[43] Id. at 454.

[44] Id. at 455.

[45] Id. at 456.

[46] Id. at 461.

[47] Id. at 462-463.

[48] Id. at 463.

that BRHI failed to present any evidence that would support its claim that a certain Ding owned the money deposited in the subject account as front money.[49] The AMLC also faulted BRHI in failing to exercise due diligence and sound business practice because it did not take necessary steps to scrutinize the money deposited in its account. It should have confirmed the legitimacy and accuracy of transactions coming in.[50]

On the other hand, BRHI, in its Memorandum[51] dated March 3, 2017, submitted that the petition is moot because a freeze order cannot be issued or extended for a period longer than six months.[52] BRHI argues that since the Freeze Order was issued on March 15,2016, more than six months has elapsed counting from its issuance. Hence, a disquisition on the merits of the petition serves no practical or legal purpose.[53] BRHI insists that the AMLC failed to establish the existence of probable cause to extend the freeze order.[54] According to BRHI, the AMLC failed to proffer proofs supporting its allegations. In fact, what the AMLC submitted was only a supposed letter from the Governor of the Central Bank of Bangladesh asking for assistance from Governor Tetangco. However, the AMLC did not even present testimony from the persons from Bangladesh Bank who allegedly met with the AMLC Secretariat and presented the facts of their case.[55] BRHI also countered that it has not committed any blunder in not knowing that the money received from PhilRem was illicit. Being a non-covered entity under the AMLA, BRHI is not required to inquire as to the source of its customer's funds. The law forces BRHI to rely upon the integrity of the

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[49] Id. at 464.

[50] Id. at 472.

[51] Id. at 379-415.

[52] Id. at 397.

[53] Id. at 399.

[54] Id.

[55] Id. at 402-403.

banking system that is supposed to release only clean money into the economy.[56]

Finally, the BRHI argues that assuming that the amounts received by BRHI from PhilRem are laundered money, the same is no longer with BRHI.[57] As demonstrated by BRHI, the money was used by the Ding group to purchase non-negotiable chips which have been transferred to junket operators or played in Solaire's premium program.[58] The ₱1,365,000,000.00 were used by the Ding group as follows: (1) ₱331,270,000.00 was played under the chip sharing program that the various members of the Ding group had opened; (2) upon instructions of Ding and the authorized members of his group, non-negotiable chips amounting to ₱903,730,000.00 were transferred to Sun City, a fixed-room junket operator which were exchanged for Sun City non-negotiable chips; (3) non-negotiable chips amounting to ₱100,000,000.00 were transferred to Gold Moon, another fixed-junket operator; and (4) non-negotiable chips in the net amount of ₱31,195,000.00 were transferred to Lau Ka Wai, a casual junket operator.[59]

Issue

The issue in this case is whether the CA erred in lifting the freeze order earlier issued against BRHI.

Ruling of the Court

A freeze order may only be effective for a maximum period of six months; hence, even assuming that the Urgent Motion for Additional Period of Freeze Order should have been granted, the six-month maximum period has elapsed.

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[56] Id. at 407.

[57] Id. at 409.

[58] Id.

[59] Id. at 410.

We agree with BRHI that the petition has become moot and academic. In the case of *Osmeña, III v. SSS*,[60] We defined a moot and academic case, to wit:

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[61] (Citations omitted)

The case of *David v. Macapagal-Arroyo*[62] earlier gave the two other exceptions to the moot and academic principle: (a) if there is grave violation of the Constitution; and (b) the exceptional character of the situation and the paramount public interest is involved.[63]

R.A. 9160, otherwise known as the AMLA, as amended by R.A. 10365, provides that:

> Section 10. Freezing of Monetary Instrument or Property. – Upon a verified ex parte petition by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, the Court of Appeals may issue a freeze order which shall be effective immediately, and which shall **not exceed six (6) months** depending upon the circumstances of the case: Provided, That if there is no case filed against a person whose account has been frozen within the period determined by the court, the freeze order shall be deemed ipso facto lifted: Provided, further, That this

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[60] 559 Phil. 723, 735 (2007).

[61] Id.

[62] 522 Phil. 705 (2006).

[63] Id. at 754.

new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.

A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the freeze order.

No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court. (Emphasis supplied)

The previous versions of Section 10 of the AMLA before the current amendment do not specify the maximum period within which a Freeze Order may be effective. However, as early as 2005, A.M. No. 05-11-04-SC or the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, Or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense Under R.A. 9160, as amended has already specified that any extension for the issuance of a freeze order should not exceed six months. The rationale for giving a maximum period for the effectivity of a freeze order is aptly explained by the Court in *Ligot v. Republic*,[64] *viz*.:

A freeze order is an extraordinary and interim relief issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of RA No. 9160, as amended. The primary objective of a freeze order is to temporarily preserve monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order. The relief is pre-emptive in character, meant to prevent the owner from disposing his property and thwarting the State's effort in building its case and eventually

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[64] 705 Phil. 477 (2013).

filing civil forfeiture proceedings and/or prosecuting the owner. (Emphasis in the original)[65]

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The Ligots' case perfectly illustrates the inequity that would result from giving the CA the power to extend freeze orders without limitations. As narrated above, the CA, via its September 20, 2005 resolution, extended the freeze order over the Ligots' various bank accounts and personal properties "until after all the appropriate proceedings and/or investigations being conducted are terminated." By its very terms, the CA resolution effectively bars the Ligots from using any of the property covered by the freeze order until after an eventual civil forfeiture proceeding is concluded in their favor and after they shall have been adjudged not guilty of the crimes they are suspected of committing. These periods of extension are way beyond the intent and purposes of a freeze order which is intended solely as an interim relief; the civil and criminal trial courts can very well handle the disposition of properties related to a forfeiture case or to a crime charged and need not rely on the interim relief that the appellate court issued as a guarantee against loss of property while the government is preparing its full case. The term of the CA's extension, too, borders on inflicting a punishment to the Ligots, in violation of their constitutionally protected right to be presumed innocent, because the unreasonable denial of their property comes before final conviction.

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Clearly, a Freeze Order may not be issued indefinitely, lest the same be characterized as a violation of the person's right to due process and to be presumed innocent of a charge. In this case, the Freeze Order was issued by the CA on March 15, 2016. Even assuming that the CA erred in failing to issue an extension of the Freeze Order, nevertheless, a period of more than six months has already elapsed. If we grant the petition now, it has been more than four years from the issuance of the Freeze Order. This development squarely falls under the principle of a moot and academic issue as We have earlier defined. The

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[65] Id. at 504-505.

[66] Id. at 507.

adjudication of this case has no practical use and value owing also to the fact that as manifested by the BDO, upon receipt of the CA Resolution dated March 15, 2016 granting BRHI's motion to lift the freeze order, BDO has complied with the order to unfreeze BRHI's Account No. 6280225150.

The argument of the AMLC that the case is not yet *fait acompli* because the BDO may just re-freeze Account No. 6280225150 upon granting of the petition is specious. Assuming that the petition is meritorious, We cannot order the re-freezing of the subject account for to do so would be to put BRHI in an unfair situation where its bank account is being frozen for a transaction that has happened four years ago and where it was not yet proven that it indeed participated in money laundering activities.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for being moot and academic. The temporary restraining order issued by the Court dated May 19, 2016 is hereby **LIFTED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Zalameda*, and *Gaerlan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 224345. September 2, 2020]

PO3 JERRY INES, *Petitioner, v.* **MUHAD M. PANGANDAMAN,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ISSUES NOT RAISED IN THE TRIAL COURT MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— Basic rules of fair play, justice, and due process dictate that arguments, issues, points of law, and theories not raised in the trial court may not be raised for the first time on appeal. To allow a litigant to raise an issue at a later stage would result in the violation of the adverse party's right to due process who would have no opportunity to present further evidence material to the new theory, which he could have defended had he been aware of such theory at the time of the hearing before the trial court.

In the case at bench, it is only when the case reached the CA that petitioner raised the issue of the Ombudsman's purported failure to conduct a clarificatory hearing, which petitioner omitted to bring to the attention of the hearing officer. For the Court to review it now would be unfair on the part of respondent who was not given an opportunity to present further evidence and defend his case, amounting to a violation of respondent's right to due process.

2. CIVIL LAW; CIVIL PROCEDURE; DOCTRINE OF *RES JUDICATA*, DEFINITION AND REQUISITES THEREOF; THE DOCTRINE DOES NOT APPLY WHEN THERE IS NO IDENTITY OF PARTIES BETWEEN THE TWO CASES AS IN THE CASE AT BAR. — *Res judicata* refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. For *res judicata* to apply, all the essential requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4)

there must be, between the first and the second action, identity of parties, of subject matter and cause of action.

First, the Court would like to clarify that contrary to the factual findings of the appellate court, there is no pending petition before this Court assailing the CA's ruling dismissing the case against Mendoza. Nevertheless, the CA Decision in the Mendoza Case is not controlling and does not set a precedent in the present case because the aforesaid requisites do not concur. While it may be argued that the Mendoza Case was adjudged on the merits by a court which has jurisdiction over the subject matter and parties, and there is identity of subject matter and cause of action between the Mendoza Case and the present case, still the doctrine of *res judicata* does not apply simply because there is no identity of parties between the two cases. The CA's ruling in the Mendoza Case is limited only to the administrative liability of Mendoza, to the exclusion of the other police officers and petitioner herein.

3. ID.; EVIDENCE; CREDIBILITY; FINDINGS OF FACT BY THE OMBUDSMAN ARE ACCORDED GREAT WEIGHT AND RESPECT, IF NOT FINALITY, BY THE COURTS. — Findings of fact by the Ombudsman are conclusive when supported by substantial evidence, which refers to "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion." By reason of its special knowledge and expertise over matters falling under its jurisdiction, the factual findings of the Ombudsman are generally accorded great weight and respect, if not finality by the courts.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; SERIOUS MISCONDUCT, DISTINGUISHED FROM SIMPLE MISCONDUCT. — In *Office of the Deputy Ombudsman for Luzon v. Dionisio*, the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting

either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."

5. ID.; ID.; ID.; ID.; EFFECTING AN ARREST WITHOUT ANY LEGAL GROUND CONSTITUTES GRAVE MISCONDUCT. — In the case at bench, the records reveal that the acts of petitioner constitute grave misconduct, and not just simple misconduct.

. . .

. . . [T]he act of arresting respondent without any legal ground implies a vile intent and not a mere error of judgment to violate the law, and if it were not for petitioner's position and official duty as a police officer, it would not have been possible for him to perform the illegal arrest. The act has a direct relation to and is connected with the performance of his official duties, amounting to maladministration or willful failure to discharge the duties of the office.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; RETRACTION; AFFIDAVITS OF RETRACTION OF TESTIMONIES ARE GENERALLY LOOKED AT WITH DISFAVOR; CASE AT BAR. — Ampaso's retraction of his testimony is immaterial. As correctly ruled by the CA, affidavits of retraction of testimonies are generally looked at with disfavor because they can easily be secured from witnesses, usually through intimidation or for a monetary consideration.

The factual circumstances surrounding Ampaso's recantation are highly suspect. Based on the records, the retraction occurred on April 3, 2013, a few months after Ampaso was implicated as a respondent in the administrative complaint filed before the Ombudsman and in the Information for the crime of arbitrary detention and robbery extortion before the Regional Trial Court on January 21, 2013.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

R E S O L U T I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari*[1] seeking to reverse and set aside the October 14, 2014 Decision[2] and April 25, 2016 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 132694, which found PO3 Jerry Ines *(petitioner)* guilty of Grave Misconduct and dismissed him from service. The CA affirmed *in toto* the January 21, 2013 Decision[4] of the Office of the Ombudsman *(Ombudsman)*, docketed as OMB-P-A-10-0879-H, entitled *"Muhad M. Pangandaman v. P/Supt. Crisostomo P. Mendoza, et al."*

Antecedents

On January 11, 2010, at around 9:30 p.m., Muhad M. Pangandaman *(respondent)*,[5] while tending his store along Litex Road, Commonwealth Avenue, Quezon City, was arrested by several policemen for allegedly violating the gun ban. He was taken to Police Station 6, Batasan Hills, Quezon City, where he was detained. In exchange for his freedom, the police officers, later identified as Police Superintendent Crisostomo Mendoza *(P/Supt. Mendoza)*, SPO1 Amor Guiang *(SPO1 Guiang)*, PO2 Rodger[6] Ompoy *(PO2 Ompoy)*, SPO2 Dante Nagera[7] *(SPO2*

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[1] *Rollo*, pp. 12-28.

[2] Id. at 31-41; penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) with Associate Justices Ramon M. Bato, Jr. and Eduardo B. Peralta, Jr., concurring.

[3] Id. at 43-49.

[4] Id. at 73-79; penned by Graft Investigation and Prosecution Officer Yvette Marie S. Evaristo with the approval of Director Dennis L. Garcia and Overall Deputy Ombudsman Orlando C. Casimiro.

[5] Id. at 205; per June 21, 2017 Resolution, Muhad M. Pangandaman was dropped as respondent because petitioner cannot provide the Court with the former's proper address.

[6] Referred to as PO2 "Roger" Ompoy in other parts of the *rollo*.

[7] Referred to as SPO2 Dante "Naguera" in other parts of the *rollo*.

Nagera), and petitioner, demanded from respondent the sum of Two Hundred Thousand Pesos (₱200,000.00).

Respondent's relatives, Diamungan M. Pangandaman *(Diamungan)* and Mampao D. Rasul *(Mampao)*, who witnessed petitioner and his team arrest respondent, sought the help of the President of the Muslim Vendor's Association in Litex, Mangorsi Ampaso *(Ampaso)*. Ampaso went to the police station and handed the money to SPO2 Nagera, but respondent was not released. Dissatisfied, the policemen again demanded the amount of One Hundred Thousand Pesos (₱100,000.00). It was only upon payment of the additional sum that petitioner and the other police officers released respondent.

Hence, respondent executed a *Sinumpaang Salaysay* dated January 16, 2010 narrating the incident, corroborated by the affidavits of Diamungan and Mampao. In his *Sinumpaang Salaysay*, petitioner did not expressly name all those who participated in his arrest. The pertinent portion of the *Sinumpaang Salaysay* reads, "*ang mga pulis kasama si Major Dante [Nagera] na nanghuli kay Muhad Pangandaman.*"

On February 24, 2010, respondent filed a *Karagdagang Sinumpaang Salaysay*. This time, respondent named the other policemen who colluded with SPO2 Nagera, including petitioner, to wit: "*Don sa Police Station, si SPO2 Dante [Nagera] at kasama niya ang mga pulis na sina PO3 Jerry [Ines], PO2 Ompoy, PO3 Polito, PO3 Perez, PO2 Vacang and PO2 Amor Guiang lahat nakatalaga sa Police Station 6, Quezon City, na humuli kay Muhad Pangandaman[.]*"

Two (2) cases were filed against petitioner and his team who participated in the arrest of respondent, namely: (1) an administrative case[8] for grave misconduct; and (2) criminal cases[9]

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[8] OMB-P-A-10-0879-H for Grave Misconduct.

[9] *Rollo*, pp. 105-107; Crim. Case No. M-QZN-13-03981-CR for Arbitrary Detention.

for robbery extortion,[10] unlawful arrest, arbitrary detention, and violation of Republic Act (*R.A.*) No. 3019.[11]

Ruling of the Ombudsman

In the administrative case, the Ombudsman found petitioner, together with P/Supt. Mendoza, SPO1 Guiang, PO2 Ompoy, and SPO2 Nagera guilty of grave misconduct. As regards the criminal complaint, the Ombudsman also found probable cause on the charges for robbery extortion and arbitrary detention and recommended the filing of sets of Information against petitioner and the other police officers. The dispositive portion of the Ombudsman Decision reads:

WHEREFORE, P/Supt. Crisostomo Mendoza, SPO1 Amor Guiang, PO2 Rodger Ompoy, SPO2 Dante Nagera and **PO3 Jerry Ines** are hereby found **GUILTY** of grave misconduct and are meted the penalty of Dismissal from the Service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.

PROVIDED, that in case respondents are already retired from the government service, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary is hereby imposed, with the same accessory penalties mentioned above.

Let a copy of this Decision be forwarded to the Secretary, Department of the Interior and Local Government, and the Chief, Philippine National Police for appropriate action and implementation.

As to the other respondents, namely, Mangorsi Ampaso, PO3 Polito, PO3 Perez and PO2 Vacang, the instant administrative case against them is **DISMISSED**.

SO ORDERED.[12]

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[10] Id. at 108-109; Crim. Case No. R-QZN-13-03320-CR for Robbery Extortion.

[11] Anti-Graft and Corrupt Practices Act.

[12] Id. at 32-33.

Petitioner and the other police officers jointly filed a Motion for Reconsideration, but it was denied in the April 18, 2013 Joint Order.

Aggrieved, petitioner filed a Petition for Review before the CA, alleging, among others, that the Ombudsman committed grave abuse of discretion in dismissing him from service without conducting a clarificatory hearing pursuant to Administrative Order No. 17, dated September 13, 2013, which amended Administrative Order No. 07, dated April 10, 1990, entitled "Rules of Procedure in the Office of the Ombudsman." According to petitioner, the conduct of a clarificatory hearing would have enabled the parties to positively identify those who were actually involved in the crime charged. Petitioner also averred that the Ombudsman erred in failing to appreciate the evidence that respondent was a fictitious person.

The CA Ruling

The CA denied the petition.

It reiterated the well-settled rule that no questions shall be entertained if raised for the first time on appeal. In the case at bar, the CA resolved that petitioner was barred from raising the issue on the alleged failure of the Ombudsman to conduct a clarificatory hearing because it was raised for the first time on appeal.[13]

Nevertheless, the CA determined that petitioner was not denied of his right to due process. Under the Ombudsman's Rules of Procedure, the conduct of a clarificatory hearing is not mandatory and the decision of whether or not to conduct a clarificatory hearing is within the discretion of the hearing officer, who is granted plenary investigatory powers.[14]

The records belied any allegation of denial of due process. The evidence showed that petitioner was able to file his Counter-

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[13] Id. at 35.

[14] Id. at 37.

Affidavit, together with its supporting evidence. Petitioner was given an opportunity to be heard and defend himself.[15]

Anent the issue of whether petitioner was guilty of grave misconduct, the CA ruled in the affirmative. It found that while petitioner was not the one who actually demanded money or received the same from respondent, it was indisputable that he was named as one of the police officers who participated in respondent's illegal arrest.[16]

As regards petitioner's claim that there was no direct evidence linking him to the crime, bolstered by the retraction of Ampaso's *Sinumpaang Salaysay* and the fact that no such Muhad M. Pangandaman, herein respondent, actually exists, the CA explained that while respondent may have no record of birth with the National Statistics Office and that the latter could not be located at his stated address, these pieces of evidence do not suggest that respondent and his witnesses were fictitious persons. The CA referred to the records that revealed that respondent personally filed his *Sinumpaang Salaysay*, together with his witnesses, at the police station.[17]

According to the CA, petitioner's lack of birth records may simply be because his birth was never recorded and the reason he could not be located may be because he might have changed addresses for various causes.

The CA did not give credence to Ampaso's retraction. It explained that affidavits of retraction of testimonies are generally looked at with disfavor due to the probability that they may later be repudiated. In this case, the Affidavit of Retraction was filed only on April 3, 2013, after Ampaso was implicated as respondent in the complaint before the Ombudsman and after the Information for the crime of arbitrary detention and robbery extortion was filed against him.

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[15] Id.

[16] Id. at 38.

[17] Id. at 38-39.

In administrative proceedings, the quantum of proof required is merely substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt, which requires moral certainty to justify affirmative findings. Here, the CA resolved that substantial evidence proving petitioner's grave misconduct was present. In the words of the CA:

> x x x While he was not specifically named as the one who demanded or received money from the respondent, his participation thereof cannot be denied. From the sworn affidavits of the respondent and his witnesses, it is evident that petitioner was one of those who perpetrated respondent's illegal arrest which paved the way for his co-respondents in the criminal and administrative cases to extort money from the respondent.[18]

In sum, the CA held that petitioner's participation in the illegal arrest of respondent constituted grave misconduct, an equivocal corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.

Petitioner filed a Motion for Reconsideration on November 7, 2014 and Manifestation and Motion on February 5, 2015 before the CA. In his Manifestation and Motion, petitioner informed the appellate court that P/Supt. Mendoza appealed the Ombudsman Decision and filed a separate Petition for Review before the CA, docketed as CA-G.R. No. 131931 *(Mendoza Case)*. Petitioner insisted that because the dismissal of the administrative charge against P/Supt. Mendoza by the CA had attained finality, such constituted *res judicata* which should also result in the dismissal of the administrative charge against him.

The CA denied the Motion for Reconsideration. It observed that petitioner failed to inform the CA that the Ombudsman Decision was elevated by P/Supt. Mendoza.

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[18] Id. at 39.

As defense, petitioner pleaded that his failure to inform the CA was due to the following reasons: loss of communication with the other police officers in the Ombudsman Case; the Ombudsman did not inform the CA of the Mendoza Case; no Petition for Consolidation was filed by respondent; and the CA should have been vigilant in the cases filed before it.

In denying the motion, the CA examined the antecedents.

Out of the Ombudsman Decision, five separate petitions were filed before the CA by petitioner,[19] Guiang,[20] Nagera,[21] and Mendoza.[22] Out of the five petitions, three petitions were denied by the CA, namely: those of petitioner, Guiang, and Nagera, with Nagera's petition having attained finality. It was only the Mendoza Case which was given due course, while the Ompoy[23] petition remained pending. Despite the fact that five petitions were filed before the CA, petitioner conveniently informed the CA only of the Mendoza Case because it was favorable to his case.

The CA determined that the Mendoza Case did not constitute *res judicata*. The Mendoza Case had yet to become final as its resolution was still pending before this Court. On the contrary, instead of the Mendoza Case as averred by petitioner, it was the Nagera Petition which should be controlling, having attained finality on August 27, 2015.

Nevertheless, all the rulings in the Mendoza, Guiang, and Nagera petitions were all consistent with the CA's decision: that the Ombudsman did not err in rendering its decision. While the CA had ruled differently in the separate petitions, the CA

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[19] Now docketed as G.R. No. 224345.

[20] Docketed as CA-G.R. SP No. 131911, Denied on March 5, 2015, now docketed as G.R. No. 220335.

[21] Docketed as CA-G.R. SP No. 132078, Denied on September 30, 2014.

[22] Docketed as CA-G.R. SP No. 131931, Granted on October 10, 2014.

[23] CA-G.R. SP No. 132189.

held that "the decisions or rulings of different divisions of the CA do not bind each other."[24]

In the end, the CA reminded petitioner that it is the duty of litigants to inform and give prompt notice to the court of similar appeals filed and of any related cases pending before other courts, which petitioner had failed to observe.

As regards petitioner's averment that there was inconsistency between the *Sinumpaang Salaysay* and the *Karagdagang Sinumpaang Salaysay*, as the *Sinumpaang Salaysay* did not mention petitioner as one of those who perpetrated the crime and it was only in the *Karagdagang Sinumpaang Salaysay* where his name was first mentioned, the CA found no merit in the argument. It opined that there was no inconsistency in both the *Sinumpaang Salaysay and Karagdagang Sinumpaang Salaysay*. Although petitioner was not explicitly named in the *Sinumpaang Salaysay*, this was rectified because he was unequivocally mentioned in the *Karagdagang Sinumpaang Salaysay*.

Hence, the present petition, which raises the following arguments:

1. There was no substantial evidence to prove petitioner's supposed grave misconduct. There was no allegation, much less proof, that petitioner committed the acts complained of;

2. Respondent's *Sinumpaang Salaysay* excluded petitioner as one of those who arrested him;

3. Respondent's witnesses, Diamungan and Mampao, did not identify petitioner as one of the perpetrators of the crime. They only mentioned petitioner in their *Karagdagang Sinumpaang Salaysay*, which was undated and unsubscribed. The delay in the execution is highly dubious because it was executed only a month after the *Sinumpaang Salaysay*. Clearly, petitioner's sudden and belated inclusion was merely an afterthought;

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[24] See *Quasha Ancheta Pena and Nolasco Law Office v. The Special Sixth Division of the CA*, 622 Phil. 738, 748 (2009); see also *Francisco v. Rojas*, 734 Phil. 122, 141 (2014).

4. Petitioner never waived his right to a formal hearing. While the conduct of a formal hearing in administrative cases is not mandatory, a hearing should have been conducted to ascertain the identity of respondent.

Issues

1. Whether or not the CA was correct in denying the petition on the ground that it raised an issue for the first time on appeal;
2. Whether or not the CA Decision in the Mendoza Case constitutes *res judicata*; and
3. Whether or not the CA committed a reversible error in finding petitioner guilty of grave misconduct.

Ruling of the Court

The petition has no merit.

Issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process[25]

Basic rules of fair play, justice, and due process dictate that arguments, issues, points of law, and theories not raised in the trial court may not be raised for the first time on appeal.[26] To allow a litigant to raise an issue at a later stage would result in the violation of the adverse party's right to due process who would have no opportunity to present further evidence material to the new theory, which he could have defended had he been aware of such theory at the time of the hearing before the trial court.[27]

In the case at bench, it is only when the case reached the CA that petitioner raised the issue of the Ombudsman's purported

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[25] *People v. BBB*, G.R. No. 237049, November 28, 2018.

[26] *Fernandez v. Amagna*, 617 Phil. 121, 134 (2009).

[27] Id. at 135.

failure to conduct a clarificatory hearing, which petitioner omitted to bring to the attention of the hearing officer. For the Court to review it now would be unfair on the part of respondent who was not given an opportunity to present further evidence and defend his case, amounting to a violation of respondent's right to due process.

The CA Decision in the Mendoza Case does not constitute res judicata

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[28] For *res judicata* to apply, all the essential requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.[29]

First, the Court would like to clarify that contrary to the factual findings of the appellate court, there is no pending petition before this Court assailing the CA's ruling dismissing the case against Mendoza. Nevertheless, the CA Decision in the Mendoza Case is not controlling and does not set a precedent in the present case because the aforesaid requisites do not concur. While it may be argued that the Mendoza Case was adjudged on the merits by a court which has jurisdiction over the subject matter and parties, and there is identity of subject matter and cause of action between the Mendoza Case and the present case, still the doctrine of *res judicata* does not apply simply because there is no identity of parties between the two cases. The CA's ruling in the Mendoza Case is limited only to the administrative liability of Mendoza, to the exclusion of the other police officers and petitioner herein.

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[28] *Taganas v. Emuslan*, 457 Phil. 305, 313 (2003).

[29] Id. at 311-312.

Petitioner is guilty of grave misconduct

Contrary to petitioner's contention that no direct evidence was established to prove his participation in respondent's illegal arrest, the Court finds in the negative. Findings of fact by the Ombudsman are conclusive when supported by substantial evidence, which refers to "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion."[30] By reason of its special knowledge and expertise over matters falling under its jurisdiction, the factual findings of the Ombudsman are generally accorded great weight and respect, if not finality by the courts.[31]

In *Office of the Deputy Ombudsman for Luzon v. Dionisio*,[32] the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former."[33]

In the case at bench, the records reveal that the acts of petitioner constitute grave misconduct, and not just simple misconduct.

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[30] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, 813 Phil. 474, 487 (2017).

[30] Id.

[31] Id.

[32] Id.

[33] Id.

First, it cannot be denied that petitioner was one of the police officers who effected respondent's illegal arrest. While he was not explicitly named in the *Sinumpaang Salaysay* and was merely generally alluded to, he was expressly mentioned in the *Karagdagang Sinumpaang Salaysay* as the one who perpetrated the illegal arrest. The fact that he was not specifically mentioned in the *Sinumpaang Salaysay* does not negate his participation.

In the *Sinumpaang Salaysay*, it stated: *"ang mga pulis kasama si Major Dante [Nagera] na nanghuli kay Muhad Pangandaman."*[34] The general reference to the police officers who participated in the illegal arrest was rectified in the *Karagdagang Sinumpaang Salaysay*, to wit: *"Don sa Police Station, si SPO2 Dante [Nagera] at kasama niya ang mga pulis na sina PO3 Jerry [Ines], PO2 Ompoy, PO3 Polito, PO3 Perez, PO2 Vacang and PO2 Amor Guiang lahat nakatalaga sa Police Station 6, Quezon City na humuli kay Muhad Pangandaman."*[35]

Thus, as correctly observed by the CA, there is no inconsistency in the testimony of respondent or his witnesses.

Second, the act of arresting respondent without any legal ground implies a vile intent and not a mere error of judgment to violate the law, and if it were not for petitioner's position and official duty as a police officer, it would not have been possible for him to perform the illegal arrest. The act has a direct relation to and is connected with the performance of his official duties, amounting to maladministration or willful failure to discharge the duties of the office.

Ampaso's retraction of his testimony is immaterial. As correctly ruled by the CA, affidavits of retraction of testimonies are generally looked at with disfavor because they can easily be secured from witnesses, usually through intimidation or for a monetary consideration.[36]

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[34] *Rollo*, p. 47.

[35] Id.

[36] *People of the Philippines v. P/Supt. Lamsen*, 721 Phil. 256, 259 (2013).

The factual circumstances surrounding Ampaso's recantation are highly suspect. Based on the records, the retraction occurred on April 3, 2013, a few months after Ampaso was implicated as a respondent in the administrative complaint filed before the Ombudsman and in the Information for the crime of arbitrary detention and robbery extortion before the Regional Trial Court on January 21, 2013.

Finally, petitioner's averment that respondent is a fictitious person has no merit. The fact that he could not be located does not mean that his existence is spurious. The evidence proving his existence cannot overcome the convincing proof that respondent, together with his witnesses, personally filed their affidavits and pleadings at the police station.

WHEREFORE, the petition is **DENIED**. The October 14, 2014 Decision and April 25, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 132694 are **AFFIRMED**. PO3 Jerry Ines is hereby ordered to suffer the penalty of dismissal from service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities, and bar from taking future civil service examinations.

SO ORDERED.

Leonen (Chairperson), Carandang, Lopez,[*] and *Gaerlan, JJ.*, concur.

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[*] Designated as additional member in lieu of Associate Justice Rodil V. Zalameda, per raffle dated July 27, 2020.

THIRD DIVISION

[G.R. No. 227933. September 2, 2020]

BAHIA SHIPPING SERVICES, INC. and FRED.* **OLSEN CRUISE LINES,** *Petitioners, v.* **ROBERTO F. CASTILLO,** *Respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; VOLUNTARY ARBITRATION; APPEALS; REGLEMENTARY PERIOD TO APPEAL DECISIONS OR AWARDS OF THE VOLUNTARY ARBITRATION; PERIOD WITHIN WHICH TO FILE A MOTION FOR RECONSIDERATION; CASE AT BAR. — Consequently, it was settled that the 10-day period stated in Article 276-A should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing a petition for review within 15 days from notice under Section 4 of Rule 43 of the Rules of Court.

Pursuant to the ruling in the case of *Guagua National Colleges*, this Court now rules that the appeal was timely filed by the petitioners.

2. ID.; ID.; DISABILITY OF EMPLOYEES; ACCIDENT, DEFINED; CASE AT BAR. — Clearly, the CBA only covers injuries as results of accidents during the seafarer's employment. The definition of the word "accident" has been laid out in the case of *NFD International Manning Agents, Inc./Barber Management Ltd. v. Illescas*:

> Black's Law Dictionary defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated,

* Spelled as Fred in some parts of the *rollo*.

> x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."
>
> . . .
>
> Verily, the CBA provisions on disability are not applicable to respondent's case because it specifically refers to disability sustained after an accident.

3. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION–STANDARD EMPLOYMENT CONTRACT (POEA-SEC); WORK-RELATED ILLNESS, DEFINED; DISPUTABLE PRESUMPTION THAT ILLNESSES NOT LISTED UNDER SECTION 32-A ARE WORK-RELATED. — Work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related.

4. ID.; ID.; PERMANENT OR TOTAL DISABILITY; FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ISSUE A FINAL AND DEFINITIVE MEDICAL ASSESSMENT WITHIN THE 240-DAY EXTENDED PERIOD. — [A] seafarer's mere inability to perform his or her usual work after 120 days does not automatically lead to entitlement to permanent and total disability benefits because the 120-day period for treatment and medical evaluation by a company-designated physician may be extended a maximum of 240 days.

> . . .
>
> Under the law and jurisprudence, the company-designated physician's failure to issue a final and definitive medical assessment within the 240-day extended period transforms respondent's disability to permanent and total disability.

5. ID.; ID.; ID.; TOTAL DISABILITY DOES NOT NECESSARILY MEAN THAT THE EMPLOYEE IS COMPLETELY DISABLED; CASE AT BAR. — Well-settled

is the rule that a total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. Furthermore, a total disability is considered permanent if it lasts continuously for more than 120 days. What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred. Apparently, in this case, respondent was not able to return to his job as a seafarer even after the lapse of more than the 240-day period of medical care, procedure, and therapy. This is confirmed by the failure of the company-designated physician to issue a certification as to the fitness to engage in sea duty or disability even after the lapse of the 240-day period. Such failure rendered the respondent entitled to permanent disability benefits.

APPEARANCES OF COUNSEL

Alton C. Durban for petitioners.
Nicomedes A. Tolentino for respondent.

D E C I S I O N

GAERLAN, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] dated May 31, 2016 in CA-G.R. SP No. 141635, and its Resolution[3] dated October 21, 2016 of the Court of Appeals (CA) denying petitioners' motion for reconsideration. The CA dismissed the appeal of herein petitioners from the Decision[4]

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[1] *Rollo*, pp. 3-33.

[2] Id. at 39-47; penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Elihu A. Ybañez and Henri Jean Paul B. Inting (now a Member of this court).

[3] Id. at 49-50.

[4] Id. at 51-70; signed by Chairman AVA Renato O. Bello, with the concurrence of Members AVA Virginia Elbinas and AVA Herminigildo C. Javen.

of the National Conciliation and Mediation Board (NCMB) which directed them to pay Robert T. Castillo (respondent) the amount of US$90,000.00 as disability benefit plus 10% of the total amount as attorney's fees.

Facts

Respondent was hired by Bahia Shipping Services, Inc. (Bahia) for its principal Fred. Olsen Cruise Lines (FOCL) as laundryman for the vessel M/S Black Watch for a period of nine months. His contract of employment was patterned and approved in accordance with the Philippine Overseas and Employment Agency-Standard Employment Contract (POEA-SEC). It was covered by a Collective Bargaining Agreement (CBA) otherwise known as the Agreement between Fred. Olsen Cruise Lines Ltd. (Owners/Company) and Norwegian Seafarers Union for Catering Personnel.[5]

After having been certified as fit for duty by the company-designated physician as a result of his pre-employment medical examination (PEME), respondent left on March 31, 2013 and embarked the M/S Black Watch.[6]

On November 29, 2013, while performing his duties as laundryman, respondent leaned forward to reach for a table napkin which was about four feet down in the cart. He suddenly felt a click on his back and started to suffer from back pain. He was treated with painkillers but his condition persisted until he could no longer stand.[7] Hence, on December 3, 2013, he was sent ashore and was examined by a physician in Rostock, Germany and was found to have "Degenerative endplate changes due to Spondylolisthesis L5-L1 with moderate antirolisthesis grade 1. Moderate neoforaminal narrowing in L4-L5 and L5-S1" after an x-ray was done.[8]

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[5] Id. at 51-52.

[6] Id. at 52-53.

[7] Id. at 53-54.

[8] Id. at 54.

After serving eight months and one week of his nine-month contract and being declared unfit to work, respondent disembarked from the M/V Black Watch on December 7, 2013 in Dover, England.[9] Therefrom, he was repatriated. Upon arrival, he was brought to the Metropolitan Hospital. He was placed under the care of the company-designated physician and provided with extensive medical treatment. On February 6, 2014, he underwent a procedure called transforaminal lumbar interbody fusion L5-S1. He was confined in the hospital for nine days and received continuous physiotherapy.[10]

Respondent claimed that despite the procedure and all the physiotherapy, he was not restored to his former health status. Thus, he sought further treatment from Dr. Manuel Fidel M. Magtira who declared him as permanently unfit to resume his sea duties in any capacity.[11]

Resultantly, he demanded from the petitioners the payment of disability benefits under the CBA. When the latter refused his demand and argued that the CBA does not apply since no accident happened during the term of his employment and that the POEA-SEC contract shall govern his claim, respondent initiated grievance proceedings at the AMOSUP office. Thereat, the parties failed to reach an amicable resolution, hence, the proceedings were declared deadlocked. The complaint was then brought to the NCMB which referred the matter to conciliation-mediation proceedings. On October 20, 2014, the parties submitted the case to the jurisdiction of the Panel of Voluntary Arbitrators.[12]

A motion to transfer the case to the National Labor Relations Commission (NLRC) dated November 17, 2014 was submitted by the petitioners' counsel. An opposition to the motion to transfer venue was submitted on November 21, 2014. Three days later,

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[9] Id. at 6.

[10] Id. at 54.

[11] Id. at 55.

[12] Id. at 57-58.

the Panel of Arbitrators denied the motion and directed the parties to submit their respective position papers and subsequent responsive pleadings.[13]

NCMB Ruling

The NCMB resolved the case and ruled that respondent's claim for the injury suffered falls right within the provisions of the CBA.[14] Thus, as the law between the parties, the CBA should be given effect and applied in full force.[15] The dispositive portion of the ruling states:

> WHEREFORE, premise[s] considered, respondents BAHIA SHIPPING SERVICES and/or FRED[.]OLSEN CRUISE LINES, are hereby directed to jointly and severally pay complainant Roberto T. Castillo, the amount of Ninety Thousand US Dollars (US90,000.00) as disability benefits, or its peso equivalent at the time of payment plus ten percent of the total amount as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO DECIDED.[16]

A motion for reconsideration was filed by the petitioners which was later denied by the NCMB for lack of merit.[17]

CA Ruling

The CA anchored its ruling on Article 262-A of the Labor Code particularly on the reglementary period for filing an appeal.[18] Noting the delay in the filing, the CA decided:

> WHEREFORE, the instant appeal is DISMISSED.

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[13] Id. at 58.

[14] Id. at 67-68.

[15] Id. at 65.

[16] Id. at 70.

[17] Id. at 71-72.

[18] Id. at 44-46.

SO ORDERED.[19]

A motion for reconsideration was filed by the petitioners but the same was denied for lack of merit.[20]

Issues

I.

THE TIMELINESS OF THE APPEAL BY HEREIN PETITIONERS TO THE CA.

II.

ENTITLEMENT OF RESPONDENT TO PERMANENT DISABILITY BENEFITS UNDER THE CBA AND ATTORNEY'S FEES.

The Ruling of the Court

The petition is impressed with merit.

Timeliness of the appeal

After the denial of their motion for reconsideration before the NCMB, the petitioners filed their appeal to the CA on August 10, 2015, exactly 14 days from the date of their receipt of the copy of the Decision. According to the appellate court, it was belatedly filed under Article 276-A of the Labor Code. The ruling in *Philippine Electric Corp. v. Court of Appeals*,[21] wherein it was enunciated that the Voluntary Arbitrator's decision must be appealed before the CA within 10 calendar days from receipt of the decision as provided in Article 276-A,[22] was cited by the

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[19] Id. at 46.

[20] Id. at 49-50.

[21] 794 Phil. 686 (2014).

[22] Art. 262-A. PROCEDURES. — x x x

x x x x x x x x x

Unless the parties agree otherwise, it shall be mandatory for the Voluntary arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.

CA in dismissing the appeal. Further, it was explained that the failure of the petitioners to perfect their appeal within the reglementary period rendered the decision of the panel of Voluntary Arbitrators final and executory and corollarily, it deprived the appellate court of jurisdiction to alter the final judgment much less entertain the appeal.[23]

Apparently, this case calls for clarification as to which reglementary period shall be followed in appealing the decisions or awards of a Voluntary Arbitrator or a panel of Voluntary Arbitrators. This matter was already settled in the 2018 case of *Guagua National Colleges v. Court of Appeals, et al.*[24] This Court exhaustively discussed the matter and resonated its ruling in the 2010 case of *Teng v. Pagahac*:[25]

> In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor, is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.
>
> **By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition**

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts any public official whom the parties may designate in the submission agreement to execute the final decision, order or award. (Emphasis ours.)

[23] *Rollo*, p. 46.

[24] G.R. No. 188492, August 28, 2018, 878 SCRA 362.

[25] 649 Phil. 460 (2010).

for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA via Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.

The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent.

By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable. In *Industrial Enterprises, Inc. v. Court of Appeals*, we ruled that relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.[26] (Emphasis in the original)

Consequently, it was settled that the 10-day period stated in Article 276-A should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by

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[26] *Guagua National Colleges v. Court of Appeals, et al.*, supra note 24 at 383-384.

filing a petition for review within 15 days from notice under Section 4 of Rule 43 of the Rules of Court.[27]

Pursuant to the ruling in the case of *Guagua National Colleges*, this Court now rules that the appeal was timely filed by the petitioners.

Entitlement to disability benefits

This Court is certain that respondent is entitled to disability benefits. The question really is, is respondent entitled to permanent total disability benefits under the CBA or the POEA-SEC which integrated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels?[28]

The respondent averred that his condition was caused by an accident he figured during the term of his employment. He categorized the click on his back when he reached for a table napkin about four feet down in the cart as an accident, and thus opined that he is entitled to claim under the CBA. The petitioners, on the other hand, refused to pay respondent's demand for payment of disability benefits, and initially argued that the CBA only covers injuries arising from accidents. According to them, since respondent never figured in an accident during the term of his employment, his claim must be under the POEA-SEC and not the CBA.

We agree with the petitioners.

A review of the CBA revealed that —

Disability:

A seafarer who suffers injury ***as a result of an accident*** from any cause whatsoever whilst in the employment of the Owners/Company, regardless of fault, including accidents occurring whilst traveling to or from the Ship and whose ability to work is reduced as a result

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[27] Id. at 381.

[28] *Fil-Star Maritime Corporation, et al. v. Rosete*, 677 Phil. 262, 274-275 (2011).

thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

[x x x x x x x x x]

Degree of Disability Rate of Compensation

	Groups 2 & 3	Group 1
	% USD	USD
	100 90,000	110,000

[x x x x x x x x x]

Regardless of the degree of disability, an injury which results in loss of profession will entitle the Seafarer to the full amount of compensation, USD ninety-thousand (90,000) for Ratings (Groups 2 & 3) and USD one-hundred and ten thousand (110,000) for Officers (Group 1). For the purpose of this Article, loss of profession means when the physical condition of the Seafarer prevents a return to sea service, under applicable national and international standards or when it is otherwise clear that the Seafarer's condition will adversely prevent the seafarer's future of comparable employment on board ships. (Emphasis ours)

Clearly, the CBA only covers injuries as results of accidents during the seafarer's employment. The definition of the word "accident" has been laid out in the case of *NFD International Manning Agents, Inc./Barber Management Ltd. v. Illescas*:[29]

Black's Law Dictionary defines "accident" as "[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated, x x x [a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct."[30]

The Philippine Law Dictionary defines the word "accident" as "[t]hat which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen."[31]

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[29] 646 Phil. 244 (2010).

[30] Id.

[31] Id.

"Accident," in its commonly accepted meaning, or in its ordinary sense, has been defined as:

> [A] fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens x x x.
>
> **The word may be employed as denoting** a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; **any unexpected personal injury resulting from any unlooked for mishap or occurrence**; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events.[32] (Emphasis in the original, citations omitted)

In *NFD International Manning Agents*, a "snap on the back" was categorically declared as not an accident within the definition of the word but an injury sustained by the seafarer from carrying heavy objects.[33] Similarly, although respondent may not have expected the click on his back when he reached for the napkin, still, it is common knowledge that leaning forward to reach for an object way below, like carrying heavy objects, can cause back injury.[34] The click on respondent's back when he leaned forward to reach for a napkin is not an accident. Hence, his condition cannot be said to be a result of an accident, that is, an unlooked for mishap, occurrence, or fortuitous event.[35] His injury cannot be viewed as unusual under the circumstances, and is not synonymous with the term "accident" as defined above. More importantly, it was found that his condition was degenerative, thus, it is conclusively not caused by an accident.

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[32] Id. at 260.

[33] Id. at 260-261.

[34] Id. at 261.

[35] Id.

Verily, the CBA provisions on disability are not applicable to respondent's case because it specifically refers to disability sustained after an accident.

Now the Court shall determine whether respondent is entitled to be awarded permanent total disability benefits under the POEA-SEC.

To counter respondent's claim for total permanent disability benefits, petitioners averred that since the respondent's condition is degenerative and not work-related, as his job as a laundryman did not entail any lifting/pulling/pushing heavy objects,[36] he is not entitled to disability benefits even under the POEA-SEC. They argued that since the POEA-SEC requires the concurrence of two elements for an injury or illness to be compensable: first, that the illness must be work-related; and second, that the work related illness must have existed during the term of the seafarer's employment contract,[37] his condition, not being work-related, is not compensable.

The petitioners further claimed that it was legally erroneous for the NCMB to rule that there was no final medical assessment by the company-designated physician as the condition of the respondent was not work-related. Being so, there can be no disability assessment or fit to work assessment.[38]

This Court is not convinced.

Work-related illness has been defined as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[39] However, the POEA-SEC's definition of a work-related illness does not necessarily mean that only those illnesses listed under Section 32-A are

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[36] Id. at 7.

[37] Id. at 62.

[38] Id. at 25.

[39] *Phil-man Marine Agency, Inc., et al. v. Dedace, Jr.*, G.R. No. 199162, July 4, 2018, 870 SCRA 445, 459.

compensable. Section 20(B)(4) of the POEA-SEC provides that illnesses not listed under Section 32 are disputably presumed as work-related.

The legal presumption of work-relatedness was borne out from the fact that the said list cannot account for all known and unknown illnesses/diseases that may be associated with, caused or aggravated by such working conditions, and that the presumption is made in the law to signify that the non-inclusion in the list of occupational diseases does not translate to an absolute exclusion from disability benefits.[40] Given the legal presumption in favor of the seafarer, he may rely on and invoke such legal presumption to establish a fact in issue.[41] "The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail."[42]

Here, the finding of the company-designated physician clearly stated that:

> Condition is degenerative disorder which can be brought about by aging, injury/trauma, "***wear and tear" on the spine by virtue of heavy work, lifting/pulling/pushing heavy objects and can be work-related if the nature of his job involves such risk factors***."[43] (Emphasis supplied)

Contrary to the allegations of the petitioners, the findings of the company-designated physician did not include a conclusion that the condition is not work-related. In truth, the medical report stated that respondent's degenerative condition can be brought about by the wear and tear on the spine by virtue of heavy work, lifting/pulling/pushing heavy objects. It also expressed that his condition is work-related if the nature of his job involves

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[40] *Romana v. Magsaysay Maritime Corporation, et al.*, 816 Phil. 194, 203-204 (2017).

[41] Id. at 204.

[42] Id.

[43] Id. at 7.

the risk factors. But the petitioners, to avoid the payment of disability benefits to the respondent, claimed that his job did not entail lifting/pulling/pushing heavy objects.

This Court finds their allegation ridiculous.

To say that respondent's job as a laundryman in a cruise ship did not entail lifting/pulling/pushing heavy objects is utterly wrong. Is it not that the duties of a laundryman in a cruise ship may include, but not limited to, washing, folding, and pressing, or dry cleaning of passenger laundry; washing and folding of tablecloths, tablemats, bed sheets, pillow cases, napkins, towels, washcloths, bathmats and any other linen from any department on board, uniforms and suits from any departments; and cleaning and maintenance of laundry facilities, equipment, machinery and storage?[44] A laundryman's job undoubtedly requires lifting, pulling, or pushing heavy objects to efficiently perform his duties. Such factors definitely caused or aggravated respondent's degenerative condition which he acquired during the time of his employment. Certainly then, his condition is work-related.

The petitioners' allegation, without any proof, that respondent's job does not entail lifting/pulling/pushing heavy objects definitely is not sufficient to overcome the legal presumption that his condition is work-related. Hence, the presumption stands.

Moving on, a seafarer's mere inability to perform his or her usual work after 120 days does not automatically lead to entitlement to permanent and total disability benefits because the 120-day period for treatment and medical evaluation by a company-designated physician may be extended to a maximum of 240 days.[45]

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[44] <https://www.allcruisejobs.com/i11031/laundryman/;http://www.windrosenetwork.com/Jobs-on-Cruise-Ships-Laundry-Department;https://www.cruiseshipjob.com/mvc/j1217/Norwegian-Cruise-Line-jobs-Laundry-Attendant.> (visited July 15, 2020).

[45] *Orient Hope Agencies, Inc., et al. v. Jara*, G.R. No. 204307, June 06, 2018, 864 SCRA 428, 443.

In *Orient Hope Agencies, Inc. v. Jara*,[46] this Court ruled:

> The 120-day period mandated in Section 20(B) of the POEA-SEC, within which a company-designated physician should declare a seafarer's fitness for sea duty or degree of disability, should be harmonized with Article 198 [192](c)(1) of the Labor Code, in relation with Book IV, Title II, Rule X of the Implementing Rules of the Labor Code, or the Amended Rules on Employee Compensation, Book IV, Title II, Article 198 [192](c)(1) of the Labor Code, as amended, reads:
>
> Article 198. [192] Permanent total disability. — x x x
>
> x x x x x x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;
>
> x x x x x x x x x
>
> Meanwhile, Rule X, Section 2 of the Implementing Rules of the Labor Code, reads:
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> Section 2. *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days ***except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days*** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[47] (Emphasis supplied and citations omitted)

Under the law and jurisprudence, the company-designated physician's failure to issue a final and definitive medical

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[46] Id.

[47] Id. at 441-442.

assessment within the 240-day extended period transforms respondent's disability to permanent and total disability.[48]

Well-settled is the rule that a total disability does not require that the employee be completely disabled, or totally paralyzed.[49] What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. Furthermore, a total disability is considered permanent if it lasts continuously for more than 120 days.[50] What is crucial is whether the employee who suffers from disability could still perform his work notwithstanding the disability he incurred.[51] Apparently, in this case, respondent was not able to return to his job as a seafarer even after the lapse of more than the 240-day period of medical care, procedure, and therapy. This is confirmed by the failure of the company-designated physician to issue a certification as to the fitness to engage in sea duty or disability even after the lapse of the 240-day period. Such failure rendered the respondent entitled to permanent disability benefits.

Accordingly, what should govern the computation of his disability benefits is the POEA-SEC incorporating the 2000 POEA Amended Standard Terms and Conditions. Under Section 20 (B), paragraph 6, of the 2000 POEA Amended Standard Terms and Conditions, to wit:

SECTION 20. COMPENSATION AND BENEFITS. —

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract** are as follows:

x x x x x x x x x

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[48] Id. at 440.

[49] *Fil-Star Maritime Corporation, et al. v. Rosete*, supra note 28 at 274.

[50] Id.

[51] Id.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer *shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract*. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[52] (Emphases and underscoring supplied)

Under the schedule of disability in Section 32 of the 2000 POEA Amended Standard Terms and Conditions, permanent total disability is classified as Grade 1. Thus, respondent's disability benefit should be computed as follows:

Grade 1: US$50,000.00 x 120% = US$60,000.00[53]

Attorney's fees

Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant.

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

x x x x x x x x x

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

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

Respondent incurred legal expenses after the petitioners denied him his disability benefits and was thus forced to file an action to recover the same. Considering that he was constrained to litigate with counsel in all the stages of this proceeding, this Court considers 10% of the total monetary award as appropriate and commensurate under the circumstances of this petition.[54]

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[52] Id. at 275.

[53] Id. at 276.

[54] *Sharpe Sea Personnel, Inc., et al. v. Mabunay, Jr.*, G.R. No. 206113, November 6, 2017, 844 SCRA 18.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The May 31, 2016 Decision, as well as the Resolution dated October 21, 2016, of the Court of Appeals is hereby **REVERSED**. Petitioners Bahia Shipping Services, Inc. and Fred. Olsen Cruise Lines are hereby ordered jointly and severally to pay respondent Roberto F. Castillo the following:

1. his total permanent disability benefits in the amount of US$60,000.00 or its equivalent amount in Philippine currency at the time of payment; and
2. ten percent (10%) of the total monetary award as attorney's fees.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 233071. September 2, 2020]

MAGSAYSAY MARITIME CORP. and KEYMAX MARITIME CO., LTD., *Petitioners, v.* **JOSE ELIZALDE B. ZANORIA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS AS TO EMPLOYEES' MONETARY CLAIMS, BEING FACTUAL IN NATURE, CANNOT BE REVIEWED IN A RULE 45 PETITION; CASE AT BAR. — The issue of whether the CA erred in upholding the Panel of Voluntary Arbitrators' findings that respondent is entitled to total and permanent disability benefits, sickness allowance, and attorney's fees is clearly factual in nature. As such, this cannot be entertained in a Rule 45 petition where the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the courts below. Thus, the petition should be denied in the absence of any *exceptional circumstances* as to merit the Court's review of factual questions that have already been settled by both the Panel of Voluntary Arbitrators and the CA.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND DISABILITY BENEFITS; THE ABSENCE OF A DEFINITE ASSESSMENT OF A SEAFARER'S FITNESS OR DISABILITY OR FAILURE TO SHOW HOW THE PARTIAL DISABILITY ASSESSMENT WAS ARRIVED AT IS AKIN TO A DECLARATION OF PERMANENT AND TOTAL DISABILITY; CASE AT BAR. — As correctly ruled by the CA, Dr. Pile, the company-designated physician, issued the Medical Certification on September 22, 2014 containing a partial disability assessment of respondent. However, the certification merely stated "[*d*]*isability Grade 10 for (50%) loss of vision of one eye*", but without an explanation or description of the

disability. Further, the certification reads, "[*p*]*resently Visual Acuity on the right eye has improved up to 20/40 only. Left eye is still 20/20. Although vision on the right eye has remarkably improved, it is still inadequate for his position.*" Following the earlier ruling of the Court, in the absence of a definite assessment of respondent's fitness or disability, or failure to show how the partial disability assessment was arrived at, or without any evidence to support the assessment, then this is akin to a declaration of permanent and total disability. Further, well-settled is the rule that a partial disability signifying a continuing capacity to perform one's customary task is undeniably incompatible with the finding that a seafarer is unfit for duty.

In the case, Dr. Pile's assessment of respondent's disability as partial or Grade 10 for the 50% loss of vision of one eye is clearly in conflict with the declaration in the same medical certification that respondent is "*still inadequate for his position.*" In other words, this should already be considered as "*akin to a declaration of permanent and total disability*."

3. ID.; ID.; ID.; IT IS OF NO MOMENT THAT THE SEAFARER HAS RECOVERED AND HAS BEEN SUBSEQUENTLY ENGAGED BY ANOTHER EMPLOYER, FOR WHAT IS IMPORTANT IS THAT THE SEAFARER WAS UNABLE TO PERFORM HIS CUSTOMARY WORK FOR MORE THAN 120 DAYS; CASE AT BAR. — [P]etitioners argue that respondent boarded a subsequent ocean-going vessel with another employer despite his pending claim for total disability benefits; that it is petitioners' stand that the award of total and permanent disability benefits should be denied as there could be no claim for disability benefits if the seafarer was subsequently engaged as a seafarer.

The Court disagrees.

In *Crystal Shipping, Inc. v. Natividad*, the Court had the occasion to rule that it was of no moment that a seafarer had recovered, for what was important was that the latter was unable to perform his customary work for more than 120 days, and this already constituted as a permanent total disability. Thus:

> . . . It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
F.M. Linsangan Law Office for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[2] dated March 7, 2017 and the Resolution[3] dated July 25, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146585 which affirmed with modification the Decision dated February 19, 2016 of the National Conciliation and Mediation Board (NCMB) Panel of Voluntary Arbitrators in MVA-091-RCMB-NCR-071-02-07-2015.

The Antecedents

On March 21, 2013, Keymax Maritime Co., Ltd. (petitioner Keymax), through its local agency, Magsaysay Maritime Corp.

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[1] *Rollo*, pp. 29-54.

[2] *Id.* at 58-67; penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a member of the Court), concurring.

[3] *Id.* at 84-86.

(petitioner Magsaysay) (collectively, petitioners), hired Jose Elizalde B. Zanoria (respondent) as Chief Mate or Chief Officer on board the vessel Brilliant Sky[4] with a basic monthly salary of US$1,427.00/month.[5]

As Chief Mate or Chief Officer, respondent was responsible for overseeing the safety and security of the ship, crew, passengers, and cargo. He was responsible for the loading and unloading of the cargo, as well as, its safe stowage. He acted as a "watchstander," who took responsibility of what was called the "4-8 watch" — watching from a suitable vantage point for four hours at a time from 4 a.m. to 8 a.m. and then 12 hours again later to ensure that the ship is compliant with the regulations and conventions governing safety, and with the regulations governing pollution. In other words, respondent was not only responsible for keeping the ship safe from attack or damage, but also to ensure that it would not fall below the standards set by the regulatory bodies.[6]

Respondent faithfully and religiously performed his job. However, while working on board the vessel, he had a blurring vision of the right eye.[7]

On March 27, 2014, in Georgia, Atlanta, USA, where the vessel was at port, Dr. Markesh Manocha checked on respondent and found the latter to be suffering from *macular hole OD, traumatic cataract OD,* and *chorioretinal scars OD*.

On April 2, 2014, respondent was medically repatriated to the Philippines. Petitioners directed him to the Association of Marine Officers and Seaman's Union of the Philippines (AMOSUP) Hospital for his post-medical examination. Dr. George C. Pile (Dr. Pile), the company-designated physician, examined him and gave his initial diagnosis of *macular hole*,

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[4] *Id.* at 58-59.

[5] *Id.* at 162, 208.

[6] *Id.* at 59.

[7] *Id.*

right eye, senile, mature cataract, right, error of refraction. Likewise, Dr. Pile diagnosed him as unfit to work and that respondent's condition was work-oriented. Hence, Dr. Pile recommended that respondent undergo "flourescein angiography, optical coherence tomography (OCT) right eye, and cardio-pulmonary clearance."[8]

On April 11, 2014, respondent went back to Dr. Pile and was diagnosed with *lamellar macular hole, right eye, epiretinal membrane with macular edema, right eye, senile, mature, cataract, error of refraction*. Dr. Pile noted again that it was work-oriented; that flourescein angiography and optical coherence tomography of his right eye was done; that respondent was still for cardiopulmonary clearance prior to cataract surgery of his right eye; and that respondent started Nevenac eye drop to his right eye three times daily. Dr. Pile recommended respondent for phacoemulsification with PCIOL implantation of his right eye.[9]

On May 23, 2014, respondent underwent phacoemulsification with PCIOL implantation of his right eye.

On May 24, 2014, respondent was discharged and was instructed to take eye drop medications. He went back to Dr. Pile for follow-up consultations.[10]

Then, on August 6, 2014, or after 122 days, Dr. Pile issued a medical certificate stating that respondent needed to come back on August 13, 2014 for final disposition.[11]

On August 13, 2014, Dr. Pile told respondent that he was already unfit to work as a seafarer and that he would be given a grading for his disability. When respondent asked petitioner

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[8] *Id.*

[9] See Position Paper dated September 16, 2015 filed by Jose Elizalde B. Zanoria with the National Conciliation and Mediation Board, Office of the Voluntary Arbitrator, *id.* at 180-207.

[10] *Id.* at 186.

[11] See Medical Certification dated August 6, 2014, *id.* at 289-290.

Magsaysay for a copy of the medical certificate, he was never given a copy despite demands.[12]

On November 25, 2014, respondent, relying on Dr. Pile's assessment that he could no longer return to work as a seafarer, filed a grievance proceeding with the AMOSUP.[13]

On January 23, 2015, a deadlock was declared after several offers and counter-offers between the parties.[14]

On February 6, 2015, respondent filed a Notice to Arbitrate with the NCMB. However, no amicable settlement was likewise reached at the NCMB proceedings.[15]

Respondent needed to support the findings of Dr. Pile that he was no longer fit to work as a seafarer because of his condition. Thus, he sought a medical opinion from an independent government ophthalmologist, Dr. Emmanuel M. Eusebio (Dr. Eusebio), who found that his illness was "permanent in nature" and "his overall capacity to work as a seaman might be compromised." Dr. Eusebio, therefore, concluded that respondent was "no longer fit to resume his previous work as a seaman." Dr. Eusebio's Medical Evaluation Report[16] reads:

> This is the case of Jose Elizalde Bueno Zanoria, 53 years old, male, single, Filipino, and presently residing at Kawit, Medellin, Cebu.
>
> He sought consult because of progressive blurring of vision of the right eye of 1 year duration.
>
> On physical examination, visual acuity with glasses were as follows:
>
> OD: 20/200 OS: 20/20 with correction

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[12] *Id.* at 60.

[13] *Id.*

[14] *Id.* at 187.

[15] *Id.*

[16] *Id.* at 291.

He was diagnosed to have senile, mature, cataract, right, for which he underwent phacoemulsification with PCIOL implantation of the right eye. There was also associated lamellar macular hole on the right eye, with error of refraction.

The above findings are permanent in nature; as such, his overall capacity to work as a seaman might be compromised. He is therefore no longer fit to resume his previous work as a seaman.[17]

After five months from the time respondent filed his complaint with the AMOSUP, petitioners manifested that they would be filing the same complaint before the National Labor Relations Commission (NLRC) to challenge the jurisdiction of the NCMB.

On April 20, 2015, respondent was then constrained to file a Motion to Appoint a Panel of Voluntary Arbitrators with the NCMB which was opposed by petitioners. Consequently, petitioners withdrew their complaint with the NLRC and agreed to select a Panel of Voluntary Arbitrators.

On September 4, 2015, when petitioners filed their Position Paper[18] with the NCMB, they already released Dr. Pile's Medical Certification[19] dated September 22, 2014 stating that from April 7, 2014 up until the time the certification was issued, respondent was found to be unfit. The Medical Certification reads:

This is to certify that Mr. Jose Elizalde B. Zanoria has been to me for Consultation from 07 April 2014 to 22 September 2014 and is found to be [ ] FIT [/] UNFIT.

Chief Complaint:

Blurring of vision of the right eye

History of Present Illness:

Progressive blurring of vision of the right eye

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[17] *Id.*

[18] *Id.* at 135-159.

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

Visual acuity with glasses OD: 20/200, OS: 20/20.

Diagnosis:

Senile, mature, cataract, right
S/P Phacoemulcification with PCIOL
implantation right eye.
Lamellar Macular hole, right eye
Error of refraction

[/]Work Oriented [ ] NOT Work Oriented

Sunlight and UV exposure

Treatment Medication:

S/P Phacoemulcification with PCIOL
implantation right eye, 23 May 2014

Approximate Period of Treatment/Prognosis and/or Disability:

Disability Grade 10 for (50%) loss of vision of one eye.

Hospitalization: [ ] Needed [/] Not Needed

Recommendation/Remarks:

Presently Visual Acuity on the right eye has improved up to 20/40 only. Left eye is still 20/20. Although vision on the right eye has remarkably improved, it is still inadequate for his position.[20]

Ruling of the Panel of Voluntary Arbitrators

On February 19, 2016, the Panel of Voluntary Arbitrators rendered a Decision ruling that respondent was permanently disabled. It ruled that the Collective Bargaining Agreement (CBA) provision containing permanent disability benefits greater than the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) should be applied.[21] The dispositive portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered ordering respondents Magsaysay Maritime Corporation and/or Keymax Maritime Co., Ltd.

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[20] *Id.*

[21] *Id.* at 61.

to jointly and severally pay complainant Jose Elizalde Zanoria the following:

1) US$159,914 or the peso equivalent at the time of payment — by way of full permanent disability benefits;

2) US$9,960 (2,2490 sic x 4 months) — by way of sickness allowance;

3) 10% of the award by way of attorney's fees.

All other claims are dismissed for lack of merit.

Manila, February 19, 2016.

SO ORDERED."[22]

Petitioners moved for the reconsideration of the Decision, but the Panel of Voluntary Arbitrators denied it in a Resolution dated May 20, 2016.

Petitioners filed a Petition for Review (under Rule 43 of the Revised Rules of Court) with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[23] with the CA.

Ruling of the CA

In the petition for review under Rule 43 of the Rules of Court with the CA, petitioners raised the following grounds for the latter's consideration, to wit:

I.

WHETHER THE [PANEL OF VOLUNTARY ARBITRATORS] ERRED IN AWARDING DISABILITY BENEFITS TO RESPONDENT IN THE AMOUNT OF US$159,914.00; *and*

II.

WHETHER THE [PANEL OF VOLUNTARY ARBITRATORS] ERRED IN AWARDING SICKNESS ALLOWANCES, AND 10%

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[22] *Id.*

[23] *Id.* at 97-130.

OF THE TOTAL JUDGMENT AWARD AS AND FOR ATTORNEY'S FEES.[24]

On March 7, 2017, the CA rendered the assailed Decision[25] affirming the findings of the Panel of Voluntary Arbitrators that respondent should be considered as permanently and totally disabled. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered and subject to the above disquisitions, the *petition* is hereby PARTLY GRANTED. The *Decision* dated February 19, 2016 and *Resolution* dated May 20, 2016 of the National Conciliation and Mediation Board Panel of Voluntary Arbitrators in MVA-091-RCMB-NCR-071-02-07-2015 are accordingly AFFIRMED with MODIFICATION such that petitioners are now ordered to pay respondent Jose Elizalde B. Zanoria the amount of US$60,000.00 (US$50,000 x 120%) payable in its peso equivalent at the time of payment as permanent disability benefits instead of US$159,914.00. The rest of the February 19, 2016 *Decision* stands.
>
> SO ORDERED.[26]

Feeling aggrieved, both parties filed their respective partial motions for reconsideration.[27]

On July 25, 2017, the CA issued the assailed Resolution[28] denying the motions.

Hence, the instant petition.

Issues

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN AWARDING TOTAL AND PERMANENT DISABILITY BENEFITS TO PRIVATE RESPONDENT.

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[24] *Id.* at 61-62.

[25] *Id.* at 58-67.

[26] *Id.* at 66.

[27] *Id.* at 68-82, 87-95.

[28] *Id.* at 84-86.

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN RULING THAT RESPONDENT IS ENTITLED TO SICKNESS ALLOWANCES AND ATTORNEY'S FEES.

III. PETITIONERS HAVE RECENTLY DISCOVERED THAT PRIVATE RESPONDENT BOARDED A SUBSEQUENT OCEAN-GOING VESSEL WITH ANOTHER EMPLOYER DESPITE A PENDING CLAIM FOR TOTAL DISABILITY BENEFITS.[29]

Ruling of the Court

The Court denies the petition for failure of the petitioners to show that the CA committed any reversible error in the challenged Decision dated March 7, 2017 and the Resolution dated July 25, 2017.

The issue of whether the CA erred in upholding the Panel of Voluntary Arbitrators' findings that respondent is entitled to total and permanent disability benefits, sickness allowance, and attorney's fees is clearly factual in nature. As such, this cannot be entertained in a Rule 45 petition where the Court's jurisdiction is limited to reviewing and revising *errors of law* that might have been committed by the courts below.[30] Thus, the petition should be denied in the absence of any *exceptional circumstances*[31] as to merit the Court's review of factual questions

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[29] *Id.* at 39.

[30] See *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 770 (2013), citing *Remalante v. Tibe*, 241 Phil. 930, 935 (1988).

[31] See *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 213 (2005), stating therein the following exceptional circumstances: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgement is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in marking its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the findings of facts are premised on the supposed absence of

that have already been settled by both the Panel of Voluntary Arbitrators and the CA.

The petition for review on *certiorari* likewise shows that petitioners are still hinging on the same arguments, to wit: (1) that the partial disability assessment Grade 10 as determined by the company-designated physician should be upheld by the CA;[32] (2) that the proper procedure under the POEA-SEC to resolve conflicting medical assessments is to refer the matter to a neutral third doctor which was not complied with or refused by the respondent;[33] thus, it is only the company-designated physician's assessment that should determine the extent of respondent's disability, *i.e.*, disability grading of Grade 10 for 50% loss of vision of one eye;[34] (3) that attorney's fees are not to be awarded in the absence of gross and evident bad faith.[35] These were already proffered, exhaustively discussed, and settled before the Panel of Voluntary Arbitrators and the CA.

As correctly ruled by the CA, Dr. Pile, the company-designated physician, issued the Medical Certification on September 22, 2014 containing a partial disability assessment of respondent.[36] However, the certification merely stated "[*d*]*isability Grade 10 for (50%) loss of vision of one eye*," but without an explanation or description of the disability.[37] Further, the certification reads, "[*p*]*resently Visual Acuity on the right eye has improved up to 20/40 only. Left eye is still 20/20. Although vision on the right eye has remarkably improved, it is still inadequate for his*

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evidence contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[32] *Rollo*, p. 40.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 47.

[36] *Id.* at 64.

[37] *Id.*

position."[38] Following the earlier ruling of the Court, in the absence of a definite assessment of respondent's fitness or disability, or failure to show how the partial disability assessment was arrived at, or without any evidence to support the assessment, then this is akin to a declaration of permanent and total disability.[39] Further, well-settled is the rule that a partial disability signifying a continuing capacity to perform one's customary task is undeniably incompatible with the finding that a seafarer is unfit for duty.[40]

In the case, Dr. Pile's assessment of respondent's disability as partial or Grade 10 for the 50% loss of vision of one eye is clearly in conflict with the declaration in the same medical certification that respondent is "*still inadequate for his position*." In other words, this should already be considered as "*akin to a declaration of permanent and total disability*." The CA ruled, thus:

> The inconsistency between the partial disability assessment — which should render respondent still fit for his position — and the declaration that he is no longer "adequate" for his position cannot be reconciled, compounded by the fact that the said contradiction is contained in one *Medical Certification*.
>
> Therefore, the only just and legal conclusion that could be made from the inability of a seafarer to return to his previous position, which renders him without a steady source of income, is a declaration of permanent and total disability amounting to Grade 1 Disability under the POEA-SEC.[41]

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

[39] *Maunlad Trans., Inc./Carnival Cruise Lines, Inc., et al. v. Camoral*, 753 Phil. 676, 691 (2015), citing *Alpha Ship Mgm't. Corp./Chan, et al. v. Calo*, 724 Phil. 106, 125 (2014).

[40] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 246 (2015), citing *Maunlad Trans., Inc./Carnival Cruise Lines, Inc., et al. v. Camoral, supra* note 39 at 688-689.

[41] *Rollo*, p. 65.

As to the issue that the award of sickness allowance is without basis, the Court affirms the ruling of the CA that the Panel of Voluntary Arbitrators correctly found that petitioners failed to pay respondent's sickness allowance pursuant to the CBA of the parties. The only defense raised by petitioners is that the sums of money due to respondent, including the questioned sickness allowance, have already been duly paid the latter.[42] However, the Court finds that petitioners failed to support this defense of payment. Hence, the Panel of Voluntary Arbitrators' award of the sickness allowance in favor of respondent is hereby upheld.

Lastly, petitioners argue that respondent boarded a subsequent ocean-going vessel with another employer despite his pending claim for total disability benefits;[43] that it is petitioners' stand that the award of total and permanent disability benefits should be denied as there could be no claim for disability benefits if the seafarer was subsequently engaged as a seafarer.[44]

The Court disagrees.

In *Crystal Shipping, Inc. v. Natividad*,[45] the Court had the occasion to rule that it was of no moment that a seafarer had recovered, for what was important was that the latter was unable to perform his customary work for more than 120 days, and this already constituted as a permanent total disability. Thus:

> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does not require that the illness should be incurable. What is important is that he was unable to perform

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[42] *Id.* at 46.

[43] *Id.* at 48.

[44] *Id.* at 49.

[45] 510 Phil. 332 (2005).

his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.[46] (Underscoring supplied.)

Given the circumstances, the Court finds that the conclusion of the CA is not tainted with grave abuse of discretion to warrant its reversal.

WHEREFORE, the petition is **DENIED**. The Decision dated March 7, 2017 and the Resolution dated July 25, 2017 of the Court of Appeals in CA-G.R. SP No. 146585 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Hernando, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[46] *Id.* at 341. Citations omitted.

SECOND DIVISION

[G.R. No. 233104. September 2, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **EDDIE MANANSALA *y* ALFARO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN AN APPEAL IN CRIMINAL CASES, THE APPELLATE COURT IS DUTY-BOUND TO CORRECT ANY ERROR THAT MAY BE FOUND IN THE APPEALED JUDGMENT, WHETHER ASSIGNED OR NOT. — Settled is the rule that an appeal in a criminal case throws the entire case wide open for review. Thus, it becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not.

2. CRIMINAL LAW; MURDER; ELEMENTS. — Jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.

Thus, for the charge of Murder to prosper, the prosecution must prove beyond reasonable doubt that: (1) the offender killed the victim, (2) through treachery, or by any of the other five qualifying circumstances, duly alleged in the Information.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE, DEFINED; WHEN CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT TO SUSTAIN CONVICTION. — This Court agrees with the CA that the pieces of circumstantial evidence sufficiently support the finding that Manansala was the one who killed the victim. It is an elementary rule in criminal law that absence of direct evidence will not bar conviction of the accused when pieces of circumstantial evidence satisfactorily prove the crime charged.

In *People v. Evangelio*, this Court elaborated on how circumstantial evidence may be appreciated to support conviction, thus:

> Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if **(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.**

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINITION AND ELEMENTS OF TREACHERY; CASE AT BAR. — The inescapable conclusion based on the above circumstances laid out by the prosecution convincingly point to Manansala as the killer.

> Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. x x x

These elements are present in this case as testified to by the prosecution witnesses and corroborated by the CCTV footages.

Manansala stealthily entered the house of the victim and shot him while he was going upstairs. The fatal wound was inflicted from behind since the entry point was located at the back lumbar region while the exit point was at the front portion of the victim's body with the trajectory traversing upwards. These clearly indicate that the victim was going upstairs with his back towards the assailant when he was shot. We are thus in agreement with the OSG that treachery attended the killing as the victim's position rendered him defenseless from the sudden attack from behind.

5. REMEDIAL LAW; EVIDENCE; RULES ON ELECTRONIC EVIDENCE; AUDIO, PHOTOGRAPHIC, VIDEO AND EPHEMERAL EVIDENCE; ANY COMPETENT WITNESS CAN TESTIFY TO THE ACCURACY OF THE VIDEO OR CCTV RECORDING; CASE AT BAR. — This Court agrees with the RTC in appreciating the CCTV footages and admitting the same as evidence because they bolstered the testimonies of the witnesses and supported the finding of treachery in the case at bar. As correctly held by the CA, the Rules on Electronic Evidence provides that persons authorized to authenticate the video or CCTV recording is not limited solely to the person who made the recording but also by another competent witness who can testify to its accuracy. In the case at bar, Asas was able to establish the origin of the recording and explain how it was transferred to the compact disc and subsequently presented to the trial court. Hence, this Court finds no reason to contradict such finding.

6. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS AND ESSENCE THEREOF; EVIDENT PREMEDITATION MUST BE BASED ON EXTERNAL ACTS AND MUST BE EVIDENT, NOT MERELY SUSPECTED, INDICATING DELIBERATE PLANNING; CASE AT BAR. — [T]his Court finds that the prosecution was not able to satisfactorily establish the qualifying circumstance of evident premeditation. Per jurisprudence, "[t]he elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts.

The above circumstances are not present in the case at bar. The only basis for the RTC and the appellate court in finding evident premeditation as attendant to the crime was the confrontation between the victim and Manansala one day before the killing. The trial court merely surmised that Manansala must have harbored feelings of resentment towards the victim and has clung to that thought and killed the victim.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment. When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. "Evident premeditation must be based on external acts and must be evident, not merely suspected, indicating deliberate planning."

7. CRIMINAL LAW; MURDER; PROPER PENALTY; CIVIL INDEMNITY; MORAL DAMAGES; EXEMPLARY DAMAGES; CASE AT BAR. — Necessarily so, this Court modifies the penalty imposed in light with our pronouncement in *People v. Jugueta* and revert the penalty to *reclusion perpetua* in accordance with Article 248 of the RPC. Considering too that no other aggravating circumstance was present in the killing, the awards of civil indemnity, moral damages, and exemplary damages should be reverted to ₱75,000.00 each.

8. ID.; ID.; CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARD THEREOF IS PROPER ONLY WHEN THE PECUNIARY LOSS SUFFERED HAS BEEN DULY PROVED; CASE AT BAR. — Anent the award of actual damages, Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In this case, the amount of ₱7,286.17 and ₱100,000.00 as hospital and funeral expenses, respectively, were duly supported by official receipts. The handwritten list of expenses amounting to ₱36,000.00 as shown in Exhibit S were not duly supported by receipts hence were properly disregarded. The heirs of the victim are therefore entitled to be paid the amount of ₱107,286.17 as actual damages.

APPEARANCES OF COUNSEL

Public Attorney's Office for plaintiff-appellee.
Office of the Solicitor General for accused-appellant.

D E C I S I O N

HERNANDO, *J.*:

Before Us is an appeal[1] filed by herein accused-appellant Eddie Manansala *y* Alfaro (Manansala) assailing the January 5, 2017 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 07893 which found him guilty beyond reasonable doubt of the crime of Murder.

The Information[3] by which Manansala was charged, alleged:

> That on or about November 2, 2013, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ARMANDO RAMOS *y* SANTOS, by then and there shooting him with a handgun hitting the left portion of his upper body (back),thereby inflicting upon him mortal gunshot wound which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.

During arraignment, Manansala pleaded "not guilty" to the crime charged.[4] Thereafter, pre-trial and trial ensued. The prosecution presented the eyewitness accounts of Edward Reyes (Edward)[5] and Renato R. Mananquil (Mananquil).[6] It likewise

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[1] CA *rollo*, pp. 126-128.

[2] *Rollo*, pp. 2-20; penned by Associate Justice Marlene Gonzales-Sison and concurred by Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court).

[3] Records, p. 1.

[4] Id. at 26-27.

[5] TSN, February 26, 2014, pp. 2-24.

[6] TSN, March 31, 2014, pp. 2-14.

presented the testimonies of Corazon Ramos (Corazon),[7] the victim's wife; Asas Ramos (Asas),[8] the victim's son; Barangay Kagawad Jume Piojo (Piojo);[9] Police Officer 1 Leopoldo N. Tuazon (PO1 Tuazon);[10] Dr. Romeo T. Salen (Dr. Salen),[11] medico-legal expert; and Senior Police Officer 1 Jonathan L. Moreno (SPO1 Moreno),[12] the investigating officer.

The defense, on the other hand, presented the testimony of Manansala[13] and his daughter, Kiera Noreen Manansala (Kiera).[14]

Version of the Prosecution:

On November 2, 2013, at around 8 o'clock in the evening, brothers Edward and Elmer Reyes were in front of their rented apartment owned by the victim Armando Ramos (Ramos) at No. 2637 Severino Reyes Street, Tondo, Manila, where the latter also resides. The Reyes brothers were watching Mananquil play his guitar beside the door of their rented apartment when suddenly they heard a gunshot inside the house. Edward then saw Manansala facing towards the direction of the stairs and holding a gun aimed upwards.[15] Thereafter, Manansala hurriedly left towards Lico Street while still holding a gun. Shouts and commotion soon followed upstairs. Edward also saw Ramos fall from the stairs with blood oozing from his left chest.[16]

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[7] Id. at 14-28.

[8] TSN, April 30, 2014, pp. 2-11; TSN, May 28, 2014, pp. 2-8.

[9] TSN, April 30, 2014, pp. 11-24.

[10] Also referred to as "Leopoldo Tuason" in the records; TSN, July 21, 2014, pp. 11-21.

[11] TSN, July 21, 2014, pp. 5-11.

[12] Id. at 2-5.

[13] TSN, March 30, 2015, pp. 2-25.

[14] TSN, June 1, 2015, pp. 2-22.

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

[16] Id. at 86-87.

Corazon, for her part, testified that she was taking a bath at the second floor of their house when Manansala came and shot her husband. When she heard the gunshot, she immediately ran and saw her husband lying at the bottom of the stairs covered with blood. Asas, the victim's son who was also inside the house, likewise heard the gunshot and his father's shout. He quickly ran towards the door and saw his father falling down the stairs.[17]

Several onlookers rushed Ramos to the Chinese General Hospital. Corazon immediately followed but upon her arrival, she was told that her husband had already expired.[18]

A concerned citizen reported the shooting incident to the police authorities. PO1 Marinito Daya and PO1 Tuazon went to verify the report. Upon confirmation, Police Superintendent Roderick Mariano formed a team headed by Police Senior Inspector (PSI) Alvin Balagat (PSI Balagat) to conduct an extensive follow-up and hot pursuit operation for the apprehension of Manansala.[19]

Meanwhile, upon Corazon's request, Ramos's cadaver was examined by Dr. Salen. The medical findings indicated that the entry point of the gunshot wound was at the victim's back, particularly at the lumbar region, while the exit point was at the front portion of the body. The trajectory of the bullet from the entrance to the exit was upward and the distance between the muzzle of the gun and the victim's body was about two feet or more.[20] The gunshot wound fatally lacerated the lungs and the heart which caused the victim's death.[21]

On November 6, 2013, the team of PSI Balagat received an information that Manansala was hiding in San Jose Del Monte,

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[17] Id. at 44-45.

[18] Id. at 84.

[19] Id. at 46.

[20] Id. at 84-85.

[21] Id. at 46.

Bulacan. They immediately coordinated with Chief PSupt. Joel Estaris (CPSupt. Estaris).The next day, PSI Balagat and his team went to San Jose Del Monte after receiving information from CPSupt. Estaris that Manansala is already in their custody. PSI Balagat and his team verified the identity of Manansala and thereafter brought him to Jose Abad Santos Police Station (PS-7), Manila Police District (MPD) for verification. Manansala was then turned over to MPD's Crime Against Person Section.[22]

During trial, the closed-circuit television (CCTV) footages of the crime scene were presented in court where a man appearing to be Manansala was seen entering the house while armed with a gun and proceeding upstairs. The man then aimed his gun, shot the victim and immediately thereafter left the house.[23]

Asas testified that he was the one who transferred the video footages from the barangay-owned CCTV that was located outside their house to the compact disc that was submitted in court as evidence. When the footage was played in court and the enlarged screenshot was presented, he identified said person as Manansala and the perpetrator of the crime.

The prosecution also presented the testimony of Barangay Kagawad Piojo who confirmed the location of the CCTV. He also impressed upon the trial court that prior to the killing incident, there were several complaints filed against Manansala concerning the installation of illegal electric connections/jumpers. These complaints became the subject of the altercation between Manansala and Ramos one day before the latter was killed.[24]

Version of the Defense:

Manansala, on the other hand, averred that on November 2, 2013, at around 7 o'clock in the evening, he was on his way to Bulacan to visit his friend, Allan Bautista (Bautista).While on his way, he passed by the house of Ramos then took the bus

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[22] Id.

[23] Id. at 45.

[24] Id. at 46.

bound for Bulacan and arrived thereat past 8 o'clock in the evening.

On November 3, 2013, he was surprised upon being informed by his daughter, Kiera, that he was the suspect in the killing of Ramos and that the killing was all over the local news. He denied killing Ramos and planned to surrender to a certain "Col. Pascual," Kiera's godparent. However, on November 5, 2013, he was suddenly arrested in Bautista's home by the police forces of San Jose Del Monte, Bulacan.

Manansala claimed that he had known Ramos since he was 13 years old and that he was the one doing the repairs for his electricity and water supply. However, Ramos had ill-feelings towards him because of the jumpers he installed which Manansala claimed even benefitted Ramos and his tenants. He denied the allegations against him, as well as of owning a gun.[25] Kiera corroborated his story.

Ruling of the RTC:

In its October 20, 2015 Decision,[26] the RTC adjudged Manansala guilty as charged. The dispositive portion of the judgment reads:

> WHEREFORE, in the light of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt of the crime of Murder, the accused EDDIE MANANSALA *y* ALFARO, alias "Eddie Pusa," alias "Bulag" is hereby sentenced to RECLUSION PERPETUA.
>
> As to the civil liability, the accused is hereby ordered to pay the heirs of the deceased Armando Ramos, the following:
>
> 1. ₱107,286.17 as actual damages[;]
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> 2. ₱75,000.00 as civil indemnity[; and]
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> 3. ₱50,000.00 as moral damages[.]

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[25] Id. at 47-48.

[26] Id. at 43-52; penned by Presiding Judge Marlina M. Manuel.

SO ORDERED.[27]

The RTC relied heavily on the accounts of the eyewitnesses pointing to Manansala as the author of the crime, especially since their accounts were corroborated by the CCTV footages.

The RTC found that treachery attended the commission of the crime because the shooting was sudden and unexpected, leaving the victim no chance to defend himself. As revealed by the medical findings, the entrance of the fatal gunshot wound was at the back of the victim's body.[28] The trial court also found the qualifying circumstance of evident premeditation to be present. The RTC noted that there was a prior public confrontation and altercation between the victim and Manansala on the alleged installation of electric jumpers. The trial court surmised that Manansala must have harbored resentment against the victim and resolved to kill him as a form of retaliation.[29]

All in all, the trial court held that the prosecution satisfactorily established the guilt of Manansala beyond reasonable doubt and successfully proved all the elements of Murder.

Ruling of the CA:

Upon review, the CA sustained the finding of the RTC that the prosecution was able to establish all the elements of the crime of Murder and has proved the guilt of Manansala beyond reasonable doubt.

The CA gave credence to the circumstantial evidence presented by the prosecution which reasonably and positively pointed to Manansala as the person who shot the victim as the same was corroborated by the CCTV footages played and viewed in open court.[30]

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[27] Id. at 52.

[28] Id. at 50.

[29] Id. at 48-49.

[30] *Rollo*, pp. 11-13.

The CA held that the RTC correctly admitted the CCTV footages as evidence as well as the competency of Asas in attesting to the accuracy of the footages. The appellate court rejected the argument of Manansala that Asas was not qualified to authenticate the footages as he was not the one who made the recording and that the CCTV was owned by the barangay. The CA held that the Rules on Electronic Evidence provides that the one who made the recording can authenticate the video, as well as any other person competent to testify on the accuracy of the video.[31]

Finally, the CA held that considering the qualifying circumstances of treachery and evident premeditation, the proper imposable penalty is death. However, due to its proscription, the CA imposed instead the penalty of *reclusion perpetua* without eligibility for parole. The CA also modified the monetary awards by increasing the amounts of civil indemnity and moral damages to ₱100,000.00 each and awarding exemplary damages for the same amount.[32]

Thus, the dispositive portion of the January 5, 2017 Decision[33] of the CA states:

WHEREFORE,the assailed Decision dated October 20, 2015 of the Regional Trial Court, Branch 25, Manila finding accused-appellant EDDIE MANANSALA *y* ALFARO @ "Eddie Pusa," "Bulag" guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** without eligibility for parole.

The civil liabilities of accused-appellant are hereby **MODIFIED**,and he is ordered to pay the heirs of deceased Armando Ramos the following:

1. Php100,000.00 by way of civil indemnity *ex delicto*;

2. Php100,000.00 by way of moral damages;

3. Php100.000.00 by way of exemplary damages;

4. Php107,286.17 as actual damages; and

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[31] Id.

[32] Id. at 18-19.

[33] Id. at 2-20.

5. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid.

SO ORDERED.[34]

Undeterred, Manansala filed his appeal before Us.[35]

Assignment of Errors

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE INSUFFICIENCY OF THE PROSECUTION'S EVIDENCE TO PROVE THAT IT WAS THE FORMER WHO SHOT THE VICTIM.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO SUFFICIENTLY ESTABLISH THE EXISTENCE OF TREACHERY AND EVIDENT PREMEDITATION.[36]

Our Ruling

The instant appeal is dismissed.

Settled is the rule that an appeal in a criminal case throws the entire case wide open for review. Thus, it becomes the duty of the appellate court to correct any error that may be found in the appealed judgment, whether assigned as an error or not. In the crime of murder, the elements of murder and the aggravating circumstances qualifying the killing must be proven beyond reasonable doubt by the prosecution.[37]

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[34] Id. at 19.

[35] Id. at 21.

[36] CA *rollo*, p. 33.

[37] See *People v. Manzano*, G.R. No. 217974, March 5, 2018.

Here, Manansala was charged with Murder qualified by evident premeditation and treachery. Article 248 of the Revised Penal Code (RPC) states:

> Article 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:
>
> 1. With treachery, x x x
>
> x x x x x x x x x
>
> 5. With evident premeditation.

Jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (d) that the killing is not parricide or infanticide.[38]

Thus, for the charge of Murder to prosper, the prosecution must prove beyond reasonable doubt that: (1) the offender killed the victim, (2) through treachery, or by any of the other five qualifying circumstances, duly alleged in the Information.[39]

In the case at bar, the death of the victim Ramos is undisputed and there is no question that the killing is neither parricide nor infanticide. The remaining points of contentions are whether Manansala was the perpetrator of the crime and whether the killing was attended by treachery and evident premeditation.

This Court agrees with the CA that the pieces of circumstantial evidence sufficiently support the finding that Manansala was the one who killed the victim. It is an elementary rule in criminal law that absence of direct evidence will not bar conviction of the accused when pieces of circumstantial evidence satisfactorily prove the crime charged.

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[38] *People v. Casemiro*, G.R. No. 231122, January 16, 2019.

[39] *People v. Lababo*, G.R. No. 234651, June 6, 2018.

In *People v. Evangelio*,[40] this Court elaborated on how circumstantial evidence may be appreciated to support conviction, thus:

> Circumstantial evidence, also known as indirect or presumptive evidence, refers to proof of collateral facts and circumstances whence the existence of the main fact may be inferred according to reason and common experience. Circumstantial evidence is sufficient to sustain conviction if **(a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved from an unbroken chain that results in a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator**. [Emphasis supplied]

Here, We are in agreement with the Office of the Solicitor General in its brief, as affirmed by the CA, that the prosecution was able to establish that Manansala was the author of the crime of murder based on the following circumstantial evidence:

1. Upon hearing the gunshot, Edward turned around and saw appellant holding a gun.

2. When Edward saw appellant, the latter was facing the stairs of the victim's house where he had his gun aimed towards the stairs.

3. After Edward saw appellant running towards Lico Street, the former went back to the place where the gunshot was heard and there he saw the victim face down on the ground bloodied and unconscious. Blood was oozing from the victim's left chest.

4. Mananquil, on the other hand, after hearing the gunshot turned to his right and saw appellant coming out from the house of the victim.

5. When appellant was no longer in the vicinity of the shooting, Mananquil went back to the victim's house. There he saw the victim lying down.

6. The CCTV and its printouts corroborating the testimonies of Edward and Mananquil.[41]

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[40] G.R. No. 181902, August 31, 2011, 650 SCRA 579.

[41] *Rollo*, p. 12.

The inescapable conclusion based on the above circumstances laid out by the prosecution convincingly point to Manansala as the killer.

> Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. x x x[42]

These elements are present in this case as testified to by the prosecution witnesses and corroborated by the CCTV footages.

Manansala stealthily entered the house of the victim and shot him while he was going upstairs. The fatal wound was inflicted from behind since the entry point was located at the back lumbar region while the exit point was at the front portion of the victim's body with the trajectory traversing upwards. These clearly indicate that the victim was going upstairs with his back towards the assailant when he was shot. We are thus in agreement with the OSG that treachery attended the killing as the victim's position rendered him defenseless from the sudden attack from behind.[43]

Incidentally, treachery was also proven by the CCTV footages presented in court and testified on by witness Asas. Pertinent excerpts of Asas' testimony shows the following:

> ACP POSO:
> During the last hearing you were asked to produce the larger image extracted in the CCTV, do you have that copy of the picture or larger image of what were marked during the presentation of your testimony?

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[42] *People v. Racal*, 817 Phil. 665, 677-678 (2017).

[43] CA *rollo*, pp. 91-92.

WITNESS [ASAS]:
Yes sir.

ACP POSO
The witness handed to me these pictures. In these pictures handed to me, where is the start or the beginning of the video?

WITNESS
Ito po.

ACP POSO
May I pray that this [enlarged] picture from the CCTV memory be [marked] as our exhibit U. This is prior to the shooting your Honor. Another [enlarged] (sic) copy of the picture depicting somebody playing guitar as U-1 your Honor.

COURT
Mark it.

ACP POSO
Who is [depicted] in this picture?

WITNESS
Eddie Manasala, sir.

ACP POSO
While looking at the door where the incident happened, the person identified as Eddie Manansala be [marked] as exhibit V?

COURT
Okay, how about the first one, the first picture?

ACP POSO
Also the accused your Honor. The accused your Honor. The accused as pointed to by the witness as V-1 your Honor?

COURT
Mark it.

ACP POSO
Another picture of the accused while he was already about to pass the door of the house where the incident happened as exhibit W your Honor and the picture of the accused looking at the door as W-1?

COURT
Mark it.

ACP POSO
Another picture showing the accused [entering] the door of the house and raising his arm while shooting the victim as exhibit X and the location of the accused as our exhibit X-1?

COURT
Okay.

ACP POSO
The picture showing the accused after the shooting leaving the door of the house where the incident happened as exhibit Y and the picture holding the gun right after the shooting as exhibit Y-1, your Honor?

COURT
Mark it.[44]

This Court agrees with the RTC in appreciating the CCTV footages and admitting the same as evidence because they bolstered the testimonies of the witnesses and supported the finding of treachery in the case at bar. As correctly held by the CA, the Rules on Electronic Evidence provides that persons authorized to authenticate the video or CCTV recording is not limited solely to the person who made the recording but also by another competent witness who can testify to its accuracy. In the case at bar, Asas was able to establish the origin of the recording and explain how it was transferred to the compact disc and subsequently presented to the trial court.[45] Hence, this Court finds no reason to contradict such finding.

However, this Court finds that the prosecution was not able to satisfactorily establish the qualifying circumstance of evident premeditation. Per jurisprudence, "[t]he elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts.[46]

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[44] TSN, May 28, 2014, pp. 2-4.

[45] *Rollo*, pp. 14-15.

[46] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

The above circumstances are not present in the case at bar. The only basis for the RTC and the appellate court in finding evident premeditation as attendant to the crime was the confrontation between the victim and Manansala one day before the killing. The trial court merely surmised that Manansala must have harbored feelings of resentment towards the victim and has clung to that thought and killed the victim.

The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment. When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. "Evident premeditation must be based on external acts and must be evident, not merely suspected, indicating deliberate planning."[47]

Nevertheless, despite the absence of evident premeditation, the killing remains to be murder in view of the qualifying circumstance of treachery.

Necessarily so, this Court modifies the penalty imposed in light with our pronouncement in *People v. Jugueta*[48] and revert the penalty to *reclusion perpetua* in accordance with Article 248 of the RPC. Considering too that no other aggravating circumstance was present in the killing, the awards of civil indemnity, moral damages, and exemplary damages should be reverted to ₱75,000.00 each.[49]

Anent the award of actual damages, Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In this case, the amount of ₱7,286.17[50] and

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[47] *People v. Abadies*, 436 Phil. 978 (2002).

[48] 783 Phil. 806 (2016).

[49] Id.

[50] Exhibit P, records, p. 45.

₱100,000.00[51] as hospital and funeral expenses, respectively, were duly supported by official receipts. The handwritten list of expenses amounting to ₱36,000.00 as shown in Exhibit S[52] were not duly supported by receipts hence were properly disregarded. The heirs of the victim are therefore entitled to be paid the amount of ₱107,286.17 as actual damages.

WHEREFORE, the appeal is hereby **DISMISSED**.The January 5, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 07893 is hereby **AFFIRMED with MODIFICATIONS** in that accused-appellant EDDIE MANANSALA *y* ALFARO @ "Eddie Pusa," @ "Bulag" is found **GUILTY** of Murder and sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the heirs of deceased Armando Ramos the following:

1. ₱75,000.00 as civil indemnity;

2. ₱75,000.00 as moral damages;

3. ₱75,000.00 as exemplary damages; and

4. ₱107,286.17 as actual damages.

Interest at the rate of six percent (6%) per annum shall be imposed on the aggregate amount of the monetary awards computed from the finality of this Decision until full payment.

SO ORDERED.

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

Baltazar-Padilla, J., on official leave.

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[51] Exhibit R, id. at 46.

[52] Records, p. 47.

[*] Designated as additional member per raffle dated August 19, 2020 vice *J.* Inting who recused from the case due to prior action in the Court of Appeals.

SECOND DIVISION

[G.R. No. 234031. September 2, 2020]

NATIONAL POWER CORPORATION, *Petitioner, v.* **EMILIA A. CANAR,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED IN SUCH PETITION; EXCEPTIONS. — [A] petition for review under Rule 45 is limited only to questions of law. The rule, however, is not without exception. In *Medina v. Mayor Asistio, Jr.*, it was held that findings of fact by the CA may be passed upon and reviewed by the Court in the following instances: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both the appellant and appellee; (7) the findings of the CA are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. ID.; ID.; ID.; ID.; ID.; FOR THE COURT TO EVALUATE AND REVIEW THE FACTS OF THE CASE, EXCEPTIONS MUST BE ALLEGED, SUBSTANTIATED, AND PROVED BY THE PARTIES; CASE AT BAR. — Although jurisprudence has provided several exceptions to the rules, exceptions must be alleged, substantiated, and proved by the parties so that the Court may evaluate and review the facts of the case. In the instant case, petitioner merely alleged

that the CSC and the CA misappreciated the facts of the case; it did not substantiate the cited exceptions and that indeed, the exception is obtaining to justify a review of the CA Decision. Hence, the Court finds that the case does not fall under any of the exceptions.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6656 (SECURITY OF TENURE ACT); PERMANENT EMPLOYEES SHALL BE GIVEN PREFERENCE FOR APPOINTMENT TO NEW POSITIONS IN THE APPROVED STAFFING PATTERN; CASE AT BAR. — Section 4 of RA 6656 explicitly provides that "[*o*]*fficers and employees holding permanent appointments shall be given preference for the appointment to new positions* in the approved staffing pattern comparable to their former position *or in case there are not enough comparable positions, to positions next lower in rank*."

Thus, the CA was correct in ruling that respondent may not automatically be separated from service.

. . . [I]n the instant case, respondent filed several applications to positions comparable to the position she formerly occupied. Her act of filing multiple applications is a clear indication that she wanted to remain in the office, and thus, should be considered in the placement process.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY; ADMINISTRATIVE AGENCIES' FACTUAL FINDINGS THAT ARE AFFIRMED BY THE COURT OF APPEALS ARE CONCLUSIVE ON THE PARTIES.— As a rule, administrative agencies' factual findings that are affirmed by the CA are conclusive on the parties and not reviewable by the Court, except only for very compelling reasons; and where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on the Court. The Court finds no cogent reason to deviate from the general rule.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Geoffrey D. Andawi for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review[1] under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated February 13, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144458 denying the petition for review filed by National Power Corporation (petitioner) against Emilia A. Canar (respondent); and its subsequent Resolution[3] dated August 23, 2017 denying petitioner's motion for reconsideration.

The Antecedents

Petitioner is a government-owned and -controlled corporation created by virtue of Republic Act No. (RA) 6395, as amended.[4] Respondent was a permanent employee of petitioner prior to the new table of organization and holding the position of Department Manager of the Facilities Management Department.[5]

On July 9, 2012, the Governance Commission for Government-Owned and -Controlled Corporation,[6] through Memorandum

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[1] *Rollo*, pp. 11-30.

[2] *Id.* at 33-39; penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a member of the Court), concurring.

[3] *Id.* at 41-42.

[4] An Act Revising the Charter of the National Power Corporation.

[5] *Rollo*, p. 33.

[6] The Governance Commission for Government-Owned and -Controlled Corporation was created by virtue of Republic Act No. 10149 with the authority to evaluate the performance and to determine the relevance of the government-owned and -controlled corporation's (GOCC), to ascertain whether such

Order No. 2012-06,[7] approved and confirmed the continuing reorganization of petitioner, and adopted a new table of organization.

Respondent submitted her application for the following vacant positions in the new table of organization, to wit:

1. Department Manager, General Services, Administration and Finance (A&F)
2. Department Manager, Logistics, A&F
3. Department Manager, Human Resource Management, A&F
4. Department Manager, Revenue Management, Corporate Affairs (waived)[8]

However, petitioner did not consider respondent in any of the positions she applied for in the table of organization. It also did not reappoint her. Thus, it considered respondent separated from the service.

Instead, petitioner appointed the following personnel:

1. Paquito F. Garcia — General Services Department
2. Natalia O. Guinto — Logistics Department
3. Marciana B. Guinto — Human Resources Department
4. Salvador D. Sarmiento, Jr. — Revenue Management Department.[9]

Consequently, petitioner issued to respondent a Notice of Non-Appointment (Notice of Separation)[10] dated February 15,

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GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached (Section 6 thereof).

[7] *Rollo*, pp. 43-45.

[8] *Id.* at 47.

[9] *Id.* at 13-14; as culled from the Petition for Review of National Power Corporation.

[10] *Id.* at 46.

2013 in accordance with RA 6656[11] and the guidelines issued pursuant thereto.[12]

Heavy-hearted, respondent appealed her non-appointment to then President of petitioner, Froilan A. Tampinco (Tampinco).[13] In her appeal, she specifically challenged the appointment of the department managers of the Logistics and Human Resource Management as not in consonance with the requirement of RA 6656.[14]

In a Memorandum[15] dated March 20, 2013, Tampinco denied respondent's appeal. The pertinent portions of the Memorandum state:

> First, please be informed that the criteria used in the evaluation are the applicant's qualifications (e.g., Education, Training, Experience, Eligibility) vis-à-vis the CSC prescribed Qualification Standards (i.e., Education, Training, Experience, and Eligibility) all of which are already contained in the certified copy of the CAF provided to you.
>
> x x x x x x x x x
>
> Finally, after careful and thorough review of the issues raised in said memo, the undersigned finds no cogent reason to reverse the decision on the appointment made to the person for the position which is the subject of your appeal.[16]

Not satisfied and feeling aggrieved by the above decision, respondent filed an appeal *(ad cautelam)* before the Civil Service Commission (CSC) assailing the decision as a violation of her rights under RA 6656 when Tampinco failed to follow the order

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[11] Entitled "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization," approved on June 10, 1988.

[12] *Rollo*, p. 14.

[13] See Memorandum dated March 12, 2013, *id.* at 47-48.

[14] *Id.* at 14.

[15] *Id.* at 49.

[16] *Id.*

of preference of removal from the service due to the reorganization; and when he filled out vacant positions by promoting incumbents of lower level positions.

Petitioner filed its comment to the appeal of respondent. Subsequently, respondent filed her reply.

In the Decision No. 130743[17] dated July 15, 2013, the CSC partially granted respondent's appeal by directing petitioner to consider respondent to the next lower positions in the new table of organization. The dispositive portion of the Decision No. 130743 reads:

> WHEREFORE, the petition for review of Emilia A. Canar, former Department Manager, National Power Corporation (NAPOCOR), is PARTLY GRANTED. Accordingly, NAPOCOR is hereby directed to consider Canar to the next lower positions in the new staffing pattern/table of organization thereat.[18]

Both petitioner and respondent moved for reconsideration.[19]

In the Resolution No. 1500487[20] dated April 17, 2015, the CSC denied petitioner's motion for reconsideration. The dispositive portion thereof reads:

> WHEREFORE, the motion for reconsideration of Froilan A. Tampinco, President, National Power Corporation (NAPOCOR), is DENIED. Accordingly, CSC Decision No. 13-0743 dated July 15, 2013 STANDS. NAPOCOR is hereby directed to consider Canar to the next lower positions in the new staffing pattern/table of organization thereat.[21]

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[17] *Id.* at 51-56. Signed by Commissioner Robert S. Martinez, Chairman Francisco T. Duque III, and Commissioner Nieves L. Osorio and attested by Director IV Dolores B. Bonifacio.

[18] *Id.* at 56.

[19] *Id.* at 15.

[20] *Id.* at 58-62. Signed by Commissioners Nieves L. Osorio and Robert S. Martinez and attested by Director IV Dolores B. Bonifacio.

[21] *Id.* at 62.

Petitioner elevated the case to the CA assailing the Decision No. 130743 and the Resolution No. 1500487 of the CSC by filing a petition for review on March 21, 2016. Subsequently, respondent filed her comment dated May 6, 2016 on the petition.[22]

In the Decision[23] dated February 13, 2017, the CA denied the petition. It held that respondent may not automatically be separated from service. It noted that the first paragraph of Section 4 of RA 6656 provides that in case there are not enough comparable positions, the permanent employees shall be given preference to the positions next lower in rank, *viz.*:

> WHEREFORE, the petition is DENIED. The Decision No. 13-0743 promulgated on July 15, 2013 and Resolution No. 1500487 promulgated on April 17, 2015 of the Civil Service Commission are hereby AFFIRMED.
>
> SO ORDERED.[24]

Petitioner moved for reconsideration. The CA denied it in its Resolution[25] dated August 23, 2017.

Hence, the instant petition raising the sole issue of whether the CA erred in affirming the decision and resolution of the CSC.

Petitioner relied on the case of *Cotiangco, et al. v. Province of Biliran, et al.*[26] *(Cotiangco)*, and contended that the CA erred in affirming the decision and resolution of the CSC directing petitioner to consider respondent to the next lower positions in the new staffing pattern/table of organization despite the fact that she did not apply for the next lower positions.

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[22] *Id.* at 16.

[23] *Id.* at 33-39.

[24] *Id.* at 39.

[25] *Id.* at 41-42.

[26] 675 Phil. 211 (2011).

Our Ruling

Petitioner's contention lacks merit.

Before proceeding to the merits of the case, the Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law.[27] The rule, however, is not without exception. In *Medina v. Mayor Asistio, Jr.*,[28] it was held that findings of fact by the CA may be passed upon and reviewed by the Court in the following instances: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the CA are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.[29]

Although jurisprudence has provided several exceptions to the rules, exceptions must be alleged, substantiated, and proved by the parties so that the Court may evaluate and review the facts of the case.[30] In the instant case, petitioner merely alleged that the CSC and the CA misappreciated the facts of the case; it did not substantiate the cited exceptions, and that indeed, the exception is obtaining to justify a review of the CA Decision.

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[27] *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 785 (2013).

[28] 269 Phil. 225 (1990).

[29] *Id.* at 232. Citations omitted.

[30] *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

Hence, the Court finds that the case does not fall under any of the exceptions.

Anent the main issue, Section 4 of RA 6656 explicitly provides that "[*o*]*fficers and employees holding permanent appointments shall be given preference for the appointment to new positions* in the approved staffing pattern comparable to their former position *or in case there are not enough comparable positions, to positions next lower in rank*."

Thus, the CA was correct in ruling that respondent may not automatically be separated from service.

Petitioner's reliance in *Cotiangco* is misplaced. There, the subject personnel totally did not apply for any newly created positions; whereas in the instant case, respondent filed several applications to positions comparable to the position she formerly occupied. Her act of filing multiple applications is a clear indication that she wanted to remain in the office, and thus, should be considered in the placement process.

As a rule, administrative agencies' factual findings that are affirmed by the CA are conclusive on the parties and not reviewable by the Court, except only for very compelling reasons;[31] and where the findings of the administrative body are amply supported by substantial evidence, such findings are accorded not only respect but also finality, and are binding on the Court.[32] The Court finds no cogent reason to deviate from the general rule.

WHEREFORE, the petition is **DENIED**. The Decision dated February 13, 2017 and the Resolution dated August 23, 2017 of the Court of Appeals in CA-G.R. SP No. 144458 are hereby **AFFIRMED**.

SO ORDERED.

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[31] *Gannapao v. Civil Service Commission, et al.*, 665 Phil. 60, 77-78 (2011). Citations omitted.

[32] *Nacu, et al. v. Civil Service Commission, et al.*, 650 Phil. 309, 325 (2010).

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando,* and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on official leave.

THIRD DIVISION

[G.R. No. 242118. September 2, 2020]

MANUEL QUILET y FAJARDO @ "TONTING," *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; BUREAU OF JAIL MANAGEMENT AND PENOLOGY (BJMP); BJMP STANDARD OPERATING PROCEDURE NO. 2010-05 (BJMP SOP NO. 2010-05); PURPOSE. — The search of the persons of jail visitors and of their belongings fall under the general rubric of "institutional security." This is clearly spelled out in the "Background/Rationale" of BJMP SOP No. 2010-05. x x x The avowed purpose and scope of the SOP is "to provide adequate safeguards against the introduction of contraband into jail facilities and to establish guidelines for different types of searches."

2. ID.; ID.; ID.; ID.; THE TYPES OF BODY SEARCHES DEFINED AND REGULATED BY BJMP SOP NO. 2010-05. — The types of body searches defined and regulated by BJMP SOP No. 2010-05 are classified from the least to the most intrusive: (1) pat/frisk and rub body search; (2) strip search; and, (3) visual body cavity search. They are defined in BJMP SOP No. 2010-05 as follows: **Pat/Frisk Search** – is a search wherein the officer pats or squeezes the subject's clothing to attempt to detect contraband/s. For same gender searches the Pat/Frisk search is normally accomplished in concert with Rub Search. **Rub Search** – is a search wherein the officer rubs and/or pats the subject's body over the clothing, but in a more intense and thorough manner. In a rub search, the genital, buttocks, and breast (of females) areas are carefully rubbed – areas which are not searched in a frisk/pat search. **Rub searches shall not be conducted on cross-gender individuals. Strip Search** – is a search which involves the visual inspection of disrobed or partially disrobed subject. **Visual Body Cavity Search** – is a search which involves the inspection of the anus and/or vaginal area, generally requiring the subject to bend over and spread

the cheeks of the buttocks; to squat and/or otherwise expose body cavity orifices. Each type of body search is covered by procedures discussed in great detail in the SOP. The same document likewise directs when a search may escalate from a pat/frisk/rub search to a strip search: If during the pat/frisk/rub search the jail officer develops probable cause that contraband is being hidden by the subject who is not likely to be discovered, the Jail Officer shall request for a conduct of strip search/visual body cavity search.

3. ID.; ID.; ID.; ID.; GUIDELINES FOR THE CONDUCT OF STRIP SEARCH UNDER BJMP SOP NO. 2010-05; NOT PRESENT IN THE CASE AT BAR. — Even granting *arguendo* that such probable cause existed in said scenario, JO3 Leonor nevertheless should have followed the detailed guidelines for a Strip Search, as laid down in Section VII of BJMP SOP No. 2010-05. x x x [I]t is clear that the BJMP personnel failed to follow the procedure laid down in BJMP SOP No. 2010-05. The prosecution did not present evidence that the Jail Warden or Jail Officer of the Day had knowledge and directed the conduct of a strip search. The required Authorization (Annex A) was not filled up, and the Waiver of Right Form (Annex B) was not given to petitioner to sign before he was made to pull up his shirt.

4. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165 AS AMENDED BY RA 10640); CHAIN OF CUSTODY RULE; MARKING IS THE PLACING BY THE APPREHENDING OFFICER OR THE POSEUR-BUYER OF HIS/HER INITIALS AND SIGNATURE ON THE ITEMS SEIZED. — "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. Marking of the seized item must not only be prompt but proper as well, since marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence.

5. ID.; ID.; ID.; MARKING, INVENTORY, AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE DONE IN THE PRESENCE OF THE ACCUSED OR HIS/HER REPRESENTATIVE OR COUNSEL, AN ELECTED PUBLIC OFFICIAL, AND A REPRESENTATIVE OF THE NATIONAL PROSECUTION SERVICE OR THE MEDIA. — As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his/her representative or counsel, as well as certain required witnesses. Upon effectivity of the amendments introduced by RA 10640, these required witnesses are an elected public official and a representative of the National Prosecution Service OR the media.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

ZALAMEDA, *J.*:

While the Court supports the government's efforts to combat the proliferation of illegal drugs in Philippine society, We maintain the importance of abiding by the procedural safeguards in all drug-related cases. Vigilance in eradicating illegal drugs must not come at the expense of disregarding the law, rules, and established jurisprudence on the matter.[1]

The Case

Before this Court is a Petition for Review on *Certiorari*, seeking reversal of the 12 July 2018 Decision[2] and 12 September

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[1] *People v. Dayon*, G.R. No. 229669, 27 November 2019.

[2] *Rollo*, pp. 33-44; penned by Associate Justice Nina G. Antonio-Valenzuela, and concurred in by Associate Justices Priscilla J. Baltazar-

2018 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 38852, which affirmed the 17 May 2016 Decision[4] of Branch 23, Regional Trial Court (RTC) of Manila in Criminal Case No. 14-309123, finding petitioner Manuel Quilet y Fajardo @ "Tonting" (petitioner) GUILTY of violating Section 11(3), Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002, as amended."

Antecedents

Petitioner was indicted through an Information, the accusatory portion of which reads:

> That on or about October 07, 2014, in the City of Manila, Philippines, the said accused not having been authorized by law to possess any dangerous drug, did[,] then and there[,] willfully, unlawfully[,] and knowingly have in his possession and under his custody and control one (1) opened transparent plastic sachet[,] marked as "GTL 07-10-14[,]" containing ZERO POINT ONE FIVE SEVEN TWO (0.1572) of dried Marijuana leaves and fruiting tops, a dangerous drug.
>
> Contrary to law.[5]

Upon arraignment, petitioner pleaded not guilty. Pre-trial and trial on the merits then ensued.[6]

According to the prosecution's version of the facts,[7] petitioner went to the Manila City Jail on 07 October 2014 to visit his boyfriend, who was then an inmate therein. Prior to petitioner's entry into the premises, Jail Office 3 Gregorio Leonor III (JO3 Leonor) inspected his belongings and subjected him to a body search.

Padilla (now a Member of this Court) and Carmelita Salandanan Manahan of the Special Sixteenth Division, Court of Appeals, Manila.

[3] Id. at 46-47.

[4] Id. at 68-75; penned by Presiding Judge Caroline Rivera-Colasito.

[5] Id. at 34.

[6] Id.

[7] Id. at 34-35; CA Decision, pp. 2-3; Footnotes omitted.

JO3 Leonor asked petitioner, who was wearing a bra, to pull up his shirt and to remove the bra's padding. An inspection of the padding revealed an open plastic sachet containing suspected dried *marijuana* leaves. Thereafter, JO3 Leonor confiscated the plastic sachet with its contents and marked it with "GTL 04-10-14." He informed petitioner of the latter's rights as an accused, and turned over the seized items to investigator JO2 Edgar P. Taoc (JO2 Taoc) for proper disposition.[8]

Pursuant thereto, JO2 Taoc prepared the Letter Referral for Inquest, Booking Sheet and Arrest Report, Chain of Custody Form, Letter Request for Laboratory Examination, and Incident Report and Turn Over. JO2 Taoc also conducted the inventory in the presence of JO3 Dominador Noe, Jr. (JO3 Noe), who also took photographs of the confiscated items. Later, JO2 Taoc delivered the seized items to the PDEA crime laboratory and handed them to Forensic Chemist Richard M. Solis. The laboratory examination confirmed the seized items to be *marijuana*.[9]

Petitioner denied the charges against him. He claimed that on 07 October 2014, he arrived at the Manila City Jail to visit his boyfriend. JO3 Leonor frisked him and asked him to pull up his shirt. JO3 Leonor supposedly found the small plastic sachet containing *marijuana* in the padding of his bra. However, petitioner claimed that he did not know who owned the plastic sachet containing *marijuana* recovered from his person. Petitioner argued he was a regular visitor at the Manila City Jail. Hence, it would be illogical for petitioner to bring prohibited items because he knew that a body search is conducted before a visitor is allowed entry.[10]

Ruling of the RTC

After trial on the merits, the RTC rendered its 17 May 2016 Decision, convicting petitioner of the offense charged. The trial

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[8] Id.

[9] Id. at 35; CA Decision, p. 3; Footnotes omitted.

[10] Id.

court concluded that the prosecution had successfully proven the elements needed to convict petitioner for illegal possession of dangerous drugs. The dispositive portion of the Decision reads:[11]

> WHEREFORE, premises considered, accused, **MANUEL QUILET y FAJARDO @ "Tonting"** is hereby found GUILTY of the crime charged and is sentenced to suffer the indeterminate penalty of imprisonment of Thirteen (13) years and one (1) day, as minimum to Fourteen (14) years, as maximum and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The **one (1) opened transparent plastic sachet marked as "GTL-07-10-14" containing ZERO POINT ONE FIVE SEVEN TWO (0.1572)** of dried Marijuana leaves and fruiting tops, subject of the instant case, is hereby forfeited in favor of the State and ordered destroyed immediately pursuant to existing Rules. Costs de oficio.
>
> SO ORDERED.

Petitioner appealed his conviction to the CA.

Ruling of the CA

On 12 July 2018, the CA affirmed the RTC's ruling, as it agreed that the prosecution proved all the elements of illegal possession of dangerous drugs. The CA likewise found petitioner's argument on the supposed irregularity of the strip search performed by JO3 Leonor unmeritorious, holding thus:[12]

> JO3 Leonor III performed the frisk and body search in accordance with BJMP SOP No. 2010-05, which states that all visitors allowed entry into the jail must be required to submit to a thorough body search to prevent entry of contraband inside the jails. Searches must not be more extensive than necessary to determine the existence of contraband believed to be concealed on the subject of the person.

Furthermore, the CA agreed with the RTC that contrary to petitioner's argument, the identity and integrity of the seized

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[11] Id. at 36; CA Decision, p. 4.

[12] Id. at 39; CA Decision, p. 7.

dangerous drug had not been compromised despite the police officers' non-compliance with the requirements of Section 21, RA 9165.[13]

Petitioner sought reconsideration, but the same was denied by the CA in its 12 September 2018 Resolution.[14]

Hence, the present petition.

Issues

Petitioner raises the following issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE INADMISSIBILITY OF THE ALLEGEDLY CONFISCATED DRUG FOR BEING FRUIT OF THE POISONOUS TREE.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE IRREGULARITIES IN THE MARKING AND CONDUCT OF THE INVENTORY OF THE ALLEGEDLY CONFISCATED ITEM.

III

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE FAILURE OF THE PROSECUTION TO OVERCOME THE PRESUMPTION OF INNOCENCE AFFORDED TO PETITIONER BY THE CONSTITUTION.[15]

The controversy boils down to whether or not the arresting officers observed the proper procedure in the handling and custody of the seized drugs, ultimately convicting petitioner for the crime of illegal possession of dangerous drugs.

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[13] Id. at 42-43; CA Decision, pp. 10-11; Footnotes omitted.

[14] Id. at 47.

[15] Id. at 21-22.

Ruling of the Court

We find the petition meritorious.

Central to the proper resolution of this case are the provisions of BJMP Standard Operating Procedure (SOP) No. 2010-05, Our previous ruling in the case of *Tuates v. People of the Philippines*,[16] and a painstaking look at the chain of custody of the item supposedly seized from petitioner.

The arresting officers failed to observe the prescribed procedure in searching or frisking petitioner

The search of the persons of jail visitors and of their belongings fall under the general rubric of "institutional security." This is clearly spelled out in the "Background/Rationale" of BJMP SOP No. 2010-05, which reads:

> The proliferation of contraband in jail facilities is a perennial problem that the BJMP is confronting since its inception. Contraband in the hands of inmates jeopardize jail security and hamper rehabilitation programs.
>
> The use of various types of searches shall be necessary to protect the safety of visitors, inmates[,] and personnel. It shall be used to detect and secure contraband with the aim of safeguarding the security of the facility.
>
> x x x x x x x x x
>
> While the conduct of various types of searches is indispensible [*sic*] in our campaign to prevent the entry of contraband, it should be reasonably implemented with utmost care and fairness to protect the rights of the subject[,] as well as to shield the jail personnel from harassment complaints.

The avowed purpose and scope of the SOP is "to provide adequate safeguards against the introduction of contraband into

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[16] G.R. No. 230789, 10 April 2019, penned by Associate Justice Alfredo Benjamin S. Caguioa.

jail facilities and to establish guidelines for different types of searches."[17]

Contraband, whose introduction into jail facilities is proscribed by the SOP, is classified into: (1) "illegal contraband," which is unlawful in itself and not because of some extraneous circumstances, such as dangerous drugs, weapons, potential weapons, explosives; and (2) "merely prohibited and nuisance contraband," which may not be classified as illegal under the law but is forbidden by jail rules, such as cellphones, intoxicating liquor, cigarettes, and pornographic materials.[18]

BJMP SOP No. 2010-05 also lays down certain general policies, two (2) of which are relevant to this case:

> 2. All visitors before being allowed entry into the jail must be requested to submit the things they carry to a thorough inspection and a thorough body search to prevent the entry of contraband/s in our jails.
>
> 3. xxxx All visitors who refuse to undergo search and inspection shall be refused entry into the jail.

These general policies reiterate that the search of both the belongings and persons of jail visitors serves these main purposes: institutional security and as a condition for admission of a visitor into the jail facility.

The types of body searches defined and regulated by BJMP SOP No. 2010-05 are classified from the least to the most intrusive: (1) pat/frisk and rub body search; (2) strip search; and, (3) visual body cavity search. They are defined in BJMP SOP No. 2010-05 as follows:

> **Pat/Frisk Search** — is a search wherein the officer pats or squeezes the subject's clothing to attempt to detect contraband/s. For same gender searches the Pat/Frisk search is normally accomplished in concert with Rub Search.

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[17] BJMP SOP No. 2010-05 (2010), II. Purpose and Scope.

[18] *See* Definition of Terms, BJMP SOP No. 2010-05.

Rub Search — is a search wherein the officer rubs and/or pats the subject's body over the clothing, but in a more intense and thorough manner. In a rub search, the genital, buttocks, and breast (of females) areas are carefully rubbed — areas which are not searched in a frisk/pat search. **Rub searches shall not be conducted on cross-gender individuals.** (emphasis supplied)

Strip Search — is a search which involves the visual inspection of disrobed or partially disrobed subject.

Visual Body Cavity Search — is a search which involves the inspection of the anus and/or vaginal area, generally requiring the subject to bend over and spread the cheeks of the buttocks; to squat and/or otherwise expose body cavity orifices.

Each type of body search is covered by procedures discussed in great detail in the SOP.[19] The same document likewise directs when a search may escalate from a pat/frisk/rub search to a strip search:[20]

> If during the pat/frisk/rub search the jail officer develops probable cause that contraband is being hidden by the subject who is not likely to be discovered, the Jail Officer shall request for a conduct of strip search/visual body cavity search.

In this case, JO3 Leonor asked petitioner to pull up his shirt, thereby disrobing him partially. As such, this search falls under the second type — the Strip Search — or a search involving the "visual inspection of disrobed or partially disrobed subject." It should be noted, however, that there is nothing on record that petitioner acted in a suspicious manner which could have allowed JO3 Leonor to "develop probable cause," and escalate the search from pat/frisk/rub to strip search.

Even granting *arguendo* that such probable cause existed in said scenario, JO3 Leonor nevertheless should have followed

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[19] Section VI for the Conduct of Pat/Frisk/Rub Search for Visitors; Section VII for the Conduct of Strip Search for Visitors; and Section VIII for the Conduct of Visual Body Cavity Search for Visitors, BJMP SOP No. 2010-05.

[20] Paragraph 3, of Section VI, Guidelines in the Conduct of Pat/Frisk/Rub Search for Visitors, BJMP SOP No. 2010-05.

the detailed guidelines for a Strip Search, as laid down in Section VII of BJMP SOP No. 2010-05, herein quoted in full:

VII. Guidelines in the Conduct of Strip Search for Visitors

The conduct of strip search shall be done provided all the following conditions are met:

1. All strip search shall be conducted with the knowledge of and directed by the Jail Warden or in his absence by the Deputy Warden/ Jail Officer of the Day. A Strip Search/ Visual Body Cavity Search Authorization (SSVBCSA) (Annex A) shall be accomplished by the searcher for this purpose. The SSVBCSA Form shall include information that there is probable cause that contraband is being hidden by the subject or subject to be strip searched is suspected of bringing contraband inside the jail. It shall particularly state the source of information, if known, and the contraband to be brought in.

2. **The visitor agrees to be strip searched which shall be in writing** to shield the jail officer performing the search from harassment complaints. For this purpose, **the Waiver of Right on Strip Search/ Visual Body Cavity Search Form (Annex B) shall be signed by the visitor.** It shall be duly explained by the jail personnel performing the search and should be understood by the subject. **If the subject refuses, he/she will not be allowed to visit.** (emphases supplied)

3. All strip search must be done in the confidentiality of an enclosed space. This area must restrict the possibility of visual access by person(s) not involved in the search.

4. To perform a strip search the jail officer shall accomplish the following:

a. Direct the subject to remove his/her clothing and hand the clothing to the searcher for inspection.

b. Clothing shall be examined by touch, using the squeeze and rub method which crushes every part of the clothing.

c. Articles should be scanned for bulges and signs of openings or freshly sewn areas. Linings should not be overlooked.

d. The searcher shall have the subject perform the following measures:

1. Hold his/her hands out in front of his/her body with fingers spread;
2. Turn his/her hands over showing the officer each side;
3. Raise his/her arms over head allowing the officer to view the subject's underarms;
4. Shake out his/her hair;
5. Open his/her mouth with head tilted back. Lifting his/her tongue;
6. Have the subject lift his/her feet so that the soles and spaces between the toes can be examined carefully.

e. Inspection of any covered wounds, casts, false teeth, prosthesis, etc. shall be conducted with the assistance of a jail doctor or nurse.

f. After completion of the search, the officer shall return the clothing to the subject and allow the subject to redress.

5. If during the course of the strip search, the officer develops probable cause that contraband is concealed in an area not readily visible during the strip search, the officer shall proceed on conducting Visual Body Cavity Search.

x x x x x x x x x

From the foregoing, it is clear that the BJMP personnel failed to follow the procedure laid down in BJMP SOP No. 2010-05. The prosecution did not present evidence that the Jail Warden or Jail Officer of the Day had knowledge and directed the conduct of a strip search. The required Authorization (Annex A) was not filled up, and the Waiver of Right Form (Annex B) was not given to petitioner to sign before he was made to pull up his shirt.

In *Tuates v. People*,[21] the Court held that—

xxx To emphasize anew, BJMP-SOP 2010-05 requires pat/frisk searches and rub searches to be done **over the jail visitor's clothing.**

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[21] *Supra* note 13.

Bundang admitted twice that what she instead did was to raise Tuates' shirt. This she cannot do, for a strip search may be resorted to only "[i]f during the pat/frisk/rub search[,] the jail officer develops probable cause that contraband is being hidden by the subject which is not likely to be discovered." Further, a strip search may only be done after the visitor **agrees in writing, which is a requirement** to shield the jail officer performing the search from harassment complaints.

xxx [Since] the search conducted by Bundang was clearly not in accordance with BJMP-SOP 2010-05. From this alone, the presumption that she performed her duties in a regular manner was thus unmistakably rebutted.

Following *Tuates v. People*, the arresting officers could not be accorded the benefit of the presumption of regularity in the performance of their duty. The foregoing findings alone are enough to acquit petitioner based on reasonable doubt. However, after going over the records with a fine-toothed comb, the Court found even more fatal flaws in the prosecution's evidence.

There were material discrepancies in the marking of the seized items

In summing up the evidence for the prosecution, the CA Decision stated that "JO3 Leonor III confiscated the plastic sachet and its contents and marked it with **'GTL 04-10-14'** xxx."[22] But in a later portion of the same Decision, the CA stated a material contradiction: "JO3 Leonor III marked the seized item with **'GTL,'** and turned over the seized item to investigating officer, JO2 Taoc xxx."[23]

The trial court itself, in its own summary of the prosecution evidence, stated that JO3 Leonor "placed the markings **'GTL'** on [the open plastic sachet] xxx."[24] Even the Solicitor General, in his Comment, stated that "JO3 Leonor confiscated the seized plastic sachet with *marijuana* and marked it with his initial **'GTL'**."[25]

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[22] *Rollo*, p. 34; CA Decision, p. 2.

[23] Id. at 42; CA Decision, p. 10.

[24] Id. at 71; RTC Decision, p. 4.

[25] Id. at 110.

More confusion arises as the foregoing markings starkly differ from the common statement in the Information and the dispositive portion of the RTC decision which say that petitioner was found in possession of one (1) opened transparent plastic sachet marked as **"GTL-07-10-14."**[26] Upon further perusal of the records, the Chain of Custody[27] and Inventory[28] sheets showed another glaring discrepancy because the documentary exhibits indicated that the plastic sachet was marked as **"GTL III 07-10-14."**

"Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[29] Marking of the seized item must not only be prompt but proper as well, since marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, "planting," or contamination of evidence.[30]

The markings as appearing in the Information, the inventory, the decisions of the RTC and the CA, as well as in the allegation of facts by the parties, are different. Needless to say, the fact that the prosecution, the RTC, and the appellate court themselves could not agree on what the true marking on the seized item was already casts a shadow of doubt on the integrity and identity of the item seized—the *corpus delicti* of the offense charged

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[26] Id. at 68.

[27] Records, p. 21.

[28] Id. at 37.

[29] *People v. Dahil,* 750 Phil. 212-239 (2015); G.R. No. 212196, 12 January 2015, 745 SCRA 221, 241.

[30] *People v. Ismael,* 806 Phil. 21-38 (2017); G.R. No. 208093, 20 February 2017, 818 SCRA 122 citing *People v. Coreche,* 612 Phil. 1238,1244 (2009); 596 SCRA 350, 14 August 2009.

against petitioner. Thus, there is no moral certainty that the substance taken from petitioner is the same dangerous drug submitted to the laboratory and the trial court.[31]

None of the required witnesses under RA 9165, as amended by RA 10640, were present during the marking, photographing and inventory of the seized item

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his/her representative or counsel, as well as certain required witnesses. Upon effectivity of the amendments introduced by RA 10640,[32] these required witnesses are an elected public official and a representative of the National Prosecution Service OR the media.[33]

The prosecution failed to establish the crucial presence of these witnesses mandated by law. The inventory sheet indicated that the witnesses were all jail officers.[34] Furthermore, as testified by JO3 Leonor:

Q: And you also conducted the inventory at the gate?
A: Yes sir.

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[31] *People v. Climaco*, 687 Phil. 593-610 (2012); G.R. No. 199403, 13 June 2012.

[32] In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018, 884 SCRA 276), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in The Philippine Star (Vol. XXVIII, No. 359, Metro Section, p. 21) and the Manila Bulletin (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 07 August 2014, pursuant to Section 5 of the law.

[33] *Supra* note 1.

[34] Records, p. 37.

Q: Is JO3 Edna Iglesia a barangay elected official?
A: No sir.

Q: How about JO3 Dominador Noe?
A: No sir.

Q: How about Manuel Quilet is he a barangay official?
A: No sir.

Q: No barangay official and you did not call any barangay official?
A: At that time we looked for barangay official.

Q: That is 2:00 o'clock in the afternoon. How about going to the Office of the Prosecutor to ask for a witness, did you do that, calling the Office of the Prosecutor?
A: It was already night time when we went to the Fiscal's Office.

x x x x x x x x x

THE COURT
Q: Officer Leonor, when you marked the sachet of *marijuana*, who were present?
A: The accused and my co-employees.

Q: You are referring to Edna Iglesia, Dominador Noe, Inspector Vargas?
A: Yes Your Honor.

Q: They were the ones who witnessed the inventory?
A: Yes ma'am.[35]

The absence of the witnesses required by law does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.[36]

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[35] TSN, 17 September 2015, pp. 9-10.

[36] *Ramos v. People*, G.R. No. 233572, 30 July 2018, 874 SCRA 595, 599.

In this case, the prosecution failed to provide sufficient justification for the failure of the arresting officers to secure the required witnesses under the law. The prosecution had sufficient opportunity during trial to explain the procedural lapses but glaringly left the same unacknowledged and unjustified. Such omission casts suspicion on the *corpus delicti* of the offense charged, thereby creating reasonable doubt.[37]

In sum, the BJMP personnel failed to observe the detailed procedures for the conduct of a strip search laid down in BJMP SOP No. 2010-05. In light of the Court's ruling in *Tuates*, such failure to follow the procedures in BJMP SOP No. 2010-05 negates the presumption of regularity in the performance of official duties. Moreover, the contradictions as to the markings, as well as the lack of required witnesses, cast grave doubt on the identity and integrity of the items seized from petitioner. With these findings, the constitutional presumption of the innocence of the petitioner must prevail, and he must thus be acquitted.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED.** The 12 July 2018 Decision and 12 September 2018 Resolution of the Court of Appeals in CA-G.R. CR No. 38852 are **REVERSED** and **SET ASIDE.** Accordingly, petitioner Manuel Quilet y Fajardo @ "Tonting" is **ACQUITTED** of the offense charged on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED to IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

The Regional Trial Court is **DIRECTED** to turn over the seized marijuana to the Dangerous Drugs Board for destruction in accordance with law.

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[37] *Supra* note 1.

Let entry of judgment be issued immediately.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo*, *Carandang*, and *Gaerlan*, *JJ.*, concur.

SECOND DIVISION

[G.R. No. 247338. September 2, 2020]

ROGER V. CHIN, *Petitioner, v.* **MAERSK-FILIPINAS CREWING, INC., MAERSK LINE A/S, and RENEL C. RAMOS,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT; PERIOD FOR FILING AN APPEAL OR A MOTION FOR RECONSIDERATION. — In the 2018 case of *Guagua National Colleges vs. CA* (*Guagua*), the Court acknowledged the variance in its rulings and categorically declared that the correct period to appeal the decision or award of the Voluntary Arbitrator or Panel of Arbitrators to the CA *via* a petition for review under Rule 43 of the Rules of Court is the fifteen (15)-day period set forth in Section 4 thereof reckoned from notice or receipt of the VA's resolution on the motion for reconsideration, and that the ten (10)-day period provided in Article 276 of the Labor Code refers to the period within which an aggrieved party may file said motion for reconsideration.

2. ID.; ID.; ID.; THE PETITION IN THE CASE AT BAR HAVING BEEN TIMELY FILED, SHALL NOT HAVE BEEN DISMISSED OUTRIGHT. — [P]etitioner in this case had fifteen (15) days from receipt of the Resolution denying his motion for reconsideration to file his petition for review with the CA. Having received a copy of the VA's October 29, 2018 Resolution on November 22, 2018, petitioner therefore had until December 7, 2018 to file his petition. As the records show that the petition was filed on December 4, 2018, albeit through a private courier, it was therefore timely filed and the CA erred in dismissing it outright. To rule otherwise would be clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioner's rights. Thus, in light of the fact that the CA dismissed the petition for review outright based solely on procedural grounds, a remand of the case for a resolution on the merits is warranted.

APPEARANCES OF COUNSEL

Antonio Seludo for petitioner.
Palafox and Romero for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated December 19, 2018[2] and May 9, 2019[3] of the Court of Appeals (CA) in CA-G.R. SP No. 158643, dismissing outright the appeal filed by petitioner Roger V. Chin (petitioner) under Rule 43 of the Revised Rules of Civil Procedure from the Decision[4] dated August 28, 2018 of the Maritime Voluntary Arbitrator (VA) in MVA-031-RCMB-NCR-129-02-04-2018, for having been filed out of time.

The Facts

On April 13, 2016, petitioner was hired as Able Seaman by Maersk-Filipinas Crewing, Inc. and its officer Renel C. Ramos, for and on behalf of their foreign principal, Maersk Line A/S (respondents), for a six (6)-month contract on board the vessel *MV Maersk Danube*, allegedly covered by a Singaporean Organization of Seamen Collective Bargaining Agreement (SoS CBA).[5] After undergoing the required Pre-Employment Medical Examination, petitioner was declared fit for duty. On May 1,

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[1] *Rollo*, pp. 46-67.

[2] Id. at 35-36. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Victoria Isabel A. Paredes and Rafael Antonio M. Santos, concurring.

[3] Id. at 38-41.

[4] Id. at 270-294. Penned by Maritime Voluntary Arbitrator Captain Gregorio B. Sialsa.

[5] See Contract of Employment dated April 13, 2016; id. at 199.

2016, he boarded the vessel and assumed his duties, which required hard manual labor.[6]

Sometime in October 2016, while lifting the steel cover of a chain pipe located under the mooring in order to clear some debris, petitioner allegedly felt excruciating pain on his back that resulted to blurring of vision or symptoms of heart attack. He reported his condition to his superiors and requested for medical consultation, but was refused. Instead, he was recommended for medical repatriation and, subsequently, signed off from the vessel on October 17, 2016.[7]

Upon arrival in Manila, petitioner was given proper post-employment medical examination and further treatment by the company-designated physician, Dr. Ferdinand Bernal (Dr. Bernal). Subsequently, petitioner was diagnosed with *Degenerative Disc Disease, L3-L4 to L5-S1*; hence, he was given appropriate medications and advised to start physical therapy sessions. After completing various consultations and tests, or on December 5, 2016, petitioner was revealed to be asymptomatic and had no more lower back pains.[8] Thus, on even date, he was declared fit to work and signed a Certificate of Fitness for Work.[9]

On January 25, 2018, petitioner sought the second medical opinion of another physician, Dr. Cesar H. Garcia (Dr. Garcia), who assessed that petitioner was "unfit for sea duty in whatever capacity."[10] Petitioner requested disability compensation from respondents, which was denied, prompting him to file a notice to arbitrate with the National Conciliation and Mediation Board (NCMB) for permanent and total disability benefits, damages, and attorney's fees.[11]

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[6] See id. at 270-271.

[7] See id. at 271.

[8] See id. at 271-273.

[9] Dated December 5, 2016. Id. at 208.

[10] See id. at 274. See also id. at 212.

[11] See id.

For their part, respondents maintained, *inter alia*, that petitioner was declared fit to work on December 5, 2016 by the company designated physician, Dr. Bernal, which declaration was the result of an extensive medical attention given to petitioner. Moreover, Dr. Bernal's findings were the result of consistent and regular monitoring of petitioner's condition and therefore, remain unrefuted by Dr. Garcia's examination, whose only basis was the same MRI conducted on petitioner in 2016. Respondents also argued that petitioner had already signed the Certificate of Fitness to Work.[12]

After the parties failed to settle the dispute before the NCMB, they agreed to undergo voluntary arbitration.

The VA Ruling

In a Decision[13] dated August 28, 2018, the VA dismissed petitioner's complaint for lack of merit.[14] In ruling that petitioner was not entitled to permanent and total disability benefits, the VA considered that: (*a*) he was declared fit to work by the company designated physician, Dr. Bernal, after extensive medical examination, treatment, and therapy sessions; (*b*) petitioner himself signed and did not contest the Certificate of Fitness to Work, which serves as an admission that he agrees and conforms with the findings of Dr. Bernal; (*c*) petitioner failed to present substantial evidence to prove work-relatedness or work aggravation of his illness and the nature of his employment as a seafarer; (*d*) since petitioner did not comply with the conflict resolution procedure or a third doctor referral as mandated under Section 20 (A)(3)[15] of the Philippine Overseas

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[12] Id.

[13] Id. at 270-294.

[14] Id. at 294.

[15] SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR ILLNESS AND INJURY

x x x x x x x x x

3. x x x

Employment Administration - Standard Employment Contract (POEA-SEC), the company-designated physician's findings shall prevail; (*e*) Dr. Garcia's medical assessment, which was based on a one-time medical consultation almost fourteen (14) months after petitioner was declared fit to work and was a mere interpretation of the medical findings of the company-designated physician, had no evidentiary weight; and (*f*) even assuming that petitioner was entitled to disability benefits, he was not entitled to the disability benefits under the SoS CBA because the vessel *MV Maersk Danube* is not covered by the same.[16]

Petitioner moved for reconsideration[17] but was denied in a Resolution[18] dated October 29, 2018, a copy of which he received on November 22, 2018.

Aggrieved, he filed a petition for review[19] under Rule 43 of the Rules of Court before the CA.

The CA Ruling

In a Resolution[20] dated December 19, 2018, the CA dismissed the petition outright for having been filed one (1) day late, finding that petitioner only had until December 3, 2018[21] within which to file the petition. Instead, petitioner filed the same only on December 4, 2018 and through a private courier, in violation of Section 4, Rule 43 of the Rules of Court.[22]

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

[16] See *rollo*, pp. 276-293.

[17] See motion for reconsideration dated September 13, 2018; id. at 295-306.

[18] Id. at 307-308.

[19] Id. at 75-92.

[20] Id. at 35-36.

[21] December 2, 2018 being a Sunday.

[22] *Rollo*, p. 35.

Petitioner's motion for reconsideration was denied in a Resolution[23] dated May 9, 2019; hence, this petition.

The Issue Before the Court

For the purpose of resolving this petition, the Court will limit the issue to whether or not the CA correctly dismissed the petition for having been filed out of time.

The Court's Ruling

The petition is meritorious.

In the 2018 case of *Guagua National Colleges vs. CA*[24] (*Guagua*), the Court acknowledged the variance in its rulings and categorically declared that the correct period to appeal the decision or award of the Voluntary Arbitrator or Panel of Arbitrators to the CA *via* a petition for review under Rule 43 of the Rules of Court is the fifteen (15)-day period set forth in Section 4[25] thereof reckoned from notice or receipt of the VA's resolution on the motion for reconsideration, and that the ten (10)-day period provided in Article 276[26] of the Labor Code

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[23] Id. at 38-41.

[24] G.R. No. 188492, August 28, 2018; citing *Teng v. Pagahac*, 649 Phil. 460 (2010).

[25] Section 4. *Period of appeal*. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[26] Article 276. Procedures. — x x x

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

x x x x x x x x x

refers to the period within which an aggrieved party may file said motion for reconsideration, to wit:

> Given the variable rulings of the Court, what should now be the period to be followed in appealing the decisions or awards of the Voluntary Arbitrators or Panel of Arbitrators?
>
> In the 2010 ruling in *Teng v. Pagahac*, the Court clarified that the 10-day period set in Article 276 of the *Labor Code* gave the aggrieved parties the opportunity to file their motion for reconsideration, which was more in keeping with the principle of exhaustion of administrative remedies, holding thusly:
>
> > In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor, is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.
> >
> > **By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA *via* Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.**
> >
> > The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent.
> >
> > **By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005**

> **Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise.** In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable. In *Industrial Enterprises, Inc. v. Court of Appeals*, we ruled that relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. (Emphasis supplied)

Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the *Rules of Court* **within 15 days from notice pursuant to Section 4 of Rule 43.** (Citations omitted; emphasis and underscoring supplied)

The Court further noted in *Guagua* that despite the clarification made in *Teng v. Pagahac*[27] in 2010, the Department of Labor and Employment (DOLE) and NCMB have yet to revise or amend Section 7,[28] Rule VII of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings and that such inaction has caused confusion, particularly with respect to the filing of the motion for reconsideration as a condition precedent to the filing of the petition for review in the CA. Thus, the Court expressly directed[29] the DOLE and the NCMB

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[27] Supra note 24.

[28] SECTION 7. *Motions for Reconsideration*. – THE DECISION OF THE VOLUNTARY ARBITRATOR IS NOT SUBJECT OF A MOTION FOR RECONSIDERATION.

[29] The *fallo* reads:

to cause the revision or amendment of the aforesaid section in order to allow the filing of motions for reconsideration in line with Article 276 of the Labor Code. Unfortunately, no revision has yet been made in this regard. Consequently, the DOLE and the NCMB are again reminded to cause the revision or amendment of Section 7, Rule VII of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings insofar as it prohibits the filing of a motion for reconsideration, if they have not done so.

In view of the foregoing, petitioner in this case had fifteen (15) days from receipt of the Resolution denying his motion for reconsideration to file his petition for review with the CA. Having received a copy of the VA's October 29, 2018 Resolution on November 22, 2018, petitioner therefore had until December 7, 2018 to file his petition. As the records show that the petition was filed on December 4, 2018, albeit through a private courier, it was therefore timely filed and the CA erred in dismissing it outright. To rule otherwise would be clearly antithetical to the tenets of fair play, not to mention the undue prejudice to petitioner's rights.[30] Thus, in light of the fact that the CA dismissed the petition for review outright based solely on procedural grounds, a remand of the case for a resolution on the merits is warranted.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated December 19, 2018 and May 9, 2019 of the Court of Appeals in CA-G.R. SP. No. 158643 are **SET ASIDE**. The present case is hereby **REMANDED** to the Court of Appeals for resolution on the merits. The Department of Labor and

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ACCORDINGLY, the Court **DISMISSES** the unmeritorious petition for *certiorari*; **AFFIRMS** the decision promulgated on December 15, 2008 by the Court of Appeals; and **DIRECTS** the Department of Labor and Employment and the National Conciliation and Mediation Board to revise or amend the *Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings* to amend the *Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings* to reflect the foregoing ruling herein. (See *Guagua National Colleges v. CA*, supra note 24.)

[30] See *Castells v. Saudi Arabian Airlines*, 716 Phil. 667 (2013).

Employment and the National Conciliation and Mediation Board are again **REMINDED** to revise or amend the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings to reflect the 2018 ruling in *Guagua National Colleges v. Court of Appeals*, G.R. No. 188492, if they have not done so.

SO ORDERED.

Hernando, Inting, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.C. No. 12537. September 3, 2020]

LEOLENIE R. CAPINPIN, *Complainant, v.* **ATTY. RIO T. ESPIRITU,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE PROCEEDINGS; THE FILING OF A PETITION FOR REVIEW DOES NOT CONFORM WITH THE STANDING PROCEDURE FOR THE INVESTIGATION OF THE ADMINISTRATIVE COMPLAINTS AGAINST LAWYERS. — We held in *Festin v. Atty. Zubiri*, that the filing of a petition for review does not conform with the standing procedure for the investigation of administrative complaints against lawyers. x x x Indeed, the authority to discipline a lawyer, who transgresses his ethical duties under the CPR, lies with this Court. Any final action on a lawyer's administrative liability shall be done by the Court based on the entire records of the case, including the IBP Board's recommendation, without need to file any additional pleading. On this score, the filing of a petition for review is unnecessary. The IBP Board's resolution and case records were forwarded to the Court. We are then bound to fully consider all documents contained therein, regardless of any further pleading filed by any party – including the present petition for review, which the Court may nonetheless consider if only to completely resolve the merits of this case and determine respondent's actual administrative liability.

2. ID.; ID.; DISBARMENT PROCEEDINGS; IN DISBARMENT PROCEEDINGS THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT. — Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant. x x x The complainant must then prove by substantial evidence the allegations in his complaint. Basic is the rule that, mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. It is likewise well to remember that, in suspension or disbarment proceedings, lawyers enjoy the presumption of innocence.

APPEARANCES OF COUNSEL

Garren Castillejos & Associates for complainant.

R E S O L U T I O N

LOPEZ, *J.*:

Leolenie R. Capinpin filed a complaint[1] for disbarment against Atty. Rio T. Espiritu for using and taking advantage of his legal knowledge to achieve his malicious, evil and unlawful purpose. Capinpin narrated that Atty. Espiritu served as her legal adviser and retained counsel. Sometime in 1993, Capinpin approached Atty. Espiritu with regard to a mortgage she obtained from Banco de Oro (BDO), Cubao Branch.[2] Allegedly, Atty. Espiritu advised Capinpin to execute a Deed of Sale in his favor, so that the former can transact directly with BDO. At the same time, Capinpin gave Atty. Espiritu ₱200,000.00 to settle her indebtedness to BDO.

At one point, she went with Atty. Espiritu to BDO to settle her account. However, Atty. Espiritu left her in the car to wait. Upon his return, Atty. Espiritu told Capinpin that the bank refused to receive payment, and that a case was already filed in court.[3] Later on, Atty. Espiritu made Capinpin execute a Special Power of Attorney as she will be leaving for Germany. While Capinpin was in Germany, she entrusted to Atty. Espiritu her Toyota Lite Ace, which she was selling.

In January 1994, Capinpin arrived in the Philippines and found out that Atty. Espiritu was able to transfer the land and vehicle in his name.[4] Capinpin talked to Atty. Espiritu, who

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 2. The mortgage was contracted on April 1, 1992 over Lot 26, Block 17, Bo. Seven Hills, Antipolo, Rizal covered by Transfer Certificate of Title (TCT) No. 185465; *id.* at 21-22.

[3] See *id.* at 7-12.

[4] See *id.* at 23-24.

promised to return her properties, but this promise was not heeded. After a long time, it was only on February 8, 2014, that Capinpin and Atty. Espiritu's paths crossed at Seahorse Hotel, Pollilo, Quezon. When Capinpin approached Atty. Espiritu, the latter dismissed her saying, "*ayaw kong pag-usapan ang bagay na nangyari 20 years ago*."[5]

Finally, Capinpin averred that the foregoing acts of Atty. Espiritu merit his disbarment for "*unlawfully, maliciously, wittingly, and wilfully employing tactics, schemes and methods which are not in accord with the standards of the legal profession*."[6]

For his part, Atty. Espiritu countered that Capinpin's complaint is malicious and full of perjured statements.[7] He denied receiving money from Capinpin, as well as, serving as her legal counsel since he was a lawyer of the Quezon City District Office of the Public Attorney's Office (PAO-QC) from 1990 to 1994.[8] He only accompanied Capinpin to BDO-Cubao Branch, sometime in 1992-1993, as a favor when she visited him at PAO-QC.[9] Moreover, perusal of the Answer filed by Capinpin in Civil Case No. Q93-15901 before the Regional Trial Court of Quezon City (RTC-QC), specifically, paragraphs 13 and 14, shows that Capinpin was present inside the bank, contrary to her claims that Atty. Espiritu left her in the car and prevented her from talking to bank personnel.[10] More importantly, the Answer was signed by Atty. Dionisio Maneja, Jr. as Capinpin's counsel.[11]

Atty. Espiritu validly acquired Capinpin's properties, when the latter offered them for sale as she was contemplating on

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[5] *Id.* at 5.

[6] *Id.*

[7] *Rollo*, p. 31.

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

[9] *Id.* at 32.

[10] *Id.* at 32-33.

[11] *Supra* note 8.

settling down in Germany.[12] They negotiated and agreed on a reasonable price.[13] In 1994, Capinpin requested to repurchase the lot, but Atty. Espiritu did not acquiesce to her offer. Thereafter, from 1995 to 2015, they would see each other from time to time, and Capinpin even sought legal advice from Atty. Espiritu, but he was never retained as counsel.[14] Finally, Atty. Espiritu denied having met Capinpin at Seahorse Hotel because, on February 8, 2014, since he was in Quezon City with a client — Mr. Manuel Utulo — and, in the afternoon was in a Financial Rehabilitation Seminar at Max's Restaurant in Quezon City Circle.[15]

On June 22, 2016, the Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) rendered a report, recommending the dismissal of the complaint for lack of merit,[16] thus:

> After a thorough and exhaustive evaluation of evidence, the undersigned Commissioner recommends that the complaint be DISMISSED for lack of merit.
>
> x x x x x x x x x
>
> Firstly, respondent worked with PAO from July 1990 to April 1994. Contrary to complainant's assertion, documents do not suggest that respondent acted as counsel for Leolenie R. Capinpin in both civil cases involving her and Lydia Sol (Civil Case No. O-91-10383 pending before Branch 76 of Quezon City), and BDO (Civil Case No. Q-93-15901). It must be noted that respondent has Special Power of Attorney ("SPA" for brevity) for these cases where he acted as her attorney-in-fact, not as counsel of record. x x x.
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> x x x x x x x x x

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[12] *Supra* note 9.

[13] *Id.*

[14] *Rollo*, p. 33.

[15] *Id.*

[16] *Rollo*, pp. 223-226.

Are Public Attorney Office Lawyers allowed to render such work in court as a mere Attorney-in-Fact and not as PAO lawyer? This is an issue better resolved by the Public Attorney's Office under its own rules and regulations. Clearly, complainant neither alleged "conflict of interest" as basis of her complaint, nor proved the same.

If respondent is not the counsel of complainant, who is her counsel? Is it Atty. Dionisio Maneja? The undersigned believe so. Even assuming that Atty. Maneja is not authorized by complainant when he filed her Answer in Court, we must take note that complainant ratified his acts when on February 14, 1994, the Honorable Court in Civil Case No. Q-93-15901 for "Sum of Money with Preliminary Attachment" granted the "Joint Motion to Dismiss" filed by both parties, duly assisted by their respective counsel. It must be noted that the names "Banco de Order, Ishiwata, Atty. Maneja and L. Capinpin" were written on the Order. Complainant was in the Philippines when this case was heard and she did not dispute the dismissal of this case. Complainant even alleged that the case was dismissed through compromise agreement. Compromise Agreements are regularly signed by both parties and their counsel to merit the Court's approval. By acquiescing to the representation of Atty. Maneja in this hearing, she ratified all his previous acts and making them valid.

The allegations that respondent suggested a fictitious or simulated sale and verification is a serious matter. However, evidence on record does not sufficiently establish such fact. Hence, in the absence of sufficient and convincing evidence showing the existence of deceit, respondent is entitled to the presumption of innocence. It must be stressed, however, that the CBD [Commission on Bar Discipline] is not the proper forum to adjudicate a transaction which is purely civil in nature such as the sale of a parcel of land and vehicle between the parties. The same have to be threshed out in the proper court.

In disbarment proceeding just like in criminal proceedings, the respondent lawyer enjoys the presumption of innocence. Such presumption must be overcome by clear preponderance of evidence. When the evidence is insufficient, the required quantum of proof is not met, in which event, the case must be dismissed. x x x.

WHEREFORE, PREMISES CONSIDERED, it is respectfully recommended that the complaint be DISMISSED for lack of merit.[17]

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[17] *Id.* at 224-226.

Capinpin moved for reconsideration of the investigating commissioner's findings,[18] but was denied.[19] On September 24, 2015, the Board of Governors of the IBP resolved to adopt the findings of fact and recommendation of the Investigating Commissioner.[20]

In the meantime, Capinpin filed a petition for review on *certiorari*[21] before this Court, reiterating her prayer that Atty. Espiritu be held guilty for violating the Lawyer's Oath and the Code of Professional Responsibility (CPR), and that he be dropped from the roll of attorneys. Capinpin maintains that she obtained the services of Atty. Espiritu to represent her in several civil cases, not knowing that the latter was a PAO lawyer. While handling the affairs of Capinpin, Atty. Espiritu took advantage of his legal knowledge and surreptitiously transferred Capinpin's properties in his name.

The petition for review is misplaced. We held in *Festin v. Atty. Zubiri*,[22] that the filing of a petition for review does not conform with the standing procedure for the investigation of administrative complaints against lawyers.[23] Section 12 (b) and (c) of Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 dated October 13, 2015, states:

> Section 12. *Review and recommendation by the Board of Governors.* —
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> x x x x x x x x x
>
> (b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings

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[18] *Id.* at 227-264.

[19] *Id.* at 271.

[20] *Id.* at 273.

[21] *Id.* at 280-294.

[22] 811 Phil. 1 (2017).

[23] *Id.* at 7.

and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. x x x.

(c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.[24]

Indeed, the authority to discipline a lawyer, who transgresses his ethical duties under the CPR, lies with this Court. Any final action on a lawyer's administrative liability shall be done by the Court based on the entire records of the case, including the IBP Board's recommendation, without need to file any additional pleading. On this score, the filing of a petition for review is unnecessary. The IBP Board's resolution and case records were forwarded to the Court. We are then bound to fully consider all documents contained therein, regardless of any further pleading filed by any party — including the present petition for review, which the Court may nonetheless consider if only to completely resolve the merits of this case and determine respondent's actual administrative liability.[25]

After a careful review of the records, the Court adopts the recommendation of the IBP Board of Governors dismissing the case against Atty. Espiritu.

There is no evidence that Atty. Espiritu was retained as counsel by Capinpin. The latter's claim, that she obtained the services of Atty. Espiritu to handle her civil cases, and especially, to deal with BDO, lacks factual basis. *First*, with regard to Civil Case No. Q93-15901, the Answer filed by Capinpin before Branch 82 of the RTC-QC, was signed by Atty. Dionisio Maneja, Jr.[26] It was alleged therein that Capinpin offered the subject property to Atty. Espiritu.[27] Incidentally, Capinpin signed the

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[24] *Id.*

[25] *Supra* note 22 at 8.

[26] *Rollo*, p. 18.

[27] *Id.* at 14-17. The pertinent portion of the Answer provides:

Verification attached to the Answer, attesting that she caused the preparation of the pleading, and that she understood and confirmed its contents, which are true and correct.[28] It is then clear that Atty. Espiritu did not represent Capinpin in the civil case. The mention of Atty. Espiritu in the Answer was not in his capacity as a lawyer, but as a prospective buyer of Capinpin's property. The same is true with the letter addressed to BDO's Chief Legal Counsel, Atty. Irene Ishiwata, dated August 4, 1993, and signed by Atty. Espiritu. *Second*, the Motion to Set Case for Reception of Rebuttal Evidence, in Civil Case No. 0-91-10383, was signed by Atty. Espiritu as attorney-in-fact of Capinpin. An attorney-in-fact is an agent authorized to act on behalf of another person, but not necessarily authorized to practice law. Capinpin's insistence, that their agreement was to establish an attorney-client relationship and not just a mere principal-agent relationship, is misplaced. Capinpin never presented the Special Power of Attorney she executed in favor of Atty. Espiritu or any other evidence to prove her attorney-client relationship with Atty. Espiritu, like the receipt for the money supposedly entrusted to him.

We stress that disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the

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3.5. x x x [Capinpin] would like to settle the remaining balance of ₱175,112.85 (185,112.85 less ₱10,000.00) when she offered the property to Atty. Rio T. ESPIRITU. x x x.

x x x x x x x x x

13. [Capinpin] in order to settle the balance of ₱175,112.85, offered to sell her property mortgaged with the plaintiff, in favor of Atty. RIO T. ESPIRITU. x x x On April 30, 1993 when [Capinpin] and Atty. Espiritu went to the office of Mrs. Susan Ong, they were advised to wait for a written reply x x x.

14. On May 12, 1992 at around 11:00 o'clock *[sic]* in the morning [Capinpin] and ATTY. RIO T. ESPIRITU proceeded to [the] Legal Department, Banco de Oro Head Office and submitted a formal proposal on how to settle the amount x x x [Capinpin] and ATTY. RIO T. ESPIRITU was advised that she will receive a written reply or counter proposal from [BDO]. x x x.

[28] *Id.* at 19.

legal profession. While the Supreme Court has the plenary power to discipline erring lawyers through this kind of proceedings, it does so in the most vigilant manner so as not to frustrate its preservative principle.[29]

Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.[30] In the case of *Reyes v. Atty. Nieva,*[31] the Court *En Banc* clarified that the proper evidentiary threshold in disbarment cases is substantial evidence, to wit:

> [T]he evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their

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[29] *Foronda v. Atty. Alvarez, Jr.*, 737 Phil. 1, 10 (2014), citing *Arma v. Montevilla*, 581 Phil. 1, 8 (2008).

[30] *Spouses Nocuenca v. Bensi*, A.C. No. 12609, February 10, 2020; *Adelfa Properties, Inc. v. Mendoza*, A.C. No. 8608, October 16, 2019; *Vantage Lighting Philippines, Inc. v. Diño, Jr.*, A.C. Nos. 7389 & 10596, July 2, 2019; *Castro, et al. v. Atty. Bigay, et al.*, 813 Phil. 882, 888 (2017); *Arsenio v. Atty. Tabuzo*, 809 Phil. 206, 210 (2017), citing *Concepcion v. Atty. Fandino, Jr.*, 389 Phil. 474 (2000); *Villatuya v. Tabalingcos*, 690 Phil. 381 (2012). See also *Robiñol v. Bassig*, 821 Phil. 28 (2017); *Atty. Ecraela v. Atty. Pangalangan*, 769 Phil. 1 (2015).

[31] 794 Phil. 360 (2016); and reiterated in *Dela Fuente Torres, et al. v. Dalangin*, 822 Phil. 80 (2017).

misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor."[32] [Pena v. Aparicio, 552 Phil. 512, 521 (2007)].

The complainant must then prove by substantial evidence the allegations in his complaint. Basic is the rule that, mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.[33] It is likewise well to remember that, in suspension or disbarment proceedings, lawyers enjoy the presumption of innocence.[34] In this case, Capinpin failed to discharge her burden of presenting substantial evidence to prove that Atty. Espiritu took advantage of his legal knowledge and profession to deceive her and appropriate her properties to himself. Capinpin's allegation that Atty. Espiritu urged her to simulate the sale of her property is unsubstantiated. Thus, it cannot be established that Atty. Espiritu engaged in unlawful and dishonest conduct by falsifying the deed of sale for his benefit.[35]

Finally, neither the IBP nor this Court has the authority to inquire into nor determine the rights of the parties over the property involved. We also do not attempt to make any determination as to the validity of the documents, or the regularity of the subject sale and transfer. Our function in this administrative case is limited to disciplining lawyers. The pronouncements in this case are not determinative of any issues of law and facts regarding the parties' legal rights over the disputed property.[36]

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[32] *Id.* at 379-380.

[33] *Cabas v. Atty. Sususco, et al.*, 787 Phil. 167, 174 (2016), citing *Dr. De Jesus v. Guerrero III, et al.*, 614 Phil. 520, 529 (2009).

[34] *Nocuenca v. Bensi*, A.C. No. 12609, February 10, 2020.

[35] See *Castro, et al. v. Atty. Bigay, et al., supra* note 30.

[36] *Id.* at 891, citing *Gemina v. Atty. Madamba*, 671 Phil. 541 (2011).

FOR THE STATED REASONS, the complaint for disbarment against Atty. Rio T. Espiritu is **DISMISSED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 218582. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **SAGISAG ATLAS "PAUL" BAUTISTA, ARLETH BUENCONSEJO[*] and ROSAMEL CARA DE GUZMAN,** *Accused,* **SAGISAG ATLAS "PAUL" BAUTISTA,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DOUBLE JEOPARDY; AN ACCUSED MAY BE PROSECUTED SIMULTANEOUSLY FOR TWO CRIMES WITHOUT RISK OF BEING PUT IN DOUBLE JEOPARDY, AS LONG AS HE/SHE HAS BEEN SO CHARGED UNDER SEPARATE INFORMATIONS; CASE AT BAR. — At the outset, it bears noting that an illegal recruiter may be held liable for the crimes of illegal recruitment committed in large scale and *estafa* without risk of being put in double jeopardy, for as long as the accused has been so charged under separate Informations. In the present case, since accused-appellant Bautista was separately charged for illegal recruitment in large scale and *estafa*, he may be properly, as he was, prosecuted simultaneously for both crimes.

2. CRIMINAL LAW; ESTAFA; HOW COMMITTED. — *Estafa* under Article 315, paragraph 2 of the RPC is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of the fraud. In this situational context, the offended party must have relied on the false pretense, fraudulent act or fraudulent means used by accused-appellant Bautista and sustained damages as a result thereof.

3. LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT; ILLEGAL RECRUITMENT IN LARGE

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[*] Also appears as "Buencosejo" in some parts of the records.

SCALE.— Illegal recruitment is committed by a person who: (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Articles 34 and 38 of the Labor Code; and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers. It is committed in large scale when it is committed against three or more persons individually or as a group.

Together with R.A. 8042, the law governing illegal recruitment is the Labor Code which, under Article 13(b) thereof defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not x x x."

4. ID.; ID.; ELEMENTS OF ILLEGAL RECRUITMENT. — To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so.

5. ID.; ID.; ELEMENTS OF ILLEGAL RECRUITMENT IN LARGE SCALE. — [T]o establish that the offense of illegal recruitment was conducted in a large scale, it must be proven that: (1) the accused engaged in acts of recruitment and placement of workers defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code; (2) the accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) the accused commits the unlawful acts against three or more persons, individually or as a group.

6. REMEDIAL LAW; EVIDENCE; HEARSAY RULE, EXCEPTIONS THERETO; ENTRIES IN OFFICIAL RECORDS; CASE AT BAR. — [T]he probative value of the POEA Certification is covered by Section 44 of the Rules of Evidence, which provides that entries in official records are *prima facie* proof of the facts stated therein. Said POEA Certification, as stipulated on with respect to its due issuance,

sufficiently established that accused-appellant Bautista and his co-accused were neither licensed nor authorized to recruit workers for overseas employment.

Clearly, as testified to by the private complainants, the accused nevertheless engaged in recruitment and placement activities without the requisite authority, and were therefore properly charged with illegal recruitment.

7. ID.; ID.; EQUIPOISE RULE; WHERE THE EVIDENCE IN A CRIMINAL CASE IS EVENLY BALANCED, THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE TILTS THE SCALES IN FAVOR OF THE ACCUSED; CASE AT BAR. — Accused-appellant Bautista's reliance on the Equipoise Rule is likewise misplaced. The Equipoise Rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused. This Rule cannot find application in accused-appellant Bautista's case because, contrary to his submission, the evidence submitted and evaluated by both lower courts mount high against accused-appellant Bautista's denial and ineffective and uncorroborated feigning of innocence. The total evidence presented by both parties is asymmetrical, with the prosecution's submissions indubitably demonstrating accused-appellant Bautista's guilt.

8. CRIMINAL LAW; REPUBLIC ACT NO. 10951; PRESCRIBED PENALTY FOR ESTAFA; CASE AT BAR.— As for the penalties, the Court notes that those imposed by the trial court for the conviction on the counts of *estafa* are accordingly modified and adjusted pursuant to R.A. 10951, which amended the RPC and adjusted the amounts or values of the property or damage on which penalties for certain crimes were based.

Particularly, pertaining to the threshold amounts relevant to the charges against accused-appellant Bautista for which he was convicted (₱50,000.00, ₱151,000.00, and ₱115,000.00, respectively), R.A. 10951 provides under Section 85 thereof the amendments to the penalties imposed for the crime of *estafa*.

. . .

Correspondingly, the penalties imposed on accused-appellant Bautista for the charges of *estafa* should be adjusted

in consonance therewith, pursuant in particular to Section 100 of the same statute which provides its retroactive effect to the extent favorable to the accused.

As amended, the prescribed penalty for *estafa*, where the amount is over ₱40,000.00 but does not exceed ₱1,200,000.00 is *arresto mayor* in its maximum period to *prision correctional* in its minimum period, ranging from four months and one day to two years and four months. Applying the Indeterminate Sentence Law, there being no modifying circumstance, the maximum term of the penalty should be anywhere within the medium period of the prescribed penalty, which is one year and one day to one year, eight months. And the minimum term should be one degree lower from the prescribed penalty, which is *arresto mayor* in its minimum and medium periods, ranging from one month and one day to four months.

Under R.A. 10951 therefore, accused-appellant Bautista is liable to suffer the indeterminate penalty of imprisonment ranging from one month and one day of *arresto mayor* as minimum, to one year and one day to one year and eight months of *prision correccional* as maximum, for each count of *estafa* found against him.

9. ID.; ILLEGAL RECRUITMENT IN LARGE SCALE; PROPER PENALTY IN CASE AT BAR. — More so, with respect to the charge of illegal recruitment, the same was proven to have been committed against three victims, and therefore constitutes illegal recruitment in large scale and is further deemed to constitute economic sabotage. The penalties in Section 7 of R.A. 8042 have already been amended by Section 6 of R.A. 10022, and have been increased to a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. However, since the crime was committed in 2008, the Court applies the penalties in the old law, R.A. 8042. Accordingly, the Court affirms the RTC's imposition of the penalty of life imprisonment, and the awarded fine of ₱500,000.00, pursuant to Section 7 of R.A. 8042.

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.*:

For review in this ordinary appeal[1] is the Decision[2] dated June 27, 2014 of the Court of Appeals, Tenth Division (CA), in CA-G.R. CR HC No. 05781, which affirmed the Joint Decision[3] dated September 26, 2012 of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC) in Criminal Case Nos. MC09-12510 to MC09-12516, MC09-12518 to 20, which found accused-appellant Sagisag Atlas "Paul" Bautista (accused-appellant Bautista) guilty beyond reasonable doubt of three counts of *estafa* under Article 315, paragraph 2(a) of the Revised Penal Code (RPC), and in Criminal Case No. MC09-12517, for violation of Section 6 of Republic Act No. (R.A.) 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*.

The Facts

In 11 separate Informations, accused-appellant Bautista, together with co-accused Arleth Buenconsejo (Buenconsejo) and Rosamel Cara De Guzman (De Guzman), was charged with 10 counts of *estafa* under Article 315, paragraph 2(a) of the RPC, and one count of violation of R.A. 8042. The accusatory portions of said Informations read:

CRIMINAL CASE NO. MC09-12510 (Estafa)

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud RANDY PAJARILLO, by means of deceit and false pretenses executed prior to or simultaneous with the

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[1] See Notice of Appeal with Compliance dated July 14, 2014; *rollo*, pp. 16-19.

[2] Id. at 2-15. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr.

[3] CA *rollo*, pp. 42-60. Penned by Presiding Judge Ofelia L. Calo.

commission of fraud, did, then and there wilfully, unlawfully and feloniously pretend and falsely represent themselves to have power, capacity and qualifications to deploy complainant for employment in Korea as factory worker for a fee, in the amount of fifty thousand pesos (P50,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and i[n] fact, said complainant gave and delivered the total amount of P50,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying RANDY PAJARILLO for employment in Korea and despite repeated demands accused failed[,] refused and continue to fail and refuse to deploy him or return the above sum demanded and received, to the damage and prejudice of said RANDY PAJARILLO in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12511 (Estafa)

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud EFREN D. DINGLE, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in South Korea as factory worker for a fee, in the amount of one hundred fifty[-]nine thousand pesos (P159,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P159,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying EFREN D. DINGLE for employment in South Korea and despite repeated demands, accused failed[,] refuse[d] and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said EFREN D. DINGLE in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12512 (Estafa)

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud MARY ANN C. MALLARI, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty thousand pesos (P30,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P30,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying MARY ANN C. MALLARI for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to deploy [her] or return the above sum demanded and received, to the damage and prejudice of said MARY ANN C. MALLARI in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12513 (Estafa)

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud SALVE D. VILLAFUERTE, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity and qualifications to deploy complainant for employment i[n] Korea as factory worker for a fee, in the amount of one hundred twenty[-]three thousand pesos (P123,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce

said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P123,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying SALVE D. VILLAFUERTE for employment in Korea and despite repeated demands, accused failed[,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said SALVE D. VILLAFUERTE in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12514 (Estafa)

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud MARIBETH D. CABBAB, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity and qualifications to deploy complainant for employment in Korea as factory worker for a fee, in the amount of one hundred forty[-]eight thousand pesos (P148,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver [and] in fact, said complainant gave and delivered the total amount of P148,000.00, as payment [for] the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying MARIBETH D. CABBAB for employment in [Korea] and despite repeated demand[s], accused failed[,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said MARIBETH D. CABBAB in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12515 (Estafa)

"That on or about the months from [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the

jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud ROLANDO L. DE VERA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in South Korea as factory worker for a fee, in the amount of one hundred forty[-four] thousand pesos (P144,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P144,000.00, as [payment for the alleged processing fee, but the accused, once in possession] of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying ROLANDO L. DE VERA for employment in South Korea and despite repeated demands, accused failed[,] refused and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said ROLANDO L. DE VERA in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12516 (Estafa)

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud FREDERICK BAUTISTA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of forty[-]five thousand pesos (P45,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P45,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without,

however, deploying FREDERICK BAUTISTA for employment in Italy and despite repeated demands accused failed[,] refused and continue to fail and refuse to so deploy him or return the above sum demanded and received, to the damage and prejudice of said FREDERICK BAUTISTA in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12517 (Section 6 of R.A. No. 8042)

"That from the period covering [July] 2008 up to September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above named accused, conspiring and confederating together and mutually helping and aiding one another representing themselves to have the capacity to contract, enlist and transport workers for employment abroad as factory workers, particularly in Korea and Italy, did, then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement abroad, to the following complainants and accordingly collected and received money from them, to wit:

Complainant/s	Amount Paid
FREDERICK BAUTISTA	P 45,000.00
MARIBETH D. CABBAB	P 148,000.00
ROLANDO L. DE VERA	P 144,000.00
MARY ANN C. MALLARI	P 30,000.00
RANDY PAJARILLO	P 50,000.00
ROWENA G. PANGANIBAN	P 30,000.00
VICKY B. PANGANIBAN	P 40,000.00
RANDY REDILLA	P 35,000.00
SALVE D. VILLAFUERTE	P 123,000.00
EFREN B. DINGLE	P 159,000.00

without first securing the required license and authority from the Department of Labor and Employment and/or from the [Philippine] Overseas Employment Agency, in violation of the above-cited law making illegal recruitment in large scale, an offense involving economic sabotage.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12518 (Estafa)

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud VICKY PANGANIBAN, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of forty thousand pesos (P40,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P40,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without however, deploying VICKY PANGANIBAN for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to so deploy [her] or return the above sum demanded and received, to the damage and prejudice of said VICKY PANGANIBAN in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12519 (Estafa)

"That on or about the month of September 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud ROWENA PANGANIBAN, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty thousand pesos (P30,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P30,000.00, as payment for the alleged processing fee, but the accused,

once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying ROWENA PANGANIBAN for employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to deploy [her] or return the above sum demanded and received, to the damage and prejudice of said ROWENA PANGANIBAN in the aforementioned amount.

CONTRARY TO LAW."

CRIMINAL CASE NO. MC09-12520 (Estafa)

"That on or about the month of August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another with intent to defraud RANDY REDILLA, by means of deceit and false pretenses executed prior to or simultaneous with the commission of fraud, did, then and there willfully, unlawfully and feloniously pretend and falsely represent themselves to have the power, capacity, and qualifications to deploy complainant for employment in Italy as factory worker for a fee, in the amount of thirty[-]five thousand pesos (P35,000.00), and by means of other similar deceits, which representation the accused well knew was false and fraudulent, and was only made by them to induce said complainant to give and deliver and in fact, said complainant gave and delivered the total amount of P35,000.00, as payment for the alleged processing fee, but the accused, once in possession of the said amount, appropriated and converted the same to their own personal use and benefit without, however, deploying RANDY REDILLA [for] employment in Italy and despite repeated demands, accused failed[,] refused and continue to fail and refuse to deploy him or return the above sum demanded and received, to the damage and prejudice of said RANDY REDILLA in the aforementioned amount.

CONTRARY TO LAW."[4]

The foregoing Informations were consolidated and during arraignment, accused-appellant Bautista pleaded not guilty.[5]

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[4] Id. at 42-48.

[5] Id. at 48-49.

Evidence of the Prosecution

During trial, the prosecution presented the testimonies of Rowena G. Panganiban (Rowena), Randy Pajarillo (Randy), Rolando De Vera (Rolando) and Efren Dingle (Efren) (collectively, private complainants), although the partial testimony of Rowena was stricken off the record after she left for abroad and could no longer be cross-examined.[6]

Randy, private complainant in Criminal Case No. MC09-12510, and one of the complainants in Criminal Case No. MC09-12517, testified that Randy met accused-appellant Bautista sometime in 2008, when the latter recruited him to work as a factory worker in Korea. Randy further testified that on September 1, 2008, he paid accused-appellant Bautista ₱50,000.00 for the processing fee, in exchange for which accused-appellant Bautista issued a receipt under the name of Baler Aurora Travel & Tours, Inc.[7] After his payment, Randy later learned that accused-appellant Bautista was arrested following an entrapment operation. Randy, along with other persons who were also recruited by accused-appellant Bautista, visited the latter in Camp Crame, but they failed to see accused-appellant Bautista in person. They were instead told to go and see accused-appellant Bautista's co-accused Buenconsejo, who was supposedly the one who would speak to them about the money that they had given to accused-appellant Bautista. Buenconsejo, in turn, issued checks to Randy's companions, equivalent to the monies they had given accused-appellant Bautista. Randy, for his part, refused to accept a check as payment, suspicious that such would turn out to be unfunded. The checks Buenconsejo issued later bounced, and Randy has since remained unable to recover the money he parted with in favor of accused-appellant Bautista.[8]

On cross-examination, Randy recounted how his former agent from Seven Blazy Agency, one Maribel Ramos (Maribel),

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[6] Id. at 49.

[7] Also appears as "Baler Aurora Travel and Tours" in some parts of the records.

[8] CA *rollo*, p. 49.

introduced accused-appellant Bautista to him as the runner of accused Buenconsejo, and the one in charge of the processing of documents and Korean language instruction. Randy further claimed that accused-appellant Bautista represented that accused Buenconsejo was the owner of the recruitment agency, who later on denied having any connections with the said agency. Randy finally noted that he did not bother to check whether Fil Overseas Sandigan agency was registered with the Philippine Overseas Employment Administration (POEA), since the office of the former was located right beside the POEA office.[9]

The prosecution also presented the testimony of Rolando, private complainant in Criminal Case No. MC09-12515 and one of the complainants in Criminal Case No. MC09-12517. He testified that similarly to Randy, Rolando was also introduced to accused-appellant Bautista by Maribel, who told him that accused-appellant Bautista was looking for workers to be sent to South Korea, as replacement for those applicants who backed out.[10] On the promise that he would be deployed to South Korea, Rolando gave accused-appellant Bautista a total of ₱144,000.00 paid in seven installments, to supposedly cover the swapping fee, the visa processing expenses, as well as airfare costs. Rolando added that after submitting to accused-appellant Bautista his passport, National Bureau of Investigation (NBI) clearance, medical certificate and a Certificate of Korean language proficiency, accused-appellant Bautista issued in his favor a Standard Labor Contract.[11]

Finally, the prosecution presented Efren, the private complainant in Criminal Case No. MC09-12511 and one of the complainants in Criminal Case No. MC09-12517. For his part, Efren testified that he also met accused-appellant Bautista through Maribel, and that accused-appellant Bautista also represented that he was recruiting applicants for work in South

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[9] Id. at 50.

[10] Id.

[11] Id. at 50-51.

Korea. Efren added that in order to be included among the list of recruits, he gave accused-appellant Bautista a total of ₱159,000.00. Despite said payments, however, accused-appellant Bautista failed to deploy Efren to South Korea as promised, and he later discovered that the recruitment agency he paid fees to had already closed.[12]

Evidence of the Defense

Accused-appellant Bautista countered that he was merely an administrative assistant of Baler Aurora Travel & Tours, Inc., which in turn is owned by his co-accused Buenconsejo and De Guzman.[13] He alleged that he met Randy, Rolando, and Efren when they purchased plane tickets for Korea. He claimed that it was his co-accused De Guzman who received the payments for the tickets, and that he was merely instructed to issue provisional receipts for the payments. He further denied conspiring with his co-accused to misrepresent and promise work in South Korea in exchange for money. He said that whenever he accepted money from the complainants, he merely did so in behalf of his co-accused De Guzman, and that in cases when he accepted money on his own behalf, he did so on the understanding that the money was for the payment of the tuition fee for the Korean language classes he conducted.[14]

Ruling of the RTC

After trial on the merits, the RTC convicted accused-appellant Bautista of the crimes charged in its Joint Decision dated September 26, 2012, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In **Criminal Case No. MC09-12510**, the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2(a)* of the

[12] Id. at 51.

[13] Id. at 53.

[14] Id. at 54.

Revised Penal Code and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of *prision correccional* as minimum to Seven (7) years, Two (2) months and One (1) day of *prision mayor* as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is order to indemnify private complainant Randy Pajarillo the amount of ₱50,000.00 with twelve percent (12%) interest per annum starting from the filing of the Information until the finality of the judgment.

2. In **Criminal Case No. MC09-12511**, the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2(a)* of the *Revised Penal Code* and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of *prision correccional* as minimum to Sixteen [(16)] years, Two (2) months and One (1) day of *reclusion temporal* as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is ordered to indemnify private complainant Efren D. Dingle the amount of ₱151,000.00 with twelve percent (12%) interest per annum starting from the filing of the Information until the finality of the judgment.

3. In **Criminal Case No. MC09-12515**, the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of *Estafa* as defined in *Article 315 par. 2(a)* of the *Revised Penal Code* and is hereby sentenced to suffer an Indeterminate Penalty of Six (6) months and One (1) day of *prision correccional* as minimum to Fourteen (14) years, Two (2) months and One (1) day of *[r]eclusion temporal* as maximum.

Furthermore, accused Sagisag Atlas "Paul" Bautista is ordered to indemnify private complainant Rolando L. De Vera the amount of ₱115,000.00 with twelve percent (12%) interest per annum starting from the filing of the Information until the finality of the judgment.

4. In **Criminal Case No. MC09-12517**[,] the Court finds accused Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of the crime of illegal recruitment in large scale, as defined under *Section 6 of R.A. 8042* and is hereby sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00 pursuant to *Section 7 of R.A. 8042*.

5. Considering that the prosecution failed to adduce any evidence in Criminal Case Nos. **MC09-12512, MC09-12513, MC09-**

12514, MC09-12516, MC09-12518, MC09-12519, and **MC09-12520**, the Court finds accused Sagisag Atlas "Paul" Bautista **NOT GUILTY** OF seven (7) counts of Estafa as defined in *Article 315 par. 2(a)* of the *Revised Penal Code*.

6. Considering that the other two (2) accused, Arleth Buenconsejo and Rosamel Cara De Guzman, are still at large and the court has not yet acquired jurisdiction over their person, let alias warrants of arrest be issued against them and let the records of the eleven (11) cases be **ARCHIVED** to be revived upon their apprehension.

SO ORDERED.[15]

In finding accused-appellant Bautista guilty, the RTC found that the prosecution was able to establish the requisites for a finding of *estafa* as committed against Randy, Rolando, and Efren. It found that in Criminal Case No. MC09-12510, the prosecution was able to prove that Randy did give him the money on the false promise of a job in Korea, and that accused-appellant Bautista and the agency he represented failed to deploy Randy as assured.[16]

The RTC also found in Criminal Case No. MC09-12511 that similar to Randy, Efren also parted with a total of ₱151,000.00 after much persuasion from accused-appellant Bautista and with the goal of employment in Korea, and that he also was not deployed as promised.[17]

Finally, the same *modus* was also established in Criminal Case No. MC09-12515, where Rolando was shown to have relied on the misrepresentations of accused-appellant Bautista and paid a total of ₱115,000.00 for work deployment in Korea which never materialized.[18]

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[15] Id. at 58-60.

[16] Id. at 55.

[17] Id. at 55-56.

[18] Id. at 56.

On the other hand, the RTC exonerated accused-appellant Bautista in all the other criminal cases[19] for *estafa* filed against him, considering that the private complainants therein were not present before it for the substantiation of the allegations therein.[20]

With respect to the charge of illegal recruitment in violation of Section 6 of R.A. 8042, the RTC ruled that the prosecution sufficiently established that the two elements of illegal recruitment concurred, namely: (1) that accused-appellant Bautista did not have the required license or authority to engage in the recruitment and placement of workers, and (2) that accused-appellant Bautista nevertheless undertook (a) recruitment and placement activity as defined under Article 13(b) of the Labor Code, or otherwise (b) any prohibited practice under Article 34 of the same Code. Specifically, it found that the first element was established by no less than the POEA Certification dated October 7, 2008 that accused-appellant Bautista and his co-accused were not licensed or otherwise authorized to recruit workers for overseas employment.[21]

For the second element, the RTC also found that, as the private complainants consistently testified to, they all gave various sums of money with the promise of overseas deployment as consideration, and that accused-appellant Bautista and his agency, contrary to this promise and representation, failed to deploy all of them and further failed to return the money the private complainants parted with.[22]

The RTC further dismissed accused-appellant Bautista's argument that he was a mere administrative employee and therefore could not be held guilty of the agency's illegal recruitment, holding instead that an employee of a company

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[19] Id.; namely Criminal Case Nos. MC09-12512, MC09-12513, MC09-12514, MC09-12516, MC09-12518, MC09-12519 and MC09-12520.

[20] Id.

[21] Id. at 57-58.

[22] Id. at 58.

found to have engaged in illegal recruitment may be held liable as a principal together with his employer for as long as the employee could be proven to have actively and consciously participated in the illegal recruitment, as accused-appellant Bautista was accordingly found.

Aggrieved, accused-appellant Bautista filed an appeal to the CA, arguing that the prosecution failed to overthrow the presumption of innocence in his favor.[23] He submitted that with respect to the charges of *estafa* against him were merely founded on the offense of an unfulfilled promise which was not attended by any deceitful or fraudulent misrepresentation.[24] Accused-appellant Bautista argued that his act of issuing provisional receipts in favor of the private complainants was merely ministerial and part of his job as a clerk of his co-accused's agency, and maintained that the money given by the private complainants were under the control of his co-accused De Guzman.[25] He countered that the RTC failed to appreciate conspiracy between him and his co-accused, so that De Guzman's act of running away with the private complainants' money could not be imputed against him, and the element of damage in the crime of *estafa* is not present.

Accused-appellant Bautista further argued that with respect to the charge of illegal recruitment against him, he questioned the proof of the first element, *i.e.*, the absence of the license or authority to undertake recruitment for overseas employment. Specifically, he challenges the probative value of the POEA Certification, given that the person who signed the same, one Melchor B. Dizon, was not presented in court for purposes of authentication of the said certification.[26] For this reason, accused-appellant Bautista argued that the contents of the POEA

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[23] Id. at 34.

[24] Id. at 35.

[25] Id.

[26] Id. at 36.

Certification should have been considered hearsay and inadmissible in evidence.[27]

Accused-appellant Bautista also questioned the evidentiary merit of the POEA Certification, and argued that the same only stated that he and his co-accused were not licensed or authorized to recruit workers for overseas employment in their personal capacities, and that nowhere in the certification was it said that the agency, Baler Aurora Travel & Tours, Inc., was similarly without authority or license to recruit.[28] Grounding his argument on the fact that the POEA Certification did not say that the agency itself was not licensed to undertake recruitment, then it followed that accused-appellant Bautista and his co-accused could not also be said to be unauthorized to recruit for overseas employment on the agency's behalf.[29]

He further proffered that under the Equipoise Rule, since the inculpatory circumstance of his case admit of two explanations, one of which is consistent with his claim of innocence, the prosecution must be deemed to have failed in hurdling the test of moral certainty, and he should therefore be acquitted.[30]

Ruling of the CA

In the assailed Decision[31] dated June 27, 2014, the CA was unpersuaded by accused-appellant Bautista's contentions, and held instead that the RTC correctly convicted him of the charges of *estafa* and illegal recruitment, as all the elements of these charges were duly established.

In affirming the RTC's conviction,[32] the CA first rejected accused-appellant Bautista's claim that no fraud could be

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[27] Id.

[28] Id. at 38.

[29] Id.

[30] Id. at 39-40.

[31] Supra note 2.

[32] Id. at 14.

attributed to him, and that his only offense was his failure to make good on the promise of deploying the private complainants for work abroad. On the contrary, the CA found that fraud in the contemplation of the crime of *estafa* under Article 315 paragraph 2 (a) is a generic term which embraces all multifarious deceitful means which are resorted to by an individual in order to secure an advantage over another by false suggestions or suppression of truth.[33] The CA found that the fraudulent means with which accused-appellant Bautista took undue advantage of private complainants were proven, further noting that in all three cases for which accused-appellant Bautista was convicted, the private complainants dealt significantly only with accused-appellant Bautista.[34]

The CA dismissed the argument that no conspiracy was proven in this case, ruling that such a finding was irrelevant in light of the fact that accused-appellant Bautista's actions themselves, as shown by evidence mounted against him, showed that he clearly engaged in *estafa* and illegal recruitment in a large scale.[35] Similarly, accused-appellant Bautista's defense that he was merely an administrative assistant of the agency was also dismissed as immaterial in view of the misrepresentations he made to the private complainants with respect to the scope of his official work. The CA found that accused-appellant Bautista repeatedly recruited people for work overseas, collected and received money from them even though he had no capacity or authority to do so.[36]

Hence, the instant appeal.

Issue

The sole issue for the Court's resolution is whether the lower courts erred in convicting accused-appellant Bautista of three

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[33] Id. at 12.

[34] Id. at 13.

[35] Id.

[36] Id. at 13-14.

counts of *estafa* under Article 315, paragraph 2(a) of the RPC, and violation of Section 6 of R.A. 8042.

The Court's Ruling

The appeal is bereft of merit, and we affirm the assailed judgment of the CA with modification on the award of damages.

At the outset, it bears noting that an illegal recruiter may be held liable for the crimes of illegal recruitment committed in large scale and *estafa* without risk of being put in double jeopardy, for as long as the accused has been so charged under separate Informations.[37] In the present case, since accused-appellant Bautista was separately charged for illegal recruitment in large scale and *estafa*, he may be properly, as he was, prosecuted simultaneously for both crimes.

Estafa

Against the charge of ten counts of *estafa*, accused-appellant Bautista counters that in all instances, what were involved were only unfulfilled promises, absent deceit or misrepresentation.[38] He proffers that there was no fraud, but merely a non-compliance of the supposed promise of job placements abroad.[39] This allegation flies in the face of the actual non-realization of said guarantee, and the machinations undertaken by accused-appellant Bautista and his co-accused, in order to induce herein private complainants to part with their money and latch their hopes onto a promise that would remain unfulfilled.

Estafa under Article 315, paragraph 2 of the RPC is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously

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[37] *People v. Bayker*, G.R. No. 170192, February 10, 2016, 783 SCRA 346, 350.

[38] CA *rollo*, p. 35.

[39] Id.

with the commission of the fraud. In this situational context, the offended party must have relied on the false pretense, fraudulent act or fraudulent means used by accused-appellant Bautista and sustained damages as a result thereof.[40]

Here, it is not disputed that private complainants Randy, Rolando and Efren all relied on accused-appellant Bautista's promise that he would be able to arrange for their placements in jobs in South Korea, but that despite payments of varying amounts of fees and the processing of the supposedly required documents, they were unable to leave the country to work abroad as they were assured, and as a consequence, all three suffered damages. These facts squarely fall within the definition of *estafa*, and belies accused-appellant Bautista's insistence that these were merely cases of benign unfulfilled promises. Instead, and as found by the lower courts, these consisted of a series of deceitful acts that are precisely within the contemplation of *estafa* under Article 315, paragraph 2 of the RPC.

Illegal Recruitment

Illegal recruitment is committed by a person who: (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Articles 34 and 38 of the Labor Code; and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers.[41] It is committed in large scale when it is committed against three or more persons individually or as a group.

Together with R.A. 8042, the law governing illegal recruitment is the Labor Code which, under Article 13(b) thereof defines recruitment and placement as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers,

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[40] See *People v. Sagaydo*, G.R. Nos. 124671-75, September 29, 2000, 341 SCRA 346, 350.

[41] *Nasi-Villar v. People*, G.R. No. 176169, November 14, 2008, 571 SCRA 202, 208; *People v. Ortiz-Miyake*, G.R. Nos. 115338-39, September 16, 1997, 279 SCRA 180, 193; *People v. Bayker*, supra note 37 at 359.

and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not x x x." The same Code also defines and punishes illegal recruitment, under Articles 38 and 39 which provide:

Art. 38. *Illegal Recruitment.* —

(a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 39 of this Code. x x x

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

x x x Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

x x x x x x x x x

Art. 39. *Penalties.* —

(a) The penalty of life imprisonment and a fine of One Hundred Thousand Pesos (P100,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein[.]

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To prove illegal recruitment, two elements must be shown, namely: (1) the person charged with the crime must have undertaken recruitment activities, or any of the activities enumerated in Article 34 of the Labor Code, as amended; and (2) said person does not have a license or authority to do so. Contrary to accused-appellant Bautista's mistaken notion, therefore, it is not the issuance or signing of receipts for the placement fees that makes a case for illegal recruitment, but rather the undertaking of recruitment activities without the necessary license or authority.[42]

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[42] *People v. Señoron*, G.R. No. 119160, January 30, 1997, 267 SCRA 278, 284.

Further, to establish that the offense of illegal recruitment was conducted in a large scale, it must be proven that: (1) the accused engaged in acts of recruitment and placement of workers defined under Article 13(b) or in any prohibited activities under Article 34 of the Labor Code; (2) the accused has not complied with the guidelines issued by the Secretary of Labor and Employment, particularly with respect to the securing of a license or an authority to recruit and deploy workers, either locally or overseas; and (3) the accused commits the unlawful acts against three or more persons, individually or as a group.[43]

All three elements have been established beyond reasonable doubt.

To overthrow the finding of guilt for this charge, accused-appellant Bautista questions the admissibility of the POEA Certification which stated that he had no authority or license to recruit for overseas employment, since said document was not authenticated in court by the signatory thereto.[44] Accused-appellant Bautista here misleads.

On the contrary, as found by the trial court, the veracity and probative import of the POEA Certification was already stipulated on by all parties involved, including accused-appellant Bautista, to wit:

> x x x The supposed testimony of Johnson Bolivar, the Philippine Overseas Employment Agency (POEA) representative, was dispensed with after the prosecution and the defense agreed to stipulate on his supposed testimony, as follows: a) that he is a bonafide employee of the POEA; b) that he is presently assigned at the licensing branch of the POEA; c) that he was duly authorized to appear as representative of Miss Liberty Casco, officer-in-charge; d) that a certification was duly issued by the POEA regarding the non-issuance of authority to accused Arleth Buenconsejo, Rosamel Cara de Guzman and Sagisag

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[43] *People v. Dujua*, G.R. Nos. 149014-16, February 5, 2004, 422 SCRA 169, 177, citing *People v. Sanchez*, G.R. No. 122508, June 26, 1998, 291 SCRA 333.

[44] CA *rollo*, p. 37.

Atlas Paul Bautista; and e) that the certification forms part of the official record of the POEA non-licensing branch.[45]

Clearly, accused-appellant Bautista may not now turn back on their stipulations and question the admissibility of a crucial document, the due issuance of which he stipulated and agreed on.

In addition, the probative value of the POEA Certification is covered by Section 44 of the Rules of Evidence, which provides that entries in official records are *prima facie* proof of the facts stated therein.[46] Said POEA Certification, as stipulated on with respect to its due issuance, sufficiently established that accused-appellant Bautista and his co-accused were neither licensed nor authorized to recruit workers for overseas employment.

Clearly, as testified to by the private complainants, the accused nevertheless engaged in recruitment and placement activities without the requisite authority, and were therefore properly charged with illegal recruitment.[47]

Accused-appellant Bautista's reliance on the Equipoise Rule[48] is likewise misplaced. The Equipoise Rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused. This Rule cannot find application in accused-appellant Bautista's case because, contrary to his submission, the evidence submitted and evaluated by both lower courts mount

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[45] Id. at 49.

[46] Section 44, Rules on Evidence provides:

Sec. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law are *prima facie* evidence of the facts therein stated. (38)

[47] *People v. Racho*, G.R. No. 227505, October 2, 2017, 841 SCRA 449, 463, citing *People v. Lalli*, G.R. No. 195419, October 12, 2011, 659 SCRA 105, 120.

[48] CA *rollo*, p. 37.

high against accused-appellant Bautista's denial and ineffective and uncorroborated feigning of innocence. The total evidence presented by both parties is asymmetrical, with the prosecution's submissions indubitably demonstrating accused-appellant Bautista's guilt.

As for the penalties, the Court notes that those imposed by the trial court for the conviction on the counts of *estafa* are accordingly modified and adjusted pursuant to R.A. 10951,[49] which amended the RPC and adjusted the amounts or values of the property or damage on which penalties for certain crimes were based.

Particularly, pertaining to the threshold amounts relevant to the charges against accused-appellant Bautista for which he was convicted (₱50,000.00, ₱151,000.00, and ₱115,000.00, respectively), R.A. 10951 provides under Section 85 thereof the amendments to the penalties imposed for the crime of *estafa*, to wit:

"Art. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x x x x x x

"3rd. The penalty of arresto mayor in its maximum period to prisión correccional in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x x x x x x x

Correspondingly, the penalties imposed on accused-appellant Bautista for the charges of *estafa* should be adjusted in consonance therewith, pursuant in particular to Section 100 of

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[49] 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, August 29, 2017.

the same statute which provides its retroactive effect to the extent favorable to the accused.

As amended, the prescribed penalty for *estafa*, where the amount is over ₱40,000.00 but does not exceed ₱1,200,000.00 is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, ranging from four months and one day to two years and four months. Applying the Indeterminate Sentence Law, there being no modifying circumstance, the maximum term of the penalty should be anywhere within the medium period of the prescribed penalty, which is one year and one day to one year, eight months. And the minimum term should be one degree lower from the prescribed penalty, which is *arresto mayor* in its minimum and medium periods, ranging from one month and one day to four months.

Under R.A. 10951 therefore, accused-appellant Bautista is liable to suffer the indeterminate penalty of imprisonment ranging from one month and one day of *arresto mayor* as minimum, to one year and one day to one year and eight months of *prision correccional* as maximum, for each count of *estafa* found against him.

Finally, the Court modifies the amount of interest in accordance with the Court's ruling in *Nacar v. Gallery Frames*.[50] The indemnity accused-appellant Bautista is due to pay each of the private complainants shall earn legal interest at the rate of 12% *per annum* from the filing of the Information until June 30, 2013, and 6% *per annum* from July 1, 2013 until full payment.[51]

More so, with respect to the charge of illegal recruitment, the same was proven to have been committed against three victims, and therefore constitutes illegal recruitment in large scale[52] and is further deemed to constitute economic sabotage.[53] The

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[50] 716 Phil. 267, 279 (2013).

[51] *People v. Aquino*, G.R. No. 234818, November 5, 2018.

[52] As provided under Articles 38 and 39 of the Labor Code.

[53] See *People v. Bacos*, G.R. No. 178774, December 8, 2010, 637 SCRA 593, 598.

penalties in Section 7 of R.A. 8042 have already been amended by Section 6 of R.A. 10022, and have been increased to a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00. However, since the crime was committed in 2008, the Court applies the penalties in the old law, R.A. 8042. Accordingly, the Court affirms the RTC's imposition of the penalty of life imprisonment, and the awarded fine of ₱500,000.00, pursuant to Section 7 of R.A. 8042.

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED.** The Decision dated June 27, 2014 of the Court of Appeals, Tenth Division, in CA-G.R. CR HC No. 05781 which found accused-appellant Sagisag Atlas "Paul" Bautista **GUILTY** beyond reasonable doubt of three (3) counts of *Estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code, and for violation of Section 6 of Republic Act No. 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995* is hereby **AFFIRMED with MODIFICATION**, as follows:

1. In Criminal Case No. MC09-12510, accused-appellant Bautista is hereby sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Randy Pajarillo the amount of ₱50,000.00 plus legal interest;

2. In Criminal Case No. MC09-12511, accused-appellant Bautista is sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Efren D. Dingle the amount of ₱151,000.00 with legal interest; and

3. In Criminal Case No. MC09-12515, accused-appellant Bautista is sentenced to suffer the indeterminate penalty of one (1) month and one (1) day of *arresto mayor* as minimum, to one (1) year and one (1) day of *prision correccional* as maximum, and ordered to indemnify private complainant Rolando L. De Vera the amount of ₱115,000.00 with legal interest.

Finally, all sums due shall earn legal interest at the rate of twelve percent (12%) *per annum* from the filing of the Informations until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction thereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 224438-40. September 3, 2020]

REPUBLIC OF THE PHILIPPINES represented by THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) and MID-PASIG LAND DEVELOPMENT CORP., *Petitioners, vs.* **AUGUSTUS ALBERT V. MARTINEZ, CITY GOLF DEVELOPMENT CORPORATION and GEEK'S NEW YORK PIZZERIA, INC.,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; CASE AT BAR. — It is settled that under Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari* before this Court as we are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the CA are final and conclusive, and cannot be reviewed on appeal. It is not the function of the Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below. However, we are mindful that the preceding rule admits of several exceptions, to wit: 1) when the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) **when the findings are contrary to the trial court**; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by

the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and, 11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. ID.; EVIDENCE; BEST EVIDENCE; MERE PHOTOCOPIES OF THE REGISTRY RECEIPT LACKS ASSURANCE OF ITS GENUINENESS CONSIDERING THAT PHOTOCOPIES CAN EASILY BE TAMPERED WITH. — Petitioner could have presented the original registry receipts. It would have constituted as the best evidence of the fact of mailing on June 4, 2013 of petitioner's Manifestation and Motion, in the separate cases that involved respondents Martinez, City Golf and Geek's, Inc. Regrettably, petitioner failed to present such original registry receipts. Its continued failure to present the said original receipts can only lead one to recall the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has in its power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary. Mere photocopy of the registry receipt in this case, militates against petitioner's position as there is no *indicium* of its authenticity. In fact, a mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.

3. ID.; RULES OF COURT; IT IS ALWAYS IN THE POWER OF THE COURT TO SUSPEND ITS OWN RULES OR TO EXCEPT A PARTICULAR CASE FROM ITS OPERATION WHENEVER THE PURPOSE OF JUSTICE REQUIRES IT. — We emphasize that the perfection of an appeal within the period fixed by the rules is mandatory and jurisdictional. But it is always in the power of the Court to suspend its own rules, or to except a particular case form its operation, whenever the purpose of justice requires it. In fact, the Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing the technicalities whenever compelling reasons so warrant or when the purpose of justice so require it.

4. ID.; ID.; ID.; RECOGNIZED EXCEPTIONS TO THE STRICT OBSERVANCE OF THE RULES. — In addition, the Court had ruled that there are recognized exceptions to the strict observance of the Rules, *viz*.: 1) most persuasive and weighty reasons; 2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; 3) good faith of the defaulting party by immediately paying within reasonable time from the time of the default; 4) existence of special or compelling circumstances; 5) merits of the case; 6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; 7) a lack of any showing that the review sought is merely frivolous and dilatory; 8) the other party will not be unjustly prejudiced thereby; 9) fraud, accident, mistake or excusable negligence without appellant's fault; 10) peculiar legal and equitable circumstances attendant to each case; 11) in the name of substantial justice and fair play; 12) importance of the issues involved; and, 13) exercise of sound discretion by the judge guided by the attendant circumstances.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Fernandez & Associates Law Firm for respondents.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated November 4, 2015 and the Resolution[3] dated April 14, 2016 of the Court of Appeals (CA) in CA-G.R. SP Nos. 135972, 136895 and 136896, which reversed the Orders

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[1] *Rollo*, pp. 11-35.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan, concurring; id. at 40-50.

[3] Id. at 51-53.

dated February 7, 2014 and May 30, 2014 of the Regional Trial Court (RTC) of Pasig City, Branch 155 in SCA Case No. 3861, and the Orders dated April 21, 2014 and July 10, 2014 of the RTC of Pasig City, Branch 67 in SCA Cases Nos. 3867 and 3868, respectively.

Factual Antecedents

Petitioner Republic of the Philippines (petitioner), represented by the Presidential Commission on Good Government and Mid-Pasig Land Development Corporation, initiated three separate complaints for unlawful detainer and damages against respondent Augustus Albert V. Martinez (respondent Martinez),[4] doing business under the name and style of "Uncle Moe's Shawarma Hub," respondent City Golf Development Corporation (respondent City Golf) and respondent Geek's New York Pizzeria, Inc. (respondent Geek's, Inc.). The said cases were raffled to the Metropolitan Trial Court (MeTC) of Pasig City, Branch 72 and docketed as Civil Cases Nos. 18675, 18679 and 18682. In three separate Decisions, all dated March 15, 2013, the MeTC of Pasig City, Branch 72 dismissed the complaints against herein respondents.[5]

Subsequently, on May 20, 2013, the petitioner, through the Office of the Solicitor General (OSG), received copies of the Decisions dated March 15, 2013. The petitioner then filed on June 3, 2013, separate Notices of Appeal dated May 28, 2013, appealing the Decisions of the MeTC of Pasig City, Branch 72 to the CA, instead of the RTC.

On June 13, 2013, the MeTC of Pasig City, Branch 72 then received petitioner's Manifestation and Motion with Attached Notice of Appeal dated June 4, 2013. In the said Manifestation and Motion, petitioner acknowledged its error and pleaded to disregard the Notice of Appeal dated May 28, 2013, and to consider the attached Notice of Appeal as its proper Notice of Appeal.[6]

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[4] Id. at 42.

[5] Id. at 60-72, 73-86, 87-99.

[6] Id. at 42-43.

Eventually, on June 18, 2013, the MeTC of Pasig City, Branch 72 issued a twin Order. The first Order granted petitioner's Manifestation and Motion, and ordered the substitution of the Notice of Appeal dated May 28, 2013 with that of the attached Notice of Appeal as petitioner's appropriate appeal. As to the second Order, the same MeTC gave due course to the petitioner's Notice of Appeal and directed the transmittal of the records to the Office of the Clerk of Court of the RTC.[7]

Respondents thereafter filed their Urgent Motions to Dismiss Appeal before the RTC of Pasig City, raffled to Branches 155 and 67, respectively. In the Order dated February 7, 2014, the RTC of Pasig City, Branch 155 denied respondent Martinez's Motion for lack of merit and ruled, to wit:[8]

> At the outset, the Court observes that the MeTC Branch 72 per its Order dated June 18, 2013, already found the Manifestation and Motion filed by plaintiff-appellant to be meritorious and thus gave due course to the Notice of Appeal dated June 4, 2013. To the mind of this Court, the MeTC Order dated June 18, 2013, constitutes sufficient finding as to the timeliness of the appeal taken by plaintiff-appellant, and thus should be accorded due respect.
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> Moreover, defendant-appellee's insinuations of irregularity in the filing of the Manifestation and Motion and Notice of Appeal are merely based on its own suspicions and conjectures and not supported by the evidence on record. An examination of the records reveals that the subject Manifestation and Motion and Notice of Appeal were sent via registered mail through the Post Office of Mandaluyong City on June 4, 2013, as shown by the date stamped on said Manifestation and Motion. Under Section 3, Rule 13 of the Rules of Court, the date of mailing of a motion or pleading, as stamped on the envelop or the registry receipt shall be considered the date of filing thereof. The stamped date is considered the official record of the mailing of the said pleading and is deemed accurate as the same carries the presumption that it has been prepared in the course of the official duties that have been regularly performed. It cannot be therefore

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[7] Id. at 135-140.

[8] Id. at 142.

be gainsaid that appellant's Notice of Appeal was filed well within the reglementary period.

Also, the RTC of Pasig City, Branch 67, in its Order dated April 21, 2014 denied respondents City Golf and Geek's, Inc.'s Motion, *viz.*:[9]

> Now, we go to the issue of whether the appeal of plaintiff-appellant which was given due course by the Metropolitan Trial Court of Pasig City, Branch 72 is dismissible.
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> x x x x x x x x x
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> A judicious review of the records readily reveals that the [MeTC] Branch 72, in its Order dated June 18, 2013 found the plaintiff-appellant's Manifestation and Motion meritorious; hence, gave due course to the Notice of Appeal dated June 4, 2013. Suffice it to say, said Order is a clear showing that the plaintiff-appellant's Notice of Appeal was filed within the period mandated by the rules. Notwithstanding, the alleged irregularities enumerated by the defendants-appellees pertaining to the timeliness of the filing of the Notice of Appeal, the fact remains that the court a quo which is clothed with competent jurisdiction to give due course to said appeal has ruled on the regularity of its filing.

The respondents subsequently filed their Motions for Reconsideration, Motion for Partial Reconsideration and Supplement to Motion for Partial Reconsideration (With Leave), but these Motions were denied by the RTC of Pasig City, Branch 155 and the RTC of Pasig City, Branch 67, in the Orders dated May 30, 2014 and July 10, 2014, respectively.

Respondents thereafter filed before the CA, separate Petitions for *Certiorari*, docketed as SP No. 135972, SP No. 136895 and SP No. 136896.[10] Upon motion, the CA then ordered the consolidation of these three Petitions. Respondents impute that the RTC of Pasig City, Branch 155 had acted with grave abuse of discretion when it issued the Orders dated February 7, 2014 and May 30, 2014, and that the RTC of Pasig City, Branch 67

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[9] Id. at 44.

[10] Id. at 158-241.

also acted with grave abuse of discretion when it rendered the Orders dated April 21, 2014 and July 10, 2014, as both trial courts ruled that the petitioner's appeal was perfected on time.

In the assailed Decision dated November 4, 2015, the CA ruled that the RTC of Pasig City, Branch 155 and the RTC of Pasig City, Branch 67 gravely abused their discretion. The CA added that petitioner failed to prove that its appeal was timely filed. The CA stated that the Decision dated March 15, 2013 of the MeTC of Pasig City, Branch 72, was received by petitioner on May 20, 2013, and that petitioner had 15 days within which to file an appeal, or on June 4, 2013. However, the CA found that petitioner's Notice of Appeal was filed only on June 7, 2013, and not on June 4, 2013. While petitioner had asserted that its appeal was sent through registered mail on June 4, 2013, as shown by the date stamped on the envelop, the CA held that petitioner did not attach the said envelop or a certified copy thereof to the pleadings filed before the court in order to prove its claim. As such, the CA concluded that since petitioner's appeal had been filed beyond the reglementary period to appeal, the said RTCs of Pasig City should not have given due course to the Notice of Appeal. The CA ruled in this wise:

> **WHEREFORE**, the *Consolidated Petitions for Certiorari* are hereby **GRANTED**. The *Orders* dated 7 February 2014 and 30 May 2014 of the Regional Trial Court of Pasig City, Branch 155, in SCA Case No. 3861, and the *Orders* dated 21 April 2014 and 10 July 2014 of the Regional Trial Court of Pasig City, Branch 67, in SCA Case Nos. 3867 and 3868 are **REVERSED** and **SET ASIDE**. Accordingly, the *Appeal* of respondents Republic of the Philippines, represented by the Presidential Commission on Good Government, and Mid-Pasig Land Development Corporation is **DISMISSED**. Both the Regional Trial Courts of Pasig City, Branch 155 and Branch 67 are **ENJOINED** from proceeding further with the disposition of the aforesaid cases.
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> **SO ORDERED**."[11]

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[11] Id. at 49.

Petitioner then moved for reconsideration, but was denied by the CA, in the assailed Resolution dated April 14, 2016.

Hence, the petitioner, through the OSG, comes to the Court raising this sole issue:

DID THE HONORABLE [CA] x x x ERR ON A QUESTION OF LAW IN FINDING THAT THE REGIONAL TRIAL COURTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY RULED THAT PETITIONER'S APPEAL WAS TIMELY FILED[.][12]

Petitioner asserts that the CA erred in ruling that both the RTCs of Pasig City, Branch 155 and Branch 67, committed grave abuse of discretion in issuing the Orders and in ruling that petitioner's appeal was timely filed. Petitioner insists that the Orders of the said RTCs of Pasig City were issued with sufficient and legal basis, and that the same RTCs found that both the envelop and Manifestation and Motion were stamped with the date June 4, 2013. Petitioner adds that it has discharged its burden of proving that its appeal was in fact timely filed.[13]

The Court's Ruling

At the outset, We stress that the resolution of the sole issue presented in this case requires a review of the factual findings of the trial courts, and of the CA.

It is settled that under Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari* before this Court as we are not a trier of facts. Our jurisdiction in such a proceeding is limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the CA are final and conclusive, and cannot be reviewed on appeal. It is not the function of the Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[14] However, we are mindful that the

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[12] Id. at 17.

[13] Id.

[14] *Mangahas v. Court of Appeals*, G.R. No. 173375, September 25, 2008.

preceding rule admits of several exceptions, to wit: 1) when the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) **when the findings are contrary to the trial court**; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and, 11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[15]

To recall, the MeTC of Pasig City, Branch 72 had given due course to petitioner's Notice of Appeal in the separate cases involving respondents Martinez, City Golf and Geek's, Inc. The RTCs of Pasig City, Branch 155 and Branch 67 then affirmed the findings of the said MeTC that petitioner's Notice of Appeal was timely filed. However, the CA had a contrary finding wherein it ruled that both the RTCs of Pasig City had gravely abused its discretion and that petitioner's appeal was filed beyond the reglementary period to appeal. As such, a deviation from the fundamental application of Rule 45 of the Rules of Court is warranted to the case at bar.

Timeliness of an appeal is a factual issue that requires a review of the evidence presented on when the appeal was actually filed.[16] In this case, to prove that its Notice of Appeal was sent via registered mail on June 4, 2013 and that it had been filed on

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[15] *Commissioner of Internal Revenue v. Silicon Philippines, Inc.*, 729 Phil. 156, 165 (2014).

[16] *Mangahas v. Court of Appeals*, supra note 14, at 77.

time, petitioner only presented a photocopy of the Manifestation and Motion with attached Notice of Appeal, and appearing on the said document is also a photocopy of a registry receipt with the date stamped June 4, 2013.[17]

We stress that the basic evidentiary rule is that he who asserts a fact or the affirmative of an issue has the burden of proving it.[18]

A judicious review of the records reveals that the CA was correct in ruling that the RTCs of Pasig City acted with grave abuse of discretion since petitioner's Notice of Appeal was filed only on June 7, 2013.

Here, petitioner failed to discharge its burden of proof that its appeal was indeed filed on June 4, 2013.

We quote with approval the findings of the CA, *viz.*:

> x x x However, their [petitioner] *Notice of Appeal* was filed only on 7 June 2013. Ineluctably, the *Appeal* was filed behind time. While they maintain that their *Appeal* was sent through registered mail on 4 June 2013 as shown by the date stamped on the envelop, they did not bother to attach the said envelop or certified copy thereof to the pleadings filed before Us. This *faux pas* blows a hole in the veracity and authenticity thereof. Indeed, their failure to attach such telling document is fatal to their claim.
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> *Au contraire*, the court *a quo* held that [petitioner's] *Manifestation and Motion and Notice of Appeal* were mailed via registered mail on 4 June 2013[,] as shown by the date stamped on said *Manifestation and Motion*. Contrarily, the MeTC categorically pronounced that the *Manifestation and Motion with attached Notice of Appeal* was filed on 7 June 2013. The 18 June 2013 MeTC *Order* speaks volumes that [petitioner's *Notice of Appeal* attached to the *Manifestation and Motion* was filed on 7 June 2013 and received by the MeTC on 13 June 2013[.][19]

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[17] *Rollo*, p. 14.

[18] *Atty. Banda v. Ermita*, 632 Phil. 501, 533 (2010).

[19] *Rollo*, pp. 47-48.

The Court observes that petitioner had already known the fact that it did not attach the envelop before the CA or certified copy thereof, which may prove petitioner's claim that its appeal was sent through registered mail on June 4, 2013. Yet, petitioner still did not bother to attach the same in its pleadings before us. Moreover, we find the need to stress that the stamped or superimposed date on a photocopy of petitioner's Manifestation and Motion with attached Notice of Appeal was a mere photocopy of an alleged registry receipt dated June 4, 2013. Petitioner could have presented the original registry receipts. It would have constituted as the best evidence of the fact of mailing on June 4, 2013 of petitioner's Manifestation and Motion, in the separate cases that involved respondents Martinez, City Golf and Geek's, Inc. Regrettably, petitioner failed to present such original registry receipts. Its continued failure to present the said original receipts can only lead one to recall the well-settled rule that when the evidence tends to prove a material fact which imposes a liability on a party, and he has in its power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on fact, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice, and support the case of his adversary. Mere photocopy of the registry receipt in this case, militates against petitioner's position as there is no *indicium* of its authenticity. In fact, a mere photocopy lacks assurance of its genuineness, considering that photocopies can easily be tampered with.[20]

We also note that petitioner stated in its Petition that Registry Receipt Nos. 2376, 2378 and 2394 covered the Manifestation and Motion with the corrected Notice of Appeal that it filed before the MeTC of Pasig City, in the cases against the respondents.[21] However, a perusal of the said Manifestation and Motion, reveals these registry receipts instead – Registry Receipts Nos. 2379, 2380 and 2381.[22] As such, the Court is

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[20] *Mangahas v. Court of Appeals*, supra note 14, at 81.

[21] *Rollo*, pp. 21-22.

[22] Id. at 14.

perplexed as to which of the said registry receipts actually covered the same Manifestation and Motion which, as petitioner claims have been filed on June 4, 2013.

Furthermore, the Court needs to address the petitioner's assertion that — an appellant need not indicate the court to which its appeal is being interposed.[23] The Rules of Court is clear that an appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.[24] In addition, not all judgments and final orders of the MeTC are elevated to the RTC. Cases decided in the exercise of its delegated jurisdiction are appealable to the CA.[25] Hence, it is necessary to indicate the correct appellate court.

Based on the foregoing, we find that the CA did not err in ruling that petitioner's appeal was not timely filed. Petitioner clearly failed to adduce credible proof that its appeal was undoubtedly filed on time, or on June 4, 2013. The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege and must be exercised in accordance with the law.[26] Indubitably, the CA is correct in ruling that petitioner's Notice of Appeal was only filed on June 7, 2013, and thus acted properly in dismissing petitioner's appeal.

While the assailed Decision and Resolution of the CA are sound and proper, the Court, however, deems it prudent to allow a liberal application of the procedural rules to the present case.

We emphasize that the perfection of an appeal within the period fixed by the rules is mandatory and jurisdictional. But it is always in the power of the Court to suspend its own rules, or to except a particular case from its operation, whenever the purpose of justice requires it. In fact, the Court is mindful of

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[23] Id. at 23-24.

[24] Rule 50, Section 2.

[25] Section 34 of Batas Pambansa Blg. 129 or The Judiciary Reorganization Act of 1980.

[26] *Gonzalo Puyat & Sons, Inc. v. Alcaide*, 680 Phil. 609, 619 (2012).

the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing the technicalities whenever compelling reasons so warrant or when the purpose of justice so require it.[27] Moreover, we had allowed in several instances that procedural rules may be relaxed to ensure the realization of substantial justice. The case of *Joson v. The Office of the Ombudsman*,[28] citing *Barnes v. Hon. Quijano Padilla*,[29] had elucidated that, *viz.*:

> [T]he Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. In numerous cases, the Court has allowed liberal construction of the Rules of Court with respect to the rules on the manner and periods for perfecting appeals, when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court, As the Court has expounded in *Aguam vs. Court of Appeals*:
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> > x x x The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case." Technicalities, however, must be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice

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[27] *Mangahas v. Court of Appeals*, supra note 14, at 82.

[28] 816 Phil. 288 (2017).

[29] 500 Phil. 303 (2005).

> and becomes its great hindrance and chief enemy, deserves scant consideration from courts." *Litigations must be decided on their merits and not on technicality*. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. *It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice 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 a miscarriage of justice*.
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In the *Ginete* case, the Court held:

> x x x x x x x x x
>
> Let it be emphasized that 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. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this court has already declared to be final, as we are now constrained to do in the instant case.
>
> *The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice*. (Emphasis in the original, citations omitted)

In addition, the Court had ruled that there are recognized exceptions to the strict observance of the Rules, *viz.*: 1) most persuasive and weighty reasons; 2) to relieve a litigant from

an injustice not commensurate with his failure to comply with the prescribed procedure; 3) good faith of the defaulting party by immediately paying within reasonable time from the time of the default; 4) existence of special or compelling circumstances; 5) merits of the case; 6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; 7) a lack of any showing that the review sought is merely frivolous and dilatory; 8) the other party will not be unjustly prejudiced thereby; 9) fraud, accident, mistake or excusable negligence without appellant's fault; 10) peculiar legal and equitable circumstances attendant to each case; 11) in the name of substantial justice and fair play; 12) importance of the issues involved; and, 13) exercise of sound discretion by the judge guided by the attendant circumstances.[30]

We hold to give due course to petitioner's appeal even though it was filed beyond the reglementary period to serve substantial justice. It must be noted that in this case, petitioner received copies of the three separate Decisions, all dated March 15, 2013, of the MeTC of Pasig City, Branch 72 on May 20, 2013, and had 15 days or until June 4, 2013 within which to file an appeal. Petitioner then filed its separate Notices of Appeal to the said MeTC on June 3, 2013. However, the said notices erroneously stated that the appeal is to the CA instead of the RTC. Upon discovery of such error, petitioner then allegedly filed by registered mail on June 4, 2013, its Manifestation and Motion with the corrected Notice of Appeal which explained that the mistake was inadvertently committed. The MeTC of Pasig City, as well as the RTCs of Pasig City, Branch 155 and Branch 67 found that the appeal was filed on time. However, as thoroughly discussed earlier, while indeed the CA was correct in finding that petitioner's Notice of Appeal was filed only on June 7, 2013, and not on June 4, 2013, we find the need to relax the 15-day period to perfect an appeal.

Here, the delay is only three days, wherein petitioner's Notices of Appeal was filed on June 7, 2013, instead of June 4, 2013.

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[30] *Labao v. Flores*, 649 Phil. 213, 222-223 (2010).

Not only this, the Court is aware of the circumstance in the present case where the petitioner filed separate Notices of Appeal within the 15-day period, but had to file another separate Notices of Appeal, although filed three days after the 15-day deadline, in order to correct what was mistakenly stated that the appeal is to the Court of Appeals. To reiterate, procedural rules must not be applied rigidly so as not to override substantial justice. Considering the fact that petitioner filed separate Notices of Appeal on time and then exerted effort to correct its earlier error by filing another separate Notices of Appeal and, that the delay of filing said Notices of Appeal is only three days, we must suspend the procedural rules and reinstate petitioner's appeal before the RTCs of Pasig City. Accordingly, in the interest of substantial justice, the assailed *Decision* and *Resolution* of the CA must be reversed and set aside, and the Orders of the RTCs of Pasig City, Branch 155 and Branch 67 must then be reinstated.

Hence, we grant the present Petition.

WHEREFORE, the Petition is **GRANTED**. The Decision dated November 4, 2015 and the Resolution dated April 14, 2016 of the Court of Appeals in CA-G.R. SP Nos. 135972, 136895 and 136896 are **REVERSED** and **SET ASIDE**. The Orders dated February 7, 2014 and May 30, 2014 of the Regional Trial Court of Pasig City, Branch 155 in SCA Case No. 3861, and the Orders dated April 21, 2014 and July 10, 2014 of the Regional Trial Court of Pasig City, Branch 67 in SCA Cases Nos. 3867 and 3868 are **REINSTATED**. Accordingly, the separate appeals of petitioner Republic of the Philippines, represented by the Presidential Commission on Good Government and Mid-Pasig Land Development Corporation, before the Regional Trial Courts of Pasig City, Branch 155 and Branch 67 are **REINSTATED**. The said Regional Trial Courts of Pasig City are **ORDERED** to proceed with the trial of the cases with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226894. September 3, 2020]

KAIZEN BUILDERS, INC. (Formerly known as Megalopolis Properties, Inc.) and CECILLE F. APOSTOL, *Petitioners, v.* **COURT OF APPEALS and the HEIRS OF OFELIA URSAIS,** *Respondents*.

[G.R. No. 247647. September 3, 2020]

KAIZEN BUILDERS, INC. (Formerly Megalopolis Properties, Inc.) and CECILLE APOSTOL, *Petitioners, v.* **HEIRS OF OFELIA URSAIS, namely, Rogelio A. Tomas, Roslyn T. Bosing, Vanessa T. Pedeglorio, Gunter U. Tomas and Jordan U. Gamalinda,** *Respondents*.

SYLLABUS

1. MERCANTILE LAW; FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (RA 10142); CORPORATE REHABILITATION, DEFINED. — Republic Act (RA) No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 statutorily defined "*rehabilitation*" as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. Case law explains that rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. A corporate rehabilitation case is a special proceeding *in rem* where the basic issues concern the viability and desirability of continuing the business operations of the distressed corporation. The purpose is to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. The rationale is to resuscitate businesses in financial distress because assets are often more valuable when so maintained than they would be when liquidated.

2. ID.; ID.; A COMMENCEMENT ORDER ISSUED BY THE REHABILITATION COURT INCLUDES A STAY ORDER WHICH HAS THE EFFECT OF SUSPENDING ALL ACTIONS FOR THE ENFORCEMENT OF CLAIMS AGAINST THE DEBTOR AND CONSOLIDATING THE RESOLUTION OF ALL LEGAL PROCEEDINGS BY AND AGAINST IT. — To achieve these objective, Sections 16 and 17 of RA No. 10142 authorizes the rehabilitation court to issue a Commencement Order that includes a Stay Order, which have the effects of suspending all actions for the enforcement of claims against the debtor and consolidating the resolution of all legal proceedings by and against it[.] x x x Indeed, an essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation. Notably, RA No. 10142 makes no distinction as to the claims that are suspended once a Commencement Order is issued.

3. ID.; ID.; ID.; REMEDY OF CREDITORS OF THE DISTRESSED CORPORATION. — To clarify, however, creditors of the distressed corporation are not without remedy as they may still submit their claims to the rehabilitation court for proper consideration so that they may participate in the proceedings, keeping in mind the general policy of the law to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. In other words, the creditors must ventilate their claims before the rehabilitation court. Any attempt to seek legal or other resource against the distressed corporation shall be sufficient to support a finding of indirect contempt of court.

APPEARANCES OF COUNSEL

Ingalla Estimada & Associates Law Offices for petitioners.
E.L. Gayo & Associates for private respondents.

D E C I S I O N

LOPEZ, *J.*:

The nature and effects of a suspension order are the core principles applied in this consolidated petitions assailing the Court of Appeals' (CA) Resolution[1] dated December 8, 2015 and Decision[2] dated October 1, 2018 in CA-G.R. CV No. 102330.

ANTECEDENTS

In 2004, Ofelia Ursais (Ofelia) purchased from Kaizen Builders, Inc. (Kaizen builders) (formerly Megalopolis Properties, Inc.) a house and lot situated in White Pine Street, Camp 7, Baguio City.[3] In 2007, the parties executed a contract to sell where Kaizen Builders bought back from Ofelia the property for ₱2,700,000.00 and swapped it with another house and lot in Kingstone Ville, Camp 7, Baguio City. They deducted from the price the ₱300,000.00 unpaid balance of Ofelia in White Pine property and the ₱2,200,000.00 value of Kingstone Ville property. The remaining ₱200,000.00 shall be paid in cash. Later, the parties replaced the contract to sell with another agreement where Ofelia invested the ₱2,200,000.00 in Kaizen Builders' development of the Kingstone Ville project.[4] In 2008, however, the parties rescinded the investment agreement where Ofelia received ₱320,000.00 from Kaizen Builders. The parties then stipulated that the amount of ₱380,000.00 will be paid on installment basis while the remaining ₱1,500,000.00 shall bear an interest of 1.5% or ₱22,500.00 *per* month.[5]

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[1] *Rollo* (G.R. No. 226894), pp. 26-27; penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with the concurrence of Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla.

[2] *Rollo* (G.R. No. 247647), pp. 19-55; penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with the concurrence of Associate Justices Celia C. Librea-Leagogo and Rafael Antonio M. Santos.

[3] *Rollo* (G.R. No. 226894), pp. 5 and 44.

[4] *Id.* at 6 and 45.

[5] *Id.* at 6-7 and 45-47.

Despite repeated demands, Kaizen Builders stopped remitting the monthly interest beginning November 2009 and refused to deliver the ₱380,000.00.[6] In 2011, Ofelia filed against Kaizen Builders and its chief executive officer Cecille F. Apostol (Cecille) a complaint for sum of money before the Regional Trial Court (RTC) docketed as Civil Case No. 7426-R.[7] On May 8, 2013, the RTC in its Decision[8] ordered Kaizen Builders and Cecille solidarily liable to pay Ofelia the following amounts, to wit:

> WHEREFORE, all the foregoing premises considered, the Court rules in favor of plaintiff OFELIA URSAIS. Defendants MEGALOPOLIS PROPERTIES INCORPORATED and CECILLE F. APOSTOL are solidarily liable to pay the Plaintiff the following:
>
> 1. the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00), which is the amount invested by Plaintiff Ursais, with legal interest to be computed from June 17, 2009 until the same is fully paid; and
>
> 2. the amount of ONE HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY PESOS (₱178,750.00), as previously computed, representing the unpaid interest of 1.5% per month or ₱22,500.00 from October 2009 until June 2010, with legal interest to be computed from June 17, 2010 until the same is fully paid.
>
> The parties bear their own cost, of suit and attorney's fees, considering the absence of bad faith and fraud, moral and exemplary damages is *[sic]* not awarded.
>
> SO ORDERED.[9]

Ofelia sought partial reconsideration claiming that the RTC failed to include the ₱380,000.00 and the payment of monthly interest up to the present. Later, Ofelia died and was substituted

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

[7] *Id.* at 48.

[8] *Id.* at 30-36: penned by Judge Edilberto T. Claravall.

[9] *Id.* at 36.

by her heirs. On November 15, 2013, the RTC granted the motion and amended its Decision,[10] thus:

> WHEREFORE, all the foregoing premises considered, the dispositive portion of the assailed Decision of the Court is amended as follows:
>
> Defendants MEGALOPOLIS PROPERTIES INCORPORATED and CECILLE F. APOSTOL are held solidarily liable to pay the Plaintiff Heirs of Ofelia Ursais the following:
>
> 1. the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00), which is the amount invested by Plaintiff Ursais, with legal interest to be computed from June 17, 2010 until the same is fully paid;
> 2. the amount of THREE HUNDRED EIGHTY THOUSAND PESOS (₱380,000.00) as contained in their Rescission Agreement dated July 25, 2008, with legal interest to be computed from July 25, 2008 until the same is fully paid; and
> 3. the amount of ONE HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY PESOS (₱179,750.00), as previously computed, representing the unpaid interest of 1.5% per month or ₱22,500.00 from October 2009 until June 2010, with legal interest to be computed from June 17, 2010 until the same is fully paid.
>
> The parties bear their own cost of suit and attorney's fees. No award as to moral and exemplary damages.
>
> SO ORDERED.[11]

Aggrieved, Kaizen Builders and Cecille elevated the case to the CA docketed as CA-G.R. CV No. 102330. Meantime, Kaizen Builders filed before the special commercial court a petition for corporate rehabilitation docketed as Special Proceedings Case No. 2466-R. On August 12, 2015, the rehabilitation court issued a Commencement Order[12] which consolidated all legal

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[10] *Id.* at 37-38.

[11] *Id.* at 38.

[12] *Id.* at 576-581.

proceedings by and against Kaizen Builders and suspended all actions for the enforcement of claims against it.

Accordingly, Kaizen Builders and Cecille moved to consolidate the appealed case with the rehabilitation proceedings. On December 8, 2015, however, the CA denied the motion and explained that the appeal would not affect the rehabilitation case since the two proceedings involved different parties, issues and reliefs.[13] Unsuccessful at a reconsideration,[14] Kaizen Builders and Cecille filed a Petition for *Certiorari* and Prohibition[15] under Rule 65 before this Court docketed as G.R. No. 226894. They argued that the CA acted with grave abuse of discretion in denying the motion for consolidation and prayed that the proceedings before the CA be suspended within the duration of the rehabilitation case.

On February 14, 2018, the CA resolved to hold in abeyance the proceedings in CA-G.R. CV No. 102330. Yet, the resolution was subsequently recalled.[16] On October 1, 2018, the CA rendered a Decision[17] on the merits of the appeal, *viz.*:

> WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED. Accordingly, the 8 May 2013 Decision and the 15 November 2013 Order of the Regional Trial Court of Baguio City, Branch 60, in Civil Case No. 7426-R are AFFIRMED with MODIFICATION such that the appellants are hereby ORDERED to pay the plaintiffs-appellees the following:
>
> 1. One Million Five Hundred Thousand Pesos (Php1,500,000.00) with legal interest of twelve percent (12%) per annum to be computed from 1 July 2010 to 30 June 2013 and legal interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory. The sum of the interests shall be subject to interest of twelve

[13] *Id.* at 26-27.

[14] *Id.* at 28-29.

[15] *Id.* at 3-15.

[16] *Rollo* (G.R. No. 247647), pp. 40-41.

[17] *Id.* at 19-55.

percent (12%) per annum to be computed from the date of judicial demand, or from 7 May 2012, to 30 June 2013 and interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory, as interest due earning legal interest;

2. Three Hundred Seventy Five Thousand Pesos (Php375,000.00) with legal interest of twelve percent (12%) per annum to be computed from 7 May 2012 to 30 June 2013 and legal interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory. The total of the interests shall be subject to interest of twelve percent (12%) per annum to be computed from the date of judicial demand, or from 7 May 2012, to 30 June 2013 and interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory, as interest due earning legal interest;

3. One Hundred Seventy Eight Thousand Seven Hundred Fifty Pesos (Php178,750.00) with legal interest to be computed from 1 July 2010 to 30 June 2013 and legal interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory. The total of the interests shall be subject to interest of twelve percent (12%) per annum to be computed from the date of judicial demand, or from 7 May 2012, to 30 June 2013 and interest of six percent (6%) per annum from 1 July 2013 until this Decision becomes final and executory, as interest due earning legal interest; and

4. Interest of six percent (6%) per annum on the total of the above monetary awards from the finality of this Decision until full payment thereof.

SO ORDERED.[18]

Dissatisfied, Kaizen Builders and Cecille filed a Petition for Review on *Certiorari*[19] under Rule 45 docketed as G.R. No. 247647 on the ground that the CA committed reversible error in holding them liable to pay Ofelia's heirs.

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[18] *Id.* at 52-54.

[19] *Id.* at 3-15.

RULING

It is the policy of the courts to consolidate cases involving similar parties and affecting closely related subject matters. The purpose of this rule is to settle the issues expeditiously and to avoid multiplicity of suits and the possibility of conflicting decisions.[20] Here, the petitions in G.R. Nos. 226894 and 247647 involve similar parties and common questions of law and fact. Hence, it is imperative upon this Court to consolidate these cases. As will be discussed, the petitions are dependent on each other such that the Decision in G.R. No. 226894 is determinative of the outcome in G.R. No. 247647. Specifically, in G.R. No. 226894, Kaizen Builders and Cecille ascribed grave abuse of discretion on the CA in not consolidating CA-G.R. CV No. 102330 with Special Proceedings Case No. 2466-R or at least suspending the decision on the merits of the appeal pending the rehabilitation case. We find merit in this argument.

Republic Act (RA) No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 statutorily defined "*rehabilitation*" as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[21] Case law explains that rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency.[22] A corporate rehabilitation case is a special proceeding *in rem*[23] where the basic issues concern the viability

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[20] *Spouses Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*, 535 Phil. 604, 618 (2006); *Zulueta v. Asia Brewery, Inc.*, 406 Phil. 543, 556 (2001); and *Caños v. Hon. Peralta, etc., et al.*, 201 Phil. 422, 426-427 (1982).

[21] Section 4 (gg) of RA No. 10142.

[22] *BIR, et al. v. Lepanto Ceramics, Inc.*, 809 Phil. 278, 286 (2017), citing *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, 715 Phil. 420, 435-436 (2013).

[23] Section 3 of RA No. 10142.

and desirability of continuing the business operations of the distressed corporation.[24] The purpose is to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[25] The rationale is to resuscitate businesses in financial distress because assets are often more valuable when so maintained than they would be when liquidated.[26]

To achieve these objectives, Sections 16 and 17 of RA No. 10142 authorizes the rehabilitation court to issue a Commencement Order that includes a Stay Order, which have the effects of suspending all actions for the enforcement of claims against the debtor and consolidating the resolution of all legal proceedings by and against it, to wit:

SECTION 16. *Commencement of Proceedings and Issuance of a Commencement Order*. — The rehabilitation proceedings shall commence upon the issuance of the **Commencement Order**, which shall:

x x x x x x x x x

(q) **include a Stay or Suspension Order which shall:**

(1) **suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor**;

x x x x x x x x x

SECTION 17. *Effects of the Commencement Order*. — Unless otherwise provided for in this Act, the court's issuance of a Commencement Order shall, in addition to the effects of a Stay or Suspension Order described in Section 16 hereof:

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[24] *Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al.*, 788 Phil. 355, 374 (2016).

[25] *Id.* citing *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, 757 Phil. 251, 264 (2015).

[26] *Viva Shipping Lines, Inc. v. Keppel Phils. Marine, Inc., et al.*, 781 Phil. 95, 113 (2016), citing *Bank of the Philippine Islands v. Securities and Exchange Commission*, 565 Phil. 588, 595-596 (2007).

x x x x x x x x x

(e) **consolidate the resolution of all legal proceedings by and against the debtor to the court: *Provided, however,* That the court may allow the continuation of cases in other courts where the debtor had initiated the suit**.

Attempts to seek legal or other recourse against the debtor outside these proceedings shall be sufficient to support a finding of indirect contempt of court. (Emphases supplied.)

Indeed, an essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation.[27] Notably, RA No. 10142 makes no distinction as to the claims that are suspended once a Commencement Order is issued. Apropos is Section 4 (c) which provides an all-encompassing definition of the term "claim," thus:

SECTION 4. *Definition of Terms*. — As used in this Act, the term:

x x x x x x x x x

(c) ***Claim* shall refer to all claims or demands of whatever nature or character against the debtor or its property, whether for money or otherwise, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed**, including, but not limited to: (1) all claims of the government, whether national or local, including taxes, tariffs and customs duties; and (2) claims against directors and officers of the debtor arising from acts done in the discharge of their functions falling within the scope of their authority: *Provided*, That, this inclusion does not prohibit the creditors or third parties from filing cases against the directors and officers acting in their personal capacities. (Emphases supplied.)

To clarify, however, creditors of the distressed corporation are not without remedy as they may still submit their claims to the rehabilitation court for proper consideration so that they

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[27] *Castillo v. Uniwide Warehouse Club, Inc. and/or Gow*, 634 Phil. 41, 49 (2010).

may participate in the proceedings, keeping in mind the general policy of the law to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. In other words, the creditors must ventilate their claims before the rehabilitation court. Any attempt to seek legal or other resource against the distressed corporation shall be sufficient to support a finding of indirect contempt of court.[28]

Thus, the Commencement Order shall direct all creditors to file their claims with the rehabilitation court at least five days before the initial hearing.[29] A creditor whose claim is not listed in the schedule of debts and liabilities and who fails to file a notice of claim in accordance with the Commencement Order but subsequently files a belated claim shall not be entitled to participate in the rehabilitation proceedings but shall be entitled to receive distributions arising therefrom.[30] The 2013 Financial Rehabilitation Rules of Procedure or A.M. No. 12-12-11-SC echoed the manner of filing the creditors' claims, to wit:

> RULE 2
> *COURT-SUPERVISED REHABILITATION*
>
> x x x x x x x x x
>
> B. *Provisions Common to Voluntary And Involuntary Proceedings/ Action on Petition and Commencement Proceedings*
>
> x x x x x x x x x
>
> SEC. 12. *Notice of Claim.* — Every creditor of the debtor or any interested party whose claim is not yet listed in the schedule of debts and liabilities shall file his verified notice of claim not later than five (5) days before the first initial hearing date fixed in the Commencement Order.

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[28] *BIR, et al. v. Lepanto Ceramics, Inc., supra* note 22 at 287, citing Sections 2 and 17 of RA No. 10142.

[29] Section 16 (i) of RA No. 10142.

[30] Section 23 of RA No. 10142.

If a creditor files a belated claim, he shall not be entitled to participate in the proceedings but shall be entitled to receive distributions arising therefrom if recommended and approved by the rehabilitation receiver, and approved by the court.

x x x x x x x x x

SEC. 14. *Action at the Initial Hearing*. — After making a determination that the jurisdictional requirements have been complied with, the court shall:

(A) determine the creditors who have made timely and proper filing of their notice of claims and issue an order that the creditors not named therein shall not be entitled to participate in the proceedings but shall be entitled to receive distributions arising from the proceedings;

x x x x x x x x x

Verily, the reason behind the imperative nature of a stay order in relation to the creditors' claims cannot be downplayed. The indiscriminate suspension of actions for claims is intended to expedite the rehabilitation of the distressed corporation. It enables the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation.[31] Corollarily, the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the action or claim is suspended. The stay order embraces all phases of the suit,[32] except in those instances expressly mentioned in Section 18 of RA No. 10142, *viz.*:

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[31] *Castillo v. Uniwide Warehouse Club, Inc. and/or Gow*, *supra* note 27 at 51, citing *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 281 (1999).

[32] *Malayan Insurance Company, Inc. v. Victorias Milling Company, Inc.*, 603 Phil. 791, 803-804 (2009), citing *Philippine Airlines, Incorporated v. Zamora*, 543 Phil. 546, 567 (2007).

SECTION 18. *Exceptions to the Stay or Suspension Order*. — The Stay or Suspension Order shall not apply:

(a) **to cases already pending appeal in the Supreme Court as of commencement date**: *Provided*, That any final and executory judgment arising from such appeal shall be referred to the court for appropriate action:

(b) subject to the discretion of the court, to cases pending or filed at a specialized court or quasi-judicial agency which, upon determination by the court, is capable of resolving the claim more quickly, fairly and efficiently than the court: *Provided*, That any final and executory judgment of such court or agency shall be referred to the court and shall be treated as a non-disputed claim;

(c) to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;

(d) to any form of action of customers or clients of a securities market participant to recover or otherwise claim moneys and securities entrusted to the latter in the ordinary course of the latter's business as well as any action of such securities market participant or the appropriate regulatory agency or self-regulatory organization to pay or settle such claims or liabilities;

(e) to the actions of a licensed broker or dealer to sell pledged securities of a debtor pursuant to a securities pledge or margin agreement for the settlement of securities transactions in accordance with the provisions of the Securities Regulation Code and its implementing rules and regulations;

(f) the clearing and settlement of financial transactions through the facilities of a clearing agency or similar entities duly authorized, registered and/or recognized by the appropriate regulatory agency like the Bangko Sentral ng Pilipinas (BSP) and the SEC as well as any form of actions of such agencies or entities to reimburse themselves for any transactions settled for the debtor; and

(g) any criminal action against the individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act. (Emphasis supplied.)

In *Lingkod Manggagawa sa Rubberworld, Adidas-Anglo v. Rubberworld (Phils.), Inc.*,[33] this Court affirmed the CA's finding that the Labor Arbiter and the National Labor Relations Commission committed grave abuse of discretion when they proceeded with the unfair labor practice case that the petitioner filed against the respondent despite the Securities and Exchange Commission's suspension order. In that case, the decisions and orders of the labor tribunals are void and could not have achieved a final and executory status, thus:

Given the factual milieu obtaining in this case, it cannot be said that the decision of the Labor Arbiter, or the decision/dismissal order and writ of execution issued by the NLRC, could ever attain final and executory status. **The Labor Arbiter completely disregarded and violated Section 6(c) of Presidential Decree 902-A, as amended, which categorically mandates the suspension of all actions for claims against a corporation placed under a management committee by the SEC. Thus, the proceedings before the Labor Arbiter and the order and writ subsequently issued by the NLRC are all null and void for having been undertaken or issued in violation of the SEC suspension Order dated December 28, 1994.** As such, the Labor Arbiter's decision, including the dismissal by the NLRC of Rubberworld's appeal, could not have achieved a final and executory status.

Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. The Labor Arbiter's decision in this case is void *ab initio*, and therefore, non-existent. A void judgment is in effect no judgment at all. No rights are divested by it nor obtained from it. Being worthless in itself, all proceedings upon which the judgment is founded are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It

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[33] 542 Phil. 203 (2007).

accordingly leaves the party-litigants in the same position they were in before the trial.[34] (Emphases supplied; citations omitted.)

Likewise, in *La Savoie Development Corp. v. Buenavista Properties, Inc.*,[35] the respondent filed a complaint for termination of contract and recovery of property with damages against petitioner before the RTC of Quezon City. Meantime, the petitioner filed rehabilitation proceedings before the RTC of Makati City which issued a suspension order. The petitioner then informed the RTC of Quezon City about the order but it had already decided the complaint. Thereafter, the judgment became final and executory. Later, the RTC of Makati City approved a rehabilitation plan which reduced the penalty stated in the decision of the RTC of Quezon City. Undaunted, the respondent questioned the reduction of penalty and argued that the RTC of Makati City cannot amend the final decision of the RTC of Quezon City. The respondent insisted that the cram down power of the rehabilitation court is irrelevant and inapplicable. In that case, we held that a decision rendered in violation of a stay order did not attain finality, *viz.*:

We see no reason not to apply the rule in *Lingkod* in case of violation of a stay order under the Interim Rules. Having been executed against the provisions of a mandatory law, the QC RTC Decision did not attain finality.

x x x x x x x x x

Necessarily, we reject respondent's contention that the Rehabilitation Court cannot exercise its cram-down power to approve a rehabilitation plan over the opposition of a creditor. **Since the QC RTC Decision did not attain finality, there is no legal impediment to reduce the penalties under the ARRP**.

Further, we have already held that a court-approved rehabilitation plan may include a reduction of liability. x x x. (Emphasis supplied.)

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[34] *Id.* at 212-213.

[35] G.R. Nos. 200934-35, June 19, 2019.

Here, it is undisputed that Kaizen Builders filed a petition for corporate rehabilitation. Finding the petition sufficient in form and substance, the rehabilitation court issued a Commencement Order on August 12, 2015 or during the pendency of the appeal in CA-G.R. CV No. 102330. Yet, the CA proceeded with the case and rendered judgment. On this point we find grave abuse of discretion. To reiterate, the Commencement Order *ipso jure* suspended the proceedings in the CA at whatever stage it may be, considering that the appeal emanated from a money claim against a distressed corporation which is deemed stayed pending the rehabilitation case. Moreover, the appeal before the CA is not one of the instances where a suspension order is inapplicable. The CA should have abstained from resolving the appeal.[36] Taken together, the CA clearly defied the effects of a Commencement Order and disregarded the state policy to encourage debtors and their creditors to collectively and realistically resolve and adjust competing claims and property rights.[37] Applying the pronouncements in *Lingkod Manggagawa sa Rubberworld* and *La Savoie Development Corp.*, the CA's Resolution dated December 8, 2015 and Decision dated October 1, 2018 in CA-G.R. CV No. 102330 are void for having been rendered with grave abuse of discretion and against the provisions of a mandatory law. With findings warranting the grant of the petition for *certiorari* and prohibition in G.R. No. 226894, there is no more reason for this Court to decide the petition for review in G.R. No. 247647 *sans* a valid judgment.

FOR THESE REASONS, the Petition for *Certiorari* and Prohibition in G.R. No. 226894 is **GRANTED**. The Court of Appeals' Resolution dated December 8, 2015 and Decision dated October 1, 2018 in CA-G.R. CV No. 102330 are declared **VOID**. The proceedings in the Court of Appeals are **SUSPENDED** during the pendency of the corporate rehabilitation case.

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[36] *Garcia v. Philippine Airlines, Inc.*, 558 Phil. 328, 337 (2007).

[37] Section 2 of RA No. 10142.

Accordingly, Kaizen Builders, Inc. is **DIRECTED** to quarterly update the Court of Appeals as to the status of its ongoing rehabilitation. The petition for review in G.R. No. 247647 is **DISMISSED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 233300. September 3, 2020]

COCA-COLA FEMSA PHILIPPINES, INC., *Petitioner, v.* **CENTRAL LUZON REGIONAL SALES EXECUTIVE UNION OF COCA-COLA SAN FERNANDO (FDO) PLANT,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION (MR) IS A PREREQUISITE TO THE FILING THEREOF; EXCEPTIONS. — On the procedural ground, the Court reiterates its ruling in *Novateknika Land Corp. v. Philippine National Bank*, where the Court laid down the general rule and exceptions in filing a motion for reconsideration before resorting to a petition for *certiorari.*

Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari,* subject to certain exceptions, to wit:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;**

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.

2. ID.; ID.; ID.; ID.; ID.; A PETITION FOR *CERTIORARI* MAY BE ENTERTAINED WITHOUT A PRIOR MR WHEN THE ISSUES RAISED THEREIN ARE THE SAME AS THOSE RAISED AND PASSED UPON BY THE LOWER TRIBUNALS.— Here, the basic issue to be resolved by the CA is whether or not there is a ground to cancel the Union's certificate of registration. This is the same issue decided by both the DOLE Regional Office and the BLR. They determined that there is no basis for cancellation as none of the grounds in Article 247, formerly Article 239, of the Labor Code is present. Due to a repetition of issue from the DOLE Regional Office to the BLR up to the CA, this case falls under the second enumeration of exceptions for filing a motion for reconsideration. Thus, the petition for *certiorari* before the CA may be entertained without a prior motion for reconsideration.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; GROUNDS FOR CANCELLATION OF LABOR UNION'S REGISTRATION; CASE AT BAR. — [T]he present petition before the Court still fails on substantial grounds. Article 247 (formerly Article 239) of the Labor Code, as amended and renumbered on July 21, 2015, provides the grounds for cancellation of a labor union's registration:

> ARTICLE 247. [239] Grounds for Cancellation of Union Registration. — The following may constitute grounds for cancellation of union registration:
>
> (a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto,

the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

As correctly and consistently determined by the DOLE Regional Office, the BLR, and the CA, Coca-Cola failed to prove that any of the above grounds were present in this case. There were no misrepresentations, false statements, or fraud in the adoption, ratification, or amendment of the constitution and by-laws, the minutes of ratification, the list of members who took part in the ratification, in the election of officers, minutes of the election of officers, and the list of voters under Article 247 of the renumbered Labor Code.

4. ID.; ID.; ID.; ID.; THE INCLUSION AS UNION MEMBERS OF MANAGERIAL EMPLOYEES SHALL NOT BE A GROUND TO CANCEL UNION REGISTRATION; MANAGERIAL EMPLOYEES WHO ARE UNION MEMBERS ARE AUTOMATICALLY REMOVED FROM THE UNION MEMBERSHIP, AND THE UNION CONTINUES TO BE REGISTERED; CASE AT BAR. — Coca-Cola claims that the Union is composed of managerial employees who are forbidden to join, assist, or form a labor organization. However, the Labor Code does not include such situation as a ground for cancellation of a union's registration. In fact, Section 6, Rule XIV of DOLE DO 40-F-03-08 addresses this situation:

A new provision is hereby added as Section 6 under Rule XIV, to read as:

SECTION 6. Prohibited Grounds for Cancellation of Registration. — The inclusion as union members of employees who are outside the bargaining unit shall not be a ground to cancel the union registration. The ineligible employees are automatically deemed removed from the list of membership of the union.

Thus, if there are any managerial employees who are union members, they are automatically removed from the

union membership, and the Union continues to be registered.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Caba Monje Peralta Llanillo & Barcena for respondent.

D E C I S I O N

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

The inclusion as union members of employees who are outside the bargaining unit shall not be a ground to cancel the union registration. The ineligible employees are automatically deemed removed from the list of membership of the union. — Section 6, Rule XIV of Department of Labor and Employment Order 40-F-03-08.

The Case

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the March 16, 2017 Decision[1] and July 31, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 148045, which denied the petition for *certiorari* under Rule 65 filed by petitioner Coca-Cola FEMSA, Phils., Inc. (Coca-Cola) for failure to file a motion for reconsideration and to prove the existence of any of the grounds under Article 239 [now renumbered as Article 247] of the Labor Code of the Philippines (Labor Code).

The case started when Coca-Cola filed a petition for cancellation of the certificate of registration of respondent Central Luzon Regional Sales Executive Union of Coca-Cola San Fernando

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Henri Jean Paul B. Inting (now a member of this Court), concurring; *rollo*, pp. 164-174.

[2] Id. at 189-190.

Plant (Union) on the ground that the union members comprised of managers who are ineligible to join, assist, or form any labor organization. On May 25, 2016, Department of Labor and Employment Regional Office (DOLE Regional Office) No. III denied the petition, docketed as RO3-RO-C-01-01-21-16.[3] On August 10, 2016, the Bureau of Labor Relations (BLR) affirmed the denial in its Resolution docketed as BLR-A-C-20-22-07-16.[4]

The Facts

Coca-Cola is a domestic corporation engaged in the business of manufacturing carbonated drinks and other beverages. The Union is a legitimate labor organization established to represent the sales executives of Coca-Cola in Central Luzon (Pampanga, Bataan, Zambales, and Tarlac).[5]

On October 28, 2015, Coca-Cola received a letter from the Union seeking recognition as the certified bargaining agent of the company's sales executives in Central Luzon.[6]

On January 21, 2016, Coca-Cola filed a petition for cancellation of the union's registration with the DOLE Regional Office in San Fernando, Pampanga. Coca-Cola alleged that the union members comprised of managers who are ineligible to join, assist, or form any labor organization.[7]

Coca-Cola averred that the position of sales executives, which were previously classified as supervisory, is now imbued with managerial and executive functions. This change of function started when Coca-Cola FEMSA, an entity based in Mexico and the mother company of most Coca-Cola companies, bought

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[3] Penned by Atty. Ana C. Dione (Regional Director of Regional Office No. III); id. at 115-119.

[4] Penned by Atty. Benjo Santos M. Benavidez (Director IV of Bureau of Labor Relations); id. at 145-150.

[5] Id. at 165.

[6] Id.

[7] Id.

and acquired Coca-Cola Philippines. The acquisition resulted to reorganization, abolishment, and creation of some positions. The sales executives' function now includes business planning, performance management, project implementation, cost management, hiring, managing, training, and layoff of personnel. The sales executives manage the company's regional departments. They customarily and regularly direct the work of two to 15 employees as they oversee the day-to-day functions of their subordinates. They recommend potential hirees for employment, initiate administrative investigations, and execute decisions such as reprimand, suspension, or termination of erring employees. These functions require discretion and exercise of judgement.[8]

For its part, the Union claimed that its members are neither occupying managerial positions nor performing managerial functions. Their job description does not entail the exercise of discretion and independent judgment since their recommendations are subject to evaluation, review, and final action of the department heads or other executives. Their role in the hiring and firing of employees is merely recommendatory. It is the Human Resource Department that has the final say on the eligibility of an applicant. Their decision in the termination of employees needs the concurrence of two other employees. These circumstances show that the union members cannot be classified as managers but are merely supervisors who have the right to form a separate union.[9]

The DOLE Regional Office Order

On May 25, 2016, the DOLE Regional Office ruled in the Union's favor and held that none of the grounds for cancellation under Section 3, Rule XIV of the DOLE Department Order No. 40-03 (DO 40-03), as amended, exists. It found that there is no substantial proof of misrepresentation, false statement, or fraud during the course of its union registration.[10]

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[8] Id. at 165-166.

[9] Id. at 166.

[10] Id.

Coca-Cola's claim that the union's entire membership is composed of managerial employees was not considered because of its failure to show that any of the grounds exists. The DOLE Regional Office clarified that the inclusion of union members outside the bargaining unit is not a ground for cancellation of registration under Section 6, Rule XIV, DOLE DO 40-03 as ineligible employees are automatically removed from the list of union members.[11]

The BLR Resolution

Coca-Cola moved for reconsideration, which the BLR treated as an appeal. The BLR denied the motion and affirmed the findings and conclusion of the DOLE Regional Office.[12]

The CA Decision

Undeterred, Coca-Cola filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA, raising the sole issue of whether or not the BLR committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dismissal of the petition for cancellation of registration.[13]

The CA ruled that Coca-Cola's petition failed on both procedural and substantial ground.[14]

Coca-Cola's petition is procedurally defective because of its failure to file a motion for reconsideration from the BLR

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[11] Section 6, Rule XIV of DOLE DO 40-03, Prohibited grounds for cancellation of registration. — The inclusion as union members of employees who are outside the bargaining unit shall not be a ground to cancel the union registration. The ineligible employees are automatically deemed removed from the list of membership of the union.

The affiliation of the rank-and-file and supervisory unions operating within the same establishment to the same federation or national union shall not be a ground to cancel the registration of either union. (as amended by D.O. 40-F-03, 30 October 2008).

[12] *Rollo*, pp. 145-150.

[13] Id. at 169-170.

[14] Id. at 170.

Resolution. It is a well-settled rule that the filing of a motion for reconsideration is an indispensable condition before the filing of a special civil action for *certiorari*. The rationale for this requirement is to afford the tribunal, board, or office an opportunity to rectify its errors and mistake before resort to courts of justice can be had. This is also implied from the nature of *certiorari*, as an extraordinary remedy, which can only be resorted to when there is no other plain, speedy, adequate remedies in the course of law. A tribunal will not be given an opportunity to correct itself if there is no motion for reconsideration. Coca-Cola also failed to establish that its case falls under one of the exceptions[15] that would warrant the non-filing of motion of reconsideration.[16]

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[15] In *Novateknika Land Corporation v. Philippine National Bank*, 706 Phil. 414, 420-421 (2013), it was held that the following are the exceptions to the general rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for certiorari:

a. Where the order is a patent nullity, as where the court a quo has no jurisdiction;

b. Where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

d. Where, under the circumstances, a motion for reconsideration would be useless;

e. Where petitioner was deprived of due process and there is an extreme urgency for relief;

f. Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g. Where the proceedings in the lower court are a nullity for lack of due process;

h. Where the proceedings was ex parte or in which the petitioner had no opportunity to object; and

i. Where the issue raised is one purely of law or where public interest is involved.

[16] *Rollo*, pp. 170-171.

Aside from procedural defects, Coca-Cola's petition lacks merit. Articles 238[17] and 239[18] of the Labor Code provide for the manner and grounds for cancellation of a union's certificate of registration. Here, Coca-Cola neither claimed nor proved that any of the grounds under Article 239 of the Labor Code exists that would warrant the cancellation of the Union's certificate of registration. Coca-Cola insists that the Union's certificate of registration should be revoked because its members are composed of employees performing managerial function. However, the Labor Code does not include such circumstance as a ground for cancellation of registration.[19]

On July 31, 2017, CA denied Coca-Cola's motion for reconsideration.[20] Unconvinced, Coca-Cola filed this petition under Rule 45 before the Court.

The Issue Presented

The sole issue presented before the Court is whether or not the CA erred in dismissing the petition and thereby affirming the BLR and DOLE Regional Office rulings.

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[17] Art. 238 of the LABOR CODE: Cancellation of registration. — The certificate of registration of any legitimate labor organization, whether national or local, may be cancelled by the Bureau, after due hearing, only on the grounds specified in Article 239 hereof.

[18] Art. 239 of the LABOR CODE: Grounds for cancellation of union registration. — The following may constitute grounds for cancellation of union registration:

a. Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

b. Misrepresentation, false statements, or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

c. Voluntary dissolution by the members.

[19] *Rollo*, pp. 171-172.

[20] Id. at 189-190.

The Court's Ruling

The petition is denied.

The CA dismissed Coca-Cola's petition for *certiorari* on two grounds, one procedural and substantial.

On the procedural ground, the Court reiterates its ruling in *Novateknika Land Corp. v. Philippine National Bank*,[21] where the Court laid down the general rule and exceptions in filing a motion for reconsideration before resorting to a petition for *certiorari*.

> Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions, to wit:
>
> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
>
> (b) **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;**
>
> (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;
>
> (d) where, under the circumstances, a motion for reconsideration would be useless;
>
> (e) where petitioner was deprived of due process and there is extreme urgency for relief;
>
> (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> (g) where the proceedings in the lower court are a nullity for lack of due process;
>
> (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and
>
> (i) where the issue raised is one purely of law or where public interest is involved. (Emphasis supplied)

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[21] 706 Phil. 414 (2013).

Here, the basic issue to be resolved by the CA is whether or not there is a ground to cancel the Union's certificate of registration. This is the same issue decided by both the DOLE Regional Office and the BLR. They determined that there is no basis for cancellation as none of the grounds in Article 247, formerly Article 239, of the Labor Code is present. Due to a repetition of issue from the DOLE Regional Office to the BLR up to the CA, this case falls under the second enumeration of exceptions for filing a motion for reconsideration. Thus, the petition for *certiorari* before the CA may be entertained without a prior motion for reconsideration.

However, the present petition before the Court still fails on substantial grounds. Article 247 (formerly Article 239) of the Labor Code, as amended and renumbered on July 21, 2015, provides the grounds for cancellation of a labor union's registration:

ARTICLE 247. [239] Grounds for Cancellation of Union Registration. — The following may constitute grounds for cancellation of union registration:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, and the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters;

(c) Voluntary dissolution by the members.

The above provision was reiterated in Section 3, Rule XIV of DOLE DO 40-F-03-08 dated October 30, 2008.[22]

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[22] Amending Rules III, V, VII, IX, XI, XIV and XV of the Implementing Rules of Book V of the Labor Code of the Philippines (P.D. No. 442, as amended), DOLE Order No. 40-F-03-08, October 30, 2008.

SECTION 3. Grounds for Cancellation. — ANY OF the following MAY constitute AS ground/s for cancellation of registration of labor organizations:

(a) Misrepresentation, false statement or fraud in connection with the adoption or ratification of the constitution and by-laws or amendments thereto, the minutes of ratification, the list of members who took part in the ratification;

(b) Misrepresentation, false statements or fraud in connection with the election of officers, minutes of the election of officers, and the list of voters; or

(c) Voluntary dissolution by the members.

As correctly and consistently determined by the DOLE Regional Office, the BLR, and the CA, Coca-Cola failed to prove that any of the above grounds were present in this case. There were no misrepresentations, false statements, or fraud in the adoption, ratification, or amendment of the constitution and by-laws, the minutes of ratification, the list of members who took part in the ratification, in the election of officers, minutes of the election of officers, and the list of voters under Article 247 of the renumbered Labor Code.

We reiterate our ruling in *Nahas v. Olarte*.[23]

> Well-settled is the rule that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA. Also settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the CA, are binding on the Supreme Court, unless patently erroneous.

Thus, the Court sustains the CA's findings and conclusion, as unanimously decided by the DOLE Regional Office and the BLR.

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[23] 734 Phil. 569, 580 (2014).

Coca-Cola claims that the Union is composed of managerial employees who are forbidden to join, assist, or form a labor organization. However, the Labor Code does not include such situation as a ground for cancellation of a union's registration. In fact, Section 6,[24] Rule XIV of DOLE DO 40-F-03-08 addresses this situation:

> A new provision is hereby added as Section 6 under Rule XIV, to read as:
>
> SECTION 6. Prohibited Grounds for Cancellation of Registration. — The inclusion as union members of employees who are outside the bargaining unit shall not be a ground to cancel the union registration. The ineligible employees are automatically deemed removed from the list of membership of the union.

Thus, if there are any managerial employees who are union members, they are automatically removed from the union membership, and the Union continues to be registered.

WHEREFORE, the March 16, 2017 Decision and July 31, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 148045 is AFFIRMED.

SO ORDERED.

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

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[24] Supra note 22.

FIRST DIVISION

[G.R. No. 235640. September 3, 2020]

ROLANDO S. SIDEÑO, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL ERRONEOUSLY TAKEN TO THE COURT OF APPEALS SHALL NOT BE TRANSFERRED TO THE APPROPRIATE COURT BUT SHALL BE DISMISSED OUTRIGHT. — Verily, upon his conviction, Sideño's remedy should have been an appeal to the SB. There is nothing in the afore-quoted provisions which can conceivably justify the filing of Sideño's appeal before the CA. Indeed, the appeal was erroneously taken to the CA because Sideño's case properly falls within the appellate jurisdiction of the SB. Section 2, Rule 50 of the Rules of Court provides, among others, that an appeal erroneously taken to the CA shall not be transferred to the appropriate court but shall be dismissed outright. This has been the consistent holding of the Court.

2. ID.; RULES OF PROCEDURE; THE SUPREME COURT HAS THE POWER TO EXCEPT A PARTICULAR CASE FROM THE OPERATION OF THE RULE WHENEVER THE PURPOSE OF EQUITY AND SUBSTANTIAL JUSTICE REQUIRES IT; WHEN WARRANTED. — However, the peculiar circumstances of the case at bench constrain the Court to relax and suspend the rules to give Sideño a chance to seek relief from the SB. After all, the Court has the power to except a particular case from the operation of the rule whenever the purpose of equity and substantial justice requires it. It bears stressing that aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character, and an examination and review by the appellate court of the lower court's findings of fact, the other elements that are to be considered are the following: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules,

(4) a lack of any showing that the review sought is merely frivolous and dilatory, (5) the other party will not be unjustly prejudiced thereby.

APPEARANCES OF COUNSEL

Edmundo R. Calo for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a petition for review on *certiorari*[1] seeking to reverse and set aside the July 7, 2017 Resolution[2] of the Sandiganbayan *(SB)* in Criminal Case Nos. SB-17-A/R-0004-0006, dismissing the appeal of petitioner Rolando S. Sideño from the May 19, 2016 Decision[3] of the Regional Trial Court, Branch 25, Manila *(RTC)*, as well as its November 10, 2017 Resolution,[4] denying Sideño's motion for reconsideration.

The factual and procedural antecedents are as follows:

Sideño was indicted for three (3) counts of violation of Section 3(b) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in three (3) separate Informations which were similarly worded, except as to the dates of the alleged commission of the offense and the amounts of share or commission of money allegedly requested and received by him. The accusatory portion of each of the Informations reads:

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[1] *Rollo*, pp. 8-17.

[2] *Id.* at 104-107. Penned by Associate Justice Edgardo M. Caldona, with the concurrence of Associate Justice Efren N. Dela Cruz and Associate Justice Geraldine Faith A. Econg.

[3] *Id.* at 34-46. Penned by Judge Marlina M. Manuel.

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

That on or about x x x, or sometime prior or subsequent thereto, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a low-ranking public officer, being the Barangay Chairman of Barangay 205, Zone 18, District II, Manila, while in the performance of his official function, committing the offense in relation to his office, and taking advantage of his official position, did then and there willfully, unlawfully and criminally request and receive from Aljon Trading, a bidder in the projects of Barangay 205, Zone 18 and engaged in the supply of office supplies and materials, his "share" in the amount of x x x, in connection with the project of the barangay and in his official capacity the accused has the right to intervene, to the damage and prejudice of the government and the public interest.

Contrary to law.[5]

Upon arraignment, Sideño pleaded not guilty to the charge. After the pre-trial was terminated, trial on the merits ensued.

The prosecution evidence tends to show that private complainant Aljon Trading is a business enterprise owned and operated by Allan Garcia. It is engaged in the business of supplying office, electrical and paint materials to *barangays*. Allan Garcia testified that Sideño was the *Barangay* Chairman of *Barangay* 205, Zone 18, District II, Manila at the time material to the case. *Barangay* 205 has undertaken a project for the procurement of electrical and educational supplies, and, for which reason, Sideño issued a Purchase Request. *Barangay* Treasurer Jaime Garcia issued an Invitation to Bid and, thereafter, the project was bid out. Later, a document, denominated as Abstract of Bid/Canvass and Award, recommending that the project be given to Aljon Trading was signed and approved by Sideño and seven *barangay kagawad*.

On March 8, 2010, Allan Garcia received Purchase Order No. 205-10-03, approved by Jaime Garcia and noted by Sideño, for the procurement and delivery of the subject items to *Barangay* 205. Allan Garcia delivered the items to *Barangay* 205 which were received by Sideño and Jaime Garcia, as indicated in the

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[5] *Id.* at 34.

Acceptance and Inspection Report which was signed by Jaime Garcia and Sideño. Also, a Confirmation Report was prepared and signed by Sideño, confirming the delivery of the subject items by Aljon Trading to *Barangay* 205. Later, a disbursement voucher, signed by Sideño, was issued to Aljon Trading. All the documents pertinent to the procurement project were submitted to Atty. Analyn Marcelo-Buan, the Director of Manila Barangay Bureau, who in turn issued the 1st Indorsement, dated March 24, 2010, forwarding the disbursement voucher to the City Accountant of Manila. Subsequently, a check was drawn, payable to Aljon Trading, and handed to Sideño as the *Barangay* Chairman of *Barangay* 205.[6]

Allan Garcia recalled that even before the processing and approval of the disbursement voucher and the issuance of the corresponding check, Sideño directly requested and demanded from him for a percentage share of 25% of the project cost. Since he knew that Sideño was the approving official of the disbursement voucher and one of the signatories of the check (the other being Jaime Garcia), as well as due to the fact that he really needed to collect the payment, he was forced to accede to Sideño's request. Thus, on March 25, 2010, he gave Sideño ₱31,000.00, as the latter's share or commission of money on the sale transaction, and made him sign an acknowledgement receipt. In exchange, Sideño handed to him the check payment.[7]

Allan Garcia further testified that sometime in February 2011, Sideño intimated to him that *Barangay* 205 would undertake another project, for the purchase of various supplies and materials, and promised/assured him that the same would be awarded to Aljon Trading. However, as a consideration for the said promise/assurance, Sideño requested for a share or commission thereon. Considering that Sideño was the approving official of the next project, he was again forced to shell out the amounts of ₱20,000.00 and ₱30,000.00, and gave the same to Sideño by way of commission, as evidenced by acknowledgement receipts

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

[7] *Id.* at 38.

dated February 4, 2011 and June 28, 2011, respectively, signed by Sideño. Despite Sideño's receipt of such amounts, no project was given to him. Sideño's proclivity to ask for commission was again repeated, still in the guise of an assured contract for the next *barangay* project. It was on this last attempt of Sideño to ask for commission that Allan Garcia decided to file a complaint against Sideño for bribery, violation of Section 3 (b) and (e) of R.A. No. 3019, grave misconduct, dishonesty and conduct prejudicial to the best interest of the service before the Office of the Ombudsman *(Ombudsman)*.[8]

Thereafter, the prosecution formally offered its documentary evidence and rested its case.

Sideño interposed the defense of denial, contending that he never requested any money by way of commission nor asked any favor from Allan Garcia. He alleged that Allan Garcia falsely accused him of demanding commission just to harass him. Sideño claimed that he did not sign the three acknowledgement receipts presented by the prosecution, although he admitted that those signatures resembled his own signature. He averred that Aljon Trading was a blacklisted supplier in the Manila City Hall and that a complaint was filed by *Barangay* Chairman Saturnino Grutas of *Barangay* 101, Zone 8, District I, Manila against Allan Garcia for falsification of public documents and unauthorized withdrawal of funds. Anent the charges in Criminal Case Nos. 13-299982 and 13-299983, Sideño stressed that it is impossible for him to have received any share or commission from Allan Garcia for the year 2011 since *Barangay* 205 had no projects during the first quarter of that year.[9]

During cross-examination, Sideño alleged that Allan Garcia filed a complaint against him before the Ombudsman. Sideño submitted a counter-affidavit denying the accusation of requesting and receiving from Allan Garcia the total amount of ₱81,000.00. Sideño asserted that Allan Garcia forged his signature on the

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[8] *Id.* at 36-39.

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

three acknowledgement receipts. He explained that he did not raise this defense before the Ombudsman because he discovered the forgery much later on.[10]

Atty. Marcelo-Buan confirmed that *Barangay* Chairman Grutas filed a complaint against Aljon Trading or Allan Garcia regarding a *barangay* project to which she was tasked to investigate. She averred that she interviewed Allan Garcia when he applied for accreditation. The documents were forwarded to the City Council for accreditation.[11]

The defense rested its case and filed its formal offer of evidence. The RTC, however, resolved to deny the admission of the pieces of documentary evidence of the defense because they were mere photocopies.[12]

On May 19, 2016, the RTC rendered a verdict of conviction in Criminal Case Nos. 13-299981, 13-299982 and 13-299983. The decretal portion of which reads:

> WHEREFORE, the Court finds the accused ROLANDO S. SIDENO GUILTY beyond reasonable doubt of three (3) counts of Violation of Section 3(b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. He is hereby sentenced to suffer, for each count, the straight penalty of imprisonment from eight (8) years and one (1) day and perpetual disqualification from public office. No cost.
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> SO ORDERED.[13]

The RTC declared that the prosecution was able to establish all the elements of violation of Section 3(b) of R.A. No. 3019 by proof beyond reasonable doubt. It rejected the defense of denial proffered by Sideño for being self-serving and unsupported by any plausible proof. It ruled that Sideño requested and received from Allan Garcia the amounts of ₱31,000.00, ₱20,000.00 and

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[10] *Id.* at 41.

[11] *Id.* at 40-42.

[12] *Id.* at 42.

[13] *Id.* at 46.

₱30,000.00 as his share on the *barangay* projects which were duly proved by the acknowledgement receipts adduced by the prosecution. The RTC observed that there is an uncanny similarity in the lines and strokes between the signatures on the three acknowledgement receipts over the printed name "P/B ROLANDO SIDENO" and Sideño's signatures as appearing on the *barangay* documents, such as to convince any person that those signatures were affixed by the same person. Lastly, the trial court held that the pieces of documentary evidence on record sufficiently showed that there was indeed a contract between Aljon Trading, as represented by Allan Garcia, and *Barangay* 205 to which Sideño has the right to intervene, being the Chairman of the *barangay*.[14]

Not in conformity, Sideño filed on July 12, 2016 a Notice of Appeal,[15] stating that the foregoing Decision of the RTC was promulgated on June 29, 2016 and that he was elevating said decision to the Court of Appeals *(CA)*.

On July 20, 2016, the RTC issued an Order forwarding the entire records of Criminal Case Nos. 13-299981, 13-299982 and 13-299983 to the CA for its review and disposition.[16]

On August 25, 2016, Sideño received a Notice to File Brief dated August 10, 2016 from the clerk of court of the CA, directing him to file an Appellant's Brief within thirty (30) days from notice thereof. Upon motion for extension of time, the CA granted Sideño a grace period of until October 24, 2016 within which to submit the required pleading *via* its October 7, 2016 Resolution. On October 24, 2016, Sideño filed his Appellant's Brief.[17]

In the meantime, the Ombudsman filed a Manifestation,[18] dated December 5, 2016, clarifying that it should not be made

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

[15] *Id.* at 47-48.

[16] *Id.* at 139.

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

[18] *Id.* at 74-76.

a party to the case because only the Solicitor General may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the Supreme Court and the CA. The Ombudsman further manifested that the CA has no jurisdiction over the appeal because the SB has the exclusive appellate jurisdiction over final judgments of the RTC, pursuant to Section 4 (c), paragraph 3 of R.A. No. 8249.

Later, the Office of the Solicitor General *(OSG)* filed before the CA a Manifestation with Motion,[19] dated January 5, 2017, seeking for the outright dismissal of Sideño's appeal for lack of jurisdiction. According to the OSG, the appeal of Sideño's conviction falls within the exclusive appellate jurisdiction of the SB under Section 4 of Presidential Decree (*P.D.*) No. 1606. The OSG further claimed that the SB's exclusive appellate jurisdiction over final orders or judgments of the regional trial courts over violations of the anti-graft and corruption laws has already been affirmed in *Engr. Abbot v. Judge Mapayo*[20] and *Magno v. People, et al.*[21]

On January 30, 2017, Sideño filed a Manifestation and Motion[22] before the CA praying that his Appellant's Brief be referred to the SB in the interest of justice and equity. He posited that he should not be faulted for the erroneous filing of the appeal as it is the duty of the RTC to refer the Notice of Appeal and forward the records of Criminal Case Nos. 13-299981, 13-299982 and 13-299983 to the proper forum, which is the SB.

On February 21, 2017, the CA issued a Resolution[23] denying the OSG's motion to dismiss outright the erroneously lodged appeal of Sideño. Instead, the CA ordered the forwarding of

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[19] *Id.* at 81-84.

[20] 390 Phil. 579 (2000).

[21] 662 Phil. 726 (2011).

[22] *Rollo*, pp. 85-87.

[23] *Id.* at 89-92.

the appealed case to the SB for proper disposition, invoking the ruling in *Cariaga v. People*.[24] The *fallo* of which states:

> WHEREFORE, the instant Manifestation and Motion of the OSG is hereby DENIED. Let the records of this case be transferred to the Sandiganbayan for appropriate action.
>
> SO ORDERED.[25]

The motion for reconsideration filed by the OSG was also denied by the CA in its May 30, 2017 Resolution.[26]

On June 9, 2017, the records of Criminal Case Nos. 13-299981, 13-299982 and 13-299983 were transmitted to the SB.

On July 7, 2017, the SB issued the assailed Resolution,[27] dismissing outright the appeal of Sideño. According to the SB, Sideño should have rectified the erroneous filing of the appeal to the CA within the fifteen (15)-day reglementary period to appeal, but he failed to do so. The SB added that the time frame within which to appeal before the proper court had already long lapsed. The dispositive portion of which reads:

> IN VIEW OF THE FOREGOING, the appeal of the accused-appellant, Rolando S. Sideno, is hereby DISMISSED for having been improperly filed.
>
> SO ORDERED.[28]

Sideño filed a motion for reconsideration, but the same was denied by the SB *via* its November 10, 2017 Resolution,[29] stressing that the RTC Decision had already become final and unappealable due to the failure of Sideño to perfect the appeal within the time prescribed by the Rules of Court. The SB held

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[24] 640 Phil. 272 (2010).

[25] *Rollo*, p. 92.

[26] *Id.* at 98-100.

[27] *Id.* at 104-107.

[28] *Id.* at 107.

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

that it could do nothing more with the appeal since it was already ousted jurisdiction upon the finality of the RTC judgment of conviction.

The Issue

Undaunted, Sideño filed the present petition and posited the following lone issue, to wit:

WHETHER THE APPEAL OF THE PETITIONER (ACCUSED-APPELLANT) MUST BE GIVEN DUE COURSE BY THE SANDIGANBAYAN PURSUANT TO THE RESOLUTION OF THE COURT OF APPEALS, ISSUED ON SEPTEMBER 28, 2017 WHICH HAS BECOME FINAL AND EXECUTORY.[30]

Sideño insists that he had nothing to do with the erroneous filing of the appeal to the CA and decries the inadvertence of his counsel. He faults the RTC for not taking the appeal before the proper forum, contending that it is incumbent upon the court of origin to determine the proper court where the appeal should be lodged, taking into consideration the nature of the crime committed and the rank or position of the accused public official.

On May 8, 2018, the OSG filed a Manifestation and Motion,[31] stating that the Ombudsman, through the Office of the Special Prosecutor *(OSP)*, should represent the People in the proceedings before the Court, including the filing of the required pleadings, in consonance with the mandate of Section 4 of R.A. No. 8249, inasmuch as the challenged Resolutions were issued by the SB. The OSG moved that it be excused from participating in the instant petition.

On even date, the Ombudsman, through the OSP, filed a Manifestation with Motion,[32] praying that Sideño's counsel be directed to furnish the OSP with a copy of the present petition, including its annexes, and that it be given an extension period

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

[31] *Id.* at 109-112.

[32] *Id.* at 116-119.

of thirty (30) days from receipt thereof within which to submit the required Comment.

In its Comment,[33] respondent People counters that Sideño had already lost his right to appeal by the time the CA deemed it proper to transfer the records of the case to the SB in the interest of substantial justice. Respondent maintains that Sideño's failure to perfect the appeal within the period of fifteen (15) days from promulgation of the RTC Decision or from notice thereof causes said decision to become final as to preclude the SB from acquiring jurisdiction to review it. Respondent avers that Sideño can no longer challenge the RTC's judgment of conviction because a decision that has attained finality becomes immutable and unalterable.

The Court's Ruling

After a meticulous scrutiny and conscientious evaluation of the records of this case, the Court finds the petition to be impressed with merit.

There is no quibble that Sideño, through his counsel, had taken a wrong procedure. Inasmuch as Sideño is a low-ranking public officer, having a salary grade below 27, he should have sought relief on the RTC verdict of conviction from the SB, pursuant to P.D. No. 1606, as amended by R.A. No. 10660,[34] specifically Section 4 thereof, *viz.*:

SEC. 4. *Jurisdiction*. x x x.

x x x x x x x x x

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial

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[33] *Id.* at 135-146.

[34] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor.

court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. (Emphasis supplied)

This is complemented by Section 1, Rule XII, Part III of the Revised Internal Rules of the Sandiganbayan which reads:

Section 1. *Ordinary Appeal*. Appeal to the Sandiganbayan from a decision rendered by a Regional Trial Court in the exercise of its original jurisdiction shall be by ordinary appeal under Rules 41 and 44 of the 1997 Rules of Civil Procedure, or Rules 122 and 124 of the Revised Rules of Criminal Procedure, as the case may be.

Verily, upon his conviction, Sideño's remedy should have been an appeal to the SB. There is nothing in the afore-quoted provisions which can conceivably justify the filing of Sideño's appeal before the CA. Indeed, the appeal was erroneously taken to the CA because Sideño's case properly falls within the appellate jurisdiction of the SB. Section 2, Rule 50 of the Rules of Court provides, among others, that an appeal erroneously taken to the CA shall not be transferred to the appropriate court but shall be dismissed outright. This has been the consistent holding of the Court.

However, the peculiar circumstances of the case at bench constrain the Court to relax and suspend the rules to give Sideño a chance to seek relief from the SB. After all, the Court has the power to except a particular case from the operation of the rule whenever the purpose of equity and substantial justice requires it. It bears stressing that aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character, and an examination and review by the appellate court of the lower court's findings of fact, the other elements that are to be considered are the following: (1) the existence of special or compelling circumstances, (2)

the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, (5) the other party will not be unjustly prejudiced thereby.[35] All these factors are attendant in this case.

To begin with, the Court notes that the notice of appeal was seasonably filed, reflecting Sideño's resolute to comply with the fifteen (15)-day reglementary period to appeal as prescribed by the Rules of Court. Records show that the May 19, 2016 Decision of the RTC was promulgated on June 29, 2016, and on July 12, 2016, or thirteen (13) days later, Sideño, through counsel, filed a notice of appeal stating his intention to elevate the said decision albeit designating the wrong forum. Doubtless, Sideño's counsel erred in filing the appeal before the CA. However, this should not be taken against Sideño for it is highly unjust for him to lose his liberty simply because his counsel blundered. Moreover, the wrongful designation of court did not appear to be a dilatory tactic on the part of Sideño. In any event, error in indicating in the notice of appeal the court to which the appeal is being interposed is not fatal to the appeal.[36] The designation of the wrong court does not necessarily affect the validity of the notice of appeal.[37]

Likewise, Sideño should not be prejudiced by the error in transmitting the records of Criminal Case Nos. 13-299981, 13-299982 and 13-299983 to the CA. In *Dizon v. People*,[38] citing the case of *Ulep v. People*,[39] the Court wrote:

The trial court, on the other hand, was duty-bound to forward the records of the case to the proper forum, the Sandiganbayan.

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[35] *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003); and *Ginete v. CA*, 357 Phil. 36, 54 (1998).

[36] *Heirs of Pizarro, Sr. v. Hon. Consolacion*, 244 Phil. 187, 194 (1988).

[37] *Torres v. People*, 672 Phil. 142, 149 (2011).

[38] G.R. No. 227577, January 24, 2018, 853 SCRA 158.

[39] 597 Phil. 580 (2009).

It is unfortunate that the RTC judge concerned ordered the pertinent records to be forwarded to the wrong court, to the great prejudice of petitioner. Cases involving government employees with a salary grade lower than 27 are fairly common, albeit regrettably so. The judge was expected to know and should have known the law and the rules of procedure. He should have known when appeals are to be taken to the CA and when they should be forwarded to the Sandiganbayan. He should have conscientiously and carefully observed this responsibility specially in cases such as this where a person's liberty was at stake.[40]

Indeed, Sideño should not be prejudiced by the shortcoming or fault of the RTC judge. Guided by the pronouncement in *Dizon*, since cases involving government employees and officials with a salary grade lower than 27 are fairly common, the RTC judge herein is expected to know that Sideño's case should have been appealed to the SB. Apparently, she did not.

The Court deems it wise that the criminal cases against Sideño, particularly Criminal Case Nos. 13-299982 and 13-299983, be reviewed on the merits by the proper tribunal, following the appropriate procedures under the rules, in the interest of substantial justice. To be convicted of violation of Section 3 (b) of R.A. No. 3019, the prosecution has the burden of proving the following elements: 1) the offender is a public officer; 2) who requested or received a gift, a present, a share, a percentage, or benefit; 3) on behalf of the offender or any other person; 4) in connection with a contract or transaction with the government; 5) in which the public officer, in an official capacity under the law, has the right to intervene.[41]

Sideño's freedom is forfeited only if all the foregoing elements are established by that requisite quantum of proof necessary for his criminal conviction for violation of Section 3(b) of R.A. No. 3019 in Criminal Case Nos. 13-299981, 13-299982 and 13-299983. A most careful re-examination and scrutiny of the

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[40] *Dizon v. People*, G.R. No. 227577, January 24, 2018, 853 SCRA 158, 169; emphasis supplied.

[41] *Cadiao-Palacios v. People*, 601 Phil. 695, 703 (2009); citation omitted.

evidence for the State by an appellate court are essential for conviction must rest on the strength of the prosecution's case and not on the weakness of the defense.

Further, the Court observes that the straight penalty of eight (8) years and one (1) day imposed by the RTC against Sideño for each count of violation of Section 3(b) of R.A. No. 3019 is not in accordance with the mandate of Section 1 of Act No. 4103, as amended by Act No. 4225 or the Indeterminate Sentence Law, to wit:

> Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum [of] which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Underscore supplied)

The application of the Indeterminate Sentence Law is mandatory to both the Revised Penal Code and the special laws where imprisonment exceeds one (1) year.[42] In *Luy v. People*,[43] the Court expounded on the worthy objective of the minimum and the maximum periods, thus:

> The need for specifying the minimum and maximum periods of the indeterminate sentence is to prevent the unnecessary and excessive deprivation of liberty and to enhance the economic usefulness of the accused, since he may be exempted from serving the entire sentence, depending upon his behavior and his physical, mental, and moral record. The requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the RPC or by special

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[42] *Romero v. People, et al.*, 677 Phil. 151, 165-166 (2011).

[43] 797 Phil. 201 (2016).

laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory.[44]

Under Section 9 of R.A. No. 3019, the penalty for violation of Section 3, among others, shall be imprisonment of not less than six (6) years and one (1) month nor more than fifteen (15) years. Applying the Indeterminate Sentence Law, the imposable penalty should have a minimum term which shall not be less than six (6) years and one (1) month, and should also have a maximum term which shall not exceed fifteen (15) years. The proper imposable penalty should be within the range of six (6) years and one (1) month to fifteen (15) years.

Sideño's liberty here is at stake. If Sideño has to suffer in prison, his guilt must be proven beyond reasonable doubt, availing all the remedies provided under the law to protect his right. Our legal culture requires the presentation of proof beyond reasonable doubt before any person may be convicted of a crime and deprived of his life, liberty or even property. It has been consistently held that:

> In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. On the whole, the meager evidence for the prosecution casts serious doubts as to the guilt of accused. It does not pass the test of moral certainty and is insufficient to rebut the constitutional presumption of innocence.[45]

Where one's liberty is at stake, it is fitting, but on a case-to-case basis, that a window for redress should be opened for the accused, especially in cases where the accused, who is ordinarily unfamiliar with the rules of procedure, is prejudiced by the mistake or error of his counsel or of the lower court. The

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[44] *Id.* at 213.

[45] *People v. Bansil*, 364 Phil. 22, 34 (1999); citation omitted.

deprivation of an accused of liberty and/or property should certainly receive the liberal application of the Rules of Court to attain justice and fairness.

Taken in the light of the foregoing, the Court finds that a thorough review and appreciation of the evidence presented by the prosecution and the defense, as well as the determination of the proper imposable penalties by the Sandiganbayan, is necessary to assure Sideño that his appeal will be decided judiciously and fairly.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated July 7, 2017 and November 10, 2017 of the Sandiganbayan in Criminal Case Nos. SB-17-A/R-0004-0006 are hereby **SET ASIDE**. The Sandiganbayan is **DIRECTED** to **REINSTATE** the appeal of Rolando S. Sideño.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238203. September 3, 2020]

LIGAYA ANG, *Petitioner, v.* **COURT OF APPEALS, AND WARREN T. GUTIERREZ, REPRESENTED BY HIS ATTORNEY-IN-FACT, Carmelita T. Gutierrez,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. — The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply strictly with the requirements of the rules. Failure to do so often leads to the loss of the right to appeal. Specifically, Rule 42 of the Rules of Court provides the requirements in appealing the Decision of the RTC in the exercise of its appellate jurisdiction.

2. ID.; ID.; PETITION FOR REVIEW UNDER RULE 42 OF THE RULES OF COURT; EXTENSION FOR THE FILING OF SUCH PETITION,CONDITIONS OF; DOCKET FEES; THE FULL AMOUNT OF THE DOCKET AND LAWFUL FEES MUST BE PAID BEFORE THE EXPIRATION OF THE REGLEMENTARY PERIOD. — Notably, the grant of any extension for the filing of a Petition for Review under Rule 42 is discretionary and subject to the condition that the full amount of the docket and lawful fees are paid before the expiration of the reglementary period. Indeed, the full payment of docket fees within the prescribed period is mandatory and necessary to perfect the appeal. Corollarily, the non-payment of docket lees is a ground to dismiss the appeal.

3. ID.; ID.; ID.; ID.; ID.; THE NON-PAYMENT OF THE DOCKET FEES WITHIN THE REGLEMENTARY PERIOD IS A GROUND TO DENY AN EXTENSION OF

> **THE FILING OF A PETITION FOR REVIEW.—**[W]e find that Ligaya failed to establish that the appellate docket fees were duly paid. Foremost, the messenger's affidavit is insufficient to establish payment. The affidavit merely stated the reason why the messenger opted to enclose the docket fees together with the motion for extension. Yet, there is no evidence such as photocopies of the money bills to prove that the envelope containing the motion has the actual cash payment. The affidavit is likewise suspect since it was executed only after the CA denied the motion. At any rate, the CA had conducted an investigation and confirmed that no payment was actually remitted. The personnel assigned to the appellate court's receiving section corroborated this finding. Moreover, Ligaya's manifestation to pay again the docket fees is inconsistent with her claim of payment.. . .
>
> All told, the CA did not commit grave abuse of discretion when it denied Ligaya's motion for extension of time and refused to admit her petition for review for non-payment of the required docket fees. It is only when persuasive reasons exist that the rules may be relaxed to spare a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. In this case, Ligaya is under no threat of suffering an injustice if her prayer is not granted. Quite the contrary, it will be unfair if we reinstate Ligaya's appeal as this would mean further waiting on the part of the private respondent who has long been deprived of the right to possess the property he owns.

APPEARANCES OF COUNSEL

People's Law Office for petitioner.
William N. Reyes for private respondent.

D E C I S I O N

LOPEZ, *J.*:

Whether the appellate docket fees were duly paid is the principal issue in this Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Court of Appeals' (CA)

Resolutions dated September 22, 2017[1] and February 20, 2018[2] in CA-G.R. SP No. 152427-UDK.

ANTECEDENTS

In 2016, Warren Gutierrez (Warren) filed an action for unlawful detainer against Spouses Ricardo and Ligaya Ang before the Metropolitan Trial Court (MeTC) docketed as Civil Case No. 10549.[3] Warren alleged that he is the owner of a 94-square meter lot registered under Transfer Certificate of Title No. 013-2015003219.[4] On December 29, 1998, Warren sold the lot on installment basis to Spouses Ang. They agreed that the contract shall be extinguished in case of non-payment of monthly amortizations.[5] After giving the initial payment, however, Spouses Ang refused to settle the balance of the purchase price despite repeated demands.[6] In their answer, Spouses Ang moved to dismiss the complaint for lack of jurisdiction over the subject matter. They also claimed that the ejectment case must fail because the contract was not validly cancelled in accordance with Republic Act (RA) No. 6552 or the Realty Installment Buyer Protection Act.[7]

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[1] *Rollo*, pp. 231-235; penned by Associate Justice Florito S. Macalino (+), with the concurrence of Associate Justices Celia C. Librea-Leagogo and Maria Elisa Sempio Diy.

[2] *Id.* at 245-251; penned by Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justices Pedro B. Corales and Maria Elisa Sempio Diy.

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

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

[5] *Id.* at 47. The parties agreed on the following terms and conditions: (a) ₱200,000.00 purchase price; (b) ₱50,000.00 upon signing of the contract; and (c) ₱10,000.00 monthly amortizations. They likewise stipulated that "[k]ung saka-sakaling papalya sa pagbabayad ng buwanan[g] hulog kahit isang buwan lamang ang PANGALAWANG PANIG, and kontratang ito ay mawawalang bisa, at anuman naunang hulog ay mababalewala at mapupunta sa UNANG PANIG."

[6] *Id.* at 48-50.

[7] *Id.* at 51-63.

On November 15, 2016, the MeTC ruled in favor of Warren and ordered Spouses Ang to vacate the lot. It held that the complaint sufficiently alleged and proved a cause of action for unlawful detainer. On the other hand, RA No. 6552 is inapplicable since Spouses Ang failed to pay any installment,[8] thus:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Ordering defendants x x x to immediately **VACATE** the subject property and restore peaceful possession thereof to plaintiff x x x.
>
> 2. Ordering defendants to **PAY** reasonable compensation for the use and occupancy of the subject property in the amount of Five Thousand Pesos (Php5,000.00) representing the unpaid monthly rentals starting December 2015 until they vacate the same with legal interest of six percent (6%) per annum commencing from the date of judicial demand on March 14, 2016 until the obligation is fully satisfied.
>
> 3. Ordering defendants to **PAY** reasonable attorney's fees in the amount of Ten Thousand Pesos (Php10,000.00); and
>
> 4. Ordering the defendants to **PAY** the costs of suit.
>
> SO ORDERED.[9] (Emphasis in the original.)

Spouses Ang appealed to the Regional Trial Court (RTC) docketed as Civil Case No. 185-V-16.[10] On July 3, 2017, the RTC affirmed the MeTC's findings and explained that the requisites for filing an action for unlawful detainer are present. Likewise, Spouses Ang cannot invoke RA No. 6552 because they failed to pay any monthly amortization for 17 years after signing of the contract,[11] to wit:

> **WHEREFORE**, the challenged decision of the Metropolitan Trial Court x x x in Civil Case No. **10549** is **AFFIRMED *in toto***.

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[8] *Id.* at 104-117.

[9] *Id.* at 117.

[10] *Id.* at 126-139.

[11] *Id.* at 149-154.

SO ORDERED. (Emphasis and italics in the original.)[12]

Unsuccessful at a reconsideration, Ligaya Ang elevated the case to the CA through a motion for extension of time to file a Petition for Review under Rule 42 docketed as CA-G.R. SP No. 152427-UDK. On September 22, 2017, the CA denied the motion for non-payment of docket fees,[13] *viz.*:

> Considering that Petitioner merely filed her Motion for Extension of Time without however paying in full the amount of docket and other lawful fees, this Court may not grant the said motion consistent with the rules and jurisprudence.
>
> x x x x x x x x x
>
> Motions for extension are not granted as a matter of right but in the sound discretion of the court. x x x The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.
>
> **WHEREFORE**, premised considered, Petitioner's Motion for Extension of Time is **DENIED**. Accordingly, this case is deemed **CLOSED and TERMINATED**.
>
> **SO ORDERED**.[14]

Ligaya sought reconsideration arguing that her counsel's messenger was unable to purchase postal money orders on the last day for filing the motion for extension of time. Thus, the messenger decided to enclose the docket fees of ₱4,730.00 in the envelope containing the motion. The messenger allegedly panicked and thought that he would not be able to file the motion on time if he would transfer to another post office. As supporting evidence, she submitted the messenger's affidavit. Ligaya also invoked liberal application of the rules and insinuated that the money might have been stolen. Lastly, Ligaya manifested that

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[12] *Id.* at 154.

[13] *Id.* at 231-235.

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

she already filed her petition for review and expressed her willingness to pay again the docket fees.[15]

On February 20, 2018, the CA denied the motion for lack of merit absent compelling reason to suspend the rules. The sworn statements of the personnel assigned to the appellate court's receiving section belied the narrations in the messenger's affidavit. Worse, Ligaya failed to comply with her commitment to pay again the docket fees,[16] thus:

> Petitioner alleges that: the docket and other lawful fees in the amount of Php4,730.00 were fully paid, as the cash representing said amount was actually enclosed in the envelope containing the Motion for Extension of Time; she was allegedly a victim of theft; and the question of who took the money is impossible to be determined.
>
> **The said bare and self-serving allegations are bereft of merit.**
>
> On 11 January 2018, Division Clerk of Court Atty. Josephine Yap referred to Ms. Myrna Almira ("Almira," for brevity), Chief Receiving Section of this Court, petitioner's Motion for Reconsideration, with the attached *Salaysay* of Cajipe. A letter-compliance dated 19 January 2018 was made by Almira, Records Officer III/Officer-in-Charge of the Receiving Section, and she submitted therewith her Affidavit of even date, together with the Affidavits of Ms. Joan A. Veluz ("Veluz," for brevity) - Records Officer I of the Receiving Section, and Ms. Catalina Santos ("Santos," for brevity) - Utility Worker I of the Receiving Section.
>
> In the Affidavit of Almira dated 19 January 2018, the same stated, *inter alia*, that: at about 2:30 pm of 07 September 2017, upon receipt of the transmittal letter of Ms. Veluz pertaining to the Motion for Extension of Time, she carefully checked if a postal money order or any cash was attached to the Motion, including the extra copies of the Motion, since there was a notation by Ms. Santos (the person in charge of opening the small envelope) on the Motion "3c w/o PMO attached"; upon diligent verification, she discovered that no PMO or cash was included in the Motion which was enclosed in a small white mailing envelope; **she strongly refutes the allegation of Cajipe**

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[15] *Id.* at 236-239.

[16] *Id.* at 245-251.

in his *Salaysay* that there was cash in the amount of Php4,730.00 considering that the Motion was processed by three (3) persons, namely, Veluz, Santos, and Almira herself, before it was delivered to the Special Cases Section; if it were true that the cash amount of Php4,730.00 was inserted in the sealed small mailing envelope, together with the Motion as alleged by Cajipe, then the personnel of the Receiving Section could have readily seen the contents thereof and found the cash; however, none was found; **prudence dictates that Cajipe should have photocopied the paper bills representing the total amount of cash payment for docket fees so that there would be proof that the cash amount was actually mailed together with the Motion; and having failed to exercise due diligence on the part of Cajipe in ensuring that the cash payment would remain intact, their office reiterates its stand that no cash was actually remitted to this Court together with the Motion that was placed inside the sealed envelope**. The Affidavits dated 19 January 2018 of Veluz and Santos corroborated the same.

x x x x x x x x x

Further, it bears to note that petitioner stated in her Urgent Motion for Reconsideration that she was allegedly willing to pay again the docket and other lawful fees. **However, contrary to her pretense of good faith, she failed to enclose in the said Urgent Motion for Reconsideration the corresponding postal money orders, as payment for the docket and other lawful fees**.

x x x x x x x x x

WHEREFORE, premises considered, the Urgent Motion for Reconsideration is DENIED for lack of merit; the letter-compliance dated 19 January 2018 of Myrna D. Almira, Records Officer III/ Officer-in-Charge of the Receiving Section of this Court is NOTED; the Petition for Review (Rule 42, Rules of Court) with Application for Temporary Restraining Order/Writ of Preliminary Injunction is merely NOTED; and it is hereby reiterated that CA-G.R. SP No. 152427-UDK is deemed CLOSED and TERMINATED.

SO ORDERED.[17] (Emphases supplied.)

Hence, this recourse. Ligaya contends that the CA acted with grave abuse of discretion when it denied her motion for extension

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[17] *Id.* at 249-251.

of time and refused to admit her petition for review for non-payment of the required docket and other lawful fees. Ligaya maintains that she fully paid the required fees and prays for liberal interpretation of the rules.[18]

RULING

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply strictly with the requirements of the rules. Failure to do so often leads to the loss of the right to appeal.[19] Specifically, Rule 42 of the Rules of Court provides the requirements in appealing the Decision of the RTC in the exercise of its appellate jurisdiction, to wit:

> Section 1. How appeal taken; time for filing. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. **Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.**

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[18] *Id.* at 3-36.

[19] *American Express Int'l., Inc. v. Judge Sison, et al.*, 591 Phil. 182, 190-191 (2008), citing *M.A. Santander Construction, Inc. v. Villanueva*, 484 Phil. 500 (2004); see also *Julian v. Development Bank of the Phils.*, 678 Phil. 133 (2011), citing *Tamayo v. Tamayo, Jr.*, 504 Phil. 179, 183 (2005); and *Spouses Ortiz v. Court of Appeals*, 360 Phil. 95, 100-101 (1998).

x x x x x x x x x

Section 3. Effect of failure to comply with requirements. — **The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees**, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**.

x x x x x x x x x

Section 8. Perfection of appeal; effect thereof. — (a) Upon the timely filing of a petition for review and **the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner**. x x x" (Emphases Supplied.)

Notably, the grant of any extension for the filing of a Petition for Review under Rule 42 is discretionary and subject to the condition that the full amount of the docket and lawful fees are paid before the expiration of the reglementary period.[20] Indeed, the full payment of docket fees within the prescribed period is mandatory[21] and necessary to perfect the appeal.[22] Corollarily, the non-payment of docket fees is a ground to dismiss the appeal.[23] In *Buenaflor v. Court of Appeals*,[24] however, we qualified this rule, and declared, *first*, that the failure to pay the appellate court docket fee within the reglementary period warrants only discretionary as opposed to automatic dismissal of the appeal; and *second*, that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with a great deal of circumspection considering all attendant circumstances. In that case, the postal money orders intended

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[20] *Reyes v. People, et al.*, 764 Phil. 294, 306-307 (2015).

[21] *The Heirs of the late Ruben Reinoso, Sr. v. Court of Appeals, et al.*, 669 Phil. 272, 280 (2011), citing *Pedrosa v. Hill*, 327 Phil. 153, 158 (1996).

[22] *Meatmasters International Corporation v. Lelis Integrated Development Corporation*, 492 Phil. 698, 701 (2005).

[23] *Gipa v. Southern Luzon Institute*, 736 Phil. 515 (2014); see also *M.A. Santander Construction, Inc. v. Villanueva, supra* note 19.

[24] 400 Phil. 395 (2000).

for the payment of appellate docket fees were actually delivered to the trial court. The fact that the money orders were made payable to the clerks of court of the Supreme Court and the CA and not the clerk of court of the trial court, was a minor defect and should not be construed as a failure to pay the docket fees.

In *American Express International, Inc. v. Sison*,[25] this Court observed that there is no specific manner of paying the docket or appeal fees. In that case, however, we upheld the dismissal of the notice of appeal because the petitioner failed to substantiate the claim that it sent the letter containing the docket fees, *viz.*:

> **There is no specific provision in the Rules of Court prescribing the manner by which docket or appeal fees should be paid. However, as a matter of convention, litigants invariably opt to use the postal money order system to pay such fees not only for its expediency but also for the official nature of transactions coursed through this system**. The controversy spawned by the question of whether Amex had, in fact, paid the appeal fees within the reglementary period could have been avoided entirely had it chosen to pay such fees through postal money order and not by enclosing its payment in a letter. After all, Amex's counsel's messenger could easily have procured a postal money order while he was already at the Ayala Post Office filing the Notice of Appeal by registered mail.
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> x x x x x x x x x
>
> Amex professed that it had paid the docket fee on the same day that it filed a Notice of Appeal. It presented as proof of payment a photocopy of the January 29, 2001 letter in which was supposedly enclosed the docket fee of P600.00, with the superimposed photocopy of Ayala Post Office Postal Registry Receipt No. 1860, under which the letter was allegedly mailed. **Based on the proof required under Sec. 12 above, the registry receipt presented by Amex does not suffice as proof of payment of the docket fee in this case. For one, filed with the Court are mere photocopies of the letter and the registry receipt and even if the original of the registry receipt was submitted, there is no indication therein that it refers to the letter or the alleged docket fee payment. For another, Amex should**

[25] 591 Phil. 182 (2008).

have also submitted in evidence the affidavit of the person who did the mailing, containing a full statement of the details of mailing. As the party to whom the burden of proof to show that the letter was mailed and received by the addressee lay, Amex could have easily presented the affidavit of its messenger to satisfy the requirement of the Rules of Court. Unfortunately, Amex offered no explanation for its failure to discharge its burden. (Emphases supplied.)

Similarly, we find that Ligaya failed to establish that the appellate docket fees were duly paid. Foremost, the messenger's affidavit is insufficient to establish payment. The affidavit merely stated the reason why the messenger opted to enclose the docket fees together with the motion for extension. Yet, there is no evidence such as photocopies of the money bills to prove that the envelope containing the motion has the actual cash payment. The affidavit is likewise suspect since it was executed only after the CA denied the motion. At any rate, the CA had conducted an investigation and confirmed that no payment was actually remitted. The personnel assigned to the appellate court's receiving section corroborated this finding. Moreover, Ligaya's manifestation to pay again the docket fees is inconsistent with her claim of payment. In *Mendoza v. Court of Appeals*,[26] the petitioner's insistence that he enclosed in the mailing envelope the docket fees was unpersuasive. This Court even questioned why petitioner prayed in his motion for reconsideration that he be allowed to pay once more the docket fees if his allegations were true.[27] Lastly, Ligaya has not shown any compelling reason to warrant a liberal application of the rules. The alleged theft is speculative. The justifications that the messenger panicked because he was unable to purchase postal money orders and that he might not be able to file the motion on time if he would

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[26] 545 Phil. 198 (2007).

[27] *Id.* at 202; this Court observed as follows: "[i]n the instant case, however, petitioner has not shown any reason which justifies relaxation of the Rules. His insistence that he enclosed in the mailing envelope the amount of ₱1,030.00 as docket fee does not convince us. If it were true, why did he pray in his motion for reconsideration that he be allowed to pay once more the docketing fee"?

transfer to another post office are neither convincing nor adequate to merit leniency. Ligaya's counsel could have asked the messenger to buy postal money orders in advance instead of waiting for the last minute in filing the motion.

All told, the CA did not commit grave abuse of discretion when it denied Ligaya's motion for extension of time and refused to admit her petition for review for non-payment of the required docket fees. It is only when persuasive reasons exist that the rules may be relaxed to spare a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[28] In this case, Ligaya is under no threat of suffering an injustice if her prayer is not granted. Quite the contrary, it will be unfair if we reinstate Ligaya's appeal as this would mean further waiting on the part of the private respondent who has long been deprived of the right to possess the property he owns.

FOR THESE REASONS, the petition is **DISMISSED**.

SO ORDERED.

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

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[28] *Sebastian v. Hon. Morales*, 445 Phil. 595, 605 (2003).

FIRST DIVISION

[G.R. No. 242690. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **WODIE FRUELDA *Y* ANULAO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DUPLICITY OF OFFENSES; MOTION TO QUASH; AN INFORMATION MUST CHARGE ONLY ONE OFFENSE, AND HENCE A MOTION TO QUASH THE INFORMATION MUST BE FILED BY THE ACCUSED WHEN IT CHARGES TWO OR MORE OFFENSES, FOR OTHERWISE, HE MAY BE CONVICTED OF THE TWO OFFENSES. — Based on the Information, Fruelda is charged with two crimes — (a) sexual assault under Article 266-A (2); and (b) rape by carnal knowledge under Article 266-A (1)(b) of the RPC. Although two offenses were charged in just one Information, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, Section 3, Rule 120 of the same rules also states that:

> [w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

Since Fruelda did not file a motion to quash the Information, he can be convicted of the two offenses charged therein: sexual assault *and* rape by carnal knowledge.

2. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES. — In reviewing rape cases, the Court is guided by the following three principles: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution

must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense. Corollary to these is the dictum that when a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON NECESSARILY CARRY GREAT WEIGHT AND RESPECT. —** It is a well-settled doctrine that when the case pivots on the issue of the credibility of the victim, the findings of the trial court necessarily carry great weight and respect. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.

4. **CRIMINAL LAW; SEXUAL ASSAULT; RAPE; ONE CANNOT BE CONVICTED OF RAPE BY MERE POSSIBILITY; CASE AT BAR. —** AAA testified that while Fruelda was moving his finger in and out of her private part through the opening of her pants' zipper, he took out his penis and massaged the same. Shortly thereafter, AAA lost consciousness. When she woke up, she was seated on the floor with her underwear and pants pulled down to her knees. Based on the foregoing, the crime committed by Fruelda is sexual assault. Although it is possible that Fruelda had carnal knowledge of AAA while the latter was unconscious, he cannot be convicted of the crime of rape by carnal knowledge based on a mere possibility.

5. **ID.; ID.; REMEDIAL LAW; EVIDENCE; ADMISSIONS; AN ACCUSED CANNOT BE CONVICTED OF ANOTHER OFFENSE OF SEXUAL ASSAULT WHICH, ALBEIT ADMITTED, IS NOT ALLEGED IN THE INFORMATION; CASE AT BAR.—** [T]he Court is left with the admission of Fruelda that he inserted his finger inside AAA's private part and that AAA fellated him — against her will. Fruelda's acts of inserting his finger inside AAA's private part against her will

and forcing AAA to fellate him constitute two different acts of sexual assault under 266-A (2). However, since the Information is silent as to the second act admitted by Fruelda, that of forcing AAA to fellate him, he cannot be convicted for it.

6. ID.; ID.; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF IN CRIMINAL CASES; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED, PRESUMPTION OF INNOCENCE; PROOF BEYOND REASONABLE DOUBT MUST BE ESTABLISHED BY THE PROSECUTION TO OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED.— The right of the accused to be presumed innocent until the contrary is proved is enshrined in the Bill of Rights. To overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. Proof beyond reasonable doubt means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. Every circumstance favoring the accused's innocence must be duly taken into account.

7. ID.; ID.; "SWEETHEART THEORY"; REMEDIAL LAW; EVIDENCE, BURDEN OF PROOF; THE BURDEN OF PROOF SHIFTS TO THE ACCUSED TO ESTABLISH BY INDEPENDENT PROOF THE EXISTENCE OF THE RELATIONSHIP AND THAT THE VICTIM CONSENTED TO THE SEXUAL ACT; CASE AT BAR.— The "sweetheart theory" is an affirmative defense often raised to prove the non-attendance of force or intimidation. When an accused in a rape case claims, as in the case at bar, that he is in a relationship with the complainant, the burden of proof shifts to him to prove the existence of the relationship *and* that the victim consented to the sexual act.

. . .

For the Court to even consider giving credence to such a defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs.

8. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ACKNOWLEDGMENT OF GUILT IS NOT A CONDITION *SINE QUA NON* THEREOF; IT IS

SUFFICIENT THAT THE ACCUSED SPONTANEOUSLY SUBMITS HIMSELF TO THE AUTHORITIES; CASE AT BAR.— Contrary to the conclusion of the CA, the Court holds that the mitigating circumstance of voluntary surrender should be appreciated in favor of Fruelda. When Fruelda found out that AAA had lodged a complaint against him, he immediately went to the Batangas Criminal Investigation and Detention Group to surrender. Acknowledgment of guilt is not a condition *sine qua non* of the mitigating circumstance of voluntary surrender. It is sufficient that the accused spontaneously submits himself to the authorities because he wishes to save them the trouble and expenses necessary for his search and capture.

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.*:

This is an appeal from the Decision dated May 29, 2018[1] rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08996, which affirmed with modification the Decision dated August 31, 2016[2] of the Regional Trial Court (RTC) of Pallocan West, Batangas City, Branch 8, finding accused-appellant Wodie Fruelda y Anulao (Fruelda) guilty beyond reasonable doubt of rape under Article 266-A, paragraph 1 (b) of the Revised Penal Code (RPC).

The Facts

An Information[3] was filed against Fruelda for the crime of rape, the accusatory portion of which reads:

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of this Court), concurring.

[2] CA *rollo*, pp. 49-58.

[3] Records, p. 1.

That on or about April 28, 2014 at around 8:00 in the morning at Brgy. Kumintang Ibaba, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously insert his fingers into the genital organ of one [AAA][4] and thereafter have carnal knowledge to said [AAA], while the said offended party is deprived of reason or otherwise unconscious and against the latter's will and consent.

CONTRARY TO LAW.

Upon arraignment, Fruelda pleaded not guilty.

After pre-trial was terminated, trial on the merits ensued.

The CA summarized the respective versions of the prosecution and defense as follows:

Version of the Prosecution

The prosecution presented the private complainant AAA, Edna Rabano Ilagan, Police Inspector Julieta Magpantay, and Dr. Jerico Cordero.

The private complainant testified that she is a member and a full-time worker of Jesus the Anointed One Church in XXX City. She is in charge of the storeroom where bars of soaps, coffee and other items used to generate funds for the congregation were stored. On the other hand, Accused was the driver of the church's Bishop Arthur Gonzales.

At around eight o'clock in the morning of (8:00 A.M.) of 28 April 2014, she was charging her cellphone inside the church premises when the accused arrived and asked her where the storeroom was. After being pointed to where the storeroom was located, the Accused asked private complainant to retrieve bar soaps for him to which she

[4] 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.

obliged. Private complainant entered the storeroom through its main door while the Accused trailed behind her.

Inside, she pointed where the bar soaps were located. As she was about to leave, the Accused asked her why some of the expired fabric conditioners were still being kept. While she was explaining that an inventory is required before the items can be disposed of, the Accused suddenly grabbed her breasts. Out of shock, private complainant shouted. Although the Accused released her breasts, he, however, immediately grabbed the front of private complainant's pants directly over her private part. She was shouting in pain as the Accused dragged her further inside the bodega. The Accused then used his body to block and keep the door shut behind him as he fondled her breasts and tried to unzip her pants. When the Accused was able to open the zipper of her pants, the Accused inserted his fingers in and out of her vagina. All the while, private complainant resisted and tried to protect herself by crossing her arms in front of her in an "X" position thereby incurring bruises in the process. The Accused then pressed her onto the wall causing her to bump her head which left her disoriented and dazed. She also felt weakened by the pain that she was feeling all over her body. The last thing she saw was the accused pulling out his penis and she heard him saying "*tumuwad ka*."

When she regained composure, private complainant realized that she was already seated on the floor. She saw that her pants as well as her underwear were pulled down to her knees but the Accused was no longer to be found. She also does not know how much time has already lapsed after the accused told her "*tumuwad ka*." Although it was already dark and she could not see anything, private complainant gathered her senses, pulled up her clothes and went out of the bodega. She was bursting in tears when her fellow church member Conchita Pandi saw her. She retrieved her cellphone and called Edna Rabano Ilagan, her fellow member at "Samahang Magdalo," to come to her aid.

When Edna Rabano Ilagan arrived, they went to Camp Miguel Malvar where the private complainant filed her complaint. Pictures of her and her bruises were also taken. She was thereafter subjected to medical examination in Camp Vicente Lim in Laguna. When they returned to Camp Miguel Malvar to submit the results of the medical examination, she was told to rest and return the next day since she could not physically bear to execute a *sinumpaang salaysay*.

Edna Rabano Ilagan testified that she was acquainted with the private complainant as they are both members of Samahang Magdalo,

a non-government organization. On 28 April 2014, she was on her way to fetch her granddaughter when she received a call from private complainant who was crying on the line. Private complainant was begging to be fetched as she was allegedly raped. When she arrived at Jesus the Anointed One Church, she saw private complainant crying and shaking near the storeroom. She also noticed that private complainant had bruises on her body. She then accompanied private complainant to the women's desk at Camp Miguel Malvar where they were interviewed by P/Insp. Julieta Magpantay. She observed that private complainant at times could not answer the questions asked as she was crying and trembling while other times she was shouting and crying. When P/Insp. Julieta Magpantay noticed private complainant's bruises, the police officer thought that a medico-legal examination is needed. However, there was no SOCO personnel available at Camp Miguel Malvar; thus, private complainant was brought to Camp Vicente Lim. After the examination, private complainant was in pain and since it was also heavily raining at that time, they were told to come back to Camp Miguel Malvar the next day for the completion of private complainant's statement.

P/Insp. Julieta Magpantay testified that she is a member of the criminal investigation and detection team of the provincial police office. On 28 April 2014, she received a complaint for sexual assault from private complainant against the Accused. She interviewed private complainant and asked her to fill up the complaint sheet. She observed, however, that private complainant was not physically and emotionally prepared to do so as she was hysterical from time to time. Private complainant also passed out while she was accomplishing the complaint sheet.

When she noticed that private complainant had a lot of bruises, P/Insp. Julieta Magpantay took photographs. Thereafter, she, together with one SPO3 Herbert Mendoza, proceeded to the crime scene for ocular inspection. They were then able to verify the allegations of private complainant. Since the Accused was not around, SPO3 Herbert Mendoza contacted Bishop Arthur Gonzales and informed him of the complaint against the Accused. P/Insp. Julieta Magpantay then accompanied private complainant and her companion Edna R. Ilagan to SOCO Camp Vicente in Calamba City, Laguna for medico-legal examination. When they went back to Batangas CIDG, he saw the Accused seating in the kitchen. Upon inquiry, she learned that the accused surrendered voluntarily. When the statement of private

complainant was completed the next day, P/Insp. Julieta Magpantay assisted the parties at the City Prosecutor's Office for inquest.

Dr. Jerico Cordero testified that he is the Assistant Regional Chief and Medico-legal Officer of Regional Crime Laboratory Office 4A-CALABARZON. He was qualified and presented as an expert witness to testify on Medical Report No. SA-0139-14 which was executed by Dr. Dorothy Joy Collo based on the examination she conducted on private complainant. Dr. Dorothy Joy Collo, however, can no longer be presented as witness as she is no longer connected with the Regional Crime Laboratory Office and has already moved abroad. In any case, Dr. Jerico Cordero was asked to interpret the findings in the Medical Report. He testified that the presence of deep fresh hymenal lacerations indicate that the injuries were inflicted within a 24-hour period. A blunt object, such as a finger or penis, could have caused the injury by penetration. The medico-legal anatomic sketch also shows that the private complainant had multiple abrasions *(gasgas)* on her jaw, neck, chest and forearms.[5]

Version of the Defense

For the defense, the following witnesses took the witness stand: the Accused Wodie Fruelda himself, Conchita Pandi and Romel Elida.

Stripped of the non-essentials, the Accused denied the imputations against him and anchored his defense on the sweetheart theory.

The Accused testified that he had been a member of Jesus the Anointed One since 1991. Prior to being the personal driver of Bishop Arthur Gonzales, he used to work for the church as part of maintenance. He was acquainted with private complainant when she joined the church in 1996. When he got married in 1999, private complainant would usually ask him about his marital life. As time went by, they became closer with one another until private complainant became his mistress. As such, it was just natural for the both of them to engage in sexual activities as they did in the morning of 28 April 2014 inside the storeroom. After their rendezvous, the Accused went out of the storeroom ahead of the private complainant. However, he saw their fellow member Conchita Pandi outside the storeroom. He then went inside to retrieve soaps and handed to Conchita Pandi. Thereafter, he left to drive for the Bishop to Manila.

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[5] *Rollo*, pp. 2-7.

When he and the Bishop returned to the church, the Accused was informed that there was a complaint against him for rape filed by private complainant. The Bishop then told him that they needed to go to CIDG at the PNP Headquarters wherein a certain SPO3 Mendoza talked to him. He was then told to remain at the police station because of the complaint lodged against him. He stayed at the police station for two (2) weeks before he was brought to court and later to the city jail. He was saddened because the reason why he went to the camp was to explain his side that he did not commit the charges hurled against him.

Conchita Pandi testified that around seven thirty in the morning (7:30 A.M.) of 28 April 2014, she was looking for private complainant as she needed assistance in laying foam to be used for the church activity to be held the next day. She asked the security guard on duty, Romel Eldin, of the whereabouts of private complainant. She was told that private complainant was inside the storeroom with the Accused. She went to the storeroom but it was locked. She likewise did not find anybody inside the storeroom but she still waited outside.

After some time, the Accused went out of the storeroom and handed her some soap for cleaning. She, however, did not take the soap as she was not supposed to clean that day. She then saw private complainant peeping out of the door of the storeroom. When she asked private complainant what she was doing inside with the Accused, private complainant replied that the Accused locked her there. She, however, pointed out the impossibility of being locked from the inside considering that private complainant was able to open the door on her own. Private Complainant thereafter broke down in tears. She then asked that their HR be summoned in order to talk to private complainant. A woman thereafter arrived and picked up private complainant from the church premises. Later that day, private complainant and the woman returned with police officers who were looking for the Accused allegedly for raping private complainant. As the police officers were inspecting the storeroom, Conchita Pandi told them that no rape occurred as she merely caught the private complainant and the Accused together inside the storeroom.

Romil Elida corroborated the testimony of Conchita Pandi. He testified that he was a volunteer security guard at the Jesus the Anointed One Church of which the Accused and private complainant were his co-members. He, however, treats the Accused as his brother. On 28 April 2014, he was on duty when the Accused arrived and asked for

private complainant who was inside the church premises. After about fifteen (15) minutes, Conchita Pandi arrived and was looking for private complainant as well to whom he responded that private complainant was inside. Conchita Pandi, however, returned saying that she could not find private complainant but he replied that he just saw private complainant with the Accused. After a while, Conchita Pandi returned saying that he caught private complainant and the Accused inside the storeroom. He then saw private complainant crying outside the storeroom.

Both Conchita Pandi and Romel Elida also testified as to the demeanor and interaction of the Accused and private complainant prior to the 28 April 2014 incident. Romel Elida averred that he had the notion that the Accused and private complainant was in some sort of relationship as the Accused would usually ask him about private complainant. He sees them flirting or joking with each other. However, he only confirmed his suspicion on 28 April 2014 when he saw private complainant crying outside the storeroom after Conchita Pandi told him that she caught the Accused and private complainant inside the storeroom. As for Conchita Pandi, she relayed to the court an incident she witnessed between the Accused and private complaint which occurred three to four years prior to 28 April 2014.[6]

Ruling of the RTC

In a Decision dated August 31, 2016, the RTC found Fruelda guilty of the crime of rape:

Wherefore, on the basis of the evidence presented by the Prosecution the accused Wodie Fruelda committed the crime of rape beyond reasonable doubt, consequently he is hereby sentenced to suffer the penalty of *reclusion perpetua* as well as to indemnify the victim in the amount of fifty thousand (Php50,000.00) as actual damage *[sic]* and twenty five thousand (Php25,000.00) as exemplary damage *[sic]*.

SO ORDERED.[7]

The trial court convicted Fruelda, thus:

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[6] Id. at 7-9.

[7] CA *rollo*, p. 58.

The accused in order to escape one's liability presented the idea that he has [a] prohibited love affair with the complainant. The Presiding Judge opted not to state in this Decision what the accused narrated in order to prove his illicit relationship with the complainant for fear that this formal Decision would be converted into a pornographic reading material. What the accused wanted to convey [was] that as lovers they had already [gone] to the extent of performing the marital act. Worthy of note that as held by the Supreme Court in the case of People versus Rommel Bello y De Leon, G.R. No. 187075, July 5, 2010. The defense of consensual sex must be established by strong evidence in order to be worthy of judicial acceptance.

Wherein it goes without saying, that such kind of relationship would be established by proof as mementos, love notes or photographs depicting a sign of special relationship between the loving couple. (People versus Corpuz, G.R. No. 175836, Jan 30, 2009, 577 SCRA 465) x x x.

The deaf/mute witness that never lies would be the document marked as Exhibit "C" Medico Legal Report No. SA-0139-14 issued by PNP-Medico Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, MD. The medico legal report reveals deep fresh laceration at 2 o'clock and 3 o'clock and 9 o'clock position and the posterior fourchette has been lacerated as interpreted by Dr. Jerico Cordero, Assistant Regional Chief of Regional Crime Laboratory Office 4A. The Assistant Regional Chief of Crime Laboratory Office 4A, explained that the vagina of the subject has been penetrated by a blunt object which logically be an erect penis. The Physician further stated that the injuries noted are what we refer to in tagalog as "gasgas."

x x x x x x x x x

As testified to by Police Inspector Magpantay she conducted an ocular inspection of the place where the incident happened and she was convinced that AAA has been telling the truth. It may be proper to say that upon request of the parties the Presiding Judge conducted an ocular inspection of the place x x x. The place where the incident happened is really a secluded place and any banging sound could not be heard in the adjacent room as a result of the ocular inspection that has been conducted.

The photographs marked as Exhibit "I", Exhibit "J", Exhibit "K", Exhibit "L" and Exhibit "M" would convey an idea of a struggle. The Medico Legal Report No. SA-0139-14 issued by PNP-Medico

Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, clearly reveals that AAA was ravished because of the presence of the fresh lacerations noted on the vagina of the victim and the injuries noted. The Medico Legal Report No. SA-0139-14 does not reveal any old healed laceration on the vagina of the victim logically pointing to a conclusion that the declaration of Wodie Fruelda about his secret relationship with the victim that they had already performed the marital act does not hold true.[8]

Ruling of the CA

In a Decision dated May 29, 2018, the CA affirmed the conviction of Fruelda, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, the assailed Decision dated 31 August 2016 of Branch 8 of the Regional Trial Court of Pallocan West, Batangas City, finding the accused Wodie Fruelda y Anulao guilty beyond reasonable doubt of the crime of Rape is hereby **AFFIRMED with MODIFICATION** in that he is ordered to pay the private complainant Seventy Five Thousand Pesos (Php75,000.00) by way of civil indemnity, Seventy Five Thousand Pesos (Php75,000.00) as moral damages and Seventy Five Thousand Pesos (Php75,000.00) as exemplary damages in line with prevailing jurisprudence.

SO ORDERED.[9]

The CA affirmed Fruelda's conviction in this wise:

Accused-Appellant maintains that his sexual encounter with the private complainant was consensual as they were sweethearts. By taking this stance, Accused-Appellant inevitably admitted his carnal knowledge with private complainant. The burden of evidence to prove their relationship as sweethearts is therefore shifted upon him.

Accused-Appellant, in his defense, avouched that the private complainant did not escape his advances despite the opportunity to do so. Private complainant could have done every physical move to frustrate his advances but she failed to do so. Accused-Appellant also avers that the testimony of private complainant is bereft of

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[8] Id. at 55-57.

[9] *Rollo*, p. 18.

allegation of threat or use of weapon or intimidation to succumb to his lustful desires. Moreover, if private complainant was indeed deprived of reason or otherwise unconscious as alleged in the Information then there is no way for the prosecution to establish with moral certainty if Accused-Appellant inserted his penis into her vagina. Lastly, Accused-Appellant submits that the testimony of private complainant was uncorroborated and therefore a mere fabrication of the charges against him to hide her shame for their illicit relationship.

The defense of Accused-Appellant is untenable.

x x x x x x x x x

The testimony of the private complainant as to the facts and circumstances that occurred prior and subsequent to the rape was clear, positive, and convincing. It also logically proved the Accused-Appellant committed the crime charged. The fact that the private complainant no longer had recollection of the precise time when she was raped does not negate her credibility. x x x

The element of force is also very glaring based on the evidence of injuries sustained by the private complainant. As aptly put by the court a quo: "[t]the photographs marked as Exhibit "I", Exhibit "J", Exhibit "K", Exhibit "L" and Exhibit "M" would convey an idea of a struggle. The Medico Legal Report No. SA-0139-14 issued by PNP Medico Legal Officer, Police Senior Inspector Dorothy Joy Ortañez Collo, clearly reveals that [private complainant] was ravished because of the presence of fresh lacerations noted on the vagina of the victim and the injuries noted [on other parts of her body]."

Anent Accused-Appellant's use of the sweetheart theory, the same must fail in the absence of any substantial proof. For courts to even consider giving credence to such defense, it must be proven by compelling evidence. The Accused-Appellant cannot just present testimonial evidence in support of the theory. Independent proof is required, such as tokens, mementos, and photographs, but none was presented in this case. And, even if it were true that Accused-Appellant and private complainant were sweethearts, this fact does not necessarily negate the commission of rape. Being sweethearts does not prove consent to the sexual act.

All told, the conviction of Accused-Appellant for the crime of rape is hereby sustained.

Hence, the instant appeal.

Issues

Whether the CA erred in finding Fruelda guilty beyond reasonable doubt of the crime of rape by carnal knowledge.

Whether the CA erred in finding that the mitigating circumstance of voluntary surrender cannot be appreciated in favor of Fruelda.

The Court's Ruling

The appeal is partly meritorious. Contrary to the findings of the lower court, Fruelda is guilty of the crime of sexual assault under Article 266-A (2) of the RPC, *not* rape by carnal knowledge under Article 266-A (1) (b).

Based on the Information, Fruelda is charged with two crimes — (a) sexual assault under Article 266-A (2); and (b) rape by carnal knowledge under Article 266-A (1) (b) of the RPC. Although two offenses were charged in just one Information, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure,[10] Section 3, Rule 120 of the same rules also states that:

> [w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

Since Fruelda did not file a motion to quash the Information, he can be convicted of the two offenses charged therein: sexual assault *and* rape by carnal knowledge.

Fruelda is guilty of sexual assault under Article 266-A (2) of the RPC, not rape by carnal knowledge under Article 266-A (1) (b)

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[10] Section 13. *Duplicity of the offense*. — A complaint or information must charge but one offense, except when the law prescribes a single punishment for various offenses.

In reviewing rape cases, the Court is guided by the following three principles: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense. Corollary to these is the dictum that when a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[11]

In the case at bar, as in most rape cases, the issue boils down to the credibility of the victim. In this regard, the Court pored over the testimony of AAA and find that there is no reason to overturn the trial court's assessment of AAA's credibility. AAA recounted what happened inside the storeroom, thus:

Q: What did this Kuya Wodie of yours tell you when he approached you?
A: He asked me "where is the bodega?," sir.

Q: Why were you the person asked by this Kuya Wodie of yours where the bodega is?
A: Because I was the one in charge of the bodega, sir. Because the stocks there which were actually bar soaps were under my custody, sir.

Q: So when asked you "ang bodega" what did you answer if you did?
A: I told him it was there, that's what I told him, sir.

Q: When you answer him "andun po" what did he do if any?
A: He went there and I don't need to accompany him because he knew where its was and I just look behind him.

Q: After this Wodie went to the bodega and she were looking behind what happened?

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[11] *People v. Garces, Jr.*, 379 Phil. 919, 927-928 (2000).

A: When I pointed to him the bodega he went inside the bodega and he went back to me and asked me about the bar soaps, sir.

Q: And what did you answer him?
A: [Inutusan niya po ako "ikuha mo ako," sir.]

Q: When this Wodie told you "ikuha mo ako," what did you do?
A: I heeded to his request, sir.

Q: Where did you go?
A: I first went to the main door and then he followed me, sir. He locked the main door, sir.

Q: When you say the main door which door you are referring to?
A: The main door going to the bodega, sir.

Q: After you saw that this Wodie who followed you closed the main door what happened next?
A: I went inside the bodega and he followed me, sir.

Q: Do you mean to say that when you enter the bodega was the bodega already open?
A: Yes, sir.

Q: And when you enter the bodega what happened?
A: He followed me inside the bodega and I pointed to him the bar soaps, sir.

Q: This bodega could you picture to us what are the things inside the bodega?
A: Mga kaldero po, tulyasi, timba, baretang sabon po at fabric conditioners, toilet bowl cleaner and the things used in the audio video presentation, sir.

Q: So when you enter [*sic*] the bodega where was Wodie?
A: He followed me inside the bodega, sir.

Q: And what did you do to his request to find you some bar soaps?
A: When I was able to point to him where the bar soaps were I turn [*sic*] my back going out of the bodega, sir.

Q: And when you were about to get out of the bodega what happened?
A: When I was trying to turn my back out [*sic*] of the bodega he asked me again "why are these things still here? These are already expired. It should not be here" so I faced him back, sir.

Q: What do you understand by the things that Wodie was referring to when he said "ba't nandito pa ang mga ito, di ba expire [*sic*] na 'to?"
A: He was telling me these fabric conditioners were *[sic]* already expired should already be disposed, sir.

x x x x x x x x x

Q: And what did you answer him?
A: I was telling it is still needed in the inventory the reason why these are not yet already disposed, sir.

Q: So after you have answered him what happened?
A: I was shocked as to what he did, sir.

Q: What did he do to you?
A: He immediately grabbed my two breasts, sir. It was not tender it was so hard, sir.

Q: What did you feel when he grab [*sic*] held your breasts?
A: I was shocked and I shouted because it was painful, sir.

x x x x x x x x x

Q: So after he grab [*sic*] held your breasts which you said was painful and as a matter of fact you shouted as a reaction x x x what happened next?
A: When I shouted he released my breasts and he grab held my front, sir.

Q: When you say "harapan" what are you referring to?
A: My genitals, sir.

Q: In what manner did he grab held your genitals?
A: He grab [*sic*] held my genitals tightly, sir.

Prosecutor Gajete: May we put it on record, Your Honor, that at this juncture the witness is crying, Your Honor.

The Court: Noted.

Prosecutor Gajete: At this juncture, Your Honor, we would like to incorporate to the record that aside from the fact that the witness is crying she is likewise shaking, Your Honor.

The Court: Noted.

x x x x x x x x x

Q: When he grab [*sic*] held the front part of your pants directly over your genitals, what did he do next?
A: I was shouting it's painful and he pulled me inside, sir.

x x x x x x x x x

Q: When you were already inside after being pulled by Wodie, what happened next?
A: He used his body to close the door, sir.

Q: Was the door in fact close [*sic*]?
A: He use [*sic*] to block the door. He pressed his body on the door to ensure that it is locked, sir.

Q: And after that what happened?
A: He mashed my breasts, sir.

Q: What was your response in relation to this [*sic*] acts of Wodie mashing your breasts?
A: I resisted, sir.

x x x x x x x x x

Q: What did you do to resist?
A: I placed my hands in an X position to protect my breasts, sir.

Q: And when you put your hands in X position to protect your breasts what did he do next?
A: He was forcibly trying to remove my hands from X position, sir.

Q: What did he do next?
A: He was trying to open and remove my pants, sir. He was not able to open it but he successfully opened my zipper of my pants, sir.

Q: When your zipper was opened what did he do next to you?
A: He inserted his fingers inside my panty, sir.

Q: What did he do to his fingers?
A: He inserted it in my vagina, sir.

Q: And while his fingers was in your vagina what was he doing with it?
A: He inserted it, sir. He was inserting his fingers in and out of my vagina, sir.

Q: And what did you feel when he was doing it?
A: It was so painful, sir.

Q: At that juncture Ms. Witness, what did you do to resist?
A: I was trying to resist, sir.

x x x x x x x x x

Q: In contrast to your resistance, what did the accused do?
A: He was trying to remove my hands in an X position in protecting my breasts he pressed me to lean on the wall and "napauntog po ako," sir.

Q: So while he was inserting his finger into your vagina, what happened next?
A: He pulled out his penis, sir.

Q: And when he already let out his penis what happened?
A: I was shocked, sir. He massage [*sic*] his penis, sir.

x x x x x x x x x

Q: I would like to go back to the point when you said he placed his fingers into your genitals the vagina. Can you be specific as to which finger or which hand use [*sic*] with that finger?
A: Left hand, sir.

Q: So while his left hand was holding your vagina he use [*sic*] his finger to insert what was he doing with his right hand if any?
A: I was in X position in protecting my breasts and he was trying to remove the X position, sir.

Q: Now you mentioned that while Wodie was inserting his finger and moving in and out of your vagina you experience [*sic*] pain. What did you do in relation to that?

A: I was disoriented and dazed and I was weakened, sir.

Q: And after you feel [*sic*] weak and disoriented or dazed what happened next?
A: "Sabi po kasi niya tumuwad daw po ako," sir.

Q: How did he say it?
A: "Tumuwad ka," sir.

Q: And did you heed his words?
A: I was confused and I do not know what he was saying and I do not know what he was trying me to do [*sic*], sir.

Q: After that what happened?
A: He was telling me "tumuwad ka" and I did not know anymore what followed and last thing I heard of him saying was "tumuwad ka," sir.

Q: Having heard "tumuwad ka" what happened next?
A: Thereafter I only realize [*sic*] I was already seated at the floor, sir.

Q: And how did you come to realize that?
A: Because I felt my buttocks were cold and my pants was [*sic*] pulled down up to my knees, sir.

Q: Only your pants were pulled down up to your knees?
A: Including my panty, sir.

Q: Where was Wodie at that juncture when you realized that your buttocks were already cold?
A: I did not know, sir.

Q: You are trying to tell the Honorable Court that Wodie was no longer around?
A: He was no longer there, sir.

Q: When you said that was the last thing I remember can you estimate how long you have no knowledge anymore of what happened after you heard the word "tumuwad ka"?
A: I do not know, sir, because I was so weak and I experienced pain all over, sir.[12]

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[12] TSN, June 19, 2014, pp. 12-20.

It is a well-settled doctrine that when the case pivots on the issue of the credibility of the victim, the findings of the trial court necessarily carry great weight and respect.[13] This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[14]

The RTC and CA, finding AAA's testimony credible, convicted Fruelda of the crime of rape by carnal knowledge. While the Court agrees with the lower courts that AAA's testimony is indeed credible, the Court finds that, on the basis of AAA's testimony, Fruelda can only be convicted of sexual assault.

AAA testified that while Fruelda was moving his finger in and out of her private part through the opening of her pants' zipper, he took out his penis and massaged the same. Shortly thereafter, AAA lost consciousness. When she woke up, she was seated on the floor with her underwear and pants pulled down to her knees. Based on the foregoing, the crime committed by Fruelda is sexual assault. Although it is possible that Fruelda had carnal knowledge of AAA while the latter was unconscious, he cannot be convicted of the crime of rape by carnal knowledge based on a mere possibility. The right of the accused to be presumed innocent until the contrary is proved is enshrined in the Bill of Rights. To overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution.[15] Proof beyond reasonable doubt means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. Every circumstance

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[13] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

[14] *Medina v. People*, 724 Phil. 226, 234-235 (2014).

[15] *People v. Mejia*, 341 Phil. 118, 144 (1997).

favoring the accused's innocence must be duly taken into account.[16]

At this juncture, the question before the Court is this: Are there other pieces of evidence to prove beyond reasonable doubt that Fruelda is likewise guilty of rape by carnal knowledge?

There is none. The other evidence presented by the prosecution merely corroborate AAA's testimony and strengthen this Court's conclusion that Fruelda is guilty only of sexual assault.

AAA suffered injuries on her face, neck, chest, arms, and forearms that were photographed[17] and described in the medico-legal report[18] as follows:

CONTINUATION OF SA-0139-14

1. Area of multiple abrasions, right mandibular region, measuring 19.0 x 1.5 cm, 9.0 cm from the anterior midline.
2. Area of multiple abrasions, left mandibular region, measuring 4.0 x 0.5 cm, 8.5 cm from the anterior midline.
3. Area of multiple abrasions, neck, measuring 9.8 x 2.0 cm, 4.0 cm right of the anterior midline.
4. Area of multiple abrasions, neck, measuring 8.0 x 2.0 cm, 3.0 cm left of the anterior midline.
5. Area of multiple abrasions, left pectoral region, measuring 10.0 x 7.0 cm, bisected by the anterior midline.
6. Area of multiple abrasions, right pectoral region, measuring 4.5 x 2.0 cm, 4.0 from the anterior midline.
7. Area of multiple abrasions, right arm, measuring 16.0 x 10.9 cm, bisected by its anterior midline.

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[16] *People v. Claro*, 808 Phil. 455, 468 (2017).

[17] Exhibits I-M, records, pp. 157 to 158.

[18] Exhibit C-1-A, id. at 149 (dorsal portion).

8. Area of multiple abrasions, right forearm, measuring 12.0 x 5.0 cm, bisected by its anterior midline.

9. Area of multiple abrasions, left arm, measuring 18.0 x 5.0 cm, bisected by its anterior midline.

10. Area of multiple abrasions, left forearm, measuring 14.0 x 6.0 cm, bisected by its anterior midline.

The medical examination performed on AAA the same day as the incident found blunt trauma to her labia minora and hymen:[19]

CONCLUSION:

MEDICAL EVALUATION SHOWS CLEAR EVIDENCE OF RECENT BLUNT PENETRATING TRAUMA TO THE HYMEN AND RECENT BLUNT TRAUMA TO THE LABIA MINORA.

The doctor presented to testify on the medical examination testified that a blunt object, such as a finger or penis, could have caused the injury by penetration.[20] Between the two blunt objects that could have caused the injury, the (insertion of a) finger is the version supported by the testimony of AAA and confirmed by Fruelda's sweetheart theory.

For his defense, Fruelda admitted that in the morning of April 28, 2014, while he and AAA were inside the storeroom of Jesus the Anointed One Church, he inserted his finger inside AAA's private part and, thereafter, AAA fellated him.[21] Fruelda, however, claimed that these were all consensual as he and AAA were in a relationship.

To prove his relationship with AAA, Fruelda presented Romel Elida (Elida) and Conchita Pandi (Pandi). Elida testified that he often saw Fruelda and AAA flirting with each other. Pandi, on the other hand, testified to how she had the impression that

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[19] Exhibit C-1-A, records, p. 149.

[20] TSN, March 13, 2015, p. 21.

[21] *Brief for the Accused-Appellant*, CA *rollo*, p. 37.

Fruelda and AAA were in a relationship based on events that happened three to four years prior to April 28, 2014.

The Court is not convinced. Absent independent proof of his alleged relationship with AAA, Fruelda's self-serving testimony and the speculative testimonies of his witnesses, Elida and Pandi, fall short of substantiating his sweetheart defense.

The "sweetheart theory" is an affirmative defense often raised to prove the non-attendance of force or intimidation.[22] When an accused in a rape case claims, as in the case at bar, that he is in a relationship with the complainant, the burden of proof shifts to him to prove the existence of the relationship *and* that the victim consented to the sexual act. In *People v. Bautista*,[23] the Court held:

> In rape, the 'sweetheart' defense must be proven by compelling evidence: first, that the accused and the victim were lovers; and, second, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.[24]

For the Court to even consider giving credence to such a defense, it must be proven by compelling evidence. The defense cannot just present testimonial evidence in support of the theory, as in the instant case. Independent proof is required — such as tokens, mementos, and photographs.[25]

No such proof was presented by the defense in this case. Thus, the Court is left with the admission of Fruelda that he inserted his finger inside AAA's private part and that AAA fellated him — against her will. Fruelda's acts of inserting his finger inside AAA's private part against her will and forcing AAA to fellate him constitute two different acts of sexual assault under Article 266-A (2). However, since the Information is

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[22] *People v. Rubillar, Jr.*, 817 Phil. 222, 234 (2017).

[23] 474 Phil. 531 (2004).

[24] Id. at 534.

[25] *People v. Olesco*, 663 Phil. 15, 24 (2011).

silent as to the second act admitted by Fruelda, that of forcing AAA to fellate him, he cannot be convicted for it.

The mitigating circumstance of voluntary surrender should be appreciated in favor of Fruelda.

Anent Fruelda's contention that the mitigating circumstance of voluntary surrender should be appreciated in his favor, the CA found that Fruelda had no intention to unconditionally surrender to the authorities:

> Accused-Appellant nonetheless avers that the court a quo erred in not appreciating the mitigating circumstance of voluntary surrender in his favor. Accused-Appellant claims that he was not arrested by police officers. Instead, he presented himself to the CIDG office saving the officers the trouble and expenses which they would otherwise incur had he not do so.
>
> For the mitigating circumstance of voluntary surrender to be appreciated, the defense must prove that: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority; (c) the surrender was spontaneous and voluntary. A surrender is said to be voluntary when it is done by the accused spontaneously and made in such manner that it shows the intent of the accused to surrender unconditionally to authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense necessarily incurred in his search and capture. Such intention, however, is absent in this case as Accused-Appellant testified during his direct examination that he went to the police station to explain his side that he did not commit crime charged. Verily, the mitigating circumstance of voluntary surrender cannot be appreciated in his favor.[26]

Contrary to the conclusion of the CA, the Court holds that the mitigating circumstance of voluntary surrender should be appreciated in favor of Fruelda. When Fruelda found out that AAA had lodged a complaint against him, he immediately went to the Batangas Criminal Investigation and Detention Group

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[26] *Rollo*, p. 17.

to surrender.[27] Acknowledgment of guilt is not a condition *sine qua non* of the mitigating circumstance of voluntary surrender. It is sufficient that the accused spontaneously submits himself to the authorities because he wishes to save them the trouble and expenses necessary for his search and capture.

Proper Penalty

Taking into account the mitigating circumstance of voluntary surrender, Fruelda shall suffer the indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

WHEREFORE, premises considered, the assailed Decision is **REVERSED.** Wodie Fruelda y Anulao is **NOT GUILTY OF RAPE BY CARNAL KNOWLEDGE**. He is found **GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF SEXUAL ASSAULT** under paragraph 2 of Article 266-A of the Revised Penal Code and shall suffer the indeterminate penalty of imprisonment ranging from six (6) years of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. He is ordered to pay the private offended party Thirty Thousand Pesos (₱30,000.00) as civil indemnity, Thirty Thousand Pesos (₱30,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[27] TSN, February 5, 2016, pp. 25-26.

FIRST DIVISION

[G.R. No. 242883. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **GERWIN GUNDA**[1] **and ELMER T. REBATO,** *Accused,* **ELMER T. REBATO,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UTMOST RESPECT IS GIVEN TO THE FACTUAL FINDINGS OF THE RTC CONSIDERING THAT IT WAS IN THE BEST POSITION TO ASSESS AND DETERMINE THE CREDIBILITY OF THE WITNESSES PRESENTED BY BOTH PARTIES. — After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds no cogent reason to disturb the ruling of the CA, which affirmed with modifications the ruling of the RTC. There is no indication that the RTC overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. The Court gives utmost respect to the factual findings of the RTC, considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — The three elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.

3. ID.; MURDER; ELEMENTS. — The elements of the crime of murder are: (1) a person was killed; (2) the accused killed the person mentioned in number (1); (3) the killing was attended

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[1] Accused Gerwin Gunda is one of those charged in the subject information for Murder. He is at large. There are two pending orders for his arrest, one dated November 25, 2009 (Records, p. 81) and the other dated June 29, 2011 (*id.* at 145).

by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.

4. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS. — Article 14 (16) of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. The two elements of treachery are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

5. ID.; ID.; ID.; EVEN A FRONTAL ATTACK COULD BE TREACHEROUS WHEN UNEXPECTED ON AN UNARMED VICTIM WHO WOULD BE IN NO POSITION TO REPEL THE ATTACK OR AVOID IT. — To emphasize, Remo was an innocent-passerby, who was caught off guard, at the time of the attack. The stealth, swiftness and methodical manner by which the attack was carried out did not give Remo a chance to evade when Rebato stabbed Remo, below the latter's right nipple of the midclavicular line, and the left quadrant of his abdomen. There is no doubt that Rebato's sudden and unexpected attack upon the victim evidences treachery. The fact that Rebato was facing Remo when the latter was stabbed is of no consequence. Even a frontal attack could be treacherous when unexpected on an unarmed victim who would be in no position to repel the attack or avoid it. Hence, the qualifying circumstance of treachery is properly appreciated in this case.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; AN INFORMATION WHICH LACKS CERTAIN ESSENTIAL ALLEGATIONS MAY STILL SUSTAIN A CONVICTION WHEN THE ACCUSED FAILS TO OBJECT TO ITS SUFFICIENCY. — The afore-mentioned principle is in accordance with the well-settled principle that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein. In effect, the failure to object is a waiver of the constitutional right to be informed of the nature and cause of the accusation. Rebato did not question

the insufficiency of the Information filed against him through a motion to quash or motion for bill of particulars. He voluntarily entered his plea during arraignment and proceeded with the trial. At that point in time, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the aggravating circumstance of treachery. The fact that he raised the issue of insufficiency of the Information in his appellant's brief filed before the CA is immaterial.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

For resolution of this Court is the appeal of accused-appellant Elmer T. Rebato seeking the reversal of the Court of Appeals *(CA)* Decision[2] dated August 30, 2018, which affirmed with modifications the Decision[3] of the Regional Trial Court *(RTC)*, Branch 1, Borongan City, Eastern Samar, dated June 18, 2015, finding Rebato guilty of the crime of Murder under Article 248 of the Revised Penal Code *(RPC)*.

The accusatory portion of the Information, docketed as Criminal Case No. 12002, states:

That on September 6, 2008, at about 11:30 o'clock *(sic)* in the evening, at Brgy[.] 05, Llorente, Eastern Samar, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and with treachery and evident premeditation,

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[2] *Rollo*, pp. 4-23. Penned by Associate Justice Pamela Ann Abella Maxino, and concurred in by Associate Justices Louis P. Acosta and Dorothy P. Montejo-Gonzaga.

[3] CA *rollo*, pp. 43-60. Penned by Presiding Judge Elvie P. Lim.

willfully, unlawfully, and feloniously stabbed to death [Fredelindo Gura Remo].

Contrary to law.[4]

Upon arraignment, Rebato pleaded not guilty.

Version of the Defense

In view of Rebato's affirmative allegation of self-defense,[5] the RTC conducted a reverse trial wherein the defense first presented its evidence and chronicled alleged factual antecedents.

On September 6, 2008, at around 11:00 p.m. in Brgy. 5, Llorente, Eastern Samar, Rebato was sitting outside Joyan's Bakeshop and listening to music from his MP4. He was with Edgar Carpio and Melchor Villaflor. The victim, Fredelindo G. Remo, together with siblings Jimmy Cabanatan and Jomar Cabanatan, who came from a drinking session about 15 to 20 meters away, approached and attacked Carpio and Villaflor. Afterwards, Remo attacked Rebato with the same water pump pipe, hitting the latter's right elbow, left hand and back. While Remo's group was attacking Rebato, someone from Remo's group said, "Let us kill him." Thereafter, Rebato ran inside the bakeshop, and Gerwin Gunda gave Rebato a small *bolo* locally called "*dipang*." Rebato used the *dipang* to stab Remo, who then ran away. Afterwards, Rebato went inside the bakeshop. Minutes later, Rebato heard people shouting that there was a dead body. When the policemen arrived, they asked the people inside the bakery to come out. When they asked who stabbed the dead person, Rebato admitted that it was him who stabbed Remo. Rebato was brought to the municipal building of Llorente, Eastern Samar, near the jail. He allegedly surrendered the bladed weapon he used to the policemen. After six days, Rebato was brought by policemen to the clinic of Dr. Myra Cecilia D. Grata and was physically examined.[6]

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[4] Records, p. 2.

[5] *Id.* at 166.

[6] CA *rollo*, p. 45.

Version of the Prosecution

On the other hand, the prosecution presented the incident in this manner:

On September 6, 2008, at about 11:30 p.m. in Brgy. 5, Llorente, Eastern Samar, while Remo was walking home and passing by Joyan's Bakeshop, Rebato approached Remo from behind and stabbed the latter, twice. First, Remo was stabbed at the right portion of the stomach and, then, in his left chest. Afterwards, Remo ran towards his house, but was not able to get too far, and fell down.[7]

Jimmy, who was about 10 to 15 meters away, witnessed the incident. Jimmy was with his three friends, who were about to start their drinking session, about 50 meters away from the bakery. Jomar, who was about 8 to ten 10 meters away from Rebato and Remo, also witnessed the incident.[8]

Remo sustained two stab wounds: a 2-centimeter in diameter wound below the right nipple of the midclavicular line, penetrating the chest cavity; and a 1.5-centimeter in diameter wound located at the left quadrant of the abdomen, penetrating the abdominal cavity. These wounds caused the immediate death of the victim due to excessive loss of blood, which was considered by the doctor as hypovolemic shock secondary to stab wound.

Ruling of the RTC

After trial on the merits, the RTC convicted Rebato of the crime of Murder. The dispositive portion of the Decision, dated June 18, 2015, reads:

WHEREFORE, all the foregoing premises considered, this Court **finds** accused **Elmer T. Rebato GUILTY beyond reasonable doubt of the crime of MURDER**, and thereby imposing upon him the penalty of *reclusion perpetua*, with the corresponding accessory penalties provided under Article 41 of the Revised Penal Code, and ordering

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[7] *Id.* at 46.

[8] *Id.*

accused Elmer T. Rebato to pay the heirs of victim [Fredelindo Remo] the following:

a. Civil indemnity for the death of [Fredelindo Remo] in the amount of ₱75,000.00;

b. Moral damages in the amount of ₱50,000.00;

c. Exemplary damages in the amount of ₱30,000.00; and

d. Temperate damages in the amount of ₱25,000.00.

It appearing on record that accused has been detained on October 10, 2008, his period of detention shall be credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.[9]

The RTC ruled that the justifying circumstance of self-defense cannot be properly interposed because of the absence of the indispensable element of unlawful aggression on the part of the victim. The RTC held that Rebato fabricated his defense of self-defense when he testified that he only sustained injuries on his right elbow, left hand and back, despite being beaten alternately for several times using water pump pipes, by Remo and his two friends.[10] The RTC also took into consideration the testimony of the doctor who examined Rebato's injuries, and who categorically declared that the injury could have probably been sustained from some other incident.[11]

Based on the testimonies of Rebato and Dr. Grata, the element of unlawful aggression has not been clearly and convincingly established by the defense.

The RTC also gave weight and credence to the evidence of the prosecution, which was clearly supported by testimonial

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[9] *Id.* at 60; emphases supplied.

[10] *Id.* at 49.

[11] *Id.* at 50.

and documentary evidence.[12] It was established through testimonial evidence that Remo was walking home when Rebato, after having been handed over the *dipang*, swiftly and deliberately stabbed Remo, and fatally wounded him, which eventually caused the latter's death.[13] Through these acts, the qualifying circumstance of treachery was attendant in the killing of Remo when the attack was swift, deliberate and unexpected, and affords the hapless victim no chance to resist or escape.[14]

As regards the aggravating circumstance of evident premeditation, this was not attendant in this case. The prosecution failed to establish that there was a previous decision on the part of the accused to commit the crime, and that there was evidence to show that sufficient time had elapsed for Rebato and his co-accused Gunda to decide to commit the crime and reflect on its consequences.[15]

Aggrieved, Rebato appealed to the CA.

Ruling of the CA

On appeal, in its Decision dated August 30, 2018, the CA affirmed the conviction by the RTC with modifications:

> **IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS with MODIFICATIONS** the assailed Decision dated June 18, 2015, of the Regional Trial Court (RTC), Branch 1, Borongan City, Eastern Samar, in Criminal Case No. 12002. Accused-appellant **Elmer T. Rebato is found guilty of the murder** of [Fredelindo Gura Remo], and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of [Fredelindo Gura Remo] the amounts of Seventy Five Thousand Pesos (PhP75,000.00), as civil indemnity, Seventy Five Thousand Pesos (PhP75,000.00), as moral damages, Seventy Five Thousand Pesos (PhP75,000.00), as exemplary damages, and Fifty Thousand Pesos (PhP50,000.00) as temperate damages.

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[12] *Id.* at 52.

[13] *Id.* at 55.

[14] *Id.*

[15] *Id.* at 56.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

After the entry of judgment in this case shall have been made, let the original records be forthwith remanded to the trial court for appropriate action regarding the information against accused Gerwin Gunda.

SO ORDERED.[16]

The CA relied on the findings of the trial court regarding its appreciation of facts offered by both the prosecution and the defense.[17] It ruled that Rebato did not act in incomplete self-defense, and that the prosecution was able to establish all the elements of Murder.[18] It further ruled that the prosecution has sufficiently alleged treachery as a qualifying circumstance in the Information, without considering the absence of an explanation of the treachery therein.[19]

Hence, this appeal.

Issue

Whether the CA correctly upheld the conviction of accused-appellant Rebato for murder.

The Court's Ruling

The appeal is without merit.

The factual findings of the RTC, as affirmed by the CA, should be given respect.

The Court adheres to the long-standing principle that the trial court's factual findings, especially its assessment of the

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[16] *Rollo*, p. 22; emphases supplied.

[17] *Id.* at 12.

[18] *Id.* at 9.

[19] *Id.* at 17.

credibility of witnesses, are accorded great weight and respect, and are binding upon this Court, particularly when affirmed by the CA.[20] These factual findings shall not be disturbed unless there are facts of weight and substance that were overlooked or misinterpreted and that would materially affect the disposition of the case.[21]

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds no cogent reason to disturb the ruling of the CA, which affirmed with modifications the ruling of the RTC. There is no indication that the RTC overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. The Court gives utmost respect to the factual findings of the RTC, considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.

Rebato failed to establish his affirmative allegation of self-defense in killing Remo.

Since self-defense is an affirmative allegation that can totally exculpate or mitigate the criminal liability of the accused, it is a well-settled principle that when it is invoked, the burden of evidence shifts to the accused to prove it by credible, clear and convincing evidence.[22] The accused must rely on the strength of his own evidence and not on the weakness of the prosecution.[23] Self-defense cannot be appreciated when uncorroborated by independent and competent evidence, or when it is extremely doubtful by itself.[24]

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[20] *People v. BBB*, G.R. No. 232071, July 10, 2019.

[21] *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 487.

[22] *People v. Tica*, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 397.

[23] *Id.*

[24] *Johnny Garcia Yap v. People*, G.R. No. 234217, November 14, 2018.

The three elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[25]

Initially, the accused must prove unlawful aggression on the part of the victim.[26] Otherwise, there can be no self-defense, either complete or incomplete.[27]

Both the prosecution and the defense presented conflicting accounts regarding the stabbing incident.

The witnesses for the prosecution testified that while Remo was walking home, Rebato attacked him from behind and stabbed him twice using a *dipang*. Based on the evidence of the prosecution, self-defense cannot be properly interposed because of the absence of unlawful aggression on the part of the victim. He was merely walking home when Rebato stabbed him.

On the other hand, Rebato testified that while he was listening to music, Remo, Jimmy and Jomar attacked him with water pump pipes, and threatened to kill him, to wit:

Q: Mr. Witness, what parts of your body were hit when these three (3) people were attacking you?
A: My right elbow, my left hand and on my back x x x.

Q: Were all of them holding weapons, Mr. Witness?
A: Yes, pipes, ma'am.

Q: What injuries did you sustain from the attack?
A: Right elbow, and left hand, bruises from the strike of the pipe.

x x x x x x x x x

Q: About your back.
A: Also on my back.[28]

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[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] TSN, Criminal Case No. 12002, March 2, 2010, p. 5; emphasis supplied.

QUESTIONS BY THE COURT:

Q: By the way, you said that **the three (3) persons attacked you by striking you with pipes and each of them have pipe[s] x x x and they were striking you simultaneously or alternately?**
A: One at a time, alternately.

Q: Can you tell us **how many times each one of these attacker[s] strik[ed] you with that pipe?**
A: So many times.

Q: Of that so **many** times that the three (3) persons striking you, your injuries were only on your hand and elbow?
A: Yes, Your Honor.

Q: Are you **saying** the other strike did not hit you?
A: Yes, Your Honor.[29]

The RTC found that Rebato's affirmative allegation of self-defense as fabricated. The RTC found it incredible that Rebato only sustained injuries on his right elbow, left hand and back, even if he was allegedly beaten up alternately for several times by Remo, and siblings Jimmy and Jomar.

Further, Rebato's effort of fabricating his defense was demonstrated by the testimony of Dr. Grata, who examined his alleged injuries. She categorically declared that the injury could have probably been sustained from some other incident:

Q: Madam Witness, in your medico-legal report, the nature of the incident is written "alleged mauling incident," was this the same information given to you?
A: Yes, that is the same information given to me.

x x x x x x x x x

Q: The findings on the patient granulation tissue 0.5 cm, the wound, what does this mean[,] doctor?
A: It means on the right elbow of the patient, I found out that there is a granulation tissue about a heal scar.

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[29] *Id.* at 18; emphases supplied.

Q: And the second findings, what does it mean[,] madam witness.
A: That there is no granulation tissue on the scar, it is a clear scar about 0.5 cm in the middle finger, the right hand of the patient.

Q: This granulation tissue, what could have been the cause of this injury, madam witness?
A: Because **I have examined the patient 6 days after the incident, it could possible [be] due to the other incident not necessary that incident that was stated in the medico [-] legal report.**

Q: But the scar is almost heal[ed]?
A: Yes, sir.

Q: How about this linear scar?
A: It was already [a] scar at the time of examination, 6 days after the incident.

Q: Did you examine the **other part of his body?**
A: Yes, I have examined the head, the chest and the other part of his body, and I have not found any other injury.

x x x x x x x x x

Q: Do you affirm madam **witness that these injuries which you found on the patient may also come from the same incident?**
A: Probably, but it could probably c[o]me from any other incident.[30]

Thus, it can be gleaned from the testimonies of Rebato and Dr. Grata that self-defense was not clearly and convincingly established by the defense.

Even assuming *arguendo* that Rebato's affirmative allegation of self-defense is not fabricated, there can still be no unlawful aggression.

In *People v. Nugas*,[31] the Court discussed the two kinds of unlawful aggression:

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[30] TSN, Criminal Case No. 12002, August 10, 2010, pp. 6-8; emphases supplied.

[31] 677 Phil. 168 (2011).

[1] Actual or material unlawful aggression [is] an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. [2] Imminent unlawful aggression [is] an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.[32]

Rebato's testimony provides that after he was struck with water pump pipes outside the bakery, he ran inside the bakery where Gunda handed him the *dipang*. There is nothing to show that Remo followed him inside the bakery:

Q: What were you doing x x x outside of x x x Joyan's Bake Shop?
A: I was playing sounds of my MP4.

Q: Was there any unusual incident that happened while you were there outside Joyan's Bake Shop and playing music in your MP4?
A: Jimmy Cabanatan and Jomar, [Fredelindo] got near me and sa[id], "Let us kill him."

x x x x x x x x x

Q: What was x x x your position when you were attacked by them?
A: When they approached me, I was sitting, but when they attacked me, I escaped, I got up and tried to escape.

x x x x x x x x x

Q: Did you come to know why they attacked you with what kind of pole?
A: Water pump pipe.

Q: Did you come to know why they attacked you?

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[32] *Id.* at 177-178.

x x x x x x x x x

A: While striking me with that pipe, I heard them saying[,] "[L]et us kill him[."]

Q: Of course, that time [Fredelindo] was still alive?
A: Yes, he ran back.

Q: What happened next after [Fredelindo] ran?
A: I went inside the bakery.

Q: What did you do to [repel] the attack on your person?
A: While I was trying to escape from the strike, Gerwin Gunda approach[ed] me[,] who handed me a weapon.

Q: After Gerwin Gunda gave you a weapon, who was then attacking you?
A: [Fredelindo], Jimmy and Jomar.[33]

When Rebato ran to the bakery where Gunda handed him the *dipang*, Remo did not follow him inside. Instead of remaining inside the bakery to keep himself safe from Remo, Jimmy and Jomar, Rebato used the *dipang* handed to him to harm Remo. In this case, Rebato caused harm to Remo not as an act of self-defense, but as an act of vengeance. When Rebato went inside the bakery and Remo neither followed Rebato inside the bakery nor committed any acts of unlawful aggression, Remo did not anymore pose any imminent threat against Rebato. At this point, the unlawful aggression on Remo's part has already ceased.

The Court also considers the results of the medico-legal examination which shows that the victim sustained two stab wounds that are close to the victim's vital organs. Based on the number and location of the victim's wounds, it can be deduced that Rebato was determined to kill the victim and was not merely defending himself.

Rebato committed the crime of Murder, qualified by treachery.

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[33] TSN, Criminal Case No. 12002, March 2, 2010, pp. 3-5; emphasis supplied.

The Information charged Rebato with the crime of Murder, which was alleged to have been attended by treachery and evident premeditation.

Article 248 of the RPC, as amended by Republic Act No. 7659, provides:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> x x x x x x x x x
>
> 5. With evident premeditation.

The elements of the crime of murder are: (1) a person was killed; (2) the accused killed the person mentioned in number (1); (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.[34]

Article 14 (16) of the RPC defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to ensure its execution, without risk to the offender arising from the defense which the offended party might make. The two elements of treachery are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[35]

On direct examination of witnesses Jimmy and Jomar, they testified that Remo was an innocent-passerby who was suddenly

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[34] *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 488-489.

[35] *Id.* at 489.

attacked and stabbed by Rebato on the right portion of his stomach and left side of his chest:

Q: Please inform and describe to the court what was the manner of Elmer Rebato, action, when he killed [Fredelindo Remo] because you said he was the one who killed, please tell the court.
A: [Fredelindo Remo] was attacked from behind by Elmer Rebato (witness demonstrating).

x x x x x x x x x

Q: I am asking whom did you first see, was it [Fredelindo Remo] or Elmer Rebato?
A: Elmer Rebato.

Q: What was Elmer doing?
A: Getting near [Fredelindo Remo].

Q: What was [Fredelindo Remo] doing at that time?
A: He was just passing by the bakery.

x x x x x x x x x

Q: While [Fredelindo Remo] was walking, what did Elmer Rebato do?
A: He suddenly attacked [Fredelindo Remo].

Q: When you say "hinibang," what do you mean?
A: He stabbed twice [Fredelindo Remo], sir.

Q: What portion of the body was stabbed by Elmer Rebato on [Fredelindo Remo]?
A: [On] the right portion of the stomach and the left portion of the chest.

x x x x x x x x x

Q: Did you notice if there was provocation on [the] part of [Fredelindo Remo]?
A: None, sir.

Q: What was the manner of [the] attack, was it sudden or what?
A: That was sudden, sir.

Q: Did you not notice whether [Fredelindo Remo] had the opportunity to defend himself insofar as you are concerned?
A: No, sir. [H]e did not know that he was being hurt.

x x x x x x x x x

Q: How about Gerwin Gunda, did he participate in the killing of [Fredelindo Remo]?
A: Yes, sir.

Q: In what way [was he] involved in the incident?
A: He was the one who handed a weapon to [Rebato].

Q: How did it happen that Gerwin Gunda tended a weapon to Elmer Rebato, how were you able to see that?
A: It was sudden. When [Gunda] handed the weapon to Elmer, he attacked [Fredelindo Remo].

x x x x x x x x x

Q: When Gerwin Gunda handed th[e] weapon to Elmer Rebato, where was [Fredelindo Remo]?
A: Timely, he was passing by on his way home.

Q: Was he alone?
A: Yes, Your Honor.

x x x x x x x x x

Q: He was just an innocent passer-by?
A: Yes, Your Honor.[36]

Q: What was [Fredelindo Remo] doing when he was stabbed by Elmer Rebato?
A: Walking.

Q: Who was with [Fredelindo Remo] when he was stabbed?
A: He was alone.

Q: Where did the accused enter x x x the scene?
A: On the side.

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[36] TSN dated June 15, 2011, Criminal Case No. 12002, pp. 5-14; emphases supplied.

Q: What did the accused do when he saw [Fredelindo Remo]?
A: He stabbed, sir.

Q: Did you observe whether **[Fredelindo Remo was] doing something against Elmer Rebato?**
A: Nothing.

Q: Insofar as you are concerned, was [Fredelindo Remo] aware when he was attacked by [the] accused?
A: No, sir. [37]

On the other hand, Dr. Grata testified on the Certificate of Death and Postmortem Report of Remo's death:

Q: Will you please state your examination and findings stated in the Post-Mortem Report?
A: It is stated in my Post-Mortem Report the pertinent doctor's findings, that there was a stab wound about 1.5 cm. in diameter.

The first wound that I found during the Post-Mortem examination was about 2 cm. in diameter below the right nipple of the midclavicular line.

Q: Was that wound fatal?
A: The stab wound was penetrating to the chest cavity.

Q: Was that wound **fatal?**
A: It could be fatal.

Q: What other wound that you found out?
A: Another wound that I found during the Post-Mortem examination was a stab wound with the same size about 1.5 cm. in diameter also penetrating the abdominal cavity located at the left lower quadrant of the abdomen.

Q: Was that wound fatal also?
A: It was fatal because it is [a] penetrating wound.

x x x x x x x x x

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[37] TSN dated July 6, 2011, Criminal Case No. 12002, p. 4; emphases supplied.

Q: Madam witness[,] these two (2) wounds sustained by the victim were in front of the body of the victim?
A: Yes, sir.

Q: So in other words the assailant must be in front of him?
A: Yes, sir.

Q: Or in other words they were facing each other, the assailant and the victim?
A: Yes, sir.[38]

Dr. Grata testified as to the nature of the wounds inflicted on Remo, and that the stabbing was frontal.

To emphasize, Remo was an innocent-passerby, who was caught off guard, at the time of the attack. The stealth, swiftness and methodical manner by which the attack was carried out did not give Remo a chance to evade when Rebato stabbed Remo, below the latter's right nipple of the midclavicular line, and the left quadrant of his abdomen. There is no doubt that Rebato's sudden and unexpected attack upon the victim evidences treachery. The fact that Rebato was facing Remo when the latter was stabbed is of no consequence. Even a frontal attack could be treacherous when unexpected on an unarmed victim who would be in no position to repel the attack or avoid it.[39] Hence, the qualifying circumstance of treachery is properly appreciated in this case.

In the present case, the prosecution was able to establish that (1) Remo was stabbed and killed; (2) Rebato stabbed and killed him; (3) Remo's killing was attended by the qualifying circumstance of treachery, as testified to by witnesses for the prosecution; and (4) Remo's killing was neither parricide nor infanticide. On the other hand, evident premeditation cannot be considered as an aggravating circumstance. In order for evident premeditation to be appreciated, it is indispensable to show

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[38] TSN dated October 25, 2011, Criminal Case No. 12002, pp. 4-5, 8.

[39] *People v. Joseph A. Ampo*, G.R. No. 229938, February 27, 2019.

concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[40]

Here, evident premeditation was not established because the prosecution's evidence was limited to what transpired at 11:30 p.m. of September 6, 2008, when Remo was walking home, and he was suddenly stabbed by Rebato. The prosecution did not present any proof showing when and how Rebato planned and prepared to kill Remo.

The RTC and the CA correctly held that the crime committed was Murder under Article 248 of the RPC by reason of the qualifying circumstance of treachery.

Rebato has waived his right to question the defect in the Information filed against him.

In *People v. Rolando Solar y Dumbrique*,[41] the Court established guidelines as to how qualifying circumstances, such as treachery, and other aggravating and attendant circumstances similar to it, should be properly alleged in the Information. The pertinent provision to this case states:

1. **Any Information which alleges that a qualifying or aggravating circumstance — in which the law uses a broad term to embrace various situations in which it may exist, such as** but are not limited to **(1) treachery;** (2) abuse of superior strength; **(3) evident premeditation;** (4) cruelty — is present, **must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash** under Section 3(e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, **or a motion for a bill of particulars** under the parameters set by said Rules.

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[40] *People v. Gerry Agramon*, G.R. No. 212156, June 20, 2018.

[41] G.R. No. 225595, August 6, 2019.

> **Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.**
>
> Alternatively, prosecutors may sufficiently aver the ultimate facts relative to a qualifying or aggravating circumstance by referencing the pertinent portions of the resolution finding probable cause against the accused, which resolution should be attached to the Information in accordance with the second guideline below.[42]

The afore-mentioned principle is in accordance with the well-settled principle that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein.[43] In effect, the failure to object is a waiver of the constitutional right to be informed of the nature and cause of the accusation.[44]

Rebato did not question the insufficiency of the Information filed against him through a motion to quash or motion for bill of particulars. He voluntarily entered his plea during arraignment and proceeded with the trial. At that point in time, he is deemed to have waived any of the waivable defects in the Information, including the supposed lack of particularity in the description of the aggravating circumstance of treachery. The fact that he raised the issue of insufficiency of the Information in his appellant's brief filed before the CA is immaterial.

Proper penalty and award of damages.

Under Article 248 of the RPC, the penalty for the crime of murder shall be punished by *reclusion perpetua* to death. There

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[42] *Id.*; emphases supplied.

[43] *Id.*

[44] *Id.*

being no other aggravating circumstances attendant to the commission of the crime, the penalty to be imposed for the crime of murder shall be *reclusion perpetua*.[45]

With respect to Rebato's civil liability, the rule is that, when the penalty to be imposed for a crime is *reclusion perpetua*, the proper amounts should be: Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages. Further, the heirs of Remo shall be entitled to the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages, in accordance with the prevailing jurisprudence which fixes the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages in murder cases, when no documentary evidence of burial or funeral expenses is presented in court.[46] Temperate damages shall be in lieu of actual damages.[47]

The imposition of six percent (6%) interest per annum on all damages awarded from the time of finality of this Decision until fully paid, as well as the payment of costs, is likewise sustained.[48]

WHEREFORE, the appeal is hereby **DISMISSED.** The Decision of the Court of Appeals dated August 30, 2018 in CA-G.R. CR-HC No. 02336, finding accused-appellant Elmer T. Rebato **GUILTY** beyond reasonable doubt of the crime of Murder, is hereby **AFFIRMED.**

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[45] Article 63 of the RPC.

[46] *People v. Jugueta*, 783 Phil. 806, 853 (2016).

[47] *Id.* at 826.

[48] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 280-281 (2013).

FIRST DIVISION

[G.R. No. 243583. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **DDD @ Adong,**[1] *Accused-Appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS. —** Thus, in this particular case, for a conviction of qualified rape or incestuous rape under Article 266-A, paragraph 1(a), in relation to Article 266-B of the Revised Penal Code, the prosecution must allege and prove the following elements: (1) accused-appellant had carnal knowledge of a woman; (2) such act was accomplished through force, threat or intimidation; (3) the victim is under 18 years of age at the time of the rape; and (4) the offender is a parent of the victim.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE TRIAL COURT'S CONCLUSIONS ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT UNLESS THERE APPEARS CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT AND VALUE WHICH THE LOWER COURT OVERLOOKED OR MISAPPRECIATED AND WHICH IF PROPERLY CONSIDERED WOULD ALTER THE RESULT OF THE CASE. —** Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect and, at times, even finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand,

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[1] The real name of the accused-appellant is withheld pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017.

a vantage point denied appellate courts; and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court. In this case, the Court does not find any cogent reason to overturn the conviction of accused-appellant in the 14 rape cases based on the testimonies of private complainants which the trial court and the Court of Appeals found to be credible.

3. CRIMINAL LAW; QUALIFIED RAPE; THE DATE AND TIME OF THE COMMISSION OF THE CRIME OF RAPE BECOME IMPORTANT ONLY WHEN THEY CREATE SERIOUS DOUBT AS TO THE COMMISSION OF THE RAPE ITSELF OR THE SUFFICIENCY OF THE EVIDENCE FOR PURPOSES OF CONVICTION; CASE AT BAR. — The date of commission of the rape is not an essential element of the crime. The date and time of commission of the crime of rape become important only when they create serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the date of commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of commission of the crime. In this case, as found by the trial court, the positive testimonies of private complainants that they were raped by accused-appellant are credible and prevail over accused-appellant's weak defenses of denial and unsubstantiated alibi.

4. ID.; ID.; RAPE IS NOT ALWAYS OR NECESSARILY COMMITTED IN ISOLATION OR SECLUSION FOR LUST IS NO RESPECTER OF TIME OR PLACE. — It is almost a matter of judicial notice that crimes against chastity have been committed in many different places which may be considered as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place. Thus, rape can be and has been committed in places where people congregate, *e.g.*, inside a house where there are occupants, a five-meter room with five people inside or even in the same room which the victim is sharing with the sister of the accused.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REPORTING THE OFFENSE, PARTICULARLY IN INCESTUOUS RAPE IS NOT

INDICATIVE OF A FABRICATED CHARGE. — The Court has consistently held that delay in reporting the offense, particularly in incestuous rape, is not indicative of a fabricated charge. Delay in reporting a rape incident neither diminishes complainant's credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercised moral ascendancy over the victims. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.

6. ID.; ID.; DENIAL AND ALIBI; FOR ALIBI TO PROSPER, IT MUST BE DEMONSTRATED THAT IT WAS PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE PRESENT AT THE PLACE WHERE THE CRIME WAS COMMITTED AT THE TIME OF COMMISSION; NOT PRESENT IN THE CASE AT BAR. — For alibi to prosper, it must be demonstrated that it was physically impossible for accused-appellant to be present at the place where the crime was committed at the time of commission. The defense did not present any evidence or witness aside from accused-appellant to support his testimony of innocence. In the rape incidents where accused-appellant put up the defense of alibi, he failed to substantiate his alleged presence in another place at the time of the commission of the crime of rape and the physical impossibility for him to be at the scene of the crime. Hence, accused-appellant's bare denial and unsubstantiated alibi cannot prevail over private complainants' positive and categorical testimonies that accused-appellant raped them.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal from the Decision[2] of the Court of Appeals dated September 28, 2018, in CA G.R. CR-HC No. 01657-MIN, which affirmed with modification the Judgment,[3] dated July 7, 2016, of the Regional Trial Court *(RTC)*, Branch 7, Ninth Judicial Region, Dipolog City, in Criminal Case Nos. 13369 to 13382, finding accused-appellant DDD guilty beyond reasonable doubt of fourteen (14) counts of rape as defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code.

The facts are as follows:

In separate Informations, accused-appellant was charged with 14 counts of rape, as defined and penalized under Article 266-A of the Revised Penal Code, in relation to Republic Act (*R.A.*) No. 7610, comprising of six (6) cases of rape committed against his minor daughter AAA[4] and eight (8) cases of rape committed against his other minor daughter BBB, *viz.*:

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[2] *Rollo*, pp. 3-29. Penned by Associate Justice Walter S. Ong, and concurred in by Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño.

[3] CA *rollo*, pp. 38-53.

[4] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

Criminal Case No. 13369:

That in the evening, on or about the 19th day of May, 2001, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[5]

Criminal Case No. 13370:

That in the evening, on or about the 27th day of July, 2001, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[6]

Criminal Case No. 13371:

That in the evening, on or about the 8th day of September, 2001, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

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[5] Records of Criminal Case No. 13369, p. 1.

[6] Records of Criminal Case No. 13370, p. 1.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim).[7]

Criminal Case No. 13372:

That in the evening, on or about the 29th day of December, 2001, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[8]

Criminal Case No. 13373:

That in the evening, on or about the 5th day of July, 2002, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[9]

Criminal Case No. 13374:

That in the evening, on or about the 15th day of July, 2002, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by

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[7] Records of Criminal Case No. 13371, p. 1.

[8] Records of Criminal Case No. 13372, p. 1.

[9] Records of Criminal Case No. 13373, p. 1.

lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [AAA], a 14-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[10]

Criminal Case No. 13375:

That in the evening, on or about the 17th day of July, 2002, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[11]

Criminal Case No. 13376:

That in the evening, on or about the 4th day of September, 2004, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[12]

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[10] Records of Criminal Case No. 13374, p. 1.

[11] Records of Criminal Case No. 13375, p. 1.

[12] Records of Criminal Case No. 13376, p. 1.

Criminal Case No. 13377:

That in the evening, on or about the 8th day of September, 2004, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[13]

Criminal Case No. 13378:

That in the evening, on or about the 25th day of December, 2004, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[14]

Criminal Case No. 13379:

That in the evening, on or about the 29th day of December, 2004, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

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[13] Records of Criminal Case No. 13377, p. 1.

[14] Records of Criminal Case No. 13378, p. 1.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[15]

Criminal Case No. 13380:

That in the evening, on or about the 13th day of February, 2005, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[16]

Criminal Case No. 13381:

That in the evening, on or about the 4th day of April, 2005, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[17]

Criminal Case No. 13382:

That in the evening, on or about the 23rd day of April, 2005, in the Municipality of [redacted], Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, moved by

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[15] Records of Criminal Case No. 13379, p. 1.

[16] Records of Criminal Case No. 13380, p. 1.

[17] Records of Criminal Case No. 13381, p. 1.

lewd and unchaste desire by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously succeed in having sexual intercourse with his own daughter [BBB], a 12-year-old minor, against her will and without her consent.

CONTRARY TO LAW[.] (Viol. of Art. 266-A of the Revised Penal Code, in relation to R.A. 7610, with the aggravating/qualifying circumstances: that the victim is under eighteen (18) years of age and the offender is the parent of the victim)[18]

When arraigned on September 12, 2005, accused-appellant pleaded not guilty to all 14 counts of the crime charged.[19]

During trial, the prosecution presented, as witnesses, private complainants AAA and BBB, as well as Dr. Peter Stephen Samonte, a Municipal Health Officer of Zamboanga del Norte.[20]

The version of the prosecution is summarized in the Judgment of the RTC, thus:

The private complainant [AAA] said that she was born on December 29, 1986 at [redacted] Cotabato. Her parents are [CCC] and [DDD]. She has four (4) brothers and three (3) sisters. Her mother died on February 28, 200[0] at [redacted], Cotabato. In April, 2001, their family transferred to [redacted], Zamboanga del Norte in the house of the sibling of their father [DDD], but only the girls were first transferred and their father worked in a farm owned by [EEE]. The boys were left in Cotabato and their father [DDD] used to go there. While staying in [redacted], her father [DDD] had raped her many times and as far as she can remember, her father would usually rape her when he arrives from Cotabato, that is about three (3) to four (4) times a week. [AAA] said that as far as she can remember, her father [DDD] raped her on May 19, 2001, July 27, 2001, September 8, 2001, December 29, 2001, July 5, 2002 and July 15, 2002. These are the only dates that she could remember. On the night of May 19, 2001, [AAA], as she used to, was sleeping in between her sisters. At around 11:00 o'clock in the evening, h[er] father [DDD,] who was drunk because it was his birthday[,] woke her up. Her father

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[18] Records of Criminal Case No. 13382, p. 1.

[19] Records of Criminal Case No. 13369, p. 16.

[20] *Rollo*, p. 11.

transferred her sister and he lay down beside her. When [AAA] moved to the side of her sister, h[er] father [DDD] held her and brought out a bolo. Even if there was no light, she could tell that it was her father because he was the only grown up man in the house. Her father [DDD] removed all her clothes and raped her. When [DDD] removed her clothing, she knew what he was planning because he had been doing it before to her. She could not resist because [DDD] brought a bolo and threatened that he would kill her and her siblings. [AAA] said that her father [DDD] had raped her before when they were still staying in North Cotabato. After her father raped her on May 19, 2001, her father [DDD] just went to sleep. She was fifteen (15) years old at that time while her sister [BBB] was about nine (9) or ten (10) while [FFF] was about three (3) or four (4). On the following day[,] on May 20, 2001, she just did her usual chores because that was what her father told her[,] to act normally because he doesn't want to be imprisoned. On July 27, 2001, because [AAA] did not go home immediately from school, she was fetched by her father [DDD] from the house of her cousin. H[er] father [DDD] was angry and even spanked her. When they arrived home, her father told her to cook. Later in the evening when her sisters were already asleep, her father [DDD] again raped her. She tried to resist but her father forced her. On September 8, 2001, it was a fiesta and [AAA] participated in a dance and when they went home, they went directly to the house of her cousin and also her niece and they slept together with her father in the house of [GGG], the brother of her father [DDD]. While they were sleeping, her father, who was drunk, pulled her, removed her clothing then raped her. Her father just told her not to make noise so the others would not know about it. On December 29, 2001, they were at their house and it was her birthday. They did not prepare anything for her birthday but she was suspecting that her father would rape her again. [AAA] went to sleep at around 7:00 o'clock in the evening and her father [DDD] told her that since he just arrived from Cotabato, he wanted to do the thing he used to do to her. Her father again raped her for more or less one (1) hour just like with the other nights. On July 5, 2002, her male siblings were already living with them in [redacted] They were just inside their house because her father would not allow them to go out since he started raping her for fear that she might tell others about it. At about 6:00 to 7:00 o'clock in the evening[,] her father wanted them to sleep already. When they were already asleep, her father slowly moved her other siblings to the other side of the bed and then raped her again. She could not resist because [every time] her father [DDD] would rape

her, a bolo is always with him. Her father is an expert in moving without creating a noise even if their floor is made up of bamboo splits. Again, it took more or less one (1) hour for her father to rape her. On July 15, 2002, she and her father had a fight before her father could molest her because she strongly resisted. Her father spanked and brought her downstairs and threatened her to be hacked with the bolo including her other siblings. She just cried and thought that if ever she would have a chance, she would escape from her father. Her father brought her upstairs and told her to lie down and he removed her clothing. He mounted on her and raped her even if her brothers and sisters were already sleeping. On July 16, 2002, [AAA] pretended to go to school and boarded a bus for Butuan City. From [redacted],] she went to Dipolog City Terminal then took the bus for Cagayan de Oro City[,] then to Butuan City where she worked as a househelper. She stayed in Butuan City for two (2) years[,] then on April 23, 2003 she went to Cotabato to her grandmother to seek help and file a case against her father [DDD]. They filed eight (8) cases against her father in Cotabato. While in Cotabato, her aunt [HHH] of [redacted]called her to file the case here because [DDD] is in Zamboanga del Norte. On April 20, 2005, [AAA] initiated these cases against her father. She said that because of what her father did to her, she felt ashamed and worried that she might not have a good future and could not face other people. She said that even death could not compensate what her father did to her and he does not deserve her respect. If it is possible, the accused should be executed immediately and even if he would shed blood, she would not forgive him because he destroyed her honor.

On the other hand[,] complainant [BBB] testified that accused [DDD] is her father. Her mother [CCC] died when she was six (6) years old and at present[,] she resides in [redacted], Zamboanga del Norte. She has siblings, namely, [III], [AAA], [JJJ], [KKK], [LLL] and [FFF]. She was born on September 4, 1992 and her mother died in 2002 *(sic)* and their father [DDD] did not remarry. In 2002, they resided in [redacted], with her father and siblings. Their house had no room so they had to sleep in one area in the sala. [BBB] was only twelve (12) years old by then in 2002. [BBB] said that in the evening of July 17, 2002[,] while she was sleeping, she was raped by her father [DDD]. At that time[,] her elder brother [III] and elder sister [AAA] were not there. Her father [DDD] woke her up and put a knife on her neck, undressed her and molested her. Then he put himself on top of her while already naked and molested her. His

penis was able to enter her vagina and that was her first time to experience sexual intercourse. She was not able to defend herself nor resist because she was afraid that her father would kill her. She felt pain and was afraid while the penis of her father was inside her vagina. After that incident on July 17, 2002, her father again raped her on September 4 and 8, 2004. Again, her father woke her up and poked a knife on her. She was threatened to be killed if she would make some noise and movement. H[er] father kissed her repeatedly then made a push and pull movement of his buttock. He ejaculated and there was a wet substance coming from his penis. The rape happened again on December 25 and 29, 2004, February 13, April 4 and 23, 2005. As far as she can recall, she was raped by her father seven (7) times and her father would rape her every week. Aside from her, her father also raped her sister [AAA]. She learned about this when her father was arrested because he raped her sister [AAA]. [BBB] said that she confided what happened to her aunt [HHH] when the latter asked her why she was always out of her mind and she was no longer acting normally. Her aunt [HHH] brought her to the doctor and had her examined. They went to the Police Station and the DSWD.[21]

Private complainants AAA and BBB were examined on September 23, 2005 and May 3, 2005, respectively, by Dr. Samonte. Thereafter, Dr. Samonte issued two medico-legal certificates[22] containing his findings that AAA had healed hymenal lacerations at 3 o'clock, 6 o'clock, 9 o'clock and 12 o'clock positions, while BBB had healed hymenal lacerations at 6 o'clock, 9 o'clock and 12 o'clock positions.

The defense presented accused-appellant as its lone witness. The version of the defense is summarized in the Judgment of the RTC, thus:

> The defense presented the accused [DDD] as [the] only witness. He first testified thru his Judicial Affidavit for Crim. Cases No. 13369-13374 filed by [AAA].
>
> The accused [DDD] testified that complainant [AAA] is his daughter. He denied to have raped [AAA] on May 19, 2001 because that day was his birthday. At 4:00 P.M., he went to the center of

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[21] CA *rollo*, pp. 44-47.

[22] Records of Criminal Case No. 13369, pp. 122-123.

[redacted] together with [MMM] and they drank coconut wine. At 10:00 P.M., [NNN] went to the accused and told him that his elder brother [GGG] got wild and was looking for him. He went home together with [MMM] and when they arrived at the house that they were renting, [GGG] challenged him to a fight and so they fought. The accused ran to the house of [NNN] to borrow a bolo. He returned and hacked the gallon of [GGG] and he ran inside the house and blocked the door holding a bolo and a knife, that was why accused [DDD] was not able to enter the house the whole night. That night, [AAA] slept in the house of [GGG] together with her younger sisters, [BBB] and [FFF]. Accused also denied to have raped [AAA] on July 27, 2001 because on said date he was still in Cotabato and some of his children were still there. [AAA] stayed in the house of [OOO] in [redacted] Zamboanga del Norte because she was studying in [redacted]. [DDD] returned to [redacted] only in the month of August, 2001 and when he arrived, he took [AAA] from [redacted] and transferred her to [redacted] and she stayed in the house of [PPP], a cousin of [DDD's] wife because he returned to Cotabato. The accused also denied to have raped [AAA] on September 8, 2001 because on this date, he was still in Cotabato while [AAA] just stayed in the house of his elder sister [QQQ] in [redacted]. Accused also denied to have raped [AAA] on December 29, 2001 because that day was the birthday of [AAA]. He was not able to return to [redacted] because during that month, he was managing his workers who were cutters of sugarcane in the plantation of [RRR] at [redacted] [,] Cotabato. He returned to [redacted] only on January 9, 2002 because he brought home his two (2) children, [KKK] and [BBB] and he also accompanied two (2) of his workers who were cutters of sugarcane, namely: [SSS] of [redacted], Dipolog City, and [TTT] of [redacted], Zamboanga del Norte. Accused also denied to have raped [AAA] on July 5, 2002 because he was not in [redacted] on that day. It is true that he already came home from Cotabato and did not return there, but on June 28, 2002, he went to [redacted] together with [UUU] and [VVV] to harvest the coconuts of [WWW] who is the neighbor of his younger sibling who lived there. They stayed in [redacted] for nine (9) days and they went home only on July 7, 2002. They were even in a hurry because the barangay and Sangguniang Kabataan elections were fast approaching. Accused also denied to have rape[d] [AAA] on July 15, 2002 because that day was the election day for barangay and Sangguniang Kabataan officials. He was in

[redacted]at that time. That day he scolded and spanked [AAA] because she received three hundred (P300.00) pesos from [XXX] but she voted for [YYY] since she received five hundred (P500.00) pesos. He was so angry with [AAA] because this [XXX] is the nephew of [EEE] who is the owner of the land where they stayed and he had said that he would evict those who would not vote for his nephew. On July 17, 2002, [AAA] went to Cotabato without his knowledge. The accused said that they sleep together in their small house with his children.

Accused [DDD] also testified thru his judicial affidavit for criminal cases 13375-13382 filed by [BBB].

Accused denied to have raped [BBB] on July 17, 2002 because it was the day that [AAA] left their house. At 4:00 P.M., [YYY] went to their house to tell him that [AAA] left for Cebu. Accused immediately went to the house of [ZZZ], [AAA's] classmate[,] to look for her. They left her house at 3:00 A.M. and they reached their house at 4:00 A.M. Accused was not in their house where [BBB] and her brothers and sisters slept the whole night of July 17, 2002. On July 18, 2002, he went to the house of [OOO] in[redacted] to look for [AAA] while [BBB] went to school. Accused denied to have raped [BBB] on September 4, 2004 because that day was the birthday of [BBB]. He was at home on that day but it was his practice to sing when any of his children celebrates birthday and his children would gather around him to listen to his songs. His children would go to bed at 10:00 P.M. after studying since they would go to school the following day. Accused also denied to have raped [BBB] on September 8, 2004 because that day was the fiesta of their barangay. Early in the morning, he was no longer in their house because he went to the center of the barangay to watch the programs there. In the evening, he was not also at home because he went to the disco and he went home only on the following day. His companion to the disco was [ZYZ], the son of the owner of the land where they lived. Accused also denied to have raped [BBB] on December 25, 2004 because that day was the birthday of his wife and also Christmas day. The allegation of [BBB] is impossible to happen since all of them were in their house and their house is very small and they even sleep together side by side. Accused also denied to have raped [BBB] on December 29, 2004 and February 13, 2005 because on December 29, 2004, it was the birthday of [AAA]. The allegation of [BBB] was impossible to happen because all of them were in their house. The allegation for

February 13, 2005 is also not true. The other children of the accused could testify on this because their house is so small and it has even one room only. Accused also denied to have raped [BBB] on April 4, 2005 because that day was the commencement exercises of [redacted] Elementary School. At twelve noon (12:00), he was no longer in their house because he went to the center of [redacted]. At five o'clock (5:00) in the afternoon, he went to the house of [YXY], their neighbor together with [WVW], bringing along a guitar because [YXY] butchered two pigs because his child graduated first honor in the elementary. He went home at 4:00 o'clock in the morning the following day. Accused also denied having raped [BBB] on April 23, 2005 because that day was a Saturday and he was making copra together with the son-in-law of [EEE], the owner of the coconut land from where they made copra. In the evening, they agreed to go to the river to catch fish together with the three (3) sons of [EEE], the three (3) sons of the accused and two (2) sons of their neighbor. They went home at 12:00 midnight. The accused said that the family of his wife used [AAA] and [BBB] because they were angry at him since he did not join them in their leftist activities and they wanted to silence him.

The defense formally rested its case without any documents to offer.[23]

In its Judgement dated July 7, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of 14 counts of rape as defined and penalized under Article 266-A of the Revised Penal Code, in relation to R.A. No. 7610. The *fallo* of the Judgment reads:

WHEREFORE, judgment is rendered declaring accused [DDD] guilty beyond reasonable doubt in all these fourteen (14) cases of RAPE and is penalized as follows:

1. For Criminal Case Nos. 13369 to 13374, to suffer six (6) counts of the penalty of RECLUSION PERPETUA with all its accessory penalties and to pay complainant [AAA] civil indemnity of P75,000.00 in each case; moral damages of P75,000.00 in each case and exemplary damages of P25,000.00 in each case or the total sum of P1,050,000.00 in all six (6) cases.

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[23] CA *rollo*, pp. 47-49.

2. For Criminal Case Nos. 13375 to 13382, to suffer eight (8) counts of the penalty of RECLUSION PERPETUA with all its accessory penalties and to pay complainant [BBB] civil indemnity of P75,000.00 in each case; moral damages of P75,000.00 in each case and exemplary damages of P25,000.00 in each case or the total sum of P1,400,000.00 in all eight (8) cases.

The detention of the accused since May 3, 2005 shall be credited to his sentence.

SO ORDERED.[24]

The RTC gave credence to the testimonies of private complainants AAA and BBB. It found that accused-appellant indeed raped his minor daughter AAA repeatedly on May 19, 2001,[25] July 27, 2001,[26] September 8, 2001,[27] December 29, 2001,[28] July 5, 2002,[29] and July 15, 2002.[30] During those times, AAA was still a minor, as evidenced by her birth certificate[31] issued by the Office of the Municipal Civil Registrar of President Roxas, Cotabato.

Moreover, the RTC found that accused-appellant also repeatedly raped his other minor daughter BBB after AAA left their house. These rape incidents happened on July 17, 2002,[32] September 4, 2004,[33] September 8, 2004,[34]

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

[25] Criminal Case No. 13369.

[26] Criminal Case No. 13370.

[27] Criminal Case No. 13371.

[28] Criminal Case No. 13372.

[29] Criminal Case No. 13373.

[30] Criminal Case No. 13374.

[31] Records of Criminal Case No. 13369, p. 119. The Certification shows that AAA was born on December 29, 1986. Hence, during the rape incidents that took place on May 19, 2001, July 27, 2001, and September 8, 2001, AAA was still 14 years old; while during the rape incidents of December 29, 2001, July 5, 2002, and July 15, 2002, AAA was 15 years old.

[32] Criminal Case No. 13375.

[33] Criminal Case No. 13376.

[34] Criminal Case No. 13377.

December 25, 2004,[35] December 29, 2004,[36] February 13, 2005,[37] April 4, 2005,[38] and April 23, 2005.[39] During those incidents, BBB was still a minor, as evidenced by her birth certificate[40] issued by the National Statistics Office.

The RTC was convinced that accused-appellant threatened his daughters AAA and BBB during the times he raped them. The trial court stated that the tenderness of their mind and age made them very much susceptible to fear of the accused-appellant who is their own father. In a rape committed by a father against his own children, the father's moral ascendancy and influence over his children substitute for violence and intimidation. However, in the instant cases, the rape is worse because accused-appellant even used intimidation and threat to inflict harm with the use of a *bolo*.

In addition, the RTC said that the fact that these rape incidents were perpetrated by the accused-appellant on his own daughters even in the presence of his other children who were asleep will not help his defense. It has been ruled that rape can be committed even in places where other people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.

The RTC did not believe the accused-appellant's defense of denial as the victims are his daughters, his own flesh and blood.

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[35] Criminal Case No. 13378.

[36] Criminal Case No. 13379.

[37] Criminal Case No. 13380.

[38] Criminal Case No. 13381.

[39] Criminal Case No. 13382.

[40] Records of Criminal Case No. 13369, p. 120. Based on the Certificate of Live Birth issued by the National Statistics Office, BBB was born on September 4, 1992. Hence, BBB was only 9 years old when she was raped on July 17, 2002; while she was 12 years old when she was raped on September 4, 2004, September 8, 2004, December 25, 2004, December 29, 2004, February 13, 2005, April 4, 2005, and April 23, 2005.

It found no reason for private complainants AAA and BBB to falsely testify against their father. The RTC ruled that the accused-appellant's defense of denial cannot overcome the positive testimonies of private complainants. When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape has indeed been committed.

Accused-appellant appealed the RTC's Judgment to the Court of Appeals and assigned this lone error:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[41]

In its Decision dated September 28, 2018, the Court of Appeals affirmed the Judgment of the RTC with modification in the amount of damages awarded to private complainants by increasing the civil indemnity, and moral and exemplary damages to ₱100,000.00, in accordance with *People v. Jugueta*.[42]

The Court of Appeals stated that the Appellant's Brief showed that the appeal relied entirely on the following contentions: (1) the testimonies of private complainants are devoid of any details and are, thus, mere conclusions and not factual testimonies; (2) the testimonies of private complainants are incredible, unbelievable and improbable, and appear to be fabricated and rehearsed; and (3) private complainants had the opportunity to immediately report the alleged rape, but they did not do so.

The Court of Appeals was not convinced by accused-appellant's arguments and addressed the same by citing the discussion of similar arguments in *People v. Pareja*.[43] It found nothing unbelievable and improbable in the testimonies of private complainants and stated that the supposed lack of details and

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[41] CA *rollo*, p. 22.

[42] 783 Phil. 806 (2016).

[43] 724 Phil. 759 (2014).

failure to report the crime immediately do not detract from the credibility of the testimonies of private complainants, considering the nature of the crime and their relationship to accused-appellant.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the instant appeal is DENIED for lack of merit. The assailed *Judgment* dated 07 July 2016, rendered by Branch 7 of the Regional Trial Court, Ninth Judicial Region, [Dipolog City] in Crim. Cases No. 13369 to No. 13382 is hereby AFFIRMED, with the MODIFICATION that the *fallo* of the said *Judgment* shall read, as follows:
>
> > WHEREFORE, judgment is rendered declaring accused [DDD] guilty beyond reasonable doubt in all these fourteen (14) cases of RAPE and is penalized as follows:
> >
> > 1. For Criminal Case Nos. 13369 to 13374, to suffer six (6) counts of the penalty of RECLUSION PERPETUA with all its accessory penalties and to pay complainant [AAA] civil indemnity of P100,000.00 in each case, moral damages of P100,000.00 in each case and exemplary damages of P100,000.00 in each case, or the total sum of P1,800,000.00 in all six (6) cases.
> >
> > 2. For Criminal Case Nos. 13375 to 13382, to suffer eight (8) counts of the penalty of RECLUSION PERPETUA with all its accessory penalties and to pay complainant [BBB] civil indemnity of P100,000.00 in each case, moral damages of P100,000.00 in each case and exemplary damages of P100,000.00 in each case, or the total sum of P2,400,000.00 in all eight (8) cases.
> >
> > The detention of the accused since May 3, 2005 shall be credited to his sentence.
> >
> > SO ORDERED.[44]

Thereafter, the case was elevated to this Court. Accused-appellant, by counsel, filed a Manifestation with Motion[45] dated July 2, 2019,

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[44] *Rollo*, pp. 27-28, italics in the original.

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

seeking to be excused from filing a supplemental brief and praying that the arguments in the Appellant's Brief filed before the Court of Appeals be considered by this Court. In its Manifestation and Motion[46] dated July 17, 2019, the People likewise prayed to be excused from filing a supplemental brief as it had extensively discussed the issues raised in the Appellee's Brief.

The main issue is whether or not the Court of Appeals correctly upheld the Judgment of the RTC that accused-appellant is guilty beyond reasonable doubt of the crime of rape in these 14 cases.

Article 266-A of the Revised Penal Code provides the elements of rape, thus:

> Article 266-A. Rape; When and How Committed. — Rape is Committed —
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> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In addition, Article 266-B[47] of the Revised Penal Code provides for the penalties of rape and states that the death penalty shall be imposed if the crime of rape is committed with the aggravating/

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

[47] Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

qualifying circumstance that the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

Thus, in this particular case, for a conviction of qualified rape or incestuous rape under Article 266-A, paragraph 1 (a), in relation to Article 266-B of the Revised Penal Code, the prosecution must allege and prove the following elements: (1) accused-appellant had carnal knowledge of a woman; (2) such act was accomplished through force, threat or intimidation; (3) the victim is under 18 years of age at the time of the rape; and (4) the offender is a parent of the victim.

The Court holds that all the aforementioned elements of qualified rape were established by the prosecution. Anent the first element, the testimonies of private complainants AAA and BBB showed that accused-appellant had carnal knowledge of AAA six (6) times, and eight (8) times in the case of BBB. The RTC and the Court of Appeals gave credence to their positive testimonies and we sustain their findings.

In regard to the second element of rape aforementioned, when the offender is the victim's father, as in this case, there need

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Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

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)

not be actual force, threat or intimidation because when a father commits the crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[48] Nevertheless, as found by the RTC in this case, accused-appellant also used intimidation or threat to inflict harm on private complainants with the use of a *bolo* if they would resist his sexual advances.

Anent the third element of minority, the birth certificates of private complainants AAA and BBB proved that they were under 18 years old during the rape incidents. The birth certificate[49] of AAA showed that she was born on December 29, 1986. Hence, during the rape incidents that took place on May 19, 2001, July 27, 2001, and September 8, 2001, AAA was only 14 years old; while during the rape incidents of December 29, 2001, July 5, 2002, and July 15, 2002, she was 15 years old. In regard to BBB, her birth certificate[50] showed that she was born on September 4, 1992. Thus, she was only 9 years old when she was raped on July 17, 2002; while she was 12 years old when she was raped on September 4, 2004, September 8, 2004, December 25, 2004, December 29, 2004, February 13, 2005, April 4, 2005, and April 23, 2005. The said birth certificates also proved that the offender, DDD, is the father/parent of private complainants. In addition, accused-appellant admitted that he is the father of private complainants. Hence, the fourth and last element was established.

In his Appellant's Brief, accused-appellant contended that the RTC erred in convicting him despite the prosecution's failure to prove his guilt beyond reasonable doubt based on the unbelievable testimonies of private complainants. He claimed that the testimonies of private complainants as to the rape incidents were devoid of any details. They simply testified that

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[48] *People v. Bentayo*, 810 Phil. 263, 269 (2017); citation omitted.

[49] Records of Criminal Case No. 13369, p. 119.

[50] *Id.* at 120.

they were raped on such and such dates, which were mere conclusions and not factual testimonies.

Accused-appellant's contention is unmeritorious. Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect and, at times, even finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the cases.[51] The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied appellate courts; and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[52] In this case, the Court does not find any cogent reason to overturn the conviction of accused-appellant in the 14 rape cases based on the testimonies of private complainants which the trial court and the Court of Appeals found to be credible.

A review of the testimonies of private complainants in the transcript of stenographic notes shows that accused-appellant indeed raped his own daughters or had carnal knowledge of them during the indicated rape incidents. AAA testified that she filed six (6) cases of rape against her father as those were the dates she could remember, although she was raped three to four times a week; while BBB said that she was raped every week and filed eight (8) cases that she could remember, thus implying that accused-appellant raped them more than the number of rape cases they filed with the court. That rape was indeed committed by accused-appellant against his minor daughter BBB eight times was narrated by the trial court concisely based on the testimony of BBB, thus:

[BBB] said that in the evening of July 17, 2002[,] while she was sleeping, she was raped by her father [DDD]. At that time[,] her

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[51] *People v. Villamor*, 780 Phil. 817, 829 (2016).

[52] *People v. Pareja*, 724 Phil. 759, 773 (2014); citation omitted.

elder brother [III] and elder sister [AAA] were not there. Her father [DDD] woke her up and put a knife on her neck, undressed her and molested her. Then he put himself on top of her while already naked and molested her. His penis was able to enter her vagina and that was her first time to experience sexual intercourse. She was not able to defend herself nor resist because she was afraid that her father would kill her. She felt pain and was afraid while the penis of her father was inside her vagina. After that incident on July 17, 2002, her father again raped her on September 4 and 8, 2004. Again, her father woke her up and poked a knife on her. She was threatened to be killed if she would make some noise and movement. H[er] father kissed her repeatedly then made a push and pull movement of his buttock. He ejaculated and there was a wet substance coming from his penis. The rape happened again on December 25 and 29, 2004; February 13, April 4 and 23, 2005.[53]

Private complainant AAA also testified that during the rape incident of May 19, 2001, when her father DDD undressed her, she already knew what he was planning because he had raped her before: he poked a *bolo* at her, told her to lie down and split her legs, and told her that if she would resist, he would kill her.[54] She felt pain after she was raped.[55] Thereafter, she testified that she was raped after her father removed her clothes and mounted on her during the subsequent rape incidents. Accused-appellant's counsel clarified the rape incident of September 8, 2001, thus:

Q - Now, at that time his penis was erect?
A - Yes, ma'am.

Q - And he was able to ejaculate?
A - Yes, ma'am.

Q - In that span of time, how many times?
A - I just felt that there was a fluid coming out.[56]

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[53] CA *rollo*, p. 46.

[54] Records of Criminal Case No. 13369, pp. 225-228.

[55] *Id.* at 228.

[56] *Id.* at 270.

The trial court placed on record in the transcript of stenographic notes that private complainant AAA was crying when she testified that her father DDD usually raped her when he arrived from Cotabato, and that he raped her three to four times a week.[57] The Court has ruled that when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed.[58] A rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families and it is unthinkable for a daughter to brazenly concoct a story of rape against her father, if such were not true.[59]

Moreover, accused-appellant argued that the rape incidents were conveniently timed during a significant date, occasion and holiday which is far too contrived to be believable.

The argument fails to convince. Accused-appellant insinuates that because some rape incidents coincided with a memorable date or occasion, the rape incidents were contrived and unbelievable. It is in accordance with human experience that people can easily remember the date of an incident when it coincides with or is near the date of a memorable day or occasion. Thus, it is of no moment that some rape incidents happened on the birthday of private complainants, on Christmas day, or the day of the *barangay fiesta*, and if the said occasions aided private complainants in remembering the dates when they were raped, since these do not affect the veracity of private complainants' testimonies. The date of commission of the rape is not an essential element of the crime.[60] The date and time of commission of the crime of rape become important only when they create serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the

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[57] *Id.* at 224.

[58] *People v. Rosario*, 455 Phil. 876, 886 (2003); citation omitted.

[59] *Id.*

[60] *People v. Bentayo*, 810 Phil. 263, 273 (2017).

date of commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of commission of the crime.[61] In this case, as found by the trial court, the positive testimonies of private complainants that they were raped by accused-appellant are credible and prevail over accused-appellant's weak defenses of denial and unsubstantiated alibi.

Further, accused-appellant questions the credibility of the testimonies of private complainants as they alleged that they were raped while other family members were sleeping near them in the same room.

It is almost a matter of judicial notice that crimes against chastity have been committed in many different places which may be considered as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place.[62] Thus, rape can be and has been committed in places where people congregate, *e.g.*, inside a house where there are occupants, a five-meter room with five people inside or even in the same room which the victim is sharing with the sister of the accused.[63] Hence, it is not unbelievable that accused-appellant raped his own daughters while other children were sleeping in the same room.

Lastly, accused-appellant questions the credibility of private complainants who had the opportunity to immediately report the alleged rape, but they did not do so.

The Court has consistently held that delay in reporting the offense, particularly in incestuous rape, is not indicative of a fabricated charge.[64] Delay in reporting a rape incident neither diminishes complainant's credibility nor undermines the charges of rape where the delay can be attributed to the pattern of fear

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[61] *Id.*

[62] *People v. Sandico*, 366 Phil. 663, 674-675 (1999).

[63] *Id.* at 675.

[64] *People v. Marcellana*, 426 Phil. 739, 746 (2002); citation omitted.

instilled by the threats of bodily harm, specially by one who exercised moral ascendancy over the victims.[65] In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[66]

In this case, private complainants were of tender age and their mother had died when they were raped by their father. AAA testified that her father always had a *bolo* with him when he raped her, and he threatened to kill her and her siblings if she would resist.[67] On July 16, 2002, AAA ran away from home and worked as a house helper in Butuan City, where the amount of money she had could transport her. Then, she went to her maternal grandmother in Cotabato in August 2003 to ask for help; they filed eight rape cases against her father in Cotabato. Her aunt, however, told her to file the cases in Zamboanga del Norte where her father was. Hence, AAA filed the cases in the RTC of Dipolog City on April 20, 2005. In regard to BBB, after AAA ran away from home, accused-appellant started to rape BBB who was also threatened with a knife when she was raped. BBB confided to her aunt that her father raped her when her aunt asked her why she was always out of her mind and was no longer acting normally. Her aunt brought her to the doctor for medical examination, then they went to the police station. Accused-appellant was charged with 14 counts of rape in separate Informations, all dated June 10, 2005. Evidently, private complainants' tender age, absence of maternal refuge, and fear of their father who had moral ascendancy and influence over them, and who threatened to kill them with his *bolo* on hand if they would resist his sexual advances, are the understandable reasons for private complainants' delay in reporting the rape incidents.

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[65] *Id.*; citation omitted.

[66] *People v. Alfaro*, 458 Phil. 942, 961 (2003); citation omitted.

[67] TSN, November 10, 2005, pp. 11 and 17-18.

Accused-appellant's defenses of denial and alibi are inherently weak and easily fabricated. For alibi to prosper, it must be demonstrated that it was physically impossible for accused-appellant to be present at the place where the crime was committed at the time of commission.[68] The defense did not present any evidence or witness aside from accused-appellant to support his testimony of innocence. In the rape incidents where accused-appellant put up the defense of alibi, he failed to substantiate his alleged presence in another place at the time of the commission of the crime of rape and the physical impossibility for him to be at the scene of the crime. Hence, accused-appellant's bare denial and unsubstantiated alibi cannot prevail over private complainants' positive and categorical testimonies that accused-appellant raped them.[69]

Based on the foregoing, the Court upholds the Decision of the Court of Appeals that accused-appellant is guilty beyond reasonable doubt of 14 counts of rape.

In regard to the penalty imposed, the Court of Appeals correctly held:

> Under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, rape committed through force, threat, or intimidation is punishable by death when the victim is a minor and the offender is a parent. Under R.A. No. 9346, however, the penalty of *reclusion perpetua* is to be imposed in lieu of death. Thus, the penalty imposed by the RTC is correct. However, in conformity with the guidelines established by the Supreme Court in the case of *People of the Philippines v. Jugueta*, the damages awarded by the RTC must be modified, as follows: (i) civil indemnity shall be increased from Php75,000.00 to Php100,000.00 for each count of rape; (ii) moral damages shall be increased from Php75,000.00 to Php100,000.00 for each count of rape; and ([iii]) exemplary damages shall be increased from Php25,000.00 to Php100,000.00 for each count of rape.[70]

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[68] *People v. Bentayo*, 810 Phil. 263, 274 (2017).

[69] *Id.*

[70] *Rollo*, p. 27; italics in the original, citation omitted.

In addition, six percent (6%) interest per annum must be imposed on all the damages awarded from the date of finality of this Decision until fully paid.[71] It should also be emphasized that the penalty of *reclusion perpetua* disqualifies accused-appellant from eligibility for parole in accordance with Section 3[72] of R.A. No. 9346.[73]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated September 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01657-MIN, finding accused-appellant DDD guilty beyond reasonable doubt of the crime of rape in these fourteen (14) rape cases, is **AFFIRMED** with **MODIFICATION** that the award of damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid and that accused-appellant is not eligible for parole. Thus, accused-appellant is penalized as follows:

1. For Criminal Case Nos. 13369 to 13374, accused-appellant is sentenced to suffer six (6) counts of the penalty of ***RECLUSION PERPETUA*** with all its accessory penalties, and without eligibility for parole, and to pay complainant AAA civil indemnity of One Hundred Thousand Pesos (₱100,000.00) in each case, moral damages of One Hundred Thousand Pesos (₱100,000.00) in each case, and exemplary damages of One Hundred Thousand Pesos (₱100,000.00) in each case, or the total sum of One Million Eight Hundred Thousand Pesos (₱1,800,000.00) in all six (6) cases.

2. For Criminal Case Nos. 13375 to 13382, accused-appellant is penalized to suffer eight (8) counts of the penalty of ***RECLUSION PERPETUA*** with all its accessory penalties, and without eligibility for parole, and to pay complainant BBB civil

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[71] *People v. Bandril*, 763 Phil. 150, 162 (2015); citation omitted.

[72] Section 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[73] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

indemnity of One Hundred Thousand Pesos (₱100,000.00) in each case, moral damages of One Hundred Thousand Pesos (₱100,000.00) in each case, and exemplary damages of One Hundred Thousand Pesos (₱100,000.00) in each case, or the total sum of Two Million Four Hundred Thousand Pesos (₱2,400,000.00) in all eight (8) cases.

Interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the finality of this Decision until fully paid.

The detention of the accused-appellant since May 3, 2005 shall be credited to his sentence.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 243985. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ROGELIO SEROJALES y CARABALLA a.k.a. "Tatay," and JUANITA GOYENOCHE y GEPIGA a.k.a. "Nita",** Accused, **JUANITA GOYENOCHE y GEPIGA a.k.a. "Nita",** *Accused-Appellant*.

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** [I]n prosecutions for illegal possession of dangerous drugs, it must be shown that: (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; LINKS TO BE ESTABLISHED IN THE CHAIN OF CUSTODY. —** There are ostensibly four links in the chain of custody that should be established: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; *and fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

4. **ID.; ID.; ID.; FAILURE TO MARK THE SEIZED DANGEROUS DRUG IN THE PRESENCE OF THE**

ACCUSED; EFFECT. — The prosecution's failure to present evidence to account for the very first link in the chain of custody already puts the rest of the chain into question and compromises the integrity and evidentiary value of the sachets of *shabu* supposedly seized from accused. Hence, there is already reasonable doubt as to whether the seized drugs were exactly the same drugs presented in court as evidence.

5. ID.; ID.; ID.; FAILURE TO ENSURE THE PRESENCE OF A REPRESENTATIVE FROM THE DOJ DURING THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPHS OF THE SEIZED DRUG; EFFECT. — It is undisputed that the inventory and marking of evidence were conducted only in the presence of Barangay Councilor Lyn K. Denham and Sheila Joy Labrador as the representative from the media. However, the prosecution did not bother to explain the absence of a representative from the DOJ during the physical inventory and the taking of photographs of the seized drugs nor was there any evidence offered to prove that the police officers exerted any effort to seek their presence. The buy-bust operation, by its nature, was arranged and scheduled in advance – the police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency, prepared the buy-bust money, and held a briefing. Simply put, the buy-bust team had enough time and opportunity to bring with them said witnesses. Yet, the prosecution failed to ensure that a representative from the DOJ would be present during the physical inventory and the taking of photographs of the seized drugs. Thus, for failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under Section 21, Article II of R.A. No. 9165, the Court is constrained to rule that the integrity and the evidentiary value of the seized drugs have been compromised.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

On appeal is the September 4, 2018 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01772-MIN which affirmed the August 7, 2017 Consolidated Decision[2] of the Regional Trial Court *(RTC)*, Branch 44, Initao, Misamis Oriental West, in Criminal Case Nos. 2011-2064, 2011-2065 and 2011-2066, finding accused Rogelio Serojales y Caraballa a.k.a. "*Tatay*" and accused-appellant Juanita Goyenoche y Gepiga a.k.a. "*Nita*" guilty beyond reasonable doubt of violating Sections 5 (Illegal Sale of Dangerous Drugs) and 11 (Illegal Possession of Dangerous Drugs), Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

The accused are charged with violation of Sections 5 and 11, Article II of R.A. 9165 in the following Informations quoted as follows:

CRIMINAL CASE NO. 2011-2064

That on September 2, 2011, in Poblacion, Laguindingan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly deliver to poseur-buyer, for and in consideration of Php500.00, with Serial Number TM336888, a marked money, one (1) small plastic sachet containing 0.02 gram of white crystalline substance which gave positive result to the tests for the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

CONTRARY TO and in violation of Art. II, Sec. 5 of R.A. 9165.

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[1] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon, concurring; *rollo*, pp. 4-13.

[2] Penned by Presiding Judge Marissa P. Estabaya; CA *rollo*, pp. 54-65.

CRIMINAL CASE NO. 2011-2065

That on September 2, 2011, in Poblacion, Laguindingan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly possess, one (1) sealed transparent plastic [sachet] containing a total weight of point eight (0.8) gram of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

CONTRARY TO and in violation of Art. II, Sec. 11 of R.A. 9165.

CRIMINAL CASE NO. 2011-2066

That on September 2, 2011, in Poblacion, Laguindingan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly possess, seven (7) sealed transparent plastic sachets containing a total weight of point twenty-nine (0.29) gram of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

CONTRARY TO and in violation of Art. II, Sec. 11 of R.A. 9165.[3]

On arraignment, Serojales and Goyenoche pleaded "not guilty" to the charges. Thereafter, trial on merits ensued.

Version of the Prosecution

On September 2, 2011, around 10:00 a.m., a confidential informant reported that Serojales known as "*Tatay*," was selling illegal drugs in Laguindingan and other neighboring municipalities in Misamis Oriental. Consequently, a team of Philippine Drug Enforcement Agency *(PDEA)* agents was formed to conduct a buy-bust operation. The buy-bust team was composed of IO-3 Rubietania L. Aguilar who was designated as poseur-buyer, while IA-1 Rodolfo S. De La Cerna was tasked as the arresting officer. Thereafter, IO-3 Aguilar was provided with one ₱500.00 bill with serial number TM336888 to be used as buy-bust money.

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

On the same day, at 12:00 noon, the team, together with the confidential informant, proceeded to Laguindingan, Misamis Oriental to pursue the buy-bust operation. At the time of the team's arrival, IO3 Aguilar and the confidential informant alighted from their vehicle and waited for "*Tatay*" in a waiting shed along the national highway. After a few moments, accused "*Tatay*" and accused-appellant Goyenoche arrived. Subsequently, IO3 Aguilar was introduced by the confidential informant as buyer. Serojales then asked IO3 Aguilar for his money. IO3 Aguilar handed the marked money to the accused. After that, Serojales asked Goyenoche to give IO3 Aguilar a sachet of shabu. IO3 Aguilar examined the contents of the sachet. At that point, IO3 Aguilar executed the pre-arranged signal by dialing the number of IA1 De La Cerna. Following that, IA1 De La Cerna came together with the rest of the team and introduced himself as a PDEA Agent. Accused were then informed of the violation they had committed and apprised them of their constitutional rights.

The team conducted a search on the persons of the accused and recovered 7 pieces of transparent plastic sachets, all containing white crystalline substance believed to be *shabu* in the possession of Goyenoche. While the buy-bust money and one (1) transparent plastic sachet containing white crystalline substance believed to be *shabu* was found in the possession of Serojales.

IO3 Aguilar then turned over to IA1 De La Cerna the sachet of *shabu* that she bought from the accused for inventory, which was marked with BB-LRA. The inventory and marking of evidence were conducted in the presence of Barangay Councilor Lyn K. Denham and Sheila Joy Labrador from ABS-CBN, as the representative from media. Serojales and Goyenoche were then brought to the PDEA office for proper disposition and legal documentation. Thereafter, all the confiscated items were forwarded to the PNP Crime Laboratory for examination.

Version of the Defense

Accused Serojales and Goyenoche vehemently denied the charge against them. They alleged that they were waiting for

a jeepney at the aforementioned waiting shed, when a vehicle stopped in front of them and its passengers jumped out from it and shouted "*dapal*" (lie on the ground). After which they were frisked while on the ground. When nothing was found on their persons, Serojales heard a PDEA agent's call wherein he heard the other person on the line saying "*pangita mog idea*" (Find another way). After that, another PDEA agent brought to the scene a sachet of *shabu*, the ownership of which was imputed to Serojales and Goyenoche. They denied the imputation against them. Nevertheless, they were photographed with it and were then taken to the Police Station of Laguindingan.

The accused argued that the prosecution failed to establish the chain of custody requirement under the law. They maintained that there was a break in the very first link of the chain of custody when IA1 De La Cerna failed to mark the sachets of shabu immediately upon seizing them from the accused. They further contended that the marking after the seizure is the starting point of the custodial link; hence, it is vital that the seized contraband be immediately marked to prevent contamination, planting or switching of evidence. Thus, for the failure of the certificate of inventory to reveal the marks on the items enumerated therein, the accused alleged that it created a reasonable doubt to the factuality of the marking.

RTC Ruling

After trial, the RTC handed a guilty verdict on both accused Serojales and Goyenoche for violation of Sections 5 *(Illegal Sale of Dangerous Drugs)* and 11 *(Illegal Possession of Dangerous Drugs*), Article II of R.A. No. 9165. The dispositive portion of the August 7, 2017 Decision[4] states:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 2011-2064: FINDING both accused ROGELIO SEROJALES y CARABALLA a.k.a. "Tatay" and JUANITA GOYENOCHE y GEPIGA a.k.a. "Nita"

[4] *Supra* note 2.

GUILTY beyond reasonable doubt of violation of Section 5 of Republic Act 9165, hereby sentences them to suffer the penalty of life imprisonment and to pay a fine of Five hundred thousand pesos (P500,000.00) each.

2. In Criminal Case No. 2011-2065: FINDING accused ROGELIO SEROJALES y CARABALLA a.k.a. "Tatay" GUILTY beyond reasonable doubt of violation of Section 11 of Republic Act 9165, hereby sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of Three hundred thousand pesos (P300,000.00).

3. In Criminal Case No. 2011-[2066]: FINDING accused JUANITA GOYENOCHE y GEPIGA a.k.a. "Nita" GUILTY beyond reasonable doubt of violation of Section 11 of Republic Act 9165, hereby sentences the accused to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of Three hundred thousand pesos (P300,000.00).

The drugs and buy-bust money amounting to Five hundred pesos (P500.00) subject matter of these cases are hereby ordered confiscated and forfeited in favor of the government to be dealt with in accordance with the law.

SO ORDERED.[5]

In ruling that the arrest of the accused was an arrest *in flagrante delicto* made in pursuance of Section 5 (a) (1), Rule 113 of the Rules of Court which states that "the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime," the RTC observed that the arrest was effected after Serojales and Goyenoche performed the overt act of selling to IO3 Aguilar the sachets of shabu. Thus, Serojales and Goyenoche were lawfully arrested. Moreover, the RTC gave credence to the testimonies of the arresting officers as to what happened during the buy-bust operation, stating that the testimonies were expressed in a candid and straightforward manner and finding absence of

[5] *Rollo*, p. 65.

any improper motive. Further, the RTC ruled that the prosecution was able to establish all the elements for the prosecution of illegal sale and possession of dangerous drugs. Lastly, the RTC is of the opinion that the integrity and evidentiary value of the seized items were preserved.

CA Ruling

On appeal, the CA affirmed the RTC Decision. The CA ruled that all the elements for the illegal sale and possession of shabu were established by the prosecution. The CA agreed with the findings of the trial court that the prosecution duly established the identity of accused as drug sellers and IO3 Aguilar as the poseur-buyer. The appellate court was in the position that there is no question that Serojales and Goyenoche were caught *in flagrante delicto* by the police officers in a valid entrapment or "buy-bust" operation. In ruling that the testimonies of the apprehending officers deserve full faith and credit, the CA opined that accused-appellants bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. Further, the appellate court, concluded that evidence clearly show an unbroken chain of custody with respect to the seized illegal drugs; thus, ruling that the preservation of the integrity and the evidentiary value of the seized drugs were sufficiently maintained.

In a Resolution[6] dated March 14, 2018, the CA resolved to dismiss the case against Serojales in view of his death on September 4, 2017, to wit:

> Consequently, Serojales' death on 4 September 2017 renders the Court's 30 January 2018 Resolution irrelevant and ineffectual as to him, and is therefore set aside. Accordingly, the criminal case against Serojales is dismissed. The appeal of Rogelio Serojales culminating in the extinguishment of his criminal liability does not have any effect on his co-accused-appellant Juanita Goyenoche. The extinguishment

[6] CA *rollo*, pp. 68-70.

of Rogelio Serojales' criminal and pecuniary liabilities is predicated on his death and not on his acquittal.[7]

Before us, the People and the accused-appellant Goyenoche, manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

Our Ruling

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Serojales and Goyenoche should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[8] The delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.[9]

On the other hand, in prosecutions for illegal possession of dangerous drugs, it must be shown that: (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[10] The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.[11]

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[7] *Id.* at 70.

[8] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[9] *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018.

[10] *Id.*

[11] *People v. Martinez*, 652 Phil. 347, 369 (2010).

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, 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[.]

It bears stressing however, that failure to strictly comply with the foregoing procedure will not render an arrest illegal or the seized items inadmissible in evidence, in view of the qualification permitted by Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of RA No. 9165, to wit:[12]

> 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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[12] *People v. Dalawis*, 772 Phil. 406, 417 (2015).

Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines chain of custody, to wit:

> Chain of custody refers to 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, to presentation in court for destruction.

Well-entrenched in our jurisprudence is the rule that the identity of the dangerous drug be established beyond reasonable doubt.[13] It is axiomatic that the dangerous drug be proven with certitude and that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In the instant case, the prosecution failed to establish the chain of custody of the seized *shabu* from the time they were recovered from the accused up to the time they were presented in court.

The prosecution failed to establish that the seized drugs were marked in the presence of Serojales and Goyenoche

There are ostensibly four links in the chain of custody that should be established: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; *and fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[14]

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[13] *Cacao v. People*, 624 Phil. 634, 643 (2010).

[14] *People v. Jack Muhammad y Gustaham*, G.R. No. 218803, July 10, 2019.

In this case, the prosecution failed to establish the very first link in the chain of custody.

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[15]

The chain of custody rule requires that the marking of the seized contraband be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation.[16]

Here, there is no showing that the seized items were marked in the presence of Serojales and Goyenoche. All that the prosecution established was that, IO3 Aguilar turned over the sachet of *shabu* to IA1 De La Cerna, who marked it with the letters "BB-LRA" and that the inventory and marking of evidence were conducted in the presence of Barangay Councilor Lyn J. Denham and Sheila Joy Labrador from ABS-CBN.[17] Other details are left out for this Court to guess. It bears stressing, however, that it must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case.[18] The prosecution did not provide any justification from this deviation. Corollarily, the Court finds that the prosecution failed to establish the *corpus delicti* of the crime charged against him.

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[15] *People v. Mantalaba*, 669 Phil. 461, 478 (2011).

[16] *People v. Gayoso*, 808 Phil. 19, 32 (2017).

[17] CA *rollo*, p. 100.

[18] *People v. Ismael*, *supra* note 8, at 37.

The prosecution's failure to present evidence to account for the very first link in the chain of custody already puts the rest of the chain into question and compromises the integrity and evidentiary value of the sachets of *shabu* supposedly seized from accused. Hence, there is already reasonable doubt as to whether the seized drugs were exactly the same drugs presented in court as evidence.

The prosecution failed to secure the required witnesses under Sec. 21 of R.A. No. 9165

In *People v. Federico Señeres, Jr.*,[19] the Court was instructive on the number of witnesses required in prosecutions for illegal sale or possession of dangerous drugs, to ensure the integrity and evidentiary value of the seized drugs:

> Under the original provision of Section 21 of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physically inventory and photograph the same 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) a representative from the media **and** (3) from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates 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) 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. **In the present case, the old provisions of Section 21 of R.A. No. 9165 and its IRR shall apply since the alleged crime was committed before the amendment**.

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[19] G.R. No. 231008, November 5, 2018. (Emphases supplied)

In the present case, the Informations filed against Serojales and Goyenoche show that the crime charged against them was committed on or about September 2, 2011, while the amendatory law took effect much later, or only on July 15, 2014. Hence, the original provision of Section 21 (1) and its IRR as quoted above applies.

It is undisputed that the inventory and marking of evidence were conducted only in the presence of Barangay Councilor Lyn K. Denham and Sheila Joy Labrador as the representative from the media.[20] However, the prosecution did not bother to explain the absence of a representative from the DOJ during the physical inventory and the taking of photographs of the seized drugs nor was there any evidence offered to prove that the police officers exerted any effort to seek their presence. The buy-bust operation, by its nature, was arranged and scheduled in advance — the police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency, prepared the buy-bust money, and held a briefing. Simply put, the buy-bust team had enough time and opportunity to bring with them said witnesses.[21] Yet, the prosecution failed to ensure that a representative from the DOJ would be present during the physical inventory and the taking of photographs of the seized drugs. Thus, for failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under Section 21, Article II of R.A. No. 9165, the Court is constrained to rule that the integrity and the evidentiary value of the seized drugs have been compromised.

It cannot be overemphasized that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of R.A. 9165, or that there was a justifiable

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[20] CA *rollo*, p. 100.

[21] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146.

ground for failing to do so.[22] The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[23] In the instant case, all the prosecution has done is to assert a self-serving claim that the integrity of the seized pack has been preserved despite the numerous procedural lapses it has committed. The fatal errors of the apprehending team can only lead this Court to seriously doubt the integrity of the *corpus delicti*.

Thus, in *People v. Ernesto Silayan*,[24] the Court acquitted the accused for the prosecution's failure to secure the attendance of the required witnesses. The Court held:

> To repeat, the burden to prove that there were justifiable grounds for the non-compliance with the procedure laid down in Section 21 (1), Article II of RA 9165 and its IRR lies with the prosecution. It must show that the apprehending team exerted earnest efforts to secure the attendance of the necessary witnesses.
>
> However, in this case, there was not even an attempt to explain why the required witnesses were not present during the inventory. No evidence was adduced to prove that earnest efforts were exerted to comply with the requirements of Section 21 (1), Article II of RA 9165 and its IRR. As this was a buy-bust operation, it is by its nature a planned activity — the police officers had every chance to comply with the procedural requirements of the law. The prosecution offered no explanation for the failure of the buy-bust team to secure the required witnesses under the law. The total failure of the prosecution to explain the non-compliance with the procedural requirements of Section 21 (1), Article II of RA 9165 and its IRR creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Silayan.

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[22] *People v. Umipang*, 686 Phil. 1024, 1053 (2012).

[23] *People v. Señeres*, *supra* note 19.

[24] G.R. No. 229362, June 19, 2019.

Considering that the prosecution failed to: (1) prove the *corpus delicti* of the crime; (2) establish an unbroken chain of custody of the seized drugs; and (3) provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165, it follows that the integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Serojales and Goyenoche must perforce be acquitted.

WHEREFORE, premises considered, the September 4, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01772-MIN, which affirmed the August 7, 2017 Consolidated Decision of the Regional Trial Court, Branch 44, Initao, Misamis Oriental West, in Criminal Case Nos. 2011-2064, 2011-2065 and 2011-2066, finding accused Rogelio Serojales y Caraballa a.k.a. "Tatay" and accused-appellant Juanita Goyenoche y Gepiga a.k.a. "Nita" guilty beyond reasonable doubt of violating Sections 5 *(Illegal Sale of Dangerous Drugs)* and 11 *(Illegal Possession of Dangerous Drugs)*, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, is **REVERSED** and **SET ASIDE**. Accordingly, accused Rogelio Serojales y Caraballa and accused-appellant Juanita Goyenoche y Gepiga a.k.a. "Nita" are **ACQUITTED** on reasonable doubt. The Penal Superintendent of the Davao Prison and Penal Farm is **ORDERED** to **IMMEDIATELY CAUSE THE RELEASE** of appellant Juanita Goyenoche y Gepiga a.k.a. "Nita" from detention, unless she is being held for some other lawful cause, and to inform this Court her action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 247229. September 3, 2020]

LUZ V. FALLARME, *Petitioner, v.* **ROMEO PAGEDPED,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; COMPLAINT; REQUIREMENT FOR JOINDER OF THE PERSON CLAIMING AN INTEREST SUBORDINATE TO THE MORTGAGE SOUGHT TO BE FORECLOSED IS NOT MANDATORY IN CHARACTER BUT MERELY DISCRETIONARY; FAILURE TO MAKE SUCH JOINDER WILL NOT INVALIDATE THE FORECLOSURE PROCEEDINGS. — The rules require that all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage should be made defendants in the action for foreclosure. Such requirement for joinder of the person claiming an interest subordinate to the mortgage sought to be foreclosed, however, is not mandatory in character but merely directory, such that failure to comply therewith will not invalidate the foreclosure proceedings.

2. ID.; ID.; ID.; RIGHT OF EQUITY REDEMPTION; THE EFFECT OF THE FAILURE OF THE MORTGAGEE TO MAKE THE SUBORDINATE LIEN HOLDER A DEFENDANT IS THAT THE DECREE ENTERED IN THE FORECLOSURE PROCEEDING WOULD NOT DEPRIVE THE SUBORDINATE LIEN HOLDER OF HIS RIGHT OF REDEMPTION. — As correctly held by the CA, in both CA-G.R. CV No. 108155 and CA-G.R. CV No. 100279, the effect of the failure of the mortgagee to make the subordinate lien holder a defendant is that the decree entered in the foreclosure proceeding would not deprive the subordinate lien holder of his right of redemption. A decree of foreclosure in a suit to which the holders of a second lien are not parties leaves the equity of redemption in favor of the lien holders unforeclosed and unaffected.

APPEARANCES OF COUNSEL

April B. Gandeza for petitioner.
Lockey and Kiat-Ong Law Office for respondent.

D E C I S I O N

REYES, JR., *J.*:

Before the Court is a petition for review on *certiorari* seeking the reversal of the Decision[1] dated May 2, 2018 and the Resolution[2] dated February 14, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 108155 which granted the appeal and reversed the ruling of the Regional Trial Court (RTC) in Civil Case No. 7821-R.

Property claimed by Pagedped

The subject matter of this case is a 1,862-square meter land in Baguio City, formerly covered by Transfer Certificate of Title (TCT) No. T-61200 issued in the name of Spouses Rudy and Nena Avila (Avilas).

On May 2, 1999, the Avilas obtained a ₱200,000.00 loan from Romeo Pagedped (Pagedped) secured by a real estate mortgage (REM) over the property. The Avilas delivered to Pagedped the owner's duplicate copy of TCT No. T-61200, and the REM was annotated on the title, as Entry No. 257381-29-86 on June 1, 1999.

Upon the failure of the Avilas to settle their obligation despite repeated demands, Pagedped judicially foreclosed the REM and the property was sold at a public auction on October 5, 2005 with Pagedped emerging as the highest bidder. The Sheriff's Certificate of Sale was registered and entered with the Register

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[1] Penned by Associate Justice Mariflor Punzalan-Castillo and concurred in by Associate Justices Danton Q. Bueser and Henri Jean Paul B. Inting (now a member of this Court); *rollo*, pp. 20-33.

[2] Id. at 34-35.

of Deeds on November 22, 2005 and annotated on TCT No. T-61200, as Entry No. 6809-36-178.

After a year from the time the Sheriff's Certificate of Sale was recorded, Pagedped consolidated his ownership over the parcel of land and was issued TCT No. T-91349 over the same on November 24, 2006, thereby cancelling TCT No. T-61200. All the annotations on TCT No. T-61200 were carried over to TCT No. T-91349.

According to Pagedped, it was only then that he discovered that several annotations were made on TCT No. T-61200 in the name of Fallarme.[3]

Fallarme's claim to ½ of the property

Luz V. Fallarme (Fallarme) instituted a case before the RTC, docketed as Civil Case No. 5045-R, against the Avilas. A Notice of Attachment dated April 4, 2003 and later a Notice of Levy upon Realty dated May 20, 2005, were issued by the court involving one-half (½) portion of the subject parcel of land. The notices were annotated on TCT No. T-61200 as Entry Nos. 14015-33-118 and 590-36-16, respectively.

Subsequently, Fallarme caused the sale at public auction of the ½ portion on July 12, 2005. At the public auction, Fallarme emerged as the highest bidder, for ₱528,000.00, for which reason, she was issued a Sheriff's Certificate of Sale. The Sheriff's Certificate of Sale was annotated on TCT No. T-61200, on June 9, 2006, as Entry No. 13687-37-108.[4]

RTC, Baguio City, Branch 6
LRC Adm. Case No. 1967-R

On May 26, 2010, Pagedped filed a petition for the cancellation of all annotations appearing on TCT No. T-91349, docketed as LRC Adm. Case No. 1967-R, before the RTC of Baguio City, Branch 6. Fallarme was joined as a respondent in the case.

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[3] Id. at 22, 38-39.

[4] Id. at 21.

In his petition, Pagedped alleged that he was surprised to discover that a Notice of Attachment dated April 4, 2003 and a Notice of Levy upon Realty dated May 20, 2005 by Sheriff Oliver N. Landingin involving the case of Fallarme were annotated at the back of his TCT No. T-91349, and that thereafter a Sheriff's Certificate of Sale dated July 12, 2005 issued by Sheriff Landingin in favor of Fallarme was also registered and entered with the Office of the Register of Deeds on June 9, 2006, and annotated on the same title. Pagedped was neither notified nor impleaded as a party to the foreclosure proceedings initiated by Fallarme, even though the Deed of REM executed in his favor was entered and annotated earlier than Fallarme's. He alleged that Fallarme knew of the encumbrance in his favor as appearing in the title, yet she failed to notify him of her foreclosure to his damage and prejudice.[5]

RTC Ruling in LRC Adm. Case No. 1967-R

On January 10, 2013, the RTC granted Pagedped's petition and the Register of Deeds of Baguio City was directed to cancel all entries mentioned therein.[6]

The *fallo* reads:

> WHEREFORE, the instant petition is granted. The Register of Deeds, Baguio City, is directed to cancel Entry No. 14015-33-118 (Notice of Attachment), Entry No. 590-36-16 (Notice of Levy upon realty) and Entry No. 13687-37-108 (Sheriff's Certificate of Sale) in the Transfer Certificate of Title No. T-91349 of the Registry of Deeds of Baguio City in the name of Romeo Pagedped.
>
> SO ORDERED.[7]

Fallarme filed a notice of appeal on January 31, 2013, and the case was elevated to the Court of Appeals, docketed as CA-G.R. CV No. 100279.

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[5] Id. at 22-23.

[6] Id. at 23.

[7] Id. at 45.

CA-G.R. CV No. 100279

On November 24, 2017, the appellate court[8] ruled:

WHEREFORE, the appeal is GRANTED. The decision of the Regional Trial Court of Baguio City, Branch 6 dated January 10, 2013 in LRC Case No. 1967-R is REVERSED and SET ASIDE. A new decision is entered DISMISSING the petition for cancellation of encumbrances on Transfer Certificate of Title No. T-91349.

SO ORDERED.[9]

The CA, through the Special Sixteenth Division, held that the RTC correctly held that the encumbrances in favor of Fallarme are inferior to that of Pagedped. This is because any subsequent lien annotated at the back of a certificate of title cannot, in any way, prejudice a mortgage previously registered even if the sale took place after the annotation of the subsequent lien or encumbrance. While the subject encumbrances were already existing when the auction sale was held on October 5, 2005, the rights of Pagedped as the original mortgagee and purchaser at the auction sale, takes precedence.

The CA further held, however, that the RTC committed reversible error in ordering the cancellation of the subject encumbrances because the record shows that Fallarme was not impleaded in the judicial foreclosure proceedings initiated by Pagedped. A subsequent lien holder who was not impleaded as a party in the foreclosure suit is not bound by the judgment in favor of the foreclosing mortgagee. Thus, the subsequent lien holder's equity of redemption remains unforeclosed and a separate foreclosure proceeding must be brought to require her to redeem from the party acquiring title. Without the conduct of a separate foreclosure proceeding, Fallarme's equity of redemption remained unforeclosed and Pagedped acquired title to the property subject to the encumbrances annotated at the

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[8] The Decision was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Ramon A. Cruz and Maria Elisa Sempio Diy; id. at 46-54.

[9] Id. at 53.

back of TCT No. T-91349. Thus, the encumbrances cannot be ordered cancelled until it is shown that Fallarme failed to exercise her equity of redemption as provided for by law.[10]

The CA Decision in CA-G.R. CV No. 100279 acquired finality on June 30, 2018.[11]

Meanwhile, shortly after she filed her appeal to the CA, above mentioned, Fallarme sent Pagedped a letter on February 21, 2013, through counsel, saying that the judgment in the case to judicially foreclose the REM is ineffective to her since she was not made a party to said case. Also, since she has ½ interest in the property, ₱100,000.00, (which is half of the ₱200,000.00 for which the property covered by TCT No. T-61200 was sold) should be taken into consideration in the computation of the redemption amount plus the legal rate of interest due thereon, computed from the time of the foreclosure sale up to the date when the property is redeemed.

Pagedped refused the offer to redeem ½ portion of the property which prompted Fallarme to file on April 18, 2013, a complaint for redemption and consignation before the RTC of Baguio City, Branch 7 docketed as Civil Case No. 7821-R.

RTC Baguio City, Branch 7
Civil Case No. 7821-R

In her complaint, Fallarme alleged that since she was not made a party in the case for judicial foreclosure of the real estate mortgage constituted over the subject parcel of land filed by Pagedped, her supposed equity of redemption remained valid and subsisting.

Pagedped, in his Answer, meanwhile maintained that the publication of the notice of foreclosure sale was a notice to the whole world, and since no redemption was made within one year from the registration of the foreclosure sale to him,

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[10] Id. at 51-53.

[11] Id. at 54.

redemption was no longer possible notwithstanding the consignation of the redemption price.

At the pre-trial, Pagedped and Fallarme stipulated on the following: (1) that Fallarme is the subsequent lien holder of ½ portion of the property covered by TCT No. T-91349; (2) that prior to the filing of Pagedped's judicial foreclosure of real estate mortgage constituted on the subject real property, Fallarme already caused the annotation of a notice of attachment and a notice of levy, but Pagedped learned of these annotations only after the release of the title in his favor; (3) that Fallarme was not joined as a party to the foreclosure action over the subject real property which Pagedped instituted against the Avilas because the latter never knew of the transaction between the Avilas and Fallarme and he was not a party to their contract; (5) that there was an offer from Fallarme for the redemption of the ½ portion of the subject property; (6) that Pagedped was informed of Fallarme's intention to consign the redemption price and the actual consignation of the redemption price; (7) that Pagedped refused Fallarme's offer to redeem the ½ portion of the subject real property; (8) that the owner's copy of TCT No. T-61200 had always been with Pagedped; (9) that in Civil Case No. 5045-R, Pagedped was never impleaded with the qualification that said case is a personal action by Fallarme against the Avilas; and (10) that the subject lot is now registered in the name of Pagedped under TCT No. T-91349.[12]

RTC Branch 7 Ruling in Civil Case No. 7821-R

On November 4, 2016, the RTC of Baguio City, Branch 7 held:

> **WHEREFORE**, as prayed for, plaintiff Luz Fallarme is hereby declared to be entitled to redeem ½ portion of the property registered under Transfer Certificate of Title No. T-91349 of the Register of Deeds of Baguio City from defendant Romeo Pagedped who is hereby given thirty (30) days from notice to claim the consigned redemption price of Php188,000.00 from the Office of the Executive Judge through

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[12] Id. at 26.

the RTC Clerk of Court and immediately thereafter, surrender the Owner's Duplicate Certificate of the said title to the Register of Deeds of Baguio City for cancellation and for the issuance in lieu thereof, of another title registered in the names of Luz Fallarme and Romeo Pagedped as co-owners of the lot covered by the said title.

SO ORDERED.[13]

The RTC, in ruling for Fallarme, held that since she was not joined as a party in the case instituted by Pagedped for the judicial foreclosure of real estate mortgage constituted upon the subject land, her right to redeem the ½ portion thereof as a subordinate lien holder remained unforeclosed and unaffected. The RTC then fixed the redemption price at ₱188,000.00, representing ½ of the purchase price plus 12% annual interest computed from the registration of the foreclosure sale to Romeo on November 22, 2005 to the filing of the instant case on April 18, 2013.

Pagedped filed an appeal with the CA docketed as CA-G.R. CV No. 108155 arguing that he was not notified of the notices of attachment and levy annotated on the copy of TCT No. T-61200 on file with the Office of the Register of Deeds, thus, such annotations were not binding on him. This also justifies why Fallarme was not impleaded in the judicial foreclosure of real estate mortgage which he instituted against the Avilas. In addition, Fallarme cannot demand for equity of redemption as she was neither the mortgagor nor a transferee of such mortgagor. She also failed to exercise her equity of redemption within a reasonable time.[14]

CA Ruling in CA-G.R. CV No. 108155

On May 2, 2018, the CA, this time through Ninth Division, granted the appeal and reversed and set aside RTC Branch 7 in Civil Case No. 7821-R:

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[13] *See* CA Decision, id. at 20-21.

[14] Id. at 28.

WHEREFORE, the instant appeal is GRANTED. The assailed Decision of the Regional Trial Court of Baguio City, Branch 7, in Civil Case No. 7821-R, is REVERSED and SET ASIDE. Judgment is rendered dismissing the case.

SO ORDERED.[15]

The CA held that since what was involved in this case was a judicial foreclosure of mortgage, there is only equity of redemption in accordance with Rule 68 of the Rules of Court. When Fallarme purchased the ½ portion of the subject parcel of land at the execution sale held on July 12, 2006, she acquired the same subject to the encumbrance (real estate mortgage constituted in favor of Pagedped) annotated on TCT No. T-61200 on June 1, 1999. The equity of redemption which Fallarme acquired over the ½ portion of the subject land subsequent to the real estate mortgage in favor of Pagedped may be divested or barred only by making Fallarme a party to the proceedings to foreclose.[16]

Still, the CA ruled that it was reversible error on the part of the RTC in allowing Fallarme to redeem ½ portion of the subject parcel of land. The CA noted that while she was not impleaded as a defendant in the judicial foreclosure of the real estate mortgage instituted by Pagedped, she was, however, joined as a respondent in the subsequent case for cancellation of encumbrances, docketed as LRC Adm. Case No. 167-R, filed in 2010 before RTC Baguio City, Branch 6. In said case, while Fallarme initially filed an Opposition, she later withdrew the same giving both Pagedped and the RTC the impression that there was no legal impediment to the cancellation of the annotations sought and that she was abandoning or waiving whatever rights she might have acquired in connection therewith.[17]

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[15] Id. at 33.

[16] Id. at 29-30.

[17] Id. at 28-32.

It was only after the January 10, 2013 Decision of the RTC that Fallarme, through a letter, informed Pagedped that she intended to redeem the ½ portion of the subject property. When Pagedped rejected her offer, it was only then that she filed the case before the RTC. The CA held that for failure of Fallarme to seasonably invoke her equity of redemption, she is precluded from doing so by reason of estoppel.[18]

Fallarme filed a Motion for Reconsideration which the CA denied on February 14, 2019.[19]

Hence, the present petition.

Issues

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONER FAILED TO INVOKE HER EQUITY OF REDEMPTION SEASONABLY AND IS PRECLUDED FROM DOING SO BECAUSE SHE WITHDREW HER OPPOSITION TO THE PETITION OF RESPONDENT FOR THE CANCELLATION OF HER NOTICES OF LEVY AND ATTACHMENT.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONER IS ESTOPPED FROM INVOKING HER EQUITY OF REDEMPTION DESPITE THE ABSENCE OF ANY LEGAL AND FACTUAL BASIS AND DESPITE THE FACT THAT SUCH ISSUE ON ESTOPPEL WAS NOT RAISED BY THE RESPONDENT BEFORE THE TRIAL COURT AND EVEN ON APPEAL.[20]

Fallarme argues that, contrary to the findings of the CA, she did not withdraw her Opposition to the petition filed by Pagedped, docketed as LRC Adm. Case No. 1967-R. Nowhere in the RTC Decision of Branch 6 did the trial court rule that she waived or

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[18] Id. at 28-31.

[19] Id. at 34-35.

[20] Id. at 10-11.

abandoned any of her rights which she might have acquired in connection with the encumbrances annotated on the certificate of title issued in Pagedped's name.

Consistent with her claim over the ½ portion of the property, she appealed the Decision of RTC Branch 6, arguing among others that since her equity of redemption is unforeclosed, the encumbrances in her favor should not be cancelled yet.

The appeal she filed in LRC Adm. Case No. 1967-R was docketed as CA-G.R. CV No. 100279 and was decided in her favor.[21] It ruled that without the conduct of a separate foreclosure proceeding, Fallarme's equity of redemption remains unforeclosed and Pagedped acquired title to the property subject to the encumbrances annotated at the back of TCT No. T-91349. Thus, the encumbrances cannot be ordered cancelled until it is shown that she failed to exercise her equity of redemption as provided for by law. The said decision became final and executory on June 30, 2018.

Fallarme further asserts that estoppel is not applicable in this case as it was not made an issue in the lower court or even on appeal by Pagedped.[22]

Pagedped for his part asserts in his Comment that Fallarme was well aware of the prior mortgage which can result at any time to a foreclosure, yet she did nothing to notify him. Worse, when LRC Adm. Case No. 1967-R was filed on May 26, 2010, where she was impleaded, she never offered to redeem one-half of the property. She waited for the decision in LRC Adm. Case No. 1967-R to be issued which decision was adverse to her and even appealed the same to the CA before she filed with the RTC a case for redemption and consignation. Equity of redemption must be exercised within the 90-day period after the judgment becomes final or after the foreclosure sale but prior to its confirmation. The sale in Pagedped's favor was

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[21] Id. at 53.

[22] Id. at 12-15.

long confirmed. To allow Fallarme to exercise her equity of redemption this late would be stretching too much the redemption laws to his damage and prejudice. It took Fallarme almost three years from the time she was aware of the consolidation of the title in the name of Pagedped to offer to redeem.[23]

The Court's Ruling

We find merit in the petition.

While redemption is looked upon with favor, it is equally true that the right to redeem properties remains to be a statutory privilege. Redemption is by force of law, and the purchaser at the public auction is bound to accept it. The right to redeem property sold as security for the satisfaction of an unpaid obligation does not exist preternaturally; neither is it predicated on proprietary right, which after the sale of the property on execution, leaves the judgment debtor and vests in the purchaser. It is a bare statutory privilege to be exercised only by the persons named in the statute. A valid redemption of property must be appropriately based on the law which is the very source of this substantive right. It is, therefore, necessary that compliance with the rules set forth by law and jurisprudence should be shown in order to render validity to the exercise of this right.[24]

Section 1, Rule 68 of the Rules of Court provides:

Section 1. *Complaint in action for foreclosure*. — In an action for the foreclosure of a mortgage or other encumbrance upon real estate, the complaint shall set forth the date and due execution of the mortgage; its assignments, if any; the names and residences of the mortgagor and the mortgagee; a description of the mortgaged property; a statement of the date of the note or other documentary evidence of the obligation secured by the mortgage, the amount claimed to be unpaid thereon; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of

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[23] Id. at 76-77.

[24] *White Marketing Development Corp. v. Grandwood Furniture & Woodwork, Inc.*, 800 Phil. 845-859 (2016).

the holder of the mortgage, all of whom shall be made defendants in the action. (1a)

The rules require that all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage should be made defendants in the action for foreclosure. Such requirement for joinder of the person claiming an interest subordinate to the mortgage sought to be foreclosed, however, is not mandatory in character but merely directory, such that failure to comply therewith will not invalidate the foreclosure proceedings.[25]

As correctly held by the CA, in both CA-G.R. CV No. 108155 and CA-G.R. CV No. 100279, the effect of the failure of the mortgagee to make the subordinate lien holder a defendant is that the decree entered in the foreclosure proceeding would not deprive the subordinate lien holder of his right of redemption. A decree of foreclosure in a suit to which the holders of a second lien are not parties leaves the equity of redemption in favor of the lien holders unforeclosed and unaffected.[26]

Here, since Fallarme was not impleaded as a defendant in the foreclosure proceedings initiated by Pagedped in 2005, as subordinate lienholder, however, she acquired an equity of redemption.

In *Looyuko v. Court of Appeals*,[27] citing the earlier case of *Limpin v. Intermediate Appellate Court*, we explained:

Section 2, Rule 68 provides that —

". . . If upon the trial . . . the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment to be paid into court within a period of not less than *ninety (90) days from the date of the service*

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[25] *Looyuko v. Court of Appeals*, 413 Phil. 445, 468 (2001).

[26] Id.

[27] 413 Phil. 445 (2001).

of such order, and that in default of such payment the property be sold to realize the mortgage debt and costs."

This is the **mortgagor's equity** (*not right*) ***of redemption*** *which, as above stated, may be exercised by him even beyond the 90-day period "from the date of service of the order," and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer.*

It is this same equity of redemption that is conferred by law on the mortgagor's successors-in-interest, or third persons acquiring right over the mortgaged property subsequent, and therefore subordinate to the mortgagee's lien [e.g., by second mortgage or subsequent attachment or judgment]. ***If these subsequent or junior lien-holders be not joined in the foreclosure action, the judgment in the mortgagor's favor is ineffective as to them, of course. In that case, they retain what is known as the "unforeclosed equity of redemption," and a separate foreclosure proceeding should be brought to require them to redeem from the first mortgagee, or the party acquiring title to the mortgaged property at the foreclosure sale, within 90 days, [the period fixed in Section 2, Rule 68 for the mortgagor himself to redeem], under penalty of losing that prerogative to redeem.*** x x x (Emphasis supplied)

Clearly, failure of the mortgagee to join a subordinate lien holder as defendant in the foreclosure proceeding does not nullify the foreclosure proceeding, but kept alive the equity of redemption acquired by said junior lien-holder.

The equity of redemption also does not constitute as a bar to the registration of the property in the name of the mortgagee. Registration may be granted in the name of the mortgagee but subject to the subordinate lien holders' equity of redemption, which should be exercised within 90 days from the date the decision becomes final. Such registration is but a necessary consequence of the execution of the final deed of sale in the foreclosure proceedings.[28]

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[28] Id.

In this case, Pagedped judicially foreclosed the REM and the subject property was sold at public auction on October 5, 2005, with Pagedped emerging as the highest bidder. The Sheriff's Certificate of Sale was registered and entered with the RD on November 22, 2005. A year later, TCT No. T-61200 was cancelled and TCT No. T-91349 was issued in Pagedped's name.

On May 26, 2010, Pagedped filed a petition for the cancellation of all annotations on TCT No. T-91349 before the trial court, where Fallarme was joined as a respondent. According to the appellate court in CA-G.R. CV No. 108155, while Fallarme initially filed an Opposition, she later withdrew the same giving the RTC and Pagedped the impression that she was abandoning or waiving her rights.

Fallarme denies this before this Court and maintains that she did not withdraw her Opposition to Pagedped's petition.

A reading of the RTC decision would reveal that it did not categorically specify that it was Fallarme who moved for the withdrawal of the Opposition. To quote:

> Further, Oppositors Spouses Romeo, Cadias and Victoria Cadias, Oliver Awal, Spouses Julio Labnas, Jr. and Dolores Labnas, Spouses Christopher Caput and Shirdellah Caput, Spouses Ligon Aguinaldo and Brenda Aguinaldo, Spouses Clarito Pacot and Josephine Pacot, Spouses Renato Tapay and Mary Tapay, Spouses Ernesto Wabe and Judith Wabe, Spouses Diego Bilar and Jennelyn Bilar, and Spouses Anton Awal and Laurena Awal filed their opposition on September 27, 2010. The said oppositors acquired through purchase one-half (½) portion of the subject property from respondent Luz Fallarme. x x x
>
> On October 15, 2010 petitioner filed a Reply to the Opposition of Private Respondent and the Oppositors. In a hearing dated October 26, 2010, the oppositors and the petitioner manifested to settle the matter between them amicably. The parties were given ample time to reach a compromise agreement. Thus, in an Order dated

February 7, 2012, on motion of oppositor's counsel, the Opposition was withdrawn.[29] (Emphasis supplied)

In any event, what is clear is that Pagedped has not yet filed a separate foreclosure proceeding to require Fallarme, as subsequent lien holder to redeem from him contested property. What Pagedped filed before RTC Branch 6 in 2010 was a petition for the cancellation of all annotations on his title, TCT No. T-91349.

Case law has clarified that if the subsequent or junior lienholders are not joined in the foreclosure action, the judgment in the mortgagor's favor is ineffective as to them. What they retain is what is known as the "unforeclosed equity of redemption" and a separate foreclosure proceeding should be brought to require them to redeem from the first mortgagee, or the party acquiring title to the mortgaged property at the foreclosure sale, within 90 days, under penalty of losing that prerogative to redeem.[30]

Note should also be taken of the fact that on November 24, 2017, the CA rendered a decision granting Fallarme's appeal which reversed and set aside the ruling of the RTC Baguio City, Branch 6, dated January 10, 2013. The CA dismissed the petition for cancellation of encumbrances on TCT No. T-91349.[31] Pagedped did not file any petition to question said CA ruling. Thus, on June 30, 2018, the Decision in CA-G.R. CV No. 100279 became final and executory.[32]

Having acquired finality, Pagedped is bound to abide by said decision.

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[29] *Rollo*, p. 42.

[30] *Looyuko v. Court of Appeals*, 413 Phil. 445-468 (2001).

[31] *Rollo*, p. 54.

[32] Id. at 55.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 2, 2018 and the Resolution dated February 14, 2019 of the Court of Appeals in CA-G.R. CV No. 108155 are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court, Branch 7 of Baguio City in Civil Case No. 7821-R is **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248729. September 3, 2020]

JOEL C. JAVAREZ, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. **CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA 7610); CHILD ABUSE; ELEMENTS. —** Under Section 3 (b) paragraph 2 of RA 7610, child abuse may be committed by deeds or words which debase, degrade or demean the intrinsic worth and dignity of a child as a human being.

2. **ID.; ID.; ID.; ID.; CHILD ABUSE, DEFINED. —** In ***Bongalon v. People***, the Court expounded the definition of "child abuse" and held that only when it is shown beyond reasonable doubt that the accused laid his or her hands on the child with actual intent to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it should be punished under the Revised Penal Code (RPC)[.]

3. **ID.; ID.; ID.; ID.; NOT PRESENT IN THE CASE AT BAR. —** Here, petitioner was not shown to have intended to debase, degrade, or demean BBB's intrinsic worth and dignity as a human being. For while hitting BBB with a broomstick is reprehensible, petitioner did so only to stop BBB and another classmate from fighting over pop rice. As for AAA, records show that in his effort to stop his two (2) other students from fighting over food during his afternoon class, petitioner got to push AAA, one of the onlookers, as a result of which, AAA fell on the floor with his face down. Surely, petitioner did not intend to maltreat nor debase AAA's dignity as a human being. He was in all honesty simply trying to stop his students from fighting. He cannot therefore be held liable under Section 10(a), Article VI of RA 7610.

4. **ID.; PHYSICAL INJURIES; FOR AN ACCUSED TO BE HELD LIABLE FOR PHYSICAL INJURIES THERE MUST**

BE MALICIOUS INTENT TO INFLICT SUCH INJURIES. — In ***Villareal v. People***, the Court expounded that for an accused to be held liable for physical injuries, there must be malicious intent to inflict such injuries[.]

5. ID.; ID.; WHEN THERE IS NO EVIDENCE OF ACTUAL INCAPACITY OF THE OFFENDED PARTY FOR LABOR OR OF THE REQUIRED MEDICAL ATTENDANCE OR WHEN THERE IS NO PROOF AS TO THE PERIOD OF THE OFFENDED PARTY'S INCAPACITY FOR LABOR OR OF THE REQUIRED MEDICAL ATTENDANCE, THE OFFENSE IS ONLY SLIGHT PHYSICAL INJURIES. — Notably, the medical examination shows that BBB sustained left cheek abrasions which may have been caused by a sharp object like a fingernail or a broomstick as well as hematoma on his left ear, which may also have been caused by contact with a broomstick. When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance; or when there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the offense is only slight physical injuries.

6. ID.; ID.; PROPER IMPOSABLE PENALTY. — The penalty for slight physical injuries is *arresto menor*, which ranges from one (1) day to thirty (30) days of imprisonment. Here, since there is no mitigating nor aggravating circumstance present, penalty shall be *arresto menor* in its medium period which is eleven (11) days to twenty (20) days of imprisonment. The Indeterminate Sentence Law being inapplicable *i.e.* maximum of the penalty imposed not exceeding one (1) year, petitioner shall suffer a straight penalty of 20 days of *arresto menor*.

APPEARANCES OF COUNSEL

Julius M. Concepcion for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Petitioner assails the Court of Appeals' Decision[1] dated September 14, 2018 in CA-G.R. CR No. 36816 affirming his conviction for violation of Section 10(a)[2] in relation to Section 31(e)[3] of Republic Act No. 7610[4] (RA 7610).

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto B. Martin; *rollo*, pp. 28-38.

[2] **ARTICLE VI**

Other Acts of Abuse

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

[3] **ARTICLE XII**

Common Penal Provisions

Section 31. *Common Penal Provisions*. —

x x x x x x x x x

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is *reclusion perpetua or reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is *prision correccional or arresto mayor*, the penalty of suspension shall also be imposed;

x x x x x x x x x

[4] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

The Charge and the Plea

Petitioner Joel Javarez was charged with violation of Section 10 (a) in relation to Section 31(e) of RA 7610 under two (2) separate Informations, thus:

Criminal Case No. 24935

That on or about the 7th day of February 2008, at around 2:00 o'clock in the afternoon, at Brgy. Iraray, Municipality of Sofronio Española, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a school teacher of Iraray Elementary School, in Sofronio Española, Palawan, did, then and there willfully, unlawfully, and criminally commit physical abuse and cruelty upon the person of AAA,[5*] a ten (10) year old minor, to wit: the accused Joel Javarez suddenly and without provocation shoved AAA believing that he was the one who initiated and caused the dispute, which act debased and demeaned the dignity of the child as a human being, thereby, affecting the normal, physical, psychological and social growth of the said minor, to the damage and prejudice of the said AAA.[6]

Criminal Case No. 24936

That on or about the 7th day of February 2008, or sometime prior or subsequent thereto, in Palawan, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then a school teacher of Iraray Elementary School, in Sofronio Española, Palawan, did, then and there willfully, unlawfully, and criminally commit physical abuse and cruelty upon the person of BBB, [7*] a 9-year old minor, to wit: the accused Joel Javarez suddenly

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[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[*] Real name not found in *rollo*.

[6] *Rollo*, p. 29.

[7] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as

and without provocation hit BBB [in] the face with broomstick after BBB asked a classmate for a piece of pop rice, which act debased and demeaned [the] dignity of the child as a human being, thereby, affecting the normal, physical, psychological and social growth of the said minor to the damage and prejudice of the said BBB.[8]

On arraignment, petitioner pleaded "not guilty" to both charges.[9] Joint trial ensued.

Evidence for the Prosecution

On February 7, 2008, petitioner, complainants' third grade adviser, was conducting a review class for the National Admission Test (NAT). Around 9 o'clock in the morning, while the class was ongoing, BBB repeatedly asked one (1) of his classmates to give him rice pop but when the latter refused, they fought. Petitioner stepped in and hit BBB's face with a broomstick he was holding.[10]

In the afternoon of the same day, in another class, BBB's cousin AAA went out of the classroom to urinate. When he came back, he saw two (2) of his classmates fighting over food. As he walked toward them, he saw petitioner approach the two (2) and push AAA in the chest, causing AAA to fall on his face.[11]

Right after the incident, both AAA and BBB went to AAA's house. They reported to AAA's mother XXX[*] the twin incidents involving them and their teacher, herein petitioner. XXX, in

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those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[*] Real name not found in *rollo*.

[8] *Rollo*, p. 29.

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

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

[11] *Id.* at 31.

[*] Real name not found in *rollo*.

turn, relayed the information to BBB's parents. Thereafter, XXX, together with AAA and BBB went to the principal's office to report the incident. They were told, however, that the principal was in Manila.[12]

XXX and complainants proceeded to file a complaint before the Department of Social Welfare and Development. Complainants were also brought to the Brooke's Point Hospital for physical examination. Per AAA and BBB's Medico-Legal Certificates, AAA suffered pain and tenderness in the chest/sternal area which may have been caused by a fist blow or any force applied to the area, which included pushing. On the other hand, BBB sustained left cheek abrasions which may have been caused by a sharp object like a fingernail or a broomstick; and hematoma on his left ear, which may have also been caused by contact with a broomstick.[13] At the police station, complainants executed their respective affidavits.[14]

Evidence for the Defense

Petitioner testified that he had been teaching for the past thirty (30) years. On February 7, 2008, he was reviewing his class for the NAT when AAA and BBB became restless and kept transferring seats despite his repeated orders for them to stop. In the afternoon of the same day, while the lecture was ongoing, petitioner saw AAA engage in a fistfight with other pupils at the back of the classroom. He approached them and tried to separate them with his arms. AAA left the classroom crying. He averred that AAA and BBB merely fabricated the story against him because they were influenced by AAA's uncle, the barangay captain who at that time was angry with him.[15]

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[12] *Id.*

[13] Temporary *rollo,* p. 5.

[14] *Rollo,* p. 31.

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

The Trial Court's Ruling

By Decision[16] dated April 10, 2014, the trial court found petitioner guilty as charged:

> WHEREFORE, premises considered, the prosecution having successfully proven the guilt of the accused, JOEL JAVAREZ is hereby found guilty beyond reasonable doubt of two (2) counts of violation of Section 10(a) of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act; and pursuant to Section 31 (e) of said law, as it is undisputed that the accused is a public school teacher and a public officer/employee, which warrants the imposition of the maximum period of the penalty imposable, therefore, the accused is hereby sentenced as follows:
>
> 1. In Criminal Case No. 24935 — to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum; and to pay "AAA" the sum of Ten Thousand (₱10,000.00) as civil indemnity; [and] the sum of Ten Thousand Pesos, as damages;
>
> 2. In Criminal Case No. 24936 — to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum; and to pay "BBB" the sum of Ten Thousand (₱10,000.00) [Pesos] as civil indemnity; [and] the sum of Ten Thousand [₱10,000.00] Pesos, as damages.
>
> SO ORDERED.[17]

The trial court gave more weight to the testimonies of the prosecution witnesses than petitioner's bare denial. It held that complainants' testimonies were direct, straightforward, and bolstered by the medical examination results showing that AAA suffered pain and tenderness in the chest/sternal area which may have been caused by a fist blow, or any force applied to the area, which includes pushing.[18] On the other hand, BBB

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[16] *Id.* at 32.

[17] *Rollo*, p. 32.

[18] Temporary *rollo*, p. 5.

sustained left cheek abrasions which may have been caused by a sharp object like a fingernail or a broomstick as well as hematoma on his left ear, which may also have been caused by contact with a broomstick.[19] Too, complainants had no ill-motive to falsely testify against petitioner.[20]

Proceedings Before the Court of Appeals

On appeal, petitioner argued that the trial court ignored the testimony of one (1) of the prosecution witnesses attesting to the fact that he did not lay his hands on BBB; as well as the testimony of defense witness Benjur Sama that during a cockfight, a rooster attacked and wounded BBB. AAA's testimony was inconsistent with human nature. For if it were true that he pushed AAA's in the chest, the latter should have fallen on his back and not with his face touching the ground. BBB was motivated to fabricate a story against petitioner because BBB was afraid to admit he was into cockfighting.[21]

The Court of Appeals' Ruling

By Decision[22] dated September 14, 2018, the Court of Appeals affirmed in the main, but modified the amount of damages.[23]

It held that Section 10 (a), Article VI of RA 7610 punishes not only those acts enumerated under Article 59 of Presidential Decree No. 603,[24] but four (4) other distinct acts as well, *i.e.*, child abuse, child cruelty, child exploitation, and being responsible for conditions prejudicial to the child's development. An accused can be prosecuted and convicted under Section 10(a),

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[19] *Id*.

[20] *Rollo*, p. 33.

[21] *Id.* at 33-34.

[22] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ronaldo Roberto B. Martin; *rollo*, pp. 28-38.

[23] *Rollo*, pp. 28-38.

[24] The Child and Youth Welfare Code.

Article VI of RA 7610 if he or she commits any of the four (4) acts mentioned. The prosecution need not prove that the acts of child abuse, child cruelty, and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the three (3) aforementioned acts.[25]

It found that using a broomstick handle, petitioner hit BBB in the left cheek. As for AAA, petitioner pushed the former, causing him to fall on his face. Complainants' testimonies were candid and consistent while petitioner could only proffer the defense of denial.[26]

It rejected petitioner's story that it was a rooster which wounded BBB. The Court of Appeals noted that defense witness Benhur Sama failed to mention the supposed rooster incident in his affidavit. Too, Sama admitted that he merely overheard the story, hence, had no personal knowledge of the so-called incident.[27]

Credence cannot be given to petitioner's assertion that BBB was motivated to file the case against him because BBB did not want to admit he was into cockfighting when he got wounded. These are bare allegations, sans any substantiating evidence.[28]

On damages, aside from civil indemnity of Ten Thousand Pesos (₱10,000.00), the Court of Appeals awarded moral damages in favor of complainants in the amount of Twenty Thousand Pesos (₱20,000.00) each to assuage their moral and emotional sufferings; and exemplary damages of Twenty Thousand Pesos (₱20,000.00) pursuant to Article 2230 of the Civil Code.[29]

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[25] *Rollo*, pp. 33-34.

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

[27] *Id.* at 35.

[28] *Id.* at 35-36.

[29] **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.

Petitioner moved for reconsideration which the Court of Appeals denied through its Resolution[30] dated June 20, 2019.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays anew for his acquittal.[31]

In its Comment[32] dated June 10, 2020, the Office of the Solicitor General reiterated that the courts below did not err in rendering a verdict of conviction against petitioner. AAA and BBB's testimonies coupled with the medical report on the injuries sustained by complainants are sufficient proofs to warrant petitioner's conviction. Too, the petition must be denied outright for raising purely factual issues which the Court cannot take cognizance of under a Rule 45 petition.

Threshold Issue

Did the Court of Appeals err in affirming petitioner's conviction for violation of RA 7610?

Ruling

The petition is partly meritorious.

Petitioner not liable under Section 10 (a), Article VI, of RA 7610; lack of intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being

Petitioner was charged, tried, and found guilty of violating Section 10(a), Article VI, of RA 7610, *viz.*:

SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*

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[30] *Rollo*, p. 40.

[31] *Id.* at 9-25.

[32] Temporary *rollo*, pp. 1-19.

> (a) **Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603**, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis ours)

Under Section 3(b) paragraph 2 of RA 7610, child abuse may be committed by deeds or words which debase, degrade or demean the intrinsic worth and dignity of a child as a human being.

In ***Bongalon v. People***,[33] the Court expounded the definition of "child abuse" and held that only when it is shown beyond reasonable doubt that the accused laid his or her hands on the child with actual intent to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it should be punished under the Revised Penal Code (RPC), thus:

> Although we affirm the factual findings of fact by the RTC and the CA to the effect that the petitioner struck Jayson at the back with his hand and slapped Jayson on the face, we disagree with their holding that his acts constituted *child abuse* within the purview of the above-quoted provisions. **The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the "intrinsic worth and dignity" of Jayson as a human being, or that he bad thereby intended to humiliate or embarrass Jayson. The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger**, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. **With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of *child abuse***. (Emphasis ours and italics in the original)

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[33] 707 Phil. 11, 14 (2013).

Black's Law Dictionary defines debasement as "the act of reducing the value, quality, or purity of something."[34] Degradation, on the other hand, is the "lessening of a person's or thing's character or quality."[35] Lastly, to demean is "to lower in character, status or reputation."[36]

In ***Jabalde y Jamandron v. People***,[37] the Court held petitioner liable only for slight physical injuries since petitioner laid her hands on the victim as a mere offshoot of her emotional outrage after being informed that her daughter's head was punctured and thinking that her daughter was already dead. The spontaneity of petitioner's acts against the victim was just a product of the instinctive reaction of a mother to rescue her own child from harm. Having lost the strength of her mind, she lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that is so essential in the crime of child abuse.

Here, petitioner was not shown to have intended to debase, degrade, or demean BBB's intrinsic worth and dignity as a human being. For while hitting BBB with a broomstick is reprehensible, petitioner did so only to stop BBB and another classmate from fighting over pop rice.

As for AAA, records show that in his effort to stop his two (2) other students from fighting over food during his afternoon class, petitioner got to push AAA, one of the onlookers, as a result of which, AAA fell on the floor with his face down. Surely, petitioner did not intend to maltreat nor debase AAA's dignity as a human being. He was in all honesty simply trying to stop his students from fighting. He cannot therefore be held liable under Section 10(a), Article VI of RA 7610.

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[34] Black's Law Dictionary 430 (8th ed. 2004).

[35] Black's Law Dictionary 456 (8th ed. 2004).

[36] Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/demean, Date visited: August 18, 2020.

[37] 787 Phil. 255 (2016).

Petitioner is liable only for slight physical injuries for intentionally inflicting physical harm on BBB

Article 266 (2) of the RPC provides:

ART. 266. *Slight physical injuries and maltreatment.* — The crime of slight physical injuries shall be punished:

x x x x x x x x x

2. By *arresto menor* or a fine not exceeding 20 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.

x x x x x x x x x

In ***Villareal v. People***,[38] the Court expounded that for an accused to be held liable for physical injuries, there must be malicious intent to inflict such injuries, *viz.*:

> In order to be found guilty of the felonious acts under Articles 262 to 266 of the [RPC], the employment of physical injuries must be coupled with *dolus malus*. As an act that is *mala in se*, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer — *iniuria ex affectu facientis consistat*. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. Thus, in case of physical injuries under the [RPC], there must be a specific *animus iniuriandi* or malicious intention to do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions. Without proof beyond reasonable doubt of the required *animus iniuriandi*, the overt act of inflicting physical injuries *per se* merely satisfies the elements of freedom and intelligence in an intentional felony. The commission of the act does not, in itself, make a man guilty unless his intentions are.

Here, as against BBB's categorical and straightforward testimony that petitioner deliberately hit him with a broomstick, petitioner's denial deserves scant consideration. Besides, it has

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[38] 749 Phil. 16, 37 (2014).

been held that testimonies of child-victims are given full faith and credit since youth and immaturity are generally badges of truth and sincerity.[39] In fine, when petitioner laid his hands-on BBB, he intended to cause or inflict physical injuries on him.

Notably, the medical examination shows that BBB sustained left cheek abrasions which may have been caused by a sharp object like a fingernail or a broomstick as well as hematoma on his left ear, which may also have been caused by contact with a broomstick.[40] When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance; or when there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the offense is only slight physical injuries.[41]

Although petitioner lacked the intent to debase, degrade or demean the intrinsic worth and dignity of BBB as a human being as required under Section 10 (a), Article VI of RA 7610, his act of laying hands on him was attended by malicious intent to physically harm BBB which is an element of the crime of slight physical injuries.

But we cannot say the same thing for AAA. To recall, petitioner was merely trying to stop two of his students from fighting over food during the class. AAA, a mere onlooker, was not involved in the fight. There was no evidence showing petitioner ever intended to harm him in any way. Petitioner had no reason to be. As it was, petitioner was focused on the two fighting students, not on AAA or anyone else. It was possible though that as an onlooker, AAA stood too close to the protagonists such that when petitioner stepped in to disengage the protagonists, necessarily AAA was also pushed back, and as result, fell to the ground. No one came forward to say that petitioner did it intentionally or that he even had a motive or reason to do it. On the contrary, the attendant circumstances showed that as a

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[39] *People v. Ocdol*, 741 Phil. 701, 710-711 (2014).

[40] Temporary *rollo*, p. 5.

[41] *Escolano v. People*, G.R. No. 226991, December 10, 2018.

teacher, petitioner only tried to restore peace in the class by stopping his students from fighting. Verily, petitioner cannot be held criminally liable for the abrasions AAA sustained on that occasion. These circumstances, taken together, negate the presence of criminal intent on the part of petitioner. As held in ***Villareal***, mere infliction of physical injuries, absent malicious intent, does not make a person automatically liable for an intentional felony.

Penalty

The penalty for slight physical injuries is *arresto menor*, which ranges from one (1) day to thirty (30) days of imprisonment.

Here, since there is no mitigating nor aggravating circumstance present, penalty shall be *arresto menor* in its medium period which is eleven (11) days to twenty (20) days of imprisonment. The Indeterminate Sentence Law being inapplicable, *i.e.* maximum of the penalty imposed not exceeding one (1) year,[42] petitioner shall suffer a straight penalty of 20 days of *arresto menor*.

As for damages, under paragraph (1), Article 2219 of the Civil Code, moral damages may be recovered in a criminal offense resulting in physical injuries.[43] Moral damages compensate for the mental anguish, serious anxiety, and moral shock suffered by the victim and his family as being a proximate result of the wrongful act. Pursuant to prevailing jurisprudence,

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[42] Sec. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof.

[43] *People v. Villacorta*, 672 Phil. 712, 729 (2011).

an award of Five Thousand Pesos (₱5,000.00) moral damages is appropriate for slight physical injuries. The Court of Appeals' award of ₱20,000.00 as moral damages should be accordingly modified.

WHEREFORE, the Court of Appeals' Decision dated September 14, 2018 and Resolution dated June 20, 2019 in CA-G.R. CR No. 36816 are **MODIFIED, as follows**:

1. In **Criminal Case No. 24935**, petitioner Joel C. Javarez is **ACQUITTED** of violation of Section 10 (a), Article VI, of RA 7610; and

2. In **Criminal Case No. 24936**, petitioner Joel C. Javarez is found **GUILTY** of **SLIGHT PHYSICAL INJURIES** under paragraph 2, Article 266, of the Revised Penal Code. He is sentenced to twenty (20) days of *arresto menor*. He is further **ORDERED** to pay BBB ₱5,000.00 moral damages which shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248875. September 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **RODOLFO MASUBAY *y* PASAGI,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES MUST BE GIVEN GREAT RESPECT IN THE ABSENCE OF ANY ATTENDANT GRAVE ABUSE OF DISCRETION. — As we have repeatedly ruled, the trial court's assessment of the credibility of witnesses must be given great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial evidence, including the demeanor of the witnesses, and is in the best position to rule on their weight and credibility. The rule finds greater application when the CA sustains the findings of the trial court.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE DETERMINATION OF THE CREDIBILITY OF THE OFFENDED PARTY'S TESTIMONY IS A MOST BASIC CONSIDERATION IN EVERY PROSECUTION FOR RAPE, FOR THE LONE TESTIMONY OF THE VICTIM, IF CREDIBLE, IS SUFFICIENT TO SUSTAIN THE VERDICT OF CONVICTION; EXCEPTIONS. — The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. the exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.

3. CRIMINAL LAW; RAPE; THE GRAVAMEN OF THE CRIME OF RAPE IS CARNAL KNOWLEDGE OF A WOMAN BY FORCE OR INTIMIDATION AND AGAINST HER WILL OR WITHOUT HER CONSENT. — The gravamen of the crime of rape is carnal knowledge of a woman by force or intimidation and against her will or without her consent. What consummates the felony is penile contact, however slight with the labia of the victim's vagina without her consent. Consequently, it is not required that lacerations be found on the private complainant's hymen. Nor is it necessary to show that the victim had a reddening of the external genitalia or sustained a hematoma on other parts of her body to sustain the possibility of a rape charge. For it is well-settled that the **absence of external injuries does not negate rape**. This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; FOR ALIBI TO PROSPER IT IS NOT ENOUGH FOR THE ACCUSED TO PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED, HE MUST LIKEWISE PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE PRESENT AT THE CRIME SCENE OR ITS IMMEDIATE VICINITY AT THE TIME OF THE COMMISSION; NOT PRESENT IN THE CASE AT BAR. — This Court has ruled in various cases that denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. In this case, accused-appellant failed miserably in establishing that it was physically impossible for him to have been at the scene of the crime. Even accused-appellant admitted that the scene of the crime is merely twenty (20) kilometers away from his workplace.

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, JR., *J.*:

Before us is an appeal assailing the Decision[1] dated January 31, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09516, which affirmed with modification the Decision[2] dated February 15, 2017 of the Regional Trial Court (RTC) Branch 86, Quezon City, convicting accused-appellant Rodolfo Masubay *y* Pasagi (Masubay) of the crime of rape under Criminal Case No. Q-05-137304.

Factual Antecedents

Accused-appellant Masubay was charged with two counts of Rape in two separate informations, as follows:

Crim. Case No. Q-05-137303

That on or about the last week of October 2003 in Quezon City Philippines, the abovenamed accused with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor 16 years of age against her will and without her consent to her damage and prejudice."

Crim. Case No. No. 05-137304

That on or about the month of October 2003 in Quezon City Philippines, the above named accused with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA a minor 16, years of age against her will and without her consent.

Version of the Prosecution

The following are the facts of the case as presented by the prosecution and narrated by the RTC.

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[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Remedios A. Salazar-Fernando and Amy C. Lazaro-Javier (now a member of this Court); *rollo*, pp. 3-17.

[2] CA *rollo*, pp. 40-52.

Sometime in October 2003, at about noontime, AAA,[3] went home from her friend's place. Her house is located at [redacted]. When AAA was already at their doorstep and about to enter their house, accused suddenly grabbed her hands and pulled her inside his house. The accused is AAA's neighbor whose house is adjacent to that of AAA. The doors of their house are near and fronting each other. No one was around the place when AAA went home.

After having been brought inside the house, the accused threatened AAA with a knife not to shout. Helpless and afraid of the threat of the accused, she was laid down on the floor by the accused who ordered AAA to remove her clothes. When she resisted, the accused forcibly removed her shorts and panty. After the accused successfully removed AAA's underwear, accused removed his underwear and immediately thereafter, he laid on top of AAA and started kissing her cheeks, lips, held her vagina and then inserted his penis into AAA's vagina. AAA was resisting from the start she was being molested by the accused but with the knife poked on her and the threat that the accused would kill her, the resolve to resist was overpowered by fear and she stopped resisting that gave way to the consummation of the dastardly act of the accused. The accused having satisfied his carnal desire released AAA to go home but was given by the accused a stern warning not to tell anyone lest the accused will kill her. Gripped by fear and terror that the accused will kill her if she tells anyone, AAA kept to herself what the accused has done to her.

Days and months passed by and AAA did not tell anyone what happened to her in the hands of the accused. After three months of living in fear, on January 26, 2004, AAA was able to muster the courage to tell her parents what the accused did

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[3] 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 A.M. No. 04-11-09 SC dated September 19, 2006.

to her. The mother of AAA, upon knowing what the accused did to AAA, immediately decided to report the incident to the police and subsequently accompanied AAA to the PNP Crime Laboratory for medical and genital examination. The examination done on AAA shows that there is a deep healed laceration on her hymen at 8:00 o'clock position and shallow healed laceration at 3:00 & 5:00 o'clock positions. AAA, together with her mother, filed a complaint for rape at the [redacted].

Dr. Reynaldo Dave, the medical doctor who conducted the medical examination upon AAA at the PNP Crime Laboratory on January 28, 2004 stated during his testimony and in the Initial Medico-Legal Report and Medico Legal Report No. M-358-04 that there is a deep healed laceration at 8:00 o'clock position and shallow-healed laceration at 3:00 & 5:00 o'clock positions; that the subject minor is in non-virgin state physically and that there are no external signs of application of any form of trauma. Further, he stated that the deep healed and shallow healed lacerations were caused by a blunt penetrating trauma to the vagina. It could be caused by a finger, erected (sic) penis or hard object.

Version of the Defense

Accused denied that he committed the crime charged in the Information. He claimed that at the time the alleged crime was committed against AAA in October 2003, he was at his work and did not go home to his house. Being a delivery boy, and a "stay in" worker, he usually sleeps at his workplace and would go home to his house in Baesa on a weekly basis. His workplace and his house in Baesa is about 20 kilometers apart.

AAA is his neighbor at his house in Baesa, Quezon City. Whenever he goes home he would only stay for a while to get some clothes. He never stayed long in his house. He cannot recall if he went home sometime in October 2003. There is no truth to the allegation of AAA that he pulled her and forced her to go inside his house to sexually molest her.

He further claimed that the instant case was filed by AAA at the instigation of the mother who got mad at him when he collected from AAA's mother the money indebted to him by the latter. He was arrested at his workplace sometime on April 2013 and he was 59 years old when the alleged incident happened.

The Ruling of the Trial Court

The RTC rendered its Decision dated February 15, 2017, the dispositive portion reads:

> WHEREFORE, in view of the foregoing premises, the accused Rodolfo Masubay y Pasagi, under Criminal Case No. Q-05-137304, is hereby found guilty beyond reasonable doubt of the crime of rape punishable under Article 266-A (1) paragraph (a) in relation to Article 266-B of the Revised Penal Code, as amended, and is hereby sentenced to a penalty of Reclusion Perpetua. For this offense the accused is adjudged to pay the victim damages as follows: (1) One Hundred Thousand Pesos (P100,000.00) by way of civil indemnity *ex delicto*; (2) moral damages in the amount of One Hundred Thousand Pesos (P100,000.00); (3) exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00) with legal interest from finality of decision. The charge under Criminal Case No. Q-05-13730[3] is dismissed for insufficiency of evidence.
>
> SO ORDERED.[4]

Dissatisfied, appellant interposed an appeal alleging that the RTC gravely erred: (i) in giving weight and credence to the dubious, incredible and inconsistent testimonies of the prosecution witnesses; (ii) in disregarding his defense of denial.[5]

As summarized by the CA, the crux of appellant's defense is that the testimonies of private complainant (AAA) and her witnesses are so incredible in that they cannot justify a conviction. Appellant specifically assails the testimony of AAA, which he alleged were inconsistent and contradictory, to wit: AAA stated in her direct examination and in her sworn statement that she

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

[5] *Rollo,* p. 7.

was raped twice; in her cross examination, however, she testified that she was raped only once. Appellant also contends that AAA suffered no physical injuries thus negating her claim that he employed force and intimidation on her. Appellant likewise wails why AAA did not shout for help when she was allegedly pulled from the doorstep of their house to his house in the afternoon of October 2003. Granting *arguendo* that AAA was indeed pulled into his house, appellant avers that "it is quite perplexing how the accused succeeded without having been seen by other people, considering that it happened in a public place and in broad daylight." Appellant further asserts that AAA's declaration that she was raped is belied by the testimony of Dr. Reynaldo Dave that no spermatozoa was found in AAA's hymen during her genital examination. Lastly, appellant argues that his defense of denial and alibi should have been given more credence than the frail and effete evidence of the prosecution identifying him as the one who raped AAA.

The CA, in its Decision dated January 31, 2019, denied the appeal and affirmed with modification the decision of the RTC, to wit:

> **WHEREFORE**, all premises considered, the instant appeal is hereby **DENIED**.
>
> Accordingly, the *Decision dated [February 15, 2017]* of the Regional Trial Court, Branch 86, Quezon City, convicting accused-appellant Rodolfo Masubay *y* Pasagi of the crime of rape under Criminal Case No. Q-05-137304, is **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages is increased to P100,000.00.
>
> Pursuant to the pronouncement in *Nacar v. Gallery Frames and Felipe Bordey, Jr.*, accused-appellant is further **ORDERED** to pay legal interest on all awarded damages at 6% per *annum* from the filing of the Information on [October 19, 2005] until the finality of this Decision, and another 6% per *annum* from such finality until full payment.

Aggrieved by the Decision of the CA, accused-appellant then appealed to this Court. Both parties filed their respective

Manifestations that they are adopting their respective Briefs filed with the CA.[7]

The Court's Ruling

This Court finds the appeal unmeritorious.

We find no cogent reasons to disturb the findings of the RTC, more so when the same was affirmed by the CA. As we have repeatedly ruled, the trial court's assessment of the credibility of witnesses must be given great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial evidence, including the demeanor of the witnesses, and is in the best position to rule on their weight and credibility. The rule finds greater application when the CA sustains the findings of the trial court.[8]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[8]

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[7] Id. at 26; 32.

[8] *People v. Masagca, Jr. y Padilla*, 659 Phil. 344, 349 (2011).

[8] *People v. Mabalo y Bacani*, G.R. No. 238839, February 27, 2019 (citations omitted).

We agree with the RTC and the CA that the prosecution was able to establish and prove the elements of rape. The RTC noted that the narration of facts by AAA in her testimony on how the accused, by force, threat and intimidation succeeded in having carnal knowledge with her sometime in October 2003 was simple, candid, straightforward, clear and without any material or significant inconsistency which deserves full credit. The following are the pertinent portion of AAA's testimony:

Q. What happened on October 2003 when the first incident of rape?

x x x x

A. I was on my way home that time, [s]ir.

Q. So, what happened to you?
A. When he suddenly pulled me towards his house, [s]ir.

Q. By whom?
A. Rodolfo Masubay, [s]ir.

Q. That accused on this case?
A. Yes[,] [s]ir.

Q. So, what happened to you when the accused pulled you inside his house?
A. He forcibly tried to remove my short[s][,] sir.

Q. What else happened?
A. And also my panty, [s]ir.

Q. How about the t-shirt or blouse you were wearing at that time?
A. He was not able to remove it, [s]ir[,] because I was struggling.

Q. So, what happened after the accused removed your short[s] and panty?
A. He poked a knife at me and he uttered for me not to shout[,] sir.

Q. How about the accused[?] [W]hat did he do to himself after removing your short[s] and panty?
A. He also undressed himself[,] [s]ir.

Q. Then afterwards what happened?
A. Something happened to us, sir[.]

Q. So, what something that you are referring to?
A. He inserted his penis into my vagina, [s]ir.

Q. So, at that particular instance, Madam Witness, the accused still holding his knife?
A. Yes, [s]ir.

Q. So, what was your reaction when accused [was] already on top of you?
A. I was terrified, [s]ir.

x x x x

Q. What was your reaction when the accused was already on top of you?
A. I was afraid, [s]ir.

Q. So, why?
A. Because he is in possession of the knife, [s]ir.

Q. So, what did you feel when the accused inserted his private part to your private part?
A. It was painful, [s]ir.

Q. How painful?
A. It was really painful, [s]ir.

Q. So, what happened afterwards?
A. I went out of his house, [s]ir.

Q. So, what did accused tell you when you go outside his house?
A. For me not to report to my mother, [s]ir.

Q. And what the accused will do to you in case you report the matter to your mother?

x x x x

A. That he will kill me, [s]ir.[10]

Accused-appellant questions the credibility of AAA on account of inconsistencies in her direct testimony and sworn statement, with that of cross-examination, regarding the number of times she was raped.

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[10] *Rollo*, pp. 9-10.

This Court is not convinced. We find this to be inconsequential to the finding of guilt of the accused-appellant in the instant case. The truth as to whether or not AAA was raped once or twice by accused-appellant does not detract from the fact that she was raped.

It is well-settled that testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[11] Further, inaccuracies and inconsistencies in the rape victim's testimony are to be expected.[12] Also, noteworthy is the fact that the other charge for rape Criminal Case No. Q-05-137303 was already dismissed by the RTC for insufficiency of evidence.

We also cannot accede to accused-appellant's assertion that he could not have raped AAA since the alleged event happened in a public place and in broad daylight; that the victim did not even scream; and that AAA would have suffered a trauma or should have at least shown any signs of physical abuse. In *People v. Mabonga y Babon*,[13] this Court ruled:

> [I]t is a common judicial experience that "the presence of people nearby does not deter rapists from committing their odious act. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping."[14]

It is well-settled that lust respects neither time nor place. "There is no rule that rape can be committed only in seclusion."[15]

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[11] *People v. Guambor*, 465 Phil. 671, 678 (2004).

[12] *People v. Rubio y Acosta*, 683 Phil. 714, 722 (2012).

[13] 477 Phil. 61 (2004).

[14] *Id*. at 78.

[15] *People v. Banig*, 693 Phil. 303, 316 (2012).

We find accused-appellant's claim that there is absence of physical abuse or injuries negates AAA's claim of being raped unworthy of consideration. The gravamen of the crime of rape is carnal knowledge of a woman by force or intimidation and against her will or without her consent. What consummates the felony is penile contact, however slight, with the labia of the victim's vagina without her consent. Consequently, it is not required that lacerations be found on the private complainant's hymen. Nor is it necessary to show that the victim had a reddening of the external genitalia or sustained a hematoma on other parts of her body to sustain the possibility of a rape charge. For it is well-settled that the **absence of external injuries does not negate rape**. This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent.[16]

In a number of cases, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused.[17]

In the case at bar, it was clearly shown that accused-appellant was then armed with a knife which made it difficult for AAA to resist and ultimately gave in to his sexual desires.

Accused-appellant then points out that the Medico Legal Report turned negative for spermatozoa. We also find the same to be without merit. It is well-settled that the absence of hymenal fluid or spermatozoa is not a negation of rape. The presence or absence thereof is immaterial since it is penetration, not ejaculation, which constitutes the crime of rape. Besides, the absence of the seminal fluid from the vagina could be due to

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[16] *People v. Napud, Jr.*, 418 Phil. 268, 279-280 (2001) (emphasis supplied; citations omitted).

[17] *People v. Pareja y Cruz*, 724 Phil. 759, 778 (2014).

a number of factors, such as the vertical drainage of the semen from the vagina, the acidity of the vagina, or simply the washing of the vagina after the sexual intercourse. At any rate, the presence of spermatozoa is not an element of the crime of rape.[18]

Accused-appellant proceeds with his defense of denial and maintained that when the alleged rape incident happened, he was at work with his co-workers. Accused-appellant argued that not all denials and alibis should be regarded as fabricated. He also maintained that although denial and alibi are generally held to be weak and unavailing, these defenses gain commensurate strength when the credibility of the prosecution witnesses is wanting and questionable.

Accused-appellant fails to persuade this Court. While accused-appellant is correct in stating that the prosecution cannot rely on the weakness of the evidence for the defense but must depend on the strength of its own evidence to prove the guilt of the accused, we find that the prosecution was able to provide sufficient evidence to prove the guilt of the accused beyond reasonable doubt through the testimony of AAA, which was corroborated by the Final Medico-legal Report and Dr. Reynaldo Dave, Jr.'s testimony. Accused-appellant's defense of denial pales in comparison and cannot prevail over AAA's testimony positively identifying him as the perpetrator of the crime.

This Court has ruled in various cases that denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[19]

In this case, accused-appellant failed miserably in establishing that it was physically impossible for him to have been at the

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[18] *People v. Alberca*, 810 Phil. 896, 907-908 (2017) (citations omitted).

[19] *People v. An*, 612 Phil. 476, 491-492 (2009).

scene of the crime. Even accused-appellant admitted that the scene of the crime is merely twenty (20) kilometers away from his workplace.

We agree with the CA in holding that the trial court correctly rejected the defense of alibi proffered by appellant which is not only inherently weak and feeble, but which became more dubious when it was sought to be established only by appellant himself, and not by disinterested, unbiased person who would, in the natural order of things, be best situated to support the denial.

Consequently, this Court agrees with the CA in affirming the ruling of the RTC finding accused-appellant guilty beyond reasonable doubt of the crime of rape under Criminal Case No. Q-05-137304. However, we do not agree with the CA in appreciating the qualifying circumstance of use of a deadly weapon as this has not been sufficiently alleged in the information although established during trial. In any case, the RTC and the CA correctly imposed the penalty of *reclusion perpetua*. We also find it necessary to adjust the award of damages pursuant to *People v. Jugueta*,[19] which provides that in case of simple rape and the penalty imposed is *reclusion perpetua*, the award for civil indemnity, moral damages and exemplary damages is ₱75,000.00 each.

This Court also finds it proper to remove the CA's award pertaining to the legal interest with a reckoning period from the filing of the information, which provided:

> x accused-appellant is further ORDERED to pay legal interest on all awarded damages at 6% per *annum* **from the filing of the Information** on [October 19, 2005], until the finality of this Decision, and another 6% per *annum* from such finality until full payment. (Emphasis supplied)

WHEREFORE, the appeal is **DENIED**. The Decision dated January 31, 2019 of the Court of Appeals in CA-G.R. CR-HC

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[19] 783 Phil. 806 (2016).

No. 09516 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Rodolfo Masubay *y* Pasagi is found **GUILTY** beyond reasonable doubt of the crime of rape, and is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* and **ORDERS** him to **PAY** AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages, all subject to 6% interest from the finality of the Decision until fully paid.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa, Inting,*[*] and *Lopez, JJ.*, concur.

[*] Designated as additional member in lieu of Associate Justice Amy C. Lazaro-Javier per Raffle dated September 25, 2019.

THIRD DIVISION

[A.C. No. 5001. September 7, 2020]

PETRA DURUIN SISMAET, *Complainant, v.* **ATTY. ASTERIA E. CRUZABRA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYERS IN GOVERNMENT SERVICE; A LAWYER WHO HOLDS A GOVERNMENT OFFICE MAY NOT BE DISCIPLINED AS A MEMBER OF THE BAR FOR MISCONDUCT IN THE DISCHARGE OF HIS DUTIES AS A GOVERNMENT OFFICIAL; EXCEPTION. — The general rule in this jurisdiction is that "*a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official.*" However, if the government official's misconduct "*is of such a character as to affect his qualification as a lawyer or to show moral delinquency, he may be disciplined as a member of the bar on such ground.*"

2. ID.; ID.; ID.; ID.; THE SUPREME COURT RETAINS DISCIPLINARY JURISDICTION OVER GOVERNMENT LAWYERS. — [T]he inquisitorial power of the IBP over government lawyers is limited to cases of misconduct amounting to violation of either the Lawyers' Oath or the Code of Professional Responsibility. Nevertheless, the Supreme Court, as the primary authority over the Philippine bar, retains disciplinary jurisdiction over government lawyers.

3. ID.; ID.; DISCIPLINARY PROCEEDINGS; GROSS IGNORANCE OF THE LAW, DEFINED. — Gross ignorance of the law has been defined as "*the disregard of basic rules and settled jurisprudence*;" or the commission of a "*gross or patent, deliberate or malicious*" error. Gross ignorance of law "*connotes a blatant disregard of clear and unambiguous provisions of law because of bad faith, fraud, dishonesty, or corruption.*"

APPEARANCES OF COUNSEL

Rutillo B. Pasok for complainant.

D E C I S I O N

GAERLAN, *J.*:

For resolution by this Court is a disbarment complaint filed by complainant Petra Duruin Sismaet (Sismaet) against respondent Atty. Asteria E. Cruzabra (Atty. Cruzabra) for "*gross ignorance of the law; violation of her duty to pay that respect and courtesy due to courts of justice and a violation of the trust and confidence required of her as the Registrar of Deeds of the City of General Santos*."[1]

The Facts

Sismaet was among the plaintiffs in Civil Case No. 4749, which is an action for nullification of sale and reconveyance of real property filed with Branch 35 of the Regional Trial Court of General Santos City, involving a parcel of land covered by Transfer Certificate of Title (TCT) No. T-32952.[2]

On January 27, 1993, Sismaet sought the registration of an affidavit of adverse claim on TCT No. T-32952 with the Registry of Deeds of General Santos City. The adverse claim was annotated on the back of the TCT with the signature of Atty. Cruzabra, who was then the Registrar of Deeds of General Santos City.[3]

On May 18, 1993, a mortgage contract between China Banking Corporation and Esteban Co, Jr. (Co), who was one of the defendants in Civil Case No. 4749, was annotated on the back

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[1] *Rollo*, p. 11.

[2] Id. at 6-8.

[3] Id. at 7.

of the TCT.[4] On February 15, 1994, Co sought the registration of an Affidavit of Cancellation for Adverse Claim, directed at the adverse claim earlier filed by Sismaet.[5] This Affidavit was likewise inscribed on the TCT, still with the signature of Atty. Cruzabra,[6] effectively cancelling Sismaet's adverse claim.

Sismaet alleges that by reason of the annotation of the mortgage contract on the TCT, she and her co-plaintiffs were forced to move for the amendment of their complaint to implead China Banking Corporation as additional defendant. She further blames Atty. Cruzabra for allowing the annotation of the mortgage contract and the Affidavit of Cancellation of Adverse Claim knowing full well that the property subject of the TCT is still under litigation.

On September 3, 1998, Sismaet moved to cite Atty. Cruzabra in contempt for allowing the annotation of the mortgage contract and the Affidavit of Cancellation of Adverse Claim.[7] The next day, Sismaet filed[8] the present disbarment complaint with the Office of the Bar Confidant (OBC).

On September 18, 1998, Atty. Cruzabra filed an Answer. She asserted that the annotation of the Affidavit of Cancellation of Adverse Claim was proper. Under Section 70 of the Property Registration Decree,[9] an adverse claim annotated on a TCT is effective only for 30 days from the date of registration. Thus, Sismaet's adverse claim should be deemed to have expired 30 days after January 27, 1993, when it was registered; and Co's affidavit of cancellation was made well after the expiration of Sismaet's adverse claim.[10] Atty. Cruzabra further averred that

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[4] Id. at 9.

[5] Id. at 34.

[6] Id. at 8.

[7] Id. at 10-11.

[8] Id. at 13.

[9] PRESIDENTIAL DECREE NO. 1529.

[10] *Rollo*, p. 34.

her duty to annotate affidavits and instruments on TCTs is ministerial in nature; hence she cannot refuse the annotation of the mortgage contract and the affidavit of cancellation of the adverse claim.[11] In a Comment dated March 24, 1999,[12] Atty. Cruzabra further stated that the complaint should be dismissed for violation of the rule against forum shopping, considering that the propriety of the annotation of the mortgage contract and the affidavit of cancellation of the adverse claim is the very same issue involved in Sismaet's contempt motion against Atty. Cruzabra before the trial court, which was already denied by the trial court. Sismaet filed a Reply[13] dated May 3, 1999, to Atty. Cruzabra's Comment, arguing that contrary to Atty. Cruzabra's assertion, an adverse claim does not expire in 30 days and can only be cancelled through a court order.

After a further exchange of pleadings, this Court ordered the referral of the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[14] After multiple motions for postponement or resetting filed by both parties,[15] including a Manifestation with Motion to Terminate Proceedings[16] dated November 7, 2005 filed by Atty. Cruzabra, the IBP Commission on Bar Discipline (IBP-CBD) finally rendered a Report and Recommendation[17] dated January 17, 2006.

The IBP-CBD recommended that the case be dismissed. It concurred with Atty. Cruzabra's contention that an adverse claim is effective only for 30 days; hence, Atty. Cruzabra was justified

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[11] Id. at 36-37.

[12] Id. at 124-129.

[13] Id. at 159-165.

[14] Id. at 196.

[15] Id. at 241-254.

[16] Id. at 284-291.

[17] Id. at 307-311; signed by Commissioner Milagros V. San Juan. Rollo, pp. 307-311.

in annotating the cancellation of the adverse claim which was filed after the 30-day period. Furthermore, pursuant to the Resolution[18] of this Court dated August 11, 1999, the Land Registration Authority also conducted an investigation into the matter and found that the grounds cited in Sismaet's petition do not constitute valid grounds for holding Atty. Cruzabra administratively liable.[19]

Issue

The sole issue for this Court's resolution is whether or not Atty. Cruzabra should be administratively sanctioned for allowing the annotation of the mortgage contract and affidavit of cancellation of adverse claims on TCT No. T-32952 despite fully knowing of the existence of, and even being impleaded in, Civil Case No. 4749 before Branch 35 of the Regional Trial Court of General Santos City.

Ruling of the Court

It must be emphasized at the outset that Sismaet seeks to hold Atty. Cruzabra liable for acts committed in the latter's capacity as Registrar of Deeds. The general rule in this jurisdiction is that "*a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official*."[20] However, if the government official's misconduct "*is of such a character as to affect his qualification as a lawyer or to show*

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[18] Id. at 238.

[19] Id. at 292-295.

[20] *Fuji v. Atty. Dela Cruz*, 807 Phil. 1 (2017); *Facturan v. Prosecutor Barcelona*, 786 Phil. 493, 499 (2016); *Berenguer-Landers v. Atty. Florin, et al.*, 709 Phil. 562, 572 (2013); *Olazo v. Justice Tinga (Ret.)*, 651 Phil. 290, 298 (2010); *Huyssen v. Atty. Gutierrez*, 520 Phil. 117 (2006); *Atty. Vitriolo v. Atty. Dasig*, 448 Phil. 199 (2003); *Dinsay v. Atty. Cioco*, 332 Phil. 740 (1996); *Dy v. Miranda, et al.*, 274 Phil. 837, 844 (1991); *Gonzales-Austria v. Judge Abaya*, 257 Phil. 645, 659-660 (1989); *Garcia, et al. v. Milla*, 121 Phil. 849 (1965).

moral delinquency, he may be disciplined as a member of the bar on such ground."[21]

However, another line of cases holds that the IBP has no jurisdiction over government lawyers charged with administrative offenses involving their official duties.[22] This is because government lawyers who are acting in their official capacities are within the jurisdiction of the disciplinary authorities of the government, including the Ombudsman and the Sandiganbayan. In *Sps. Buffe v. Gonzalez, et al.*,[23] this Court, speaking through Justice Antonio T. Carpio, explained that:

> Indeed, the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their official duties. For such acts, government lawyers fall under the disciplinary authority of either their superior or the Ombudsman. Moreover, an anomalous situation will arise if the IBP asserts jurisdiction and decides against a government lawyer, while the disciplinary authority finds in favor of the government lawyer.[24]

The jurisdiction of the IBP to investigate members of the Bar in the government service is based not only on the applicability of the Lawyer's Oath to all lawyers, whether in the government or in the private sector; but also on Canon 6 of the Code of Professional Responsibility. Thus, in *Abella v. Barrios, Jr.*,[25] this Court clarified that:

> [Rules 1.01, 1.03, and 6.02 of the Code of Professional Responsibility], which are contained under Chapter 1 of the Code, delineate the lawyer's responsibility to society: Rule 1.01 engraves the overriding prohibition

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[21] *Olazo v. Justice Tinga (Ret.); Atty. Vitriolo v. Atty. Dasig; Dy v. Miranda, et al.*, id.

[22] *Segura v. Garachico-Fabila*, A.C. No. 9837, September 2, 2019; *Trovela v. Robles*, A.C. No. 11550, June 4, 2018, 864 SCRA 1, 8; *Alicias v. Atty. Macatangay*, 803 Phil. 85, 90-92 (2017); *Sps. Buffe v. Gonzalez, et al.*, 797 Phil. 143 (2016).

[23] *Sps. Buffe v. Gonzales, et al.*, id.

[24] Id. at 151-152.

[25] 711 Phil. 363 (2013).

against lawyers from engaging in any unlawful, dishonest, immoral and deceitful conduct; Rule 1.03 proscribes lawyers from encouraging any suit or proceeding or delaying any man's cause for any corrupt motive or interest; meanwhile, Rule 6.02 is particularly directed to lawyers in government service, enjoining them from using one's public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interests to interfere with public duties. **It is well to note that a lawyer who holds a government office may be disciplined as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer**.[26] (Citations omitted, emphasis and underscoring supplied)

In *Collantes v. Atty. Renomeron*,[27] where this Court disbarred the Register of Deeds of Tacloban City for refusing the registration of 163 deeds of assignment after applicant's counsel refused to buy him a plane ticket, this Court held:

The issue in this disbarment proceeding is whether the respondent register of deeds, as a lawyer, may also be disciplined by this Court for his malfeasances as a public official. The answer is yes, for **his misconduct as a public official also constituted a violation of his oath as a lawyer**.

The lawyer's oath (Rule 138, Section 17, Rules of Court; People vs. De Luna, 102 Phil. 968), imposes upon every lawyer the duty to delay no man for money or malice. The lawyer's oath is a source of his obligations and its violation is a ground for his suspension, disbarment or other disciplinary action.

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The Code of Professional Responsibility applies to lawyers in government service in the discharge of their official tasks. Just as the Code of Conduct and Ethical Standards for Public Officials requires public officials and employees to process documents and papers expeditiously and prohibits them from directly or indirectly having a financial or material interest in any transaction requiring the approval of their office, and likewise bars them from soliciting gifts or anything of monetary value in the course of any transaction which may be

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[26] Id. at 370.

[27] 277 Phil. 668 (1991).

affected by the functions of their office, the Code of Professional Responsibility forbids a lawyer to engage in unlawful, dishonest, immoral or deceitful conduct, or delay any man's cause "for any corrupt motive or interest."[28] (Citations omitted, emphasis and underscoring supplied)

The foregoing jurisprudence clearly shows that the inquisitorial power of the IBP over government lawyers is limited to cases of misconduct amounting to violation of either the Lawyers' Oath or the Code of Professional Responsibility. Nevertheless, the Supreme Court, as the primary authority over the Philippine bar, retains disciplinary jurisdiction over government lawyers.

In this case, the alleged violations of Atty. Cruzabra were committed in her capacity as Registrar of Deeds of General Santos City. She was accused of "*gross ignorance of the law, violation of her duty to pay that respect and courtesy due to courts of justice, and a violation of the trust and confidence required of her as the Registrar of Deeds of the City of General Santos,*"[29] for her act of annotating an affidavit of cancellation on Sismaet's adverse claim. Gross ignorance of the law has been defined as "*the disregard of basic rules and settled jurisprudence;*"[30] or the commission of a "*gross or patent, deliberate or malicious*" error.[31] Gross ignorance of the law "*connotes a blatant disregard of clear and unambiguous provisions of law because of bad faith, fraud, dishonesty, or corruption.*"[32] In *Tadlip v. Atty. Borres, Jr.*,[33] this Court applied the same definition to sanction a DARAB provincial adjudicator, *viz.*:

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[28] Id. at 672-673.

[29] *Rollo*, p. 11.

[30] *Chief State Prosecutor Zuño v. Judge Cabredo*, 450 Phil. 89, 97 (2003).

[31] *Alfelor v. Judge Diaz*, 813 Phil. 544, 552-553 (2017).

[32] *In re Villamin*, IPI No. 17-256-CA-J, February 18, 2020; *In re Enalbes*, A.M. No. 18-11-09-SC, January 22, 2019.

[33] 511 Phil. 56 (2005).

> Respondent is not only a lawyer practicing his profession, but also a provincial adjudicator, a public officer tasked with the duty of deciding conflicting claims of the parties. He is part of the quasi-judicial system of our government. Thus, by analogy, the present dispute may be likened to administrative cases of judges whose manner of deciding cases was similarly subject of respective administrative cases.
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> To hold the judge liable, this Court has time and again ruled that the error must be "so gross and patent as to produce an inference of ignorance or bad faith or that the judge knowingly rendered an unjust decision." It must be "so grave and on so fundamental a point as to warrant condemnation of the judge as patently ignorant or negligent." Otherwise, to hold a judge administratively accountable for every erroneous ruling or decision he renders, assuming that the judge erred, would be nothing short of harassment and that would be intolerable.[34]

After a thorough consideration of the facts, the applicable law, and respondent's previous disciplinary record, this Court finds that Atty. Cruzabra was remiss in the discharge of her duties, not only as Register of Deeds, but also as an attorney and officer of the court. While the registration of instruments and affidavits is indeed a ministerial duty of the Register of Deeds, it has also been held that the Register of Deeds may refuse registration of an instrument or affidavit when the ownership of the real property covered by such instrument or affidavit is under litigation.[35] In the case at bar, not only was Atty. Cruzabra fully aware of the pendency of Civil Case No. 4749 wherein Co was a defendant, she herself was likewise impleaded therein. Consequently, the more prudent course of action was for Atty. Cruzabra to refuse the registration of Co's affidavit of cancellation, considering that Sismaet's adverse claim was still being litigated at the time Co filed his affidavit. The law allows the annotation of an adverse claim on a certificate of title in order to protect a party's interest in a real property

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[34] Id. at 64-65.

[35] See *Balbin, et al. v. Register of Deeds of Ilocos Sur*, 138 Phil. 12, 16-17 (1969).

and to notify third persons that there is a controversy over the ownership of a particular real property.[36] Thus, by the annotation of Co's affidavit of cancellation, Sismaet lost the protection afforded by the adverse claim. Furthermore, the cancellation of the adverse claim amounts to a notice to third parties that the controversy over the disputed property has abated, even if it continues to persist in fact. It is settled law that the Register of Deeds cannot unilaterally cancel an adverse claim.[37] As early as 1958,[38] this Court has already ruled that an adverse claim can only be cancelled by a court after a hearing conducted for that purpose.[39] Thus, Atty. Cruzabra's reliance on her own interpretation of the provisions of the Property Registration Decree is unjustified. As Register of Deeds, Atty. Cruzabra is obliged to be fully aware and cognizant of the laws and jurisprudence on land registration. By annotating Co's affidavit of cancellation of Sismaet's adverse claim and Co's mortgage contract with China Bank, Atty. Cruzabra not only demonstrated unjustifiable ignorance of land registration laws but also pre-empted the trial court's exclusive power to cancel Sismaet's adverse claim, in violation of the Lawyer's Oath, Rule 138, Section 20(b) of the Rules of Court,[40] and Canon 11 of the Code of Professional Responsibility.[41]

However, there is no showing from the records that Atty. Cruzabra's annotation of the affidavit of cancellation of Sismaet's

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[36] *Valderama v. Arguelles*, G.R. No. 223660, April 2, 2018, citing *Martinez v. Garcia, et al.*, 625 Phil. 377, 383-384 (2010) and *Arrazola v. Bernas*, 175 Phil. 452, 456-457 (1978).

[37] *Diaz-Duarte v. Spouses Ong*, 358 Phil. 876, 884 (1998).

[38] *Ty Sin Tei v. Lee Dy Piao*, 103 Phil. 858 (1958).

[39] *Torbela v. Spouses Rosario*, 678 Phil. 1 (2011).

[40] SECTION 20. Duties of attorneys. — It is the duty of an attorney: x x x (b) To observe and maintain the respect due to the courts of justice and judicial officers.

[41] CANON 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

adverse claim was motivated by any corrupt, malicious, or deliberate intent to harm, defraud or disadvantage Sismaet. Furthermore, the disciplinary authority with jurisdiction over Atty. Cruzabra, *i.e.*, the Land Registration Authority, has found that the acts complained of do not constitute valid grounds for holding her administratively liable.

In determining the appropriate penalty, We also consider Atty. Cruzabra's previous disciplinary record. In *Office of the Ombudsman (Mindanao) v. Cruzabra*,[42] We affirmed the Ombudsman's ruling suspending her for one month without pay for simple neglect of duty, after a land registration examiner in her office made an illegal intercalation in a certificate of title. Likewise, in *Abella v. Atty. Cruzabra*,[43] We reprimanded Atty. Cruzabra for engaging in notarial practice in relation to her position as then-Deputy Registrar of Deeds without written authority from the Secretary of Justice. Given the severity of her infraction, the absence of bad faith attendant thereto, and the previous sanctions meted against Atty. Cruzabra, this Court finds that a six-month suspension from the practice of law is most appropriate.

WHEREFORE, this Court **SUSPENDS** respondent Atty. Asteria E. Cruzabra from the practice of law for six (6) months effective upon receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies 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 dissemination to all courts throughout the country.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo*, *Carandang*, and *Zalameda, JJ.*, concur.

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[42] 627 Phil. 363 (2010).

[43] 606 Phil. 200 (2009).

SECOND DIVISION

[A.C. No. 10249. September 7, 2020]

VIRGILIO C. RIGON, JR., *Complainant*, *v.* **ATTY. ERIC P. SUBIA,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINARY PROCEEDINGS; THE DEATH OF THE COMPLAINANT IS NOT A HINDRANCE IN THE PROCEEDINGS, WHICH THE SUPREME COURT MAY EVEN *MOTU PROPRIO* INITIATE, REQUIRING NEITHER PLAINTIFFS NOR PROSECUTORS. — [I]t bears to stress that the death of the complainant, Virgilio, Jr., is not a hindrance in the proceedings of this case. As the Court has held, disciplinary and disbarment proceedings against lawyers are considered *sui generis* in nature with the main aim of preserving the integrity of the legal profession. The proceedings, which the Court may even *motu proprio* initiate, have neither plaintiffs nor prosecutors. The Court will look into the conduct and behavior of lawyers in order to determine if they are fit to exercise the privileges of the legal profession. If found guilty, the erring lawyers shall be dealt with accordingly and will be held accountable for any misconduct or misbehavior, committed in violation of the Code of Professional Responsibility.

Furthermore, the case will still proceed despite the defect found in the SPA, wherein the persons who vested authority upon Virgilio, Jr. to institute the complaint were indicated as heirs of Cornelio instead of Placido.

2. ID.; ID.; ID.; REQUISITES FOR THE INSTITUTION OF DISCIPLINARY PROCEEDINGS AGAINST LAWYERS. — From the foregoing [Section 1, Rule 139-B of the Rules of Court], the following must be present in the institution of disbarment and disciplinary proceedings of attorneys: (a) verified complaint of any person; (b) the complaint must state clearly and concisely the act complained of; (c) the complaint must be supported by affidavits of persons having personal knowledge

of the facts therein alleged and/or by such documents as may substantiate said facts.

3. ID.; NOTARIES PUBLIC; A NOTARY PUBLIC IS EXPECTED TO OBSERVE A HIGH DEGREE OF DILIGENCE AND PRUDENCE IN COMPLYING WITH THE PARAMETERS SET FORTH UNDER THE NOTARIAL RULES. — Time and time again, the Court has stressed that the duties of notaries public are dictated by public policy and the act of notarization is imbued with substantial public interest. As such, a notary public is expected to observe a high degree of diligence and prudence in complying with the parameters set forth under the Notarial Rules.

4. ID.; 2004 NOTARIAL RULES; NOTARIZING A DOCUMENT WITHOUT VERIFYING THAT THE PARTIES THEREIN WERE ALREADY DEAD CONSTITUTES A BREACH OF THE NOTARIAL RULES; CASE AT BAR. — In the case at bench, Atty. Subia failed to faithfully comply with Sections 6 and 8 of Rule II, and Sections 2 and 5 (b) of Rule IV of the Notarial Rules. . . .

As the records reveal, Atty. Subia's signature and notarial seal appear on the subject Deed without him properly verifying that the persons who signed the same as vendors were already dead at the time of its execution. The subject Deed also lacks the signatures of two (2) witnesses in the execution thereof. Clearly, all the foregoing provisions of the Notarial Rules were breached by Atty. Subia.

5. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; ABSENT ANY CLEAR AND CONVINCING PROOF OF FORGERY, THE PRESUMPTION REMAINS THAT IT WAS THE NOTARY PUBLIC WHO NOTARIZED THE DOCUMENT. — Although Atty. Subia denied having notarized the subject Deed and even reasoned that his signature thereon was falsified and forged, the Court cannot be swayed by bare and unsubstantiated denials. While Atty. Subia manifested that he is willing to submit his specimen signature to expert authorities to prove that indeed the signature appearing on the subject Deed is fake and spurious, he failed to append sufficient pieces of evidence to support his claim of forgery, or did he make any attempt to obtain the technical examination of a handwriting expert. Absent any clear and convincing proof that the signature and notarial seal

appearing on the subject Deed were forgeries, the presumption remains that it was Atty. Subia who signed and notarized the defective and spurious subject Deed.

6. ID.; ID.; NOTARIES PUBLIC ARE RESPONSIBLE FOR ALL THE ENTRIES IN THEIR NOTARIAL REGISTER; CASE AT BAR. — Indeed, assuming that another person may have forged Atty. Subia's signature, the mere fact that Atty. Subia's notarial seal appears on the document and considering that he failed to deny the authenticity of the same, he bears the accountability and responsibility for the use thereof even if such was done without his consent and knowledge. Furthermore, the perpetrator of the alleged forgery knew of the details of the notarial register of Atty. Subia. Indubitably, there was negligence on the part of Atty. Subia in the handling of his affairs as a notary public.

7. ID.; ID.; A NOTARY PUBLIC'S NEGLIGENCE HAS INIMICAL REPURCUSSIONS TO THE PUBLIC. — A lawyer, who is commissioned as a notary public, has the duty to exercise utmost diligence and to discharge with faithfulness the sacred duties of his profession, which is impressed with public interest. A notary public's negligence has inimical repercussions to the public, such as in this case, a family lost a portion of their inheritance and was forced to come to court for relief. Thus, the Court has always been strict in the discipline of lawyers who are remiss in their duties as notaries public as it will undermine the public's faith and confidence in notarial acts and in notarized documents.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court is an Affidavit Complaint[1] dated November 11, 2013 filed by Virgilio Cayetano Rigon, Jr. (Virgilio, Jr.), seeking the disbarment of Atty. Eric P. Subia (Atty. Subia) for violation of the 2004 Rules on Notarial Practice (Notarial Rules).

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[1] *Rollo*, Vol. I, pp. 1-2.

Facts

Complainant Virgilio Jr., authorized by a Special Power of Attorney[2] (SPA) by the heirs of Placido Rigon (Placido), alleged in his Affidavit Complaint that Placido is the registered owner of a parcel of land (subject land) located at Cabatuan, Isabela covered under the Original Certificate of Title No. T-20, which was later on registered under Transfer Certificate of Title (TCT) No. T-30352.[3] Such title was reconstituted in 1976 and the land is now registered under TCT No. T-99481.[4]

On June 24, 2011, in the City of Cauayan, Isabela, a Deed of Absolute Sale[5] (subject Deed) covering a portion of the subject land was allegedly executed between Placido, with the conformity of his wife Telesfora Aczon[6] (Telesfora), and one Pete Gerald L. Javier (Javier). The questioned subject Deed was notarized before Atty. Subia. Virgilio, Jr. alleged that Atty. Subia made it appear that the vendor, Placido, and his wife Telesfora, were signatories thereto when, in truth and in fact, the spouses were already dead prior to the execution of the subject Deed. Placido already passed on as early as February 5, 1940, while Telesfora died on December 8, 1961.[7]

The subject Deed indicated that it is docketed as Document (Doc.) No. 20, Page No. 04, Book No. 06, Series of 2011 under the Notarial Register of Atty. Subia. [8] However, upon verification with the Office of the Clerk of Court (OCC) of Cauayan City, Isabela, the docket number pertained to a Joint Affidavit of

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[2] Id. at 4-5.

[3] Id. at 1.

[4] Id. at 3.

[5] Id. at 6.

[6] Also referred to as "Telesfora Aczona" and "Telesfora Acson" in other parts of the *rollo*.

[7] *Rollo*, Vol. I, p. 1.

[8] Id. at 6.

Two Disinterested Persons, and not the subject Deed allegedly executed by Placido.[9]

The subject Deed caused the transfer of the title of a portion of the subject land from Placido to Javier under a new title — TCT No. T-397909.[10]

Aggrieved, the heirs of Placido authorized Virgilio, Jr. to file an administrative and disbarment case against Atty. Subia for violation of the Notarial Rules by notarizing a deed of absolute sale without verifying that the vendor and his wife stated therein were already long dead, and without the presence of the required two (2) witnesses.

On March 17, 2014, Atty. Subia filed his Comment[11] to the Affidavit Complaint and belied the allegations against him. Atty. Subia claimed that he did not prepare such document, and that someone falsified and copied his signature. In fact, the Certification[12] from the OCC of Cauayan, Isabela declared that based on his notarial reports, the document under Doc. No. 20, Page No. 04, Book No. 06, Series of 2011 is the Joint Affidavit of Two Disinterested Persons executed by Jenny A. Foronda and Grace Omanito, and not the subject Deed allegedly executed by Placido.

On July 7, 2014, the Court issued a Resolution[13] referring the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On October 7, 2014, the Court received a handwritten letter[14] from Virgilio B. Rigon, Sr. (Virgilio, Sr.), the father of Virgilio, Jr., informing this Court that the latter died on August 13, 2014

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[9] Id. at 11.

[10] Id. at 13.

[11] Id. at 16-19.

[12] Id. at 11.

[13] Id. at 25.

[14] *Rollo*, Vol. II, pp. 2-3.

due to a gunshot wound. In the same letter, Virgilio, Sr. manifested that he would continue to follow-up the case on behalf of his deceased son.

On December 1, 2014, Atty. Subia filed before the IBP Commission on Bar Discipline (CBD) a Comment[15] asserting that the death of Virgilio, Jr. warrants the dismissal of the case. Virgilio, Sr. cannot substitute his son in the present case as the SPA of Virgilio, Jr. cannot be extended to other persons. Atty. Subia likewise raised the issue that the principals of the SPA, which granted Virgilio, Jr. the authority to file the disbarment case, were indicated as heirs of Cornelio Rigon (Cornelio) and not of Placido. Cornelio is one of the heirs of Placido.[16]

The IBP's Report and Recommendation

In an undated Report and Recommendation[17] made by Commissioner Ramsey M. Quijano (Commissioner Quijano), Atty. Subia was found to have violated the Notarial Rules. Mere denial of having notarized the subject Deed shows Atty. Subia's negligence in preserving the substantive public interest in the act of notarization considering that his seal appears on the document.[18]

On February 22, 2018, the IBP Board of Governors (Board) issued a Resolution[19] on CBD Case No. 14-4378 adopting the findings of fact and recommendation of Commissioner Quijano in his undated report. The IBP Board recommended the revocation of Atty. Subia's notarial commission, and the disqualification of Atty. Subia from being commissioned as notary public for a period of two (2) years. The IBP Board

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[15] *Rollo*, Vol. III, pp. 82-83.

[16] Id. at 82.

[17] Id. at 197-200.

[18] Id. at 200.

[19] Id. at 195-196.

likewise recommended the suspension of Atty. Subia from the practice of law for six (6) months.[20]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the IBP correctly found Atty. Subia liable for violation of the Notarial Rules.

The Court's Ruling

At the outset, it bears to stress that the death of the complainant, Virgilio, Jr., is not a hindrance in the proceedings of this case. As the Court has held, disciplinary and disbarment proceedings against lawyers are considered *sui generis* in nature with the main aim of preserving the integrity of the legal profession. The proceedings, which the Court may even *motu proprio* initiate, have neither plaintiffs nor prosecutors.[21] The Court will look into the conduct and behavior of lawyers in order to determine if they are fit to exercise the privileges of the legal profession. If found guilty, the erring lawyers shall be dealt with accordingly and will be held accountable for any misconduct or misbehavior, committed in violation of the Code of Professional Responsibility.[22]

Furthermore, the case will still proceed despite the defect found in the SPA, wherein the persons who vested authority upon Virgilio, Jr. to institute the complaint were indicated as heirs of Cornelio instead of Placido.

As provided for in Section 1, Rule 139-B of the Rules of Court, as amended:

> Section 1. *How Instituted*. — Proceedings for disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu propio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state

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[20] Id. at 195, 200.

[21] *Bides-Ulaso v. Noe-Lacsamana*, 617 Phil. 1, 14 (2009).

[22] See *Fabugais v. Faundo, Jr.*, A.C. No. 10145, June 11, 2018.

clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu propio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in the government service; *Provided, however*, that all charges against Justices of the Court of Tax Appeals and the *Sandiganbayan*, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court; *Provided, further*, that charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall immediately be forwarded to the Supreme Court for disposition and adjudication.

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

From the foregoing, the following must be present in the institution of disbarment and disciplinary proceedings of attorneys:

(a) verified complaint of any person;

(b) the complaint must state clearly and concisely the act complained of;

(c) the complaint must be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

In the present case, Virgilio, Jr., herein complainant, was able to comply with the needed requisites. A verified Affidavit Complaint was filed and attached thereto were: (1) a copy of the questioned subject Deed bearing the seal and signature of Atty. Subia;[23] (2) a certified true and correct copy of TCT No. T-99481;[24]

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[23] *Rollo*, Vol. I, p. 6.

[24] Id. at 3.

(3) copies of Negative Certification of Death of Placido and Telesfora;[25] and (4) a copy of the Certification from the OCC of Cauayan, Isabela.[26]

Now to the issue on whether the IBP correctly found Atty. Subia to have violated the Notarial Rules.

After a judicious review of the records, the Court hereby affirms and adopts the recommendation of the IBP-CBD.

Time and time again, the Court has stressed that the duties of notaries public are dictated by public policy and the act of notarization is imbued with substantial public interest.[27] As such, a notary public is expected to observe a high degree of diligence and prudence in complying with the parameters set forth under the Notarial Rules.

In the case at bench, Atty. Subia failed to faithfully comply with Sections 6 and 8 of Rule II, and Sections 2 and 5 (b) of Rule IV of the Notarial Rules, which state that:

RULE II

SEC. 6. *Jurat*. — "Jurat" refers to an act in which an individual on a single occasion:

(a) **appears in person before the notary public** and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) **signs the instrument or document in the presence of the notary**; and

(d) **takes an oath or affirmation before the notary public** as to such instrument or document.

x x x x x x x x x

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[25] Id. at 8-9.

[26] Id. at 11.

[27] See *Tenoso v. Echanez*, 709 Phil. 1, 6 (2013).

SEC. 8. *Notarial Certificate*. — "Notarial Certificate" refers to the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and **states the facts attested to by the notary public in a particular notarization as provided for by these Rules**.

RULE IV

SEC. 2. *Prohibitions*. — x x x

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

(1) **is not in the notary's presence personally at the time of the notarization**; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

x x x x

SEC. 5. *False or Incomplete Certificate*. — A notary public shall not:

x x x x

(b) **affix an official signature or seal on a notarial certificate that is incomplete**. (Emphases supplied)

As the records reveal, Atty. Subia's signature and notarial seal appear on the subject Deed without him properly verifying that the persons who signed the same as vendors were already dead at the time of its execution. The subject Deed also lacks the signatures of two (2) witnesses in the execution thereof. Clearly, all the foregoing provisions of the Notarial Rules were breached by Atty. Subia.

Although Atty. Subia denied having notarized the subject Deed and even reasoned that his signature thereon was falsified and forged, the Court cannot be swayed by bare and unsubstantiated denials. While Atty. Subia manifested that he is willing to submit his specimen signature to expert authorities to prove that indeed the signature appearing on the subject Deed is fake and spurious, he failed to append sufficient pieces of

evidence to support his claim of forgery, nor did he make any attempt to obtain the technical examination of a handwriting expert. Absent any clear and convincing proof that the signature and notarial seal appearing on the subject Deed were forgeries, the presumption remains that it was Atty. Subia who signed and notarized the defective and spurious subject Deed.

The IBP-CBD opined that if it were not for Atty. Subia's negligence, the subject Deed would not have borne his notarial seal and signature. The Court concurs.

Indeed, assuming that another person may have forged Atty. Subia's signature, the mere fact that Atty. Subia's notarial seal appears on the document and considering that he failed to deny the authenticity of the same, he bears the accountability and responsibility for the use thereof even if such was done without his consent and knowledge. Furthermore, the perpetrator of the alleged forgery knew of the details of the notarial register of Atty. Subia. Indubitably, there was negligence on the part of Atty. Subia in the handling of his affairs as a notary public.

In *Laquindanum v. Quintana*,[28] the Court held that a notary public cannot take refuge in claiming that his wife, who is also his secretary, was the one who notarized the document without his consent. A person who is commissioned as a notary public takes full responsibility for all the entries in his notarial register.[29]

In *Spouses Santuyo v. Hidalgo*,[30] Atty. Hidalgo denied notarizing a deed of sale and filed a case of *estafa* through falsification of public documents against Spouses Santuyo for forging his notarial signature and for the illegal use of his notarial seal. The Court held Atty. Hidalgo guilty of negligence in the performance of his duty as a notary public for failing to exercise necessary prudence in the mechanical preparation of the document for notarization, including the safekeeping of his

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[28] 608 Phil. 727 (2009).

[29] Id. at 736.

[30] 489 Phil. 257 (2005).

notarial dry seal and notarial register. Atty. Hidalgo was suspended from his practice of law and was disqualified from being commissioned as a notary public for a period of two (2) years.

In *Ferguson v. Ramos*,[31] Atty. Ramos also denied having notarized a deed of sale and claimed that his signature was forged. The Court asked how the culprit knew the details of his notarial registry. Thus, the Court held that regardless of who is the culprit of the forgery, Atty. Ramos cannot be exonerated from liability considering that he failed to exercise utmost diligence in his duty as a notary public, and revoked his notarial commission and permanently barred him from being commissioned as a notary public.

In line with these cases, the Court finds the suspension of Atty. Subia from the practice of law for six (6) months in order. Also, the immediate suspension of his current notarial commission, if any, and his disqualification from being commissioned as a notary public for two (2) years is imposed upon him.

A lawyer, who is commissioned as a notary public, has the duty to exercise utmost diligence and to discharge with faithfulness the sacred duties of his profession, which is impressed with public interest. A notary public's negligence has inimical repercussions to the public, such as in this case, a family lost a portion of their inheritance and was forced to come to court for relief. Thus, the Court has always been strict in the discipline of lawyers who are remiss in their duties as notaries public as it will undermine the public's faith and confidence in notarial acts and in notarized documents.[32]

WHEREFORE, respondent Atty. Eric P. Subia is found **GUILTY** of violation of the 2004 Rules on Notarial Practice and of negligence in the performance of his duties as a notary

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[31] 808 Phil. 777 (2017).

[32] See *Iringan v. Gumangan*, 816 Phil. 820 (2017).

public. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for six (6) months; **REVOKES** his notarial commission, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

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

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be attached to the personal record of Atty. Eric P. Subia; the Office of the Court Administrator, for dissemination to all lower courts; and the Integrated Bar of the Philippines, for proper guidance and information.

SO ORDERED.

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

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[A.M. No. P-19-3960. September 7, 2020]

EMMA R. CHUA, *Complainant, v.* **RONALD C. CORDOVA, SHERIFF IV, REGIONAL TRIAL COURT, LAS PIÑAS CITY, BRANCH 197,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF OPPRESSION; OPPRESSION IS A MISDEMEANOR COMMITTED BY A PUBLIC OFFICER WHO UNDER COLOR OF HIS OFFICE WRONGFULLY INFLICT UPON ANY PERSON ANY BODILY HARM, IMPRISONMENT OR OTHER INJURY. — The Court in *Office of the Ombudsman v. Caberoy*, defined oppression or grave abuse of authority as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflict upon any person any bodily harm, imprisonment or other injury. It is an act of cruelty, severity, or excessive use of authority."

2. ID.; ID.; ID.; DETERMINATION OF THE SUFFICIENCY OF THE COUNTER-BOND IS WITHIN THE DISCRETION OF THE COURT AND NOT OF THE SHERIFF; ACT CONSTITUTING OPPRESSION. — In the instant case, it is undisputed that on 4 March 2008, the trial court issued a writ of preliminary injunction and a writ of execution relative to Civil Case No. 06-0114. On 10 March 2008, a motion to dissolve the writ of preliminary mandatory injunction was then filed by Odette. Thereafter, the trial court in an Order dated 14 April 2008, granted the motion to dissolve the writ of preliminary mandatory injunction conditioned upon Odette's posting of a counter-bond. x x x It must be reiterated that an order granting to dissolve the writ of preliminary mandatory injunction was issued by the trial court, conditioned with the posting of a counter-bond. In proceeding with the enforcement of the dissolved writ of execution, Sheriff Cordova acted beyond his ministerial function. It must be stressed that the determination of the sufficiency of the counter-bond or compliance thereof, is within the discretion of the court, and not of the sheriff. Thus, such

act of Sheriff Cordova constitutes oppression or grave abuse of authority.

D E C I S I O N

DELOS SANTOS, *J.*:

For consideration of the Court is the Complaint-Affidavit[1] dated 4 July 2016 filed by Emma R. Chua (Chua) charging respondent Ronald C. Cordova (Sheriff Cordova), Sheriff IV, Regional Trial Court (RTC) of Las Piñas City, Branch 197, with grave abuse of discretion, grave abuse of authority, conduct unbecoming a public servant, conduct prejudicial to the best interest of the service, grave misconduct, and violation of Section 3, paragraph (e) of Republic Act No. (RA) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, relative to Civil Case No. 06-0114.[2] The Office of the Ombudsman forwarded the said complaint-affidavit to the Supreme Court since Sheriff Cordova is a trial court employee under the exclusive administrative jurisdiction of the Court.[3]

The Facts

Chua alleged that a civil complaint was filed by spouses Gerd and Sarah Gerbig (Spouses Gerbig) against her daughter, Odette R. Chua (Odette), for the enforcement of easement, violation of the National Building Code, and damages with a prayer for a writ of preliminary injunction, docketed as Civil Case No. 06-0114, before the RTC of Las Piñas City, Branch 197. On 4 March 2008, a Writ of Preliminary Mandatory Injunction[4] was issued by the trial court, ordering Odette or in her failure, the City Engineer's Office of Las Piñas City, to

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[1] *Rollo*, pp. 3-8.

[2] Entitled *Spouses Gerd and Sarah Gerbig v. Odette R. Chua*, for Enforcement of Easement, Violation of the National Building Code, and Damages.

[3] *Rollo*, p. 2.

[4] Id. at 10-11.

remove the additional two-storey building or extension constructed by Odette on her property. Thus, on 10 March 2008, Odette filed a Motion to Dissolve Writ of Preliminary Injunction.[5] In an Order[6] dated 14 April 2008, the trial court granted the motion and required Odette to file a counter-bond in the amount of ₱800,000.00, a copy of which was received by Chua on 18 April 2008, on behalf of Odette.[7]

Chua further alleged that on 25 April 2008, at around 4 o'clock in the afternoon, she was surprised when Sheriff Cordova, together with some men, entered their property and demolished their firewall and the back portion of their house. When she confronted Sheriff Cordova, he allegedly failed to provide a copy of any writ of execution issued by the trial court. She averred that during the demolition, Sheriff Cordova mocked, insulted, and humiliated her and her deceased husband, and told her "*una-unahan lang ito, bobo kasi kayo di nyo alam ang dapat nyo gawin. Malaki [ang] bayad sa akin kaya kahit gabi o Sabado o Linggo ako ang masusunod kung kelan ko gusto [magpademolish]. He he.*"[8] Chua also claimed that the demolition lasted for four (4) days and resulted in the damage of their personal properties, such as air-conditioning unit, washing machine, water pump, and several plants. The alleged acts of Sheriff Cordova, according to Chua, constitute grave abuse of discretion, grave misconduct, conduct unbecoming a public servant, conduct prejudicial to the best interest of the service, and a violation of Section 3(e) of RA 3019.[9]

On 5 April 2017, the Office of the Court Administrator (OCA) directed Sheriff Cordova to submit his comment on the charges against him.[10]

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[5] Id. at 12-18.

[6] Id. at 21-23.

[7] Id. at 4.

[8] Id. at 4-5.

[9] Id. at 5-7.

[10] Id. at 25.

In his Comment[11] dated 15 May 2017, Sheriff Cordova admitted that on 4 March 2008, the RTC of Las Piñas City, Branch 197, simultaneously issued the Writ of Preliminary Injunction[12] and the Writ of Execution[13] relative to Civil Case No. 06-0114. Thereafter on 14 April 2008, the same trial court issued the Order[14] granting the motion to dissolve the writ of preliminary injunction and required Odette to secure a counter-bond in the amount of ₱800,000.00. On several occasions, Sheriff Cordova, together with the counsel of Spouses Gerbig, went to Chua to remind her of the impending demolition of the subject structure, unless, they can produce the required counter-bond. On 25 April 2008, acting on the alleged writ of execution, Sheriff Cordova proceeded with the demolition of the property's firewall. He alleged that Chua was hostile with them and even threatened to gun down one of the workers. Sheriff Cordova further alleged that he took all the necessary precautions in order to avoid any further damage to the property of Chua and the adjacent properties.[15]

In the same comment, Sheriff Cordova denied the allegations of Chua. *First*, as to the allegation of grave abuse of authority and grave abuse of discretion, he averred that it was his ministerial duty to proceed with the implementation of the writ of execution with reasonable celerity and promptness, otherwise, the other party will sue him for not executing the writ. *Second*, with respect to the allegation of conduct unbecoming a public servant, he denied that he mocked, insulted, and humiliated Chua, as he was too busy supervising the workers and talking to Chua's adjacent property owners. *Third*, as regards to violation of Section 3(e) of RA 3019, he denied that he received any money or compensation from the execution of the writ. He explained that the expenses in the demolition was shouldered by Spouses

[11] Id. at 26-39.

[12] Id. at 10-11.

[13] Id. at 47-48.

[14] Id. at 21-23.

[15] Id. at 28-29.

Gerbig. *Lastly*, he denied any knowledge with regard to the allegation of damage caused to Chua's personal properties, as he took all the necessary precaution and safety during the demolition.[16]

In her Opposition to Comment[17] dated 20 June 2017, Chua reiterated that Sheriff Cordova deliberately and criminally caused the demolition of the property's firewall on a weekend, which left her with no other recourse, and that Sheriff Cordova ordered his laborers to climb the fence to demolish the firewall, setting aside propriety and good manners.[18] Chua likewise claimed that the Order dated 14 April 2008 did not expressly provide a period within which to post a counter-bond.[19] She tried to explain to Sheriff Cordova that she only received the said Order on 18 April 2008, and that she was still raising funds for the required counter-bond, but it fell on deaf ears.[20] She asserted that the acts of Sheriff Cordova were tainted with deceit, bad faith, and for the purpose of material gain.

The OCA's Report and Recommendation

In its Report[21] dated 22 February 2019, the OCA recommended: (1) that the administrative complaint against Sheriff Cordova be re-docketed as a regular administrative matter; (2) that he be found liable for grave abuse of authority or oppression and for violation of Section 6, Canon IV of A.M. No. 03-06-13-SC,[22] otherwise known as the Code of Conduct for Court Personnel; and (3) that he be fined in the amount of ₱30,000.00, to be paid within 30 days from notice, with a stern

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[16] Id. at 30-39.

[17] Id. at 113-122.

[18] Id. at 114-115.

[19] Id. at 114, 117.

[20] Id. at 118.

[21] Id. at 123-128.

[22] Section 6. Court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

warning that a repetition of similar acts shall be dealt with more severely.[23]

In its evaluation, the OCA held that Sheriff Cordova failed to live up to his mandate, as he deviated from his purely ministerial functions. The OCA elucidated that despite Sheriff Cordova's knowledge of the existence of the Order dated 14 April 2008, which granted the motion to dissolve the writ of preliminary injunction, he still proceeded to implement the previously issued writ of execution. Moreover, it held that the fact that he served the alleged writ on a weekend should raise suspicion that it was done to prevent any interference from the courts. He clearly overstepped his ministerial function, when he resolved the issue on whether the Order dated 14 April 2008, was conditioned on Odette's securing a counter-bond, which was within the discretion of the trial court. Accordingly, Sheriff Cordova acted beyond the scope of his authority, thus, not only he committed grave abuse of authority or oppression, he also violated Section 6, Canon IV of A.M. No. 03-06-13-SC.[24]

In a Resolution[25] dated 17 June 2019, the Court resolved to re-docket the administrative matter as a regular administrative case against Sheriff Cordova.

The Issue Before the Court

The issue for the Court's resolution is whether or not Sheriff Cordova should be held administratively liable as recommended by the OCA.

The Court's Ruling

We adopt the findings of the OCA, except as to the recommended penalty.

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them.

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[23] *Rollo*, p. 128.

[24] Id. at 125-127.

[25] See id. at 130.

They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs. They are required to live up to the strict standards of honesty and integrity in public service.[26]

In *Olympia-Geronilla v. Montemayor, Jr.*,[27] the Court held that "as agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."[28] The 2002 Revised Manual for Clerks of Court provides:

D. *General Functions and Duties of Clerks of Court and Other Court Personnel*

2. Other Court Personnel

2.1.5. Deputy Sheriff IV/Deputy Sheriff V/Deputy Sheriff VI

2.1.5.1. serves and/or executes all writs and processes of the Courts and other agencies, both local and foreign;

Thus, the primary duty of a sheriff is to serve and/or execute all writs and processes of the Courts for the effective administration of justice.

The OCA found that Sheriff Cordova was guilty of oppression. Oppression is an administrative offense classified and penalized under Section 46(B)(2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which provides:

Section 46. *Classification of Offenses.* —

x x x x

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[26] *Serdoncillo v. Sheriff Lanzaderas*, 815 Phil. 468, 477 (2017).

[27] 810 Phil. 1 (2017).

[28] Id. at 11, citing *Lucas v. Dizon*, 787 Phil. 88 (2014).

B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

x x x x

2. Oppression;

The Court in *Office of the Ombudsman v. Caberoy*,[29] defined oppression or grave abuse of authority as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflict upon any person any bodily harm, imprisonment or other injury. It is an act of cruelty, severity, or excessive use of authority."[30]

In the instant case, it is undisputed that on 4 March 2008, the trial court issued a writ of preliminary injunction and a writ of execution relative to Civil Case No. 06-0114. On 10 March 2008, a motion to dissolve the writ of preliminary mandatory injunction was then filed by Odette. Thereafter, the trial court in an Order dated 14 April 2008, granted the motion to dissolve the writ of preliminary mandatory injunction conditioned upon Odette's posting of a counter-bond. However, from 25-29 April 2008, Sheriff Cordova proceeded to implement the previously issued writ of execution, despite having knowledge of the Order dissolving the writ of preliminary injunction. In justifying his acts, Sheriff Cordova insisted that it was his ministerial duty to enforce the writ issued by the courts. He further argued that he was not remiss in his duty as a sheriff, as he made several follow-ups and reminders to Chua and the City Engineer's Office of Las Piñas City, of the impending demolition, unless Chua can come up with the required counter-bond. There being no answer from Chua, Sheriff Cordova proceeded with the demolition.

The argument of Sheriff Cordova is misplaced. It must be reiterated that an order granting to dissolve the writ of preliminary mandatory injunction was issued by the trial court, conditioned

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[29] 746 Phil. 111 (2014).

[30] Id. at 119, citing *Romero v. Villarosa, Jr.*, 663 Phil. 196 (2011).

with the posting of a counter-bond. In proceeding with the enforcement of the dissolved writ of execution, Sheriff Cordova acted beyond his ministerial function. It must be stressed that the determination of the sufficiency of the counter-bond or compliance thereof,[31] is within the discretion of the court, and not of the sheriff. Thus, such act of Sheriff Cordova constitutes oppression or grave abuse of authority. The OCA was correct when it held that Sheriff Cordova violated Section 6, Canon IV of A.M. No. 03-06-13-SC and that "[g]ood faith on the part of respondent [s]heriff, or lack of it, in proceeding to properly execute his mandate is of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therewith, it behooves him to make due compliance."[32]

We find that the charges of conduct unbecoming a public servant, conduct prejudicial to the best interest of the service, and violation of Section 3 (e) of RA 3019, should be dismissed for lack of evidence.

Anent the penalty to be imposed, in arriving at the recommended penalty, the OCA applied Section 50 of the RRACCS,[33] and held that oppression is the most serious offense,

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[31] Section 7, Rule 58 of the 1997 Revised Rules of Court.

Section 7. *Service of copies of bonds; effect of disapproval of same*. — The party filing a bond in accordance with the provisions of this Rule shall forthwith serve a copy of such bond on the other party, who may except to the sufficiency of the bond, or of the surety or sureties thereon. If the applicant's bond is found to be insufficient in amount, or if the surety or sureties thereon fail to justify, and a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be dissolved. If the bond of the adverse party is found to be insufficient in amount, or the surety or sureties thereon fail to justify a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith, the injunction shall be granted or restored, as the case may be.

[32] *Rollo*, p. 126.

[33] Section 50. *Penalty for the Most Serious Offense*. — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

and that the violation of A.M. No. 03-06-13-SC is an aggravating circumstance. Thus, considering Sheriff Cordova's previous administrative case,[34] the penalty of suspension for six (6) months is proper. However, to prevent any undue adverse effect on the public service, the OCA deemed it wise to recommend that the penalty of suspension be converted to the payment of fine in the amount of ₱30,000.00.

Here, Sheriff Cordova is guilty of both oppression and violation of A.M. No. 03-06-13-SC, thus, the proper penalty is suspension for six (6) months and one (1) day to one (1) year for the first offense. The recommended penalty of the OCA of payment of fine in the amount of ₱30,000.00 as penalty is insufficient. Considering that Sheriff Cordova has a previous administrative case, the proper penalty to be imposed should be suspension for one (1) year.

WHEREFORE, respondent Ronald C. Cordova, Sheriff IV of Regional Trial Court, Las Piñas City, Branch 197 is found guilty of Oppression or Grave Abuse of Authority, and violation of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel, and is hereby **SUSPENDED** from service for one (1) year.

SO ORDERED.

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

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

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[34] In the Decision dated 23 February 2005, the Court's Second Division, in A.M. No. P-04-1832 (formerly OCA IPI No. 03-1572-P), 492 Phil. 276, entitled *Emelita F. Gadil v. Ronald C. Cordova, x x x*, found Cordova guilty of simple misconduct and was ordered to pay a fine of ₱10,000.00, with a warning that commission of the same or similar act in the future will be dealt with more severely.

THIRD DIVISION

[G.R. No. 192113. September 7, 2020]

UNIROCK CORPORATION, *Petitioner, v.* **HONORABLE COURT OF APPEALS and EDUARDO PAJARITO,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; ABSENCE OF THE REQUISITES THEREOF RENDERS THE DISMISSAL OF AN EMPLOYEE ILLEGAL. — Aptly, the CA ruled that Pajarito cannot be validly separated from service on the ground of retrenchment, in view of the absence of all the requisites thereof, consisting of the following: a) the retrenchment is necessary to prevent losses and such losses are proven; b) written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; c) payment of separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher.

2. ID.; ID.; ID.; WILLFUL DISOBEDIENCE; REQUISITES FOR DISOBEDIENCE TO BE A JUST CAUSE FOR THE DISMISSAL OF AN EMPLOYEE. — Under Article 297 [282] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer:

> Article 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work[.]
>
> x x x x

For disobedience to be considered as just cause for termination, two requisites must concur: first, the employee's assailed conduct must have been willful or intentional, and second, the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he or she had been engaged to discharge. For disobedience to be willful, it must be characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.

3. ID.; ID.; MANAGEMENT PREROGATIVE TO TRANSFER PERSONNEL; LIMITATIONS IN THE EXERCISE THEREOF. — [T]his Court has recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment provided that there is no demotion in rank or a diminution of his salary, benefits and other privileges. This is a privilege inherent in the employer's right to control and manage its enterprise effectively. Even as the law is solicitous of the employees' welfare, it cannot ignore the right of the employer to exercise what are clearly and obviously management prerogatives. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.

But like all other rights, there are limits. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right must be exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his/her union activities and thereby defeat his/her right to self-organization. To establish the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the displaced employee; nor does it involve a demotion in rank or a diminution of his/her salaries, privileges and other benefits.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; WILLFUL DISOBEDIENCE; AN EMPLOYEE'S REASONABLE PLEA FOR AN EXTENSION OF THE PERIOD TO EFFECT A TRANSFER ORDER DOES NOT AMOUNT

TO WILLFUL DISOBEDIENCE. — [W]e agree with the CA that the time interval of three days from the issuance of the transfer order on March 14, 2005 to its effectivity on March 17, 2005 was too tight and prejudicial to Pajarito. Juxtaposed with the requisites of willful disobedience, the directive failed to satisfy the requirement of reasonableness. It is well to note that a work relocation from Greater Manila Area to a distant province like Davao requires a reasonable amount of time to work out certain details such as family living arrangements.

. . .

. . .We hold that Pajarito's plea for extension until April 1, 2005 to enable him to prepare his personal affairs, including his children's completion of their studies for the school year, does not constitute an intentional violation of the transfer order.

This Court is not unmindful of Our pronouncements holding that difficulties for the family and parental obligations are not legitimate reasons for declining a transfer. But what obviously sets this case apart from those cases is the fact that Pajarito did not refuse the transfer order but merely requested for additional time to comply therewith. This is not to say, however, that a request for the extension of the period to effect a transfer automatically negates an employer's claim of insubordination, for every case must be determined based on the surrounding circumstances thereof.

. . .We find no genuine reason why the period allotted for Pajarito to relocate from Metro Manila to Davao was too short, in the first place, and why it could not be extended at all. To reiterate, Unirock's belated and unsubstantiated claim of urgency deserves no credit. Under the circumstances of this case, Pajarito's plea to reschedule his transfer from March 17, 2005 to April 1, 2005, to enable his children to wrap up in school prior to his transfer, was reasonable and can hardly be considered as tainted with a perverse mental attitude, so as to amount to willful disobedience. We agree with the NLRC's pronouncement in its first Decision that the penalty of dismissal was too harsh.

5. ID.; ID.; ID.; ABANDONMENT OF WORK; THE FILING OF AN ILLEGAL DISMISSAL COMPLAINT NEGATES JOB ABANDONMENT. — [A]nent Unirock's claim of

abandonment, this Court has consistently held that two elements must be present, to wit: (1) failure to report for work or absence without valid or justifiable reason; and (2) clear intention to sever the employment relationship manifested by some overt act. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his/her dismissal cannot logically be said to have abandoned his/her work. The filing of such complaint is proof enough of his/her desire to return to work, thus negating any suggestion of abandonment.

In this case, a review of the timeline belies the claim of abandonment. Pajarito clearly wasted no time in filing an illegal dismissal case against Unirock on April 21, 2005, after his termination on March 31, 2005. More tellingly, as early as March 18, 2005, he already filed a request for conciliation and mediation on his belief that he was already dismissed from employment at that time, since he was no longer allowed to report for work.

6. ID.; ID.; ID.; LAPSE OF 15 YEARS FROM FILING TO THE FINALITY OF THE CASE JUSTIFIES THE AWARD OF SEPARATION PAY IN LIEU OF REINSTATEMENT. — [W]e sustain the award of separation pay in lieu of reinstatement. In a line of cases, this Court deemed it proper to award separation pay in lieu of reinstatement, when a substantial amount of years have lapsed from the filing of the case to its finality. Considering that more than 15 years have passed since the institution of the instant case, the payment of separation pay is deemed more practical and appropriate to the parties concerned.

APPEARANCES OF COUNSEL

Antonio A. Geronimo for petitioner.
M.G. Silvestre Law Office for private respondent.

D E C I S I O N

GAERLAN, *J.*:

This resolves the Petition for Review on *Certiorari*[1] assailing the Decision[2] dated October 16, 2009 and the Resolution[3] dated March 29, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106754 which reinstated with modification the first Decision[4] dated March 28, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 048226-06, finding Eduardo Pajarito (Pajarito) illegally dismissed, and set aside the NLRC's second Decision[5] dated October 8, 2008, declaring Pajarito retrenched from service. The assailed Resolution denied reconsideration of the CA's assailed Decision.

Factual Antecedents

The undisputed facts, as culled from the Decision of the CA, are as follows:

> x x x Eduardo Pajarito was hired on March 9, 1999 by x x x company Unirock Corporation [Unirock] as a heavy equipment operator with a basic daily salary of P258.00.
>
> On March 14, 2005, the company's vice-president for Human Resources Development (HRD), x x x Roberto Ignacio, issued a transfer order for [Pajarito] to work in Davao effective March 17, 2005 as his skill is needed in its job site operation. Together with the transfer, he was offered additional benefits like P1000.00 monthly relocation allowance and P50.00 daily meal allowance. [Unirock] also committed to shoulder his transportation fare and food on his way to the new

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[1] *Rollo*, pp. 12-32.

[2] Id. at 38-52; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Martin S. Villarama, Jr. (now a retired member of this Court) and Ricardo R. Rosario.

[3] Id. at 54-55; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Ricardo R. Rosario and Antonio L. Villamor.

[4] Id. at 111-118.

[5] Id. at 130-138.

place of work. Despite personal service of such order, [Pajarito] refused to receive the same. Hence, the transfer notice was sent through registered mail but [Pajarito] failed to receive it because he had moved out from his last known address. Immediately, [Unirock] issued a memorandum asking [Pajarito] to explain his refusal to accept the transfer. In the meantime, or on March 18, 2005, [Pajarito] filed a request for mediation and conciliation with the NLRC's Conciliation and Mediation Center.

On March 19, 2005, [Pajarito] submitted to [Unirock] his written explanation, the full text of which reads:

> Ako po si Eduardo Pajarito. Narito po ang aking paliwanag. Mula po ng natanggap ko yung kautusan sa Tagapangasiwa hindi ko po tinatanggihan ang kautusan sa Itaas, dahil malapit po ang aking magulang doon. Kaya nga lang po nagkaroon ng problem na, sinasabing tinanggihan ko po ang kautusan. Sa katunayan nga po nagpahanap na po [a]ko sa aking kapatid ng bahay ng malilipatan doon. Sa totoo po hindi po ako tumatanggi, ang ipinakikiusap ko po lang po [sic] sana ay patapusin ko po muna yung pag-aaral ng aking mga anak hanggang sa bakasyon po nila sa April 1, dahil hindi ko po sila pweding [sic] iwanan dahil nasa murang edad pa po sila [a]t wala pang tamang pagiisip, kailangan pa po nila ng kalinga [n]g isang magulang. Pangalawa po wala po akong kamag-anak [d]ito na pwedeng pag-iwanan sa kanila.
>
> Paano po ninyo nasasabi na tinatanggihan ko po ang mga bagay na iyan, [a]t yung inaalok po ninyong relocation na P1,000.00 at allowance P50.00 sa tingin po ninyo sapat po kaya. Hindi po kaya malinaw na paglabag po ito sa human rights/ karapatang pantao. Sa tingin po ninyo hindi kaya ito'y isang harassment. Sa tingin ko po kasi panghaharass na po ito sa akin. Sana po ay maunawaan po ninyo ang aking panig. Maraming salamat po.

On March 31, 2005, [Unirock] issued a *Memorandum of Termination* against [Pajarito] effective that date, allegedly for willful disobedience to the transfer order, and abandonment of work for his unauthorized absences from March 17-30, 2005.

Hence, [Pajarito] filed a complaint for illegal dismissal on April 21, 2005, docketed as NLRC Case No. 00-04-03513-2005. [Pajarito] posited that his dismissal was without cause and lacked due process;

that he did not disobey the order but only asked for time to allow his children to finish their schooling so he could bring his family to Davao; that the intended transfer was due to his suspected organization of a union; and, that he is entitled to reinstatement with full back wages, damages and attorney's fees, as well as wage differentials for the last three years of his employment.

[Unirock] maintained that respondent was given due notices for his transfer to the Davao project; that the company merely exercised its management prerogative in the questioned transfer; and, that he committed insubordination when he unjustly disobeyed such transfer, and neglect of duties when he incurred prolonged absence without leave which constituted valid grounds for his dismissal.[6]

In the Decision[7] dated November 29, 2005, Labor Arbiter Pablo C. Espiritu, Jr. dismissed the complaint for lack of merit. The Labor Arbiter found that Pajarito was validly terminated from employment on the ground of his willful insubordination to the lawful order of Unirock to transfer him to Davao and his absences without leave (AWOL) from March 17-31, 2005. Anent his claim of underpayment, the Labor Arbiter found no basis to sustain the same as his weekly gross payslips showed that his wages were paid beyond minimum wage, and that, in any case, his failure to raise the same in the sworn affidavit — having raised it only in his rejoinder — rendered the Labor Arbiter devoid of jurisdiction to entertain the same.[8]

On Pajarito's appeal, the NLRC rendered the Decision[9] dated March 28, 2009, disposing as follows:

WHEREFORE, the assailed decision of the Labor Arbiter is accordingly REVERSED. Respondents-appellees are therefore hereby ordered to reinstate complainant Eduardo Pajarito to his former position with payment of full backwages and an indemnity in the amount of Php30,000.00.

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[6] Id. at 39-41.

[7] Id. at 87-94.

[8] Id. at 91-94.

[9] Id. at 111-118.

SO ORDERED.[10]

In finding for Pajarito, the NLRC found that the conduct of Pajarito of requesting additional time to implement his transfer cannot be considered a wrongful or perverse attitude, as would constitute willful disobedience. The NLRC, thus, held that the penalty of dismissal was too harsh and manifestly disproportionate to his alleged insubordination, which was excusable under the given circumstances. The NLRC also found that Pajarito was deprived of procedural due process for want of any written notice charging the latter of insubordination.

Unirock filed a motion for reconsideration[11] and supplemental motion for reconsideration[12] with a prayer to reinstate the November 29, 2005 Labor Arbiter Decision. On October 8, 2008, the NLRC rendered an amended Decision,[13] the decretal part of which reads:

WHEREFORE, we modify our Decision and declare that complainant was considered retrenched from work. Accordingly[,] he should be paid his retrenchment pay at half month pay per year of service plus financial assistance in the amount of P25,000.00.

SO ORDERED.[14]

Pajarito elevated the case to the CA. On October 16, 2009, the CA rendered the herein assailed Decision,[15] which disposed as follows:

WHEREFORE, the petition is GRANTED. The assailed Decision dated October 8, 2008 of the NLRC is ANNULLED and SET ASIDE. The NLRC *Decision* dated March 28, 2007 is REINSTATED with MODIFICATION that petitioner is awarded separation pay (in lieu

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[10] Id. at 117.

[11] Id. at 119-126.

[12] Id. at 127-129.

[13] Id. at 130-138.

[14] Id. at 138.

[15] Id. at 38-52.

of reinstatement) equivalent to one month for every year of service from the date of hiring on March 9, 1999 and full backwages computed from the date of his illegal dismissal on March 17, 2005 until the finality of this decision.

SO ORDERED.[16]

In the Resolution[17] dated March 29, 2010, the CA denied Unirock's motion for reconsideration.

Hence, this petition was filed.

Unirock argues that the CA gravely erred when it delved into the legality of retrenchment especially when the same was never raised as a defense by the petitioner. It further argued that the CA gravely erred when it held that Pajarito was illegally dismissed on the ground that Pajarito's act of not reporting to work in Davao does not constitute insubordination and abandonment.

The petition lacks merit.

For one, the appellate court had cogent reason to delve into the matter of retrenchment, which constituted the very cause for which the termination of Pajarito from service was considered authorized by the NLRC in its second Decision, *viz.*:

> Be that as it may, complainant's intransigence to the lawful order of respondent company should not result in his dismissal from the service. We cannot see it as abandonment of work as he took steps to allegedly seek rectification of the perceived violation of his rights.
>
> It would rather be equitable to grant him separation pay for retrenchment on account of his services of six (6) years at half month's pay for every year of service, a fraction of six (6) months being considered as one whole year.
>
> In addition, as a matter of equity, and in order to tide complainant and his family over during the time that he is seeking a new

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[16] Id. at 51.

[17] Id. at 54-55.

employment, respondents should give him financial assistance in the amount of P25,000.00[.][18]

To state the obvious, it was the NLRC that unceremoniously declared the retrenchment of Pajarito despite the lack of basis therefor. Thus, in the exercise of its power in a *certiorari* proceeding to correct grave abuse of discretion, the CA imperatively passed upon the matter.

Aptly, the CA ruled that Pajarito cannot be validly separated from service on the ground of retrenchment, in view of the absence of all the requisites thereof, consisting of the following: a) the retrenchment is necessary to prevent losses and such losses are proven; b) written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date of retrenchment; c) payment of separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher.

This brings Us to the issue of gross insubordination and abandonment.

Under Article 297 [282][19] of the Labor Code, an employer may terminate the services of an employee who commits willful disobedience of the lawful orders of the employer:

> Article 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:
>
> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work[.]
>
> x x x x

For disobedience to be considered as just cause for termination, two requisites must concur: first, the employee's assailed conduct must have been willful or intentional, and second, the order

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[18] Id. at 137-138.

[19] DOLE Department Advisory No. 001-15, Renumbering of the Labor Code of the Philippines, as amended.

violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he or she had been engaged to discharge. For disobedience to be willful, it must be characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[20]

In this case, the resolution of whether the foregoing requisites are present behooves this Court to correlate the same with some salient points laid down in our prior pronouncements concerning employment transfers.

In a number of cases, this Court has recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment provided that there is no demotion in rank or a diminution of his salary, benefits and other privileges. This is a privilege inherent in the employer's right to control and manage its enterprise effectively. Even as the law is solicitous of the employees' welfare, it cannot ignore the right of the employer to exercise what are clearly and obviously management prerogatives. The freedom of management to conduct its business operations to achieve its purpose cannot be denied.[21]

But like all other rights, there are limits. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion and putting to mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right must be exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. Nor when the real reason is to penalize an employee for his/her union activities and thereby defeat his/her right to self-organization.[22] To establish the validity of the

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[20] *Malcaba v. Prohealth Pharma Philippines, Inc.*, G.R. No. 209085, June 16, 2018, 864 SCRA 518, 555-556.

[21] *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment*, 264 Phil. 338, 341 (1990).

[22] Id.

transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the displaced employee; nor does it involve a demotion in rank or a diminution of his/her salaries, privileges and other benefits.[23]

Here, we agree with the CA that the time interval of three days from the issuance of the transfer order on March 14, 2005 to its effectivity on March 17, 2005 was too tight and prejudicial to Pajarito. Juxtaposed with the requisites of willful disobedience, the directive failed to satisfy the requirement of reasonableness. It is well to note that a work relocation from Greater Manila Area to a distant province like Davao requires a reasonable amount of time to work out certain details such as family living arrangements.

Notably, the belated claim of Unirock that the transfer was urgently required to meet the company's two-month deadline deserves no credence.[24] First, Unirock failed to substantiate the claim with proof when it could have easily presented the contract or timetable indicating the supposed deadline of its project. Time and again, this Court has ruled that mere allegation is not proof. Second, it was alleged for the first time only in Unirock's supplemental motion for reconsideration[25] of the NLRC's first Decision, despite the materiality thereof to petitioner's cause, thereby betraying its character as a mere afterthought.

Moving on to the other element of willful disobedience, We hold that Pajarito's plea for extension until April 1, 2005 to enable him to prepare his personal affairs, including his children's completion of their studies for the school year, does not constitute an intentional violation of the transfer order.

This Court is not unmindful of Our pronouncements[26] holding that difficulties for the family and parental obligations are not

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[23] *Pharmacia and Upjohn, Inc. (now Pfizer Philippines, Inc.) v. Albayda, Jr.*, 642 Phil. 680, 696 (2010).

[24] Id. at 31.

[25] *Rollo*, pp. 127-129.

[26] *Allied Banking Corporation v. Court of Appeals*, 461 Phil. 517 (2003). See also *Phil. Telegraph Corp. v. Laplana*, 276 Phil. 527 (1991).

legitimate reasons for declining a transfer. But what obviously sets this case apart from those cases is the fact that Pajarito did not refuse the transfer order but merely requested for additional time to comply therewith. This is not to say, however, that a request for the extension of the period to effect a transfer automatically negates an employer's claim of insubordination, for every case must be determined based on the surrounding circumstances thereof.

Turning back to Our earlier discussion, We find no genuine reason why the period allotted for Pajarito to relocate from Metro Manila to Davao was too short, in the first place, and why it could not be extended at all. To reiterate, Unirock's belated and unsubstantiated claim of urgency deserves no credit. Under the circumstances of this case, Pajarito's plea to reschedule his transfer from March 17, 2005 to April 1, 2005, to enable his children to wrap up in school prior to his transfer, was reasonable and can hardly be considered as tainted with a perverse mental attitude, so as to amount to willful disobedience. We agree with the NLRC's pronouncement in its first Decision that the penalty of dismissal was too harsh.

Lastly, anent Unirock's claim of abandonment, this Court has consistently held that two elements must be present, to wit: (1) failure to report for work or absence without valid or justifiable reason; and (2) clear intention to sever the employment relationship manifested by some overt act.[27] Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[28] Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his/her dismissal cannot logically be said to have abandoned his/her work. The filing of such complaint is proof enough of his/her desire to return to work, thus negating any suggestion of abandonment.[29]

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[27] *MZR Industries, et al. v. Calambot,* 716 Phil. 617, 627 (2014).

[28] *Doctor v. NII Enterprises,* G.R. No. 194001, November 22, 2017, 846 SCRA 53, 70.

[29] *GSP Manufacturing Corp. v. Cabanban,* 527 Phil. 452, 455 (2006).

In this case, a review of the timeline belies the claim of abandonment. Pajarito clearly wasted no time in filing an illegal dismissal case against Unirock on April 21, 2005, after his termination on March 31, 2005. More tellingly, as early as March 18, 2005, he already filed a request for conciliation and mediation on his belief that he was already dismissed from employment at that time, since he was no longer allowed to report for work.

All told, neither just nor authorized cause exists to justify the termination of Pajarito. It follows then that he was illegally dismissed from work.

Finally, we sustain the award of separation pay in lieu of reinstatement. In a line of cases,[30] this Court deemed it proper to award separation pay in lieu of reinstatement, when a substantial amount of years have lapsed from the filing of the case to its finality. Considering that more than 15 years have passed since the institution of the instant case, the payment of separation pay is deemed more practical and appropriate to the parties concerned.

WHEREFORE, premises considered, the Petition is **DENIED**. The October 16, 2009 Decision and the March 29, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 106754 are hereby **AFFIRMED**. Respondent Eduardo Pajarito is deemed illegally dismissed. Petitioner Unirock Corporation and Roberto Ignacio are ordered to pay respondent his separation pay (in lieu of reinstatement) equivalent to one month for every year of service from the date of hiring on March 9, 1999 and full backwages computed from the date of his illegal dismissal on March 17, 2005 until the finality of this Decision.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda,*

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[30] *Asso. of Independent Unions in the Phil. v. NLRC*, 364 Phil. 697 (1999); *G & S Transport Corporation v. Infante*, 559 Phil. 701 (2007); *San Miguel Properties Philippines, Inc. v. Gucaban*, 669 Phil. 288 (2011).

THIRD DIVISION

[G.R. No. 197335. September 7, 2020]

REPUBLIC OF THE PHILIPPINES, through the PHILIPPINE NATIONAL POLICE (PNP), *Petitioner, v.* **Heirs of JOSE C. TUPAZ, IV, namely: MA. CORAZON J. TUPAZ, MA. JEANETTE T. CALING, MA. JUNELLA T. AVJEAN, MARIE JOSELYN T. DEXHEIMER, JOSE NIÑO T. TUPAZ, V, and JON FERDINAND T. TUPAZ, and/or EL ORO INDUSTRIES, INC., and the NATIONAL LIBRARY, represented by ADORACION MENDOZA-BOLOS, Director, and the Chief of the Publication and Special Services Division of the National Library,** *Respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF FACT. —** The scope of this Court's jurisdiction over petitions brought under Rule 45 of the Revised Rules of Court is limited to reviewing questions of law. This Court will not entertain questions of fact because it is not duty-bound to weigh and analyze evidence anew. The factual findings of the appellate courts are generally final and conclusive on this Court when supported by substantial evidence.

2. **ID.; ID.; ID.; ID.; EXCEPTIONS; WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT. —** The question pertaining to the authorship of a copyrightable work is a factual matter that generally goes beyond the scope of review in a Rule 45 Petition. However, this Court may undertake a factual review when the findings of the Court of Appeals are "contrary to those of the trial court[.]"

3. **ID.; ID.; ID.; THE CASE ON APPEAL SHALL BE RESOLVED USING THE LAW IN FORCE AT THE TIME OF THE ISSUE. —** This case shall be resolved using the provisions of Presidential Decree No. 49, not Republic Act No. 8293. Presidential Decree No. 49 was the law in force at the time the

new designs of the PNP cap device and badge were made. It was also the law in force when the certificates of copyright registration were issued to respondents in 1996. Republic Act No. 8293, which amended Presidential Decree No. 49, only took effect on January 1, 1998.

4. COMMERCIAL LAW; INTELLECTUAL PROPERTY LAWS; COPYRIGHT. — Copyright is "the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment[.]" It "may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute." Copyright is a purely statutory right. Only classes of works falling under the statutory enumeration are entitled to protection.

5. ID.; ID.; ID.; RATIONALES. — Copyright has two rationales: the economic benefit and social benefit. The economic benefit is reaped by the author from his work while the social benefit manifests when it creates impetus for individuals to be creative. Copyright, like other intellectual property rights, grants legal protection by prohibiting the unauthorized reproduction of the author's work. It "create[s] a temporary monopoly on varying types of knowledge, allowing their owners to restrict and even prevent, other from using that knowledge." By eliminating fear of other's appropriation and exploitation of an author's work, intellectual creation is incentivized.

6. ID.; ID.; PROTECTION OF INTELLECTUAL PROPERTY (PD NO. 49); CLASSES OF COPYRIGHTABLE WORKS PROTECTED FROM THE MOMENT OF CREATION. — In 1972, Presidential Decree No. 49, otherwise known as the Decree on the Protection of Intellectual Property, was passed, . . .

Section 2 of Presidential Decree No. 49 enumerates different classes of copyrightable works, which are protected from the moment of creation:

SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

(A) Books, including composite and cyclopedic works, manuscripts, directories, and gazetteers;

(B) Periodicals, including pamphlets and newspapers;

(C) Lectures, sermons, addresses, dissertations prepared for oral delivery;

(D) Letters;

(E) Dramatic or dramatico-musical compositions; choreographic works and entertainments in dumb shows, the acting form of which is fixed in writing or otherwise;

(F) Musical compositions, with or without words;

(G) Works of drawing, painting, architecture, sculpture, engraving, lithography, and other works of art; models or designs for works of art;

(H) Reproductions of a work of art;

(I) Original ornamental designs or models for articles of manufacture, whether or not patentable, and other works of applied art;

(J) Maps, plans, sketches, and charts;

(K) Drawings or plastic works of a scientific or technical character;

(L) Photographic works and works produced by a process analogous to photography; lantern slides;

(M) Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(N) Computer programs;

(O) Prints, pictorial illustrations, advertising copies, labels, tags, and box wraps;

(P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as

herein defined, which shall be protected as provided in Section 8 of this Decree;

(Q) Collections of literary, scholarly, or artistic works or of works referred to in Section 9 of this Decree which by reason of the selection and arrangement of their contents constitute intellectual creations, the same to be protected as such in accordance with Section 8 of this Decree;

(R) Other literary, scholarly, scientific[,] and artistic works.

7. ID.; ID.; PD NO. 49 AND RA NO. 8293; PROVISIONS ON THE REGISTRATION OF THE WORK. — The enumeration under Section 2 of Presidential Decree No. 49 is substantially similar to that which can be found in Section 172.1 of the subsequent law, Republic Act No. 8293.

Under both laws, the copyright vests upon the sole fact of creation. Presidential Decree No. 49 requires the registration and deposit of some works with the National Library. Noncompliance with this rule "does not deprive the copyright owner of the right to sue for infringement." However, it limits the remedies of copyright owners, denies them of the right to recover damages, and subjects them to certain sanctions. Republic Act No. 8293 retains the registration and deposit requirement but only for the purpose of "completing the records of the National Library and the Supreme Court Library[.]" The present law "does not require registration of the work to fully recover in an infringement suit."

8. ID.; ID.; DERIVATIVE WORK. — Broadly defined, a derivative work refers to a work that is "based on ... one or more already existing works." The author of a derivative work borrows expressive content from an existing work and transforms it into another work. Through this process, the author of a derivative work does not simply copy the existing work but creates an original work entitled to a separate copyright. Although the expression in the derivative work is "intermingled with the expression from the underlying work," the derivative author contributes original expression to the new work making it distinct from the underlying work.

9. ID.; ID.; ID.; DERIVATIVE WORKS RIGHT IS INSEPARABLE FROM THE ADAPTATION RIGHT OF THE ORIGINAL WORK'S AUTHOR. — Derivative works right is inseparable from the adaptation right of the original work's author. Adaptation right is included in the bundle of rights granted to a recognized author or owner of an intellectual property. Under Section 5(B) of Presidential Decree No. 49:

> SECTION 5. Copyright shall consist in the exclusive right;
>
> . . . .
>
> (B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design[.]

10. ID.; ID.; ID.; NO EXACT DEFINITION OF DERIVATIVE WORKS IS FOUND IN P.D. NO. 49 AND R.A. NO. 8293, ONLY EXAMPLES CONSISTENT WITH THE BERNE CONVENTION. — No exact definition of derivative works is found in Presidential Decree No. 49 and Republic Act No. 8293. However, both laws provide examples consistent with the Berne Convention.

Under Article 2(3) of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) to which the Philippines is a contracting party, derivative works pertain to "[t]ranslations, adaptations, arrangements of music and other alterations of a literary or artistic work[.]"

Section 2(P) of Presidential Decree No. 49 grants copyright protection to "[d]ramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government[.]" Republic Act No. 8293 devotes a separate chapter to derivative works. The enumeration is substantially similar to that found in Presidential Decree No. 49. However, it excludes from copyright protection derivative works based on existing works of the government.

11. ID.; ID.; ID.; P.D. NO. 49 ON HOW DERIVATIVE WORKS MAY BE GRANTED COPYRIGHT AS A NEW WORK.

— Presidential Decree No. 49 gives special attention to derivative works and how it may be granted copyright as a new work. Under Section 8 of the law:

> SECTION 8. The works referred to in subsections (P) and (O) of Section 2 of this Decree shall, *when produced with the consent of the creator or proprietor of the original works on which they are based*, be protected as new works; however, such new works shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Presidential Decree No. 49 is consistent with prevailing conventions when it was enacted. Under the Berne Convention and the Universal Copyright Convention, authors of original works retain the exclusive right of control over their works.

12. ID.; ID.; ID.; ID.; THE NEW DESIGNS OF THE PNP CAP DEVICE AND BADGE CORRECTLY CLASSIFIED AS DERIVATIVE WORKS; CONDITIONS FOR COPYRIGHT. — The Court of Appeals correctly classified the new designs of the PNP cap device and badge as derivative works. Respondents, in collaboration with the PNP and upon its instruction, borrowed expressive content from the pre-existing designs of the PNP cap device and badge to create the new. The new designs are considered alterations of artistic works under Section 2(P) of Presidential Decree No. 49. However, they can only be copyrighted if they were produced with the consent of the creator of the pre-existing designs and if there is distinction between the new designs and the pre-existing designs.

13. ID.; ID.; ID.; ID.; ID.; ID.; PRESENCE OF ORIGINALITY. — The test of whether the new designs are copyrightable independently from the pre-existing works is the presence of originality in the derivative work. The new work, although similar to the pre-existing work in some of its expressive elements, must be substantially distinct from the pre-existing work.

14. ID.; ID.; THE COPYRIGHT BELONGS TO THE CREATOR OF THE WORK OR THE CREATOR'S HEIRS AND

ASSIGNS. — Under Section 2 of Presidential Decree No. 49, the copyright belongs to the creator of the work or the creator's heirs or assigns. If the work is created by two (2) or more persons, they shall own the copyright jointly. The same principles are embodied in Sections 178.1 and 178.2 of Republic Act No. 8293.

15. ID.; ID.; ID.; AUTHOR OR CREATOR OF THE WORK. — Unlike Republic Act No. 8293, which defines an author as the "natural person who has created the work[,]" Presidential Decree No. 49 does not provide a definition of an author or a creator. Despite the law's silence, an author, for purposes of copyright ownership, should be deemed as one who fixes an abstract idea into something tangible.

16. ID.; ID.; ID.; ID.; AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS AGREEMENT); "IDEA/EXPRESSION DICHOTOMY". — The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which took effect in the Philippines on January 1, 1995, states that "copyright protection shall extend to expressions and not to ideas, procedures, methods of operation[,] or mathematical concepts as such."

More commonly referred to as the "idea/expression dichotomy," the principle in copyright protection is that "ideas are not protectable" and only expressions of those ideas may be subject to copyright protection.

17. ID.; ID.; ID.; ID.; ID.; CASE OF *ABS-CBN CORP. V. GOZON* DISTINGUISHED IDEAS AND EXPRESSION OF IDEAS IN RELATION TO WHAT MAY BE THE SUBJECT OF COPYRIGHT. — In *ABS-CBN Corp. v. Gozon*, this Court distinguished ideas and expression of ideas in relation to what may be the subject of copyright:

> An idea or event must be distinguished from the expression of that idea or event. An idea has been likened to a ghost in that it "must be spoken to a little before it will explain itself.". .. ...
>
> Ideas can be either abstract or concrete. It is the concrete ideas that are generally referred to as expression:

> The words "abstract" and "concrete" arise in many cases dealing with the idea/expression distinction. The *Nichols* court, for example, found that the defendant's film did not infringe the plaintiffs play because it was "too generalized an abstraction from what plaintiff wrote ... only a part of her ideas." In *Eichel v. Marcin*, the court said that authors may exploit facts, experiences, field of thought, and general ideas found in another's work, "provided they do not substantially copy a concrete form, in which the circumstances and ideas have been developed, arranged, and put into shape." Judge Hand, in *National Comics Publications, Inc. v. Fawcett Publications, Inc.* said that "no one infringes, unless he descends so far into what is concrete as to invade ... 'expression.'"
>
> These cases seem to be distinguishing "abstract" ideas from "concrete" tangible embodiments of these abstractions that may be termed expression. However, if the concrete form of a work means more than the literal expression contained within it, it is difficult to determine what is meant by "concrete." *Webster's New Twentieth Century Dictionary of the English Language* provides several meanings for the word concrete. These include: "having a material, perceptible existence; of, belonging to, or characterized by things or events that can be perceived by the senses; real; actual;" and "referring to a particular; specific, not general or abstract."

18. ID.; ID.; ID.; ID.; ID.; ONLY THE CLASSES OF WORK ENUMERATED IN P.D. NO. 49 ARE SUBJECT TO COPYRIGHT, WHICH REFERS TO FINISHED WORKS AND NOT TO CONCEPTS. — *Joaquin v. Drilon* also illustrates the distinction between ideas and expression of ideas regarding copyrightable subject matter. The petitioner in *Joaquin* claimed that the format of its dating game show called 'Rhoda and Me' is entitled to copyright protection. In ruling against the petitioner, this Court underscored the principle that the law on copyright is purely statutory. Only classes of work enumerated in Pres. Decree No. 49 are subject to copyright. Thus, the format of a television show, not falling within the enumeration, is not copyrightable. Furthermore, this Court stated:

> *P.D. No. 49, §2, in enumerating what are subject to copyright, refers to finished works and not to concepts*. The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

19. ID.; ID.; ID.; ID.; IDEAS SHOULD TRANSITION INTO SOMETHING THAT IS PHYSICAL. — Although a creator or author is not expressly defined under Pres. Decree No. 49, it may be logically inferred—based on the scope of copyrightable works—that a creator or an author pertains to someone who transforms an abstract idea into a tangible form of expression through the application of skill or labor.

To create a thing that may be entitled to a copyright requires something more than the giving of ideas and concepts. Ideas should translate to or transition into something that is tangible or physical. In other words, something capable of being perceived must be produced. To illustrate, an image that remains in a person's mind would not be entitled to copyright protection unless he or she draws it on a piece of paper or paints the image on canvass.

20. ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — In this case, it is undisputed that petitioner and respondent Tupaz collaborated to develop the new designs of the PNP cap device and badge. However, the extent of petitioner's participation in developing the new designs of the PNP cap device and badge was limited to instructing respondent Tupaz on how the designs should appear in general and what specific elements should be incorporated. Petitioner merely supplied ideas and concepts. It was respondent Tupaz who used his skill and labor to concretize what petitioner had envisioned. Therefore, petitioner cannot be considered as an author of the new designs either in whole or in part.

21. ID.; ID.; P.D. NO. 49 ON THOSE ENTITLED TO OWN COPYRIGHT UNDER THE EXCEPTIONS IN SECTION 6; FIRST EXCEPTION REFERS TO WORKS CREATED IN THE COURSE OF THE EMPLOYMENT OF THE CREATOR. — Petitioner is also not entitled to own the copyright under any of the exceptions in Section 6 of Presidential Decree No. 49. The first exception refers to works created in

the course of the employment of the creator. Section 6 of Presidential Decree No. 49 states:

> If the work in which copyright subsists was made during and in the course of the employment of the creator, the copyright shall belong to:
>
> (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
>
> (b) The employer, if the work is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied to the contrary.

Section 178.3 of Republic Act No. 8293, retains the rule regarding works created in the course of the employment.

22. ID.; ID.; ID.; SECOND EXCEPTION REFERS TO COMMISSIONED WORKS. — The second exception refers to commissioned works. The creator of the work should be paid valuable consideration for the work made. Section 6 of Presidential Decree No. 49 states that the copyright of a commissioned work belongs in joint ownership to the creator and the person who commissioned the work. The parties, however, can agree that the ownership of the copyright shall pertain to either of them.

The rule regarding commissioned works is modified under Republic Act No. 8293. Parties no longer have joint ownership over the copyright. Under Section 178.4 of Republic Act No. 8293, the copyright of a commissioned work generally belongs to the creator. However, the parties may agree in writing to transfer the copyright to the person who commissioned the work.

23. ID.; ID.; ID.; THE EXCEPTIONS ARE NOT APPLICABLE IN CASE AT BAR. — In the present case, petitioner is not entitled to own the copyright because the designs were neither commissioned works nor works created in the course of respondent Tupaz's employment. First, although the parties verbally agreed to work together, petitioner did not hire respondent Tupaz's services for a fee or a commission. Respondent Tupaz rendered his services voluntarily. In other words, the new designs do not qualify as commissioned works.

Second, there was no employer-employee relationship between the parties at the time the designs were made.

Petitioner could have avoided this dispute had it entered into a contract that clearly and expressly spelled out the extent of each party's rights over the new designs, as Presidential Decree No. 49 allows the transfer or assignment of the work and its copyright to other persons by gift, inheritance, or otherwise.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

LEONEN, *J.*:

The copyright of a derivative work solely belongs to the person who fixes an idea into a tangible medium of expression. The law on copyright only protects the expression of an idea, not the idea itself. Thus, one who merely contributes concepts or ideas is not deemed an author.

For this Court's resolution is a Petition for Review on Certiorari[1] assailing the Court of Appeals' Decision[2] and Resolution.[3] The challenged judgments reversed the Regional Trial Court's Decision,[4] which ordered the cancellation of

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[1] *Rollo*, pp. 26-49.

[2] Id. at 8-20. The August 12, 2010 Decision docketed as CA-G.R. CV No. 82018 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[3] Id. at 22-23. The November 5, 2003 Resolution docketed as CA-G.R. CV No. 82018 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez Jr., and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

[4] Id. at 83-85. The Decision dated November 5, 2003 was penned by Presiding Judge Reynaldo B. Daway of Branch 90, Regional Trial Court, Quezon City.

respondents' certificates of copyright registration over the designs of the Philippine National Police (PNP) cap device and badge.[5]

In 1996, the PNP Directorate for Logistics Support Service authorized the procurement of new uniforms and equipment for the PNP, including brand new cap devices and badges. The PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division assumed the responsibility of updating the designs of the PNP cap device and badge.[6]

The present PNP cap device and badge have the following distinctive features: (1) a native shield, depicted as a vertically elongated hexagon; (2) a sword-and-shield wielding warrior purporting to be Lapu-Lapu; (3) eight (8) rays of the sun representing the first eight (8) provinces to revolt against Spain; (4) three (3) pentagram stars representing Luzon, Visayas, and Mindanao; (5) laurel leaves; and (6) the words "service, honor, and justice."[7]

The designs of the present PNP cap device and badge were previously used by the Philippine Constabulary in its coat of arms.[8]

The PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division collaborated with Jose C. Tupaz, IV (Tupaz) to create the new designs of the PNP cap device and badge. Tupaz volunteered and rendered his services for free.[9] Under their agreement, Tupaz will sketch the new designs and produce samples or prototypes. The samples will then be presented before the PNP's Uniform and Equipment Standardization Board for approval.[10]

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[5] Id. at 85.

[6] Id. at 30.

[7] Id. at 66-67, Petitioner's Complaint.

[8] Id. at 30.

[9] Id. at 9.

[10] Id. at 15-17.

Tupaz drew the new designs based on the PNP's specifications and instructions. He then submitted the finished sketches to the PNP for evaluation. Thereafter, the designs were transmitted to and approved by the National Police Commission.[11]

Upon approval of the new designs, the PNP conducted a public bidding for the procurement of the new PNP cap devices and badges. Among those who participated was El Oro Industries, Inc. (El Oro).[12] Tupaz was El Oro's then-president and chair of the board of directors.[13]

El Oro submitted the second highest bid price. After the tabulation of the bids, El Oro presented before the PNP's Bids and Awards Committee certificates of copyright registration over the PNP cap device and badge issued in favor of Tupaz. Hence, the contract was not awarded to the winning bidder, but to El Oro.[14]

No other manufacturer attempted to produce the PNP cap device and badge bearing the new designs for fear of copyright infringement.[15]

Police Director Jose S. Andaya, head of the PNP Directorate on Research and Development, Clothing, and Criminalistics Equipment Division, wrote the National Library requesting the cancellation of the certificates of copyright registration of the PNP cap device and badge. However, the National Library did not act on the request.[16]

Subsequently, the Republic of the Philippines, through the PNP, filed a Complaint before the Quezon City Regional Trial Court for the cancellation of Tupaz's certificates of copyright

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[11] Id. at 30-31.

[12] Id. at 31.

[13] Id. at 10.

[14] Id. at 31.

[15] Id. at 31-32.

[16] Id. at 10.

registration, with a prayer for the issuance of a writ of preliminary injunction.[17]

In their Answer, El Oro and Tupaz alleged that El Oro is the exclusive and official engraver of Philippine heraldry items since 1953. They claimed that Tupaz's ancestor, Jose T. Tupaz, Jr., developed the original designs on which the present designs of the PNP cap device and badge were based. Hence, El Oro owned the copyright over the new designs and was allegedly the only qualified bidder.[18]

In its Decision,[19] the Regional Trial Court ruled in favor of the Republic of the Philippines. The dispositive portion states:

> WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants as follows:
>
> (a) [O]rdering the defendant National Library to cancel Certificate of Copyright Registration No. 96-589 over the PNP Cap Device and Certificate of Copyright Registration No. 96-721 over the PNP badge issued in favor of defendant/s Jose C. Tupaz IV and/or El Oro Industries Inc., and to issue two new certificates of copyright registration in the name of the Philippine National Police in lieu of these two aforecited certificates of copyright registration; and
>
> (b) [O]rdering the issuance of a writ of prohibitory injunction, permanently prohibiting defendant/s Jose C. Tupaz IV and/or El Oro Industries Inc., and other persons/parties deriving interest from said defendant/s from manufacturing, using[,] and selling the PNP cap devices and badges bearing the designs created and developed by the Philippine National Police which are the subject matters of Certificates of Copyright Registration Nos. 96-589 and 96-721, which had now been ordered cancelled as provided herein.
>
> All other claim/s including the counterclaim are dismissed for lack of legal and/or factual basis.

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[17] Id. at 84.

[18] Id. at 10.

[19] Id. at 83-85.

SO ORDERED.[20]

The Regional Trial Court declared that the new designs of the PNP cap device and badge were created by the PNP Directorate for Research and Development, Clothing, and Criminalistics Equipment Division. Under Section 176.1 of Republic Act No. 8293,[21] the new designs are works of the Philippine government, the copyright of which may not be registered in favor of private entities.[22]

El Oro and Tupaz moved for reconsideration, but their motion was denied.[23]

Pending appeal before the Court of Appeals, Tupaz passed away.[24] He was substituted in the case by his heirs.[25]

In its Decision,[26] the Court of Appeals reversed the Regional Trial Court's ruling and lifted the writ of prohibitory injunction issued against El Oro, Tupaz, and their successors-in-interest.

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[20] Id. at 85.

[21] Republic Act No. 8293 (1997), Sec. 176.1 provides:

SECTION 176. *Works of the Government.* — 176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use for any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.

[22] *Rollo*, p. 85.

[23] Id. at 86.

[24] Id. at 29.

[25] Id. at 8. The heirs of Tupaz who substituted him in the case were: (1) Ma. Corazon J. Tupaz; (2) Ma. Jeanette T. Caling; (3) Ma. Junella T. Avjean; (4) Marie Joselyn T. Dexheimer; (5) Jose Niño T. Tupaz, V; and (6) Jon Ferdinand T. Tupaz.

[26] Id. at 8-20.

The Court of Appeals classified the new designs of the PNP cap device and badge as derivative works under Section 2(P) of Presidential Decree No. 49.[27] According to the Court of Appeals, a derivative work is entitled to copyright protection, if produced with the consent of the original work's author, and if it has a "distinguishable non-trivial variation" from the original.[28] The Court of Appeals ruled that both requirements were present.[29]

Although both parties claim authorship over the pre-existing designs, the Court of Appeals nevertheless held that the consent requirement was met because both parties agreed to use the pre-existing designs as basis for the new designs. Moreover, the new designs are substantially distinct from the pre-existing designs.[30] In its Decision, the Court of Appeals stated:

Comparing Exhibits A-1 (the cap device designed earlier used by the PNP) and A-2 (the design for which Tupaz obtained a copyright registration certificate), substantial changes in the appearance are present. Some of these distinctions are: the native shield in Exhibit A-1 is checkered cream and red in color while the one in Exhibit A-2 is silver; eight short sun rays appear on top of Exhibit A-2 while there is none in the other earlier design; and the flowers in Exhibit A-2 are mere buds while the ones in Exhibit A-1 have open petals. Notable changes are also present if Exhibits B-1 (the badge design earlier used by the PNP) and B-2 (another design for which Tupaz obtained a certificate [of copyright registration]) are

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[27] Pres. Decree No. 49 (1972). Sec. 2(P) provides:

SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:

. . . .

(P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as herein defined, which shall be protected as provided in Section 8 of this Decree[.]

[28] *Rollo*, pp. 12-13.

[29] Id. at 13-14.

[30] Id.

compared. For instance, among other differences, colors (black, red, white and blue) and eight short sun rays on top of the design are incorporated in Exhibit B-2 while Exhibit B-1 does not contain these details.[31]

The Court of Appeals declared Tupaz as the author of the new designs. The PNP only contributed ideas, but it was Tupaz who actually made the new designs. The Court of Appeals emphasized that the law on copyright protects the expression of an idea, but not the idea itself.[32]

The Republic of the Philippines then filed a Petition for Review on Certiorari[33] before this Court. In a September 14, 2011 Resolution,[34] this Court required respondents to comment on the petition. However, they failed to file their comment on the petition. Subsequently, this Court issued a show cause order requiring respondent Tupaz to explain why he should not be held in contempt, and to submit the required comment on the petition.[35]

The Resolution, and other subsequent Resolutions of this Court, were returned unserved to respondents.[36] In another Resolution,[37] this Court required the Office of the Solicitor General to submit the current addresses of respondents so that they may be served with court processes.

The Office of the Solicitor General manifested that respondent Tupaz received a copy of the petition based on the postmaster's certification. Meanwhile, respondent Ma. Corazon Tupaz passed away on August 30, 2010. On the other hand, the whereabouts

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[31] Id. at 14.

[32] Id. at 14-17.

[33] Id. at 26-49.

[34] Id. at 99.

[35] Id. at 115.

[36] Id. at 136.

[37] Id. at 136-136-A.

of respondents Ma. Jeanette T. Caling, Ma. Junella T. Avjean, Marie Jocelyn T. Dexheimer, and Jon Ferdinand T. Tupaz could not be ascertained.[38]

Extraordinary efforts to serve copies of the resolutions ordering respondents to file their comment failed. This Court later resolved to dispense with the filing of respondents' comment on the petition.[39]

Petitioner concedes that only questions of law may be raised in a Petition for Review on Certiorari brought under Rule 45 of the Rules of Court. However, it claims that the present case is exempted from the application of the general rule for two (2) reasons. First, the factual findings of the Court of Appeals are contrary to the findings of the trial court. Second, the conclusion of the Court of Appeals[40] is "grounded entirely on speculation, surmise[s,] and conjectures[.]"[41]

Petitioner argues that derivative works are entitled to protection under Section 8 of Presidential Decree No. 49 only if they were "produced with the consent of the creator or proprietor of the original works[.]"[42] However, the Court of Appeals failed to establish the true author of the pre-existing designs. This is relevant to determine who can give consent.[43]

Moreover, petitioner maintains that there is no substantial distinction between the new designs and the pre-existing designs. The distinctive features of the pre-existing designs were exactly adopted in the new designs. The differences pointed out by the Court of Appeals are only trivial distinctions. Due to the absence of distinguishable non-trivial variations, the new designs cannot

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[38] Id. at 137-142.

[39] Id. at 169.

[40] Id. at 35-37.

[41] Id. at 36.

[42] Id. at 38-39.

[43] Id. at 37-40.

be copyrighted as derivative or new works under Section 8 of Presidential Decree No. 49.[44]

This case presents the following issues for this Court's resolution:

First, whether or not this Court may undertake a factual review.

Second, whether or not the new designs of the PNP cap device and badge are entitled to protection as derivative works under Section 8 of Presidential Decree No. 49.

Lastly, whether or not the PNP, as contributor of ideas, should be deemed as the author of the new designs.

The petition is unmeritorious.

I

The scope of this Court's jurisdiction over petitions brought under Rule 45 of the Revised Rules of Court is limited to reviewing questions of law.[45] This Court will not entertain questions of fact because it is not duty-bound to weigh and analyze evidence anew.[46] The factual findings of the appellate courts are generally final and conclusive on this Court when supported by substantial evidence.[47]

The question pertaining to the authorship of a copyrightable work is a factual matter that generally goes beyond the scope of review in a Rule 45 Petition. However, this Court may undertake a factual review when the findings of the Court of Appeals are "contrary to those of the trial court[.]"[48]

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[44] Id. at 42-45.

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

[46] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997) [Per J. Panganiban, Third Division]; *Bautista v. Puyat*, 416 Phil. 305, 308 (2001) [Per J. Pardo, First Division].

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

[48] Id. *citing Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division]; See *Gabriel v. Spouses Mabanta*, 447 Phil. 717, 725 (2003) [Per J. Sandoval-Gutierrez, Third Division].

In this case, the Regional Trial Court and Court of Appeals differed as to who created the new designs of the PNP cap device and badge. Also, both tribunals applied different laws. The Regional Trial Court rendered its Decision based on the present intellectual property code or Republic Act No. 8293.[49] The Court of Appeals, on the other hand, relied on the provisions of Presidential Decree No. 49.[50]

This case shall be resolved using the provisions of Presidential Decree No. 49, not Republic Act No. 8293. Presidential Decree No. 49 was the law in force at the time the new designs of the PNP cap device and badge were made. It was also the law in force when the certificates of copyright registration were issued to respondents in 1996.[51] Republic Act No. 8293, which amended Presidential Decree No. 49, only took effect on January 1, 1998.[52]

II(A)

Copyright is "the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment[.]"[53] It "may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute."[54] Copyright is a purely statutory right. Only classes of works falling under the statutory enumeration are entitled to protection.[55]

Copyright has two rationales: the economic benefit and social benefit. The economic benefit is reaped by the author from his work while the social benefit manifests when it creates impetus

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[49] *Rollo*, p. 85.

[50] Id. at 12-14, 17-18.

[51] Id. at 68.

[52] Repub1ic Act No. 8293 (1997), Sec. 241.

[53] *Olaño v. Lim Eng Co*, 783 Phil. 238, 249 [Per J. Reyes, Third Division].

[54] *Pearl & Dean (Phil.) v. Shoemart*, 456 Phil. 474, 489 (2003) [Per J. Corona, Third Division].

[55] *Joaquin v. Drilon*, 361 Phil. 900, 914 (1999) [Per J. Mendoza, January 8, 1999].

for individuals to be creative.[56] Copyright, like other intellectual property rights, grants legal protection by prohibiting the unauthorized reproduction of the author's work.[57] It "create[s] a temporary monopoly on varying types of knowledge, allowing their owners to restrict and even prevent, other from using that knowledge."[58] By eliminating fear of other's appropriation and exploitation of an author's work, intellectual creation is incentivized.[59]

When the concept of copyright emerged, it was primarily concerned with the advancement of a common social good and not so much about the author's rights. Copyright statutes were initially crafted for the reading public and to encourage education through the production of books.[60]

Copyright traces its beginnings in 1476 when printing was first introduced in England. The English Crown then had two (2) main reasons in regulating printing through licensing: (1) to suppress dissent, which was rapidly growing due to easier reproduction of materials; and (2) to profit from those who are willing to pay for the exclusive right to print particular books. Subsequently, the control of publishing was ceded to a group of printers, bookbinders, and booksellers called Stationer's Company through a printing patent which grants monopoly over the English publishing trade. Through the Stationer's Company, the English Crown maintained its political and economic interest in the publishing trade.[61]

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[56] AXEL GOSSERIES, ET AL., INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 162 (2008).

[57] Id. at 160.

[58] MEIR PEREZ PUGATCH, THE INTERNATIONAL POLITICAL ECONOMY OF INTELLECTUAL PROPERTY RIGHTS 16 (2004).

[59] AXEL GOSSERIES, ET AL., INTELLECTUAL PROPERTY AND THEORIES OF JUSTICE 160 (2008).

[60] RONAN DEAZLEY, RETHINKING COPYRIGHT: HISTORY, THEORY, LANGUAGE 23 (2006).

[61] PAUL GOLDSTEIN, INTERNATIONAL COPYRIGHT: PRINCIPLES, LAW, AND PRACTICE 5 (2001).

The Stationer's Company eventually lost its power when the Licensing Act expired in 1694. Failing to convince the Parliament to extend its powers, the Stationer's Company lobbied for the interests of authors over publishers. In 1710, the Statute of Anne, the first copyright act, was enacted. The Statute of Anne granted the Stationer's Company the remedies they needed to maintain their existing publication rights. However, it removed the Stationer's Company's monopoly by allowing anyone, whether an author or a publisher, to obtain copyright by mere registration. The law further provided a limited term of copyright instead of the former perpetual monopoly. It granted 14 years for the work's publication which is renewable for another 14 years, if the author was still alive.[62]

While the Statute of Anne was seen as an anti-monopoly trade regulation, it mainly focused on the author's social contribution and the advancement of education through the production of books.[63] It is not mainly after the "recognition of any pre-existing authorial right, nor...the regulation of the booksellers' market[,]" but the promotion of "the free market of ideas[.]"[64]

The Statute of Anne only covered books, but succeeding laws added other subjects as new technology emerged, such as engravings, sculptures, paintings, drawings, photographs, sound recordings, and motion pictures.[65] The first copyright law of the United States, the Act of 1790, was modeled after the Statute of Anne. It initially covered books, maps, and charts and similarly required a formal registration and granted a 14-year copyright renewable for another 14-year term.[66] In its subsequent

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[62] Id. at 5-6.

[63] RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY 46 (2004).

[64] Id.

[65] PAUL GOLDSTEIN, INTERNATIONAL COPYRIGHT: PRINCIPLES, LAW, AND PRACTICE 6 (2001).

[66] Id. at 6-7.

amendments, the period was extended to 28 years[67] and it expanded copyright to other works such as historical and other prints, dramatic works and its public performance, photographs, visual art, and musical compositions.[68] It later included the right to create derivative works and the prohibition on copyright protection in government publications.[69]

Intellectual property law in our jurisdiction dates back during the Spanish occupation.[70] When the United States took over the Philippines through the Treaty of Paris in 1898, "patents, trademarks, and copyrights that were granted by the Spanish government continued to have legal effect in the [Philippines.]"[71]

While under the United States occupation, Act No. 3134, otherwise known as the Copyright Law of the Philippine Island, was passed.[72] Act No. 3134 was based on the United States Copyright Law of 1909.[73] After the Philippines gained its independence in 1946, Act No. 3134 provided the legal framework for intellectual property law in our jurisdiction.[74]

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[67] US Copyright Act of 1909, Sec. 23.

[68] US Copyright Act of 1909, Sec. 5.

[69] US Copyright Act of 1909, Secs. 6 and 7.

[70] PAUL GOLDSTEIN, ET AL., INTELLECTUAL PROPERTY IN ASIA: LAW, ECONOMICS, HISTORY AND POLITICS, 201 (2009).

> [T]he Spanish patent law [was] promulgated on March 27, 1826 ... Several royal decrees paved the way for the amendment of the laws of the Spanish colonies to place questions on patents under the jurisdiction of ordinary tribunals in the colonies. During the Spanish period, all patent applications of Philippine residents had to be sent to Spain for examination and grant.

[71] Id.

[72] Id.

[73] *The intellectual property system: a brief history*, INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES, available at <https://www.ipophil.gov.ph/news/the-intellectual-property-system-a-brief-history/> (last accessed on September 7, 2020).

[74] PAUL GOLDSTEIN, ET AL., INTELLECTUAL PROPERTY IN ASIA: LAW, ECONOMICS, HISTORY AND POLITICS, 201 (2009).

Years later, laws on patent[75] and trademark[76] were enacted, creating a patent office for the registration of trademarks, trade names, and service marks.[77]

In 1972, Presidential Decree No. 49, otherwise known as the Decree on the Protection of Intellectual Property, was passed, superseding Act No. 3134. Nevertheless, Presidential Decree No. 49 was heavily modeled after Act No. 3134.[78]

Section 2 of Presidential Decree No. 49 enumerates different classes of copyrightable works, which are protected from the moment of creation:

> SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works:
>
> (A) Books, including composite and cyclopedic works, manuscripts, directories, and gazetteers;
>
> (B) Periodicals, including pamphlets and newspapers;
>
> (C) Lectures, sermons, addresses, dissertations prepared for oral delivery;
>
> (D) Letters;
>
> (E) Dramatic or dramatico-musical compositions; choreographic works and entertainments in dumb shows, the acting form of which is fixed in writing or otherwise;
>
> (F) Musical compositions, with or without words;
>
> (G) Works of drawing, painting, architecture, sculpture, engraving, lithography, and other works of art; models or designs for works of art;

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[75] Republic Act No. 165 (1947).

[76] Republic Act No. 166 (1947).

[77] *The intellectual property system: a brief history*, INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES, available at <https://www.ipophil.gov.ph/news/the-intellectual-property-system-a-brief-history/> (last accessed on September 7, 2020).

[78] Pres. Decree No. 49 (1972).

(H) Reproductions of a work of art;

(I) Original ornamental designs or models for articles of manufacture, whether or not patentable, and other works of applied art;

(J) Maps, plans, sketches, and charts;

(K) Drawings or plastic works of a scientific or technical character;

(L) Photographic works and works produced by a process analogous to photography; lantern slides;

(M) Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(N) Computer programs;

(O) Prints, pictorial illustrations, advertising copies, labels, tags, and box wraps;

(P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as herein defined, which shall be protected as provided in Section 8 of this Decree;

(Q) Collections of literary, scholarly, or artistic works or of works referred to in Section 9 of this Decree which by reason of the selection and arrangement of their contents constitute intellectual creations, the same to be protected as such in accordance with Section 8 of this Decree;

(R) Other literary, scholarly, scientific[,] and artistic works.

The enumeration under Section 2 of Presidential Decree No. 49 is substantially similar to that which can be found in Section 172.1 of the subsequent law, Republic Act No. 8293.[79]

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[79] Republic Act No. 8293 (1997), Sec. 172 provides:

SECTION 172. *Literary and Artistic Works*. — 172.1. Literary and artistic works, hereinafter referred to as "works," are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

Under both laws, the copyright vests upon the sole fact of creation.[80] Presidential Decree No. 49 requires the registration and deposit of some works with the National Library.[81]

(a) Books, pamphlets, articles and other writings;

(b) Periodicals and newspapers;

(c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;

(d) Letters;

(e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;

(f) Musical compositions, with or without words;

(g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;

(h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;

(i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;

(j) Drawings or plastic works of a scientific or technical character;

(k) Photographic works including works produced by a process analogous to photography; lantern slides;

(l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

(m) Pictorial illustrations and advertisements;

(n) Computer programs; and

(o) Other literary, scholarly, scientific and artistic works.

[80] Pres. Decree No. 49 (1972), Sec. 2 and Republic Act No. 8293 (1997), Sec. 172.

[81] Pres. Decree No. 49 (1972), Sec. 26 provides:

Section 26. After the first public dissemination or performance by authority of the copyright owner of a work falling under subsections (A), (B), (C) and (D) of Section 2 of this Decree, there shall, within three weeks, be registered and deposited with the National Library, by personal delivery or by registered mail, two complete copies or reproductions of the work in such form as the Director of said library may prescribe. A certificate of registration and deposit for which the prescribed fee shall be collected. If, within three weeks after receipt by the copyright owner of a written demand from the director for such deposit, the required copies of reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to

Noncompliance with this rule "does not deprive the copyright owner of the right to sue for infringement."[82] However, it limits the remedies of copyright owners, denies them of the right to recover damages, and subjects them to certain sanctions.[83] Republic Act No. 8293 retains the registration and deposit requirement but only for the purpose of "completing the records of the National Library and the Supreme Court Library[.]"[84] The present law "does not require registration of the work to fully recover in an infringement suit."[85]

II(B)

Broadly defined, a derivative work refers to a work that is "based on ... one or more already existing works."[86] The author of a derivative work borrows expressive content from an existing work and transforms it into another work.[87] Through this process, the author of a derivative work does not simply copy the existing work but creates an original work entitled to a separate copyright.[88] Although the expression in the derivative work is "intermingled with the expression from the underlying work,"

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pay a fine equivalent to the required fee per month of delay and to pay to the National Library the amount of the retail price of the best edition of the work.

With or without a demand from the Director, a copyright owner who has not made such deposit shall not be entitled to recover damages in an infringement suit and shall be limited to the other remedies specified in Section 23 of this Decree.

[82] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 930 (1996) [Per J. Regalado, En Banc].

[83] Pres. Decree No. 49 (1972), Sec. 26.

[84] Rep. Act No. 8293 (1997), Sec. 191.

[85] *ABS-CBN v. Gozon*, 755 Phil. 709, 740 (2015) [Per J. Leonen, Second Division].

[86] DEBORAH E. BOUCHOUX, INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS 203 (4TH ED., 2012).

[87] Id.

[88] Id. at 203-204.

the derivative author contributes original expression to the new work making it distinct from the underlying work.[89]

Derivative works right is inseparable from the adaptation right of the original work's author.[90] Adaptation right is included in the bundle of rights granted to a recognized author or owner of an intellectual property. Under Section 5(B) of Presidential Decree No. 49:

> SECTION 5. Copyright shall consist in the exclusive right;
>
> . . . .
>
> (B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design[.]

Under earlier laws, authors are not granted adaptation rights. The original author's right was narrow as it only covered the literal copying of the material. For instance, an author cannot claim an injunction against the unauthorized translation of his or her work to another language, because the rights granted under the copyright only extends to "printing, reprinting, publishing or vending."[91]

Adaptation right was later introduced as copyright expanded beyond literal copying. Similar to existing laws in United Kingdom,[92]

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[89] Pamela Samuelson, *The Quest for a Sound Conception of Copyright's Derivative Work Right*, 101 GEORGETOWN LAW JOURNAL 1505, 1526 (2013).

[90] Deidré : A. Keller, *Recognizing the Derivative Works Right as a Moral Right: A Case Comparison and Proposal*, 63 CASE WESTERN RESERVE LAW REVIEW 511, 541 (2012).

[91] Amy B. Cohen, *When Does a Work Infringe the Derivative Works Right of a Copyright Owner?*, 17 CARDOZO ARTS & ENT. L.J. 623, 626 (1999).

[92] Copyright, Designs, and Patents Act, 1988, c. 48, Sec. 16 provides:

> Section 16. The acts restricted by copyright in a work.
>
> (1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom —

Canada,[93] and Australia,[94] the United States' 1909 Copyright Act then allowed "abridgements, adaptations, arrangements,

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. . . .

(e) to make an adaptation of the work or do any of the above in relation to an adaptation.

[93] Canadian Copyright Act, R.S.C. 1985, c. C-42, Sec.3(1)(a)(b)(c) provides:

Section 3(1). For the purposes of this Act, copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right (a) to produce, reproduce, perform or publish any translation of the work, (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

[94] Copyright Act 1968, Sec. 10(1), 31(1)(a)(vi) provide:

Section 10. Adaptation means:

(a) in relation to a literary work in a non-dramatic form a version of the work (whether in its original language or in a different language) in a dramatic form;

(b) in relation to a literary work in a dramatic form a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(ba) in relation to a literary work being a computer program—a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form):

(i) a translation of the work; or (ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and

(d) in relation to a musical work—an arrangement or transcription of the work.

Section 31. Nature of copyright in original works

(1) For the purposes of this Act, unless the contrary intention appears, copyright, in relation to a work, is the exclusive right:

dramatizations, translations, or other version of works...of copyrighted works" only when produced with the author's consent.[95] This statutory text was adopted in Act No. 3134, and later in Presidential Decree No. 49.[96]

Borne out of copyright's expansion, the notion of derivative works was introduced in the legal scheme. When the adaptation of an original work was authorized by the owner, and when distinct from the underlying work, the resulting derivative work is copyrightable.

No exact definition of derivative works is found in Presidential Decree No. 49 and Republic Act No. 8293. However, both laws provide examples consistent with the Berne Convention.

Under Article 2(3) of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) to which the Philippines is a contracting party,[97] derivative works pertain

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(a) in the case of a literary, dramatic or musical work, to do all or any of the following acts:

(vi) to make an adaptation of the work;

[95] US Copyright Act of 1909, Sec. 6 provides:

That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such work, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

[96] Act No. 3134, Sec. 3(b) provides:

Section 3(b) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;

[97] The Philippines became a party to the Berne Convention on August 1, 1951. *See* WIPO Lex, *Contracting Parties*, available at <https://wipolex. wipo.int/en/treaties/parties/remarks/PH/15> (last accessed on September 7, 2020).

to "[t]ranslations, adaptations, arrangements of music and other alterations of a literary or artistic work[.]"

Section 2(P) of Presidential Decree No. 49 grants copyright protection to "[d]ramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government[.]" Republic Act No. 8293 devotes a separate chapter to derivative works. The enumeration is substantially similar to that found in Presidential Decree No. 49. However, it excludes from copyright protection derivative works based on existing works of the government.[98]

Presidential Decree No. 49 gives special attention to derivative works and how it may be granted copyright as a new work. Under Section 8 of the law:

> SECTION 8. The works referred to in subsections (P) and (O) of Section 2 of this Decree shall, *when produced with the consent of the creator or proprietor of the original works on which they are based*, be protected as new works; however, such new works shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works. (Emphasis supplied)[99]

Presidential Decree No. 49 is consistent with prevailing conventions when it was enacted. Under the Berne Convention and the Universal Copyright Convention, authors of original works retain the exclusive right of control over their works. Pertinent articles of the conventions provide:

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[98] Republic Act No. 8293 (1997), Sec. 171 provides:

Section 173. *Derivative Works*. — 173.1. The following derivative works shall also be protected by copyright:

(a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and

(b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

[99] Pres. Decree No. 49 (1972), Sec. 8.

Berne Convention

Article 8.
Right of Translation.

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

. . . .

Article 12.
Right of Adaptation, Arrangement and Other Alteration.

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.[100]

Universal Copyright Convention

Article V

1. Copyright shall include the exclusive right of the author to make, publish, and authorize the making and publication of translations of works protected under this Convention.

The Court of Appeals correctly classified the new designs of the PNP cap device and badge as derivative works. Respondents, in collaboration with the PNP and upon its instruction, borrowed expressive content from the pre-existing designs of the PNP cap device and badge to create the new. The new designs are considered alterations of artistic works under Section 2(P) of Presidential Decree No. 49. However, they can only be copyrighted if they were produced with the consent of the creator of the pre-existing designs and if there is distinction between the new designs and the pre-existing designs.

Both requisites are present in this case.

The Regional Trial Court and the Court of Appeals failed to determine who authored the pre-existing designs. Respondents assert that they owned both designs because their ancestor, Jose

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[100] Berne Convention, Art. 8, 12.

T. Tupaz, Jr., is the author of the original designs of the PNP cap device and badge. On the other hand, petitioner claims that it owned the designs. However, this would be of little or of no consequence considering that the parties asserting ownership over the pre-existing designs are the very same ones who collaborated to create the new designs. It would have been a different matter if a third party also claimed ownership over the pre-existing designs. What is clear is that both parties agreed to create the new designs from the pre-existing designs.

Since the creator of the new designs must borrow expressive content from the pre-existing designs, the new designs would obviously incorporate elements of the original material. In this case, the borrowed elements of the original material are the native shield, the eight (8) rays of the sun, three (3) stars, laurel leaves, and the words "service," "honor," and "justice."[101]

The test of whether the new designs are copyrightable independently from the pre-existing works is the presence of originality in the derivative work. The new work, although similar to the pre-existing work in some of its expressive elements, must be substantially distinct from the pre-existing work.[102]

A careful comparison of the pre-existing designs and the new designs shows that there are substantial distinctions between the two:[103]

Figure 1.1
Pre-existing PNP Cap Device

Figure 1.2
Redesigned PNP Cap Device

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[101] *Rollo*, p. 42.

[102] DEBORAH E. BOUCHOUX, INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS 203-204 (4TH ED., 2012).

[103] *Rollo*, pp. 87 and 96; and pp. 88 and 97.

The most prominent feature of the pre-existing PNP cap device is the native shield. In the new design of the PNP cap device, the native shield has been reduced in size and the laurel leaves are made more noticeable. The Court of Appeals observed that the native shield in the pre-existing design is "checkered cream and red in color." On the other hand, the native shield in the new design is silver.[104]

The pre-existing PNP cap device contains the words "PHILIPPINE NATIONAL POLICE" located inside the native shield, which was eliminated in the new design. Instead, the words "PHILIPPINES" and "POLICE" were placed at the top and bottom of the cap device, respectively. Furthermore, the word "POLICE" is more prominent in the new design. There are also 8 short sun rays on top of the cap device:

Figure 2.1
Pre-existing PNP Badge

Figure 2.2
Redesigned PNP Badge

With regard to the PNP badge, the most prominent feature of the pre-existing design is the native shield, which has been reduced in size in the new design. Another prominent feature of the pre-existing design is the badge number. The badge number in the new design was reduced and placed at the bottom portion.

The words "PHILIPPINE NATIONAL POLICE" were transposed from the native shield in the pre-existing design and were placed on top in the new design. The shapes of the two designs are also different. The new design takes the general shape of an oval compared to the pre-existing design. Aside

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[104] Id. at 14.

from these, the Court of Appeals observed that the new design contains the colors black, red, white, and blue.[105]

III

Under Section 2 of Presidential Decree No. 49, the copyright belongs to the creator of the work or the creator's heirs or assigns. If the work is created by two (2) or more persons, they shall own the copyright jointly.[106] The same principles are embodied in Sections 178.1 and 178.2 of Republic Act No. 8293.[107]

Unlike Republic Act No. 8293, which defines an author as the "natural person who has created the work[,]"[108] Presidential Decree No. 49 does not provide a definition of an author or a creator. Despite the law's silence, an author, for purposes of copyright ownership, should be deemed as one who fixes an abstract idea into something tangible.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which took effect in the

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[105] Id.

[106] Pres. Decree No. 49 (1972), Sec. 6, par. 1 provides:

Section 6. The creator or his heirs or assigns shall own the copyright in any of the works mentioned in Section 2 of this Decree. If the works is produced by two or more persons, the copyright shall belong to them jointly and their respective rights thereto shall be governed by the Rules of the Civil Code on co-ownership.

[107] Republic Act No. 8293 (1997), Sec. 178.1 provides:

Section 178. *Rules on Copyright Ownership*. — Copyright ownership shall be governed by the following rules:

178.1. Subject to the provisions of this section, in case of original literary and artistic works, copyright shall belong to the author of the work; 178.2. In case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created[.]

[108] Republic Act No. 8293 (1997), Sec. 171.1.

Philippines on January 1, 1995,[109] states that "copyright protection shall extend to expressions and not to ideas, procedures, methods of operation[,] or mathematical concepts as such."[110]

More commonly referred to as the "idea/expression dichotomy," the principle in copyright protection is that "ideas are not protectable" and only expressions of those ideas may be subject to copyright protection.[111]

In *ABS-CBN Corp. v. Gozon*,[112] this Court distinguished ideas and expression of ideas in relation to what may be the subject of copyright:

> An idea or event must be distinguished from the expression of that idea or event. An idea has been likened to a ghost in that it "must be spoken to a little before it will explain itself." ...
>
> . . . .
>
> Ideas can be either abstract or concrete. It is the concrete ideas that are generally referred to as expression:
>
> > The words "abstract" and "concrete" arise in many cases dealing with the idea/expression distinction. The *Nichols* court, for example, found that the defendant's film did not infringe the plaintiff's play because it was "too generalized an abstraction from what plaintiff wrote ... only a part of her ideas." In *Eichel v. Marcin*, the court said that authors may exploit facts, experiences, field of thought, and general ideas found in another's work, "provided they do not substantially copy a concrete form, in which the circumstances and ideas have been developed, arranged, and put into shape." Judge Hand, in *National Comics Publications, Inc. v. Fawcett Publications, Inc. said that* "no

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[109] *E.I. Dupont De Nemours and Co. v. Francisco*, 794 Phil. 97, 127 (2016) [Per J. Leonen, Second Division].

[110] Agreement On Trade Related Aspects of Intellectual Property Rights, Art. 9, par. 2.

[111] DEBORAH E. BOUCHOUX, INTELLECTUAL PROPERTY THE LAW OF TRADEMARKS, COPYRIGHTS, PATENTS, AND TRADE SECRETS 199 (4TH ED., 2012).

[112] 755 Phil. 709 (2015) [Per J. Leonen, Second Division].

> one infringes, unless he descends so far into what is concrete as to invade... 'expression.'"
>
> These cases seem to be distinguishing "abstract" ideas from "concrete" tangible embodiments of these abstractions that may be termed expression. However, if the concrete form of a work means more than the literal expression contained within it, it is difficult to determine what is meant by "concrete." *Webster's New Twentieth Century Dictionary of the English Language* provides several meanings for the word concrete. These include: "having a material, perceptible existence; of, belonging to, or characterized by things or events that can be perceived by the senses; real; actual;" and "referring to a particular; specific, not general or abstract."[113] (Citations omitted)

Joaquin v. Drilon[114] also illustrates the distinction between ideas and expression of ideas regarding copyrightable subject matter. The petitioner in *Joaquin* claimed that the format of its dating game show called 'Rhoda and Me' is entitled to copyright protection.[115] In ruling against the petitioner, this Court underscored the principle that the law on copyright is purely statutory.[116] Only classes of work enumerated in Pres. Decree No. 49 are subject to copyright.[117] Thus, the format of a television show, not falling within the enumeration, is not copyrightable.[118] Furthermore, this Court stated:

> *P.D. No. 49, §2, in enumerating what are subject to copyright, refers to finished works and not to concepts.* The copyright does not extend to an idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it

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[113] Id. at 741-744.

[114] 361 Phil. 900 (1999) [Per J. Mendoza, January 8, 1999].

[115] Id. at 912.

[116] Id. at 912-914.

[117] Id. at 912.

[118] Id.

is described, explained, illustrated, or embodied in such work.[119] (Citation omitted, emphasis supplied)

Although a creator or author is not expressly defined under Pres. Decree No. 49, it may be logically inferred—based on the scope of copyrightable works—that a creator or an author pertains to someone who transforms an abstract idea into a tangible form of expression through the application of skill or labor.

To create a thing that may be entitled to a copyright requires something more than the giving of ideas and concepts. Ideas should translate to or transition into something that is tangible or physical. In other words, something capable of being perceived must be produced. To illustrate, an image that remains in a person's mind would not be entitled to copyright protection unless he or she draws it on a piece of paper or paints the image on canvass.

In this case, it is undisputed that petitioner and respondent Tupaz collaborated to develop the new designs of the PNP cap device and badge. However, the extent of petitioner's participation in developing the new designs of the PNP cap device and badge was limited to instructing respondent Tupaz on how the designs should appear in general and what specific elements should be incorporated.[120] Petitioner merely supplied ideas and concepts.[121] It was respondent Tupaz who used his skill and labor to concretize what petitioner had envisioned. Therefore, petitioner cannot be considered as an author of the new designs either in whole or in part.

Petitioner is also not entitled to own the copyright under any of the exceptions in Section 6 of Presidential Decree No. 49.[122] The first exception refers to works created in the course of the

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[119] Id. at 915.

[120] Id. at 30-31.

[121] Id.

[122] Pres. Decree No. 49, Sec. 6, pars. 2 and 3:

employment of the creator. Section 6 of Presidential Decree No. 49 states:

> If the work in which copyright subsists was made during and in the course of the employment of the creator, the copyright shall belong to:
>
> (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
>
> (b) The employer, if the work is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied to the contrary.[123]

Section 178.3 of Republic Act No. 8293, retains the rule regarding works created in the course of the employment.[124]

The second exception refers to commissioned works. The creator of the work should be paid valuable consideration for the work made. Section 6 of Presidential Decree No. 49 states that the copyright of a commissioned work belongs in joint

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Section 6. Where the work is commissioned by a person who is not the employer of the creator and who pays or agrees to pay for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of it but the copyright thereto shall belong in joint ownership to him and the creator, unless there is a stipulation to the contrary.

[123] Pres. Decree No. 49, Sec. 6, par. 2.

[124] Republic Act No. 8293 (1997), Sec. 178.3 provides:

Section 178. *Rules on Copyright Ownership.* — Copyright ownership shall be governed by the following rules:

178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary[.]

ownership to the creator and the person who commissioned the work. The parties, however, can agree that the ownership of the copyright shall pertain to either of them.[125]

The rule regarding commissioned works is modified under Republic Act No. 8293. Parties no longer have joint ownership over the copyright. Under Section 178.4 of Republic Act No. 8293, the copyright of a commissioned work generally belongs to the creator. However, the parties may agree in writing to transfer the copyright to the person who commissioned the work.[126]

In the present case, petitioner is not entitled to own the copyright because the designs were neither commissioned works nor works created in the course of respondent Tupaz's employment. First, although the parties verbally agreed to work together, petitioner did not hire respondent Tupaz's services for a fee or a commission. Respondent Tupaz rendered his services voluntarily.[127] In other words, the new designs do not qualify as commissioned works. Second, there was no employer-employee relationship between the parties at the time the designs were made.

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[125] Pres. Decree No. 49, Sec. 6, par. 3:

Section 6. Where the work is commissioned by a person who is not the employer of the creator and who pays or agrees to pay for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of it but the copyright thereto shall belong in joint ownership to him and the creator, unless there is a stipulation to the contrary.

[126] Rep. Act No. 8293 (1997). Sec. 171.4 provides:

Section 178. *Rules on Copyright Ownership*. — Copyright ownership shall be governed by the following rules:

. . . .

178.4. In the case of a work commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary[.]

[127] *Rollo*, p. 18.

Petitioner could have avoided this dispute had it entered into a contract that clearly and expressly spelled out the extent of each party's rights over the new designs, as Presidential Decree No. 49 allows the transfer or assignment of the work and its copyright to other persons by gift, inheritance, or otherwise.[128]

WHEREFORE, the Petition for Review is **DENIED**. The Court of Appeals Decision dated August 12, 2010 and Resolution dated June 27, 2011 in CA-G.R. CV No. 82018 are **AFFIRMED**.

SO ORDERED.

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

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[128] Pres. Decree No. 49 (1972), Sec. 15.

THIRD DIVISION

[G.R. No. 204948. September 7, 2020]

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner, v.* **RONQUILLO, NUMERIANO F., ABANIL, ZENAIDA N., ABEJO, REYNALDO Y., ABRENICA, ELEUTERIO C., ABUBAKAR, AMIRHUSIN I., ADA, MARILYN S., ADALIM, NICASIO B., AGANON, MARIBETH C., AGUILAR, SALVADOR V., AGUIRRE, MANFREDO A., ALAVA, WILFRED P., ALCOVER, NICOLAS M., ALFEREZ, NENITA V., ALIAS, LUCILA P., ALURA, JOSIE A., AMOS, GIL P., AMPONIN, ELEANOR G., ANGOB, WILLIAM M., ANTONIO, GIL P., APOSTOL, RAMONA C., APROVECHADO, ARCADIO H., ARANDEZ, AMELIA B., ARIOLA, ELENA C., ARTAJO, ALICIA A., ARUTA, ELVIRA M., ASPRER, NILA A., ATINON, RAMON B., ATOS, CONSTANTINO M., AURE, GODOFREDO V., AVANCEÑA, EFREN A., BACAREZA, ALAWI V., BALBIDO, DOLORES G., BALMACEDA, EVELYN S., BANATE, ROLLY B., BARACHINA, BELLA M., BARCELON, ARTURO J., BARCIMO, MARIA VIDAL M., BARROMETRO, MA. TERESA S., BARROS, RICARDO P., BASILIO, NICANOR B., BASISTA, ZOSIMO C., JR., BASTASA, SOFRONIO M., BASTILLADA, JUAN S., BATE, AMANTE M., BAUTISTA, VIRGINIA D., BAYOT, JOSE DELA CERNA, BEJA, ESTELA R., BEJAR, ALEJANDRO JR., BELLIDO, FLORDELIZ L., BERNADEZ, HERMOGENES L. JR., BERNAL, LORENZO C., BERNARDO, RENATO G., BIEN, MA. TERESITA V., BILOG, SILVILINA M., BINARAO, NENITA M., BLANCAFLOR, MANUEL M., BLANDO, VILMA B., BLAZA, SALVE P., BORJA, ENRIQUE MACARIO T., BORRES, ZOSIMO B., BORRO, JUDY S., BUHAY, HERMINIA A., BUMANLAG, NATHANIEL A., BUTALID, ERLINDA L., CABLING, NORA, CABUENAS, LEO J., CADELINA, NORMA**

F., CAGAYAN, MA. TERESA M., CAIJO, EDUARDO B., CALDEA, MARIA R., CALIMAG, CANDIDO M., CALLUENG, BELEN Q., CALUMPANG, HELEN G., CAMBALING, EVA C., CANIA, ANA O., CAOILE, CRISPIN D., CAOLBOY, RAMON E., CAPINO, ROSE MARIE C., CAPIO, RUBEN R., CARDEÑAS, VERONICA F., CAREY, ROMEO E., CARIÑO, JOSHUA R., CARPIO, ALFREDO G., CASTAÑEDO, CAMILO A., CAUNDAY, CORNELIO C., CECILIO, TOMAS O., CERVERA, JULITO M., CHANCOCO, ASUNCION B., CHANGCO, RENATO B., CLARAVAL, LETICIA C., CONADO, JOSE R., CONTRERAS, JUDY ARLENE U., CORPUS, RODOLFO R., CRUZ, GLORIA E., CUA, RODOLFO E., CUEVAS, ELSIE S., DALUZ, JUANITA C., DAYAO, FRANCISCO C., DAYAO, MELENCIO B., DE BELEN, ERLINDA D., DE DIOS, RHODA B., DE GUZMAN, ESTER T., DE JESUS, MARCELINA D., DE JESUS, MILDRED M., DE LA ROSA, HILARION V., JR., DE LEON, HILDA R., DE LEON, MARIBETH A., DEANG, CORCORDIA R., DECENA, EPIFANIA T., DEL ROSARIO, ANACLETO G., DEL ROSARIO, ANDREA, DEL ROSARIO, MA. ISABEL B., DEL ROSARIO, PARITO M., DELA CRUZ, ESTELITA C., DELFIN, LERIDA M., DELOS REYES, BENITA C., DEMECILLO, DEMOSTHENES C., DEMONTEVERDE, FRANKLIN J., DEODORES, JOSE M., DETUYA, CARLITA C., DEVERA, RAFAELITA S., DEXIMO, LUZVIMINDA A., DIAMANTE, FLORDELIZA L., DIESMOS, AMPARO C., DIMACULANGAN, OSCAR M., DIN, VELINA B., DIPAGAN, BENJAMIN V., DOBLE, LAURO B., DOMINGO, REYNALDO G., DONELO, JOVEN A., DUBAL, LILIA Q., DUMALA, ROBERTO L., EDILLOR, LETICIA R., ELENTO, NELSON G., ESCANDELOR, RODOLFO F., ESCUDERO, JOSEFINO E., ESCUDERO, ROMEO P., ESCUREL, ARTURO E., ESGUERA, PABLO G., ESLAO, EDNA

E., ESMA, DEOSITA F., ESPADA, LYDIA L., ESPINOLA, CONRADO M., ESPONILA, MELBA T., ESTACIO, MA. SOLEDAD G., ESTRELLA, HECTOR M., ESTREMOS, ZOSIMO M., JR., EVANGELISTA, EDGARDO M., EVANGELISTA, RODRIGO N., FALCONITE, EMILIANO M., FERNANDEZ, JAIME F., FERNANDEZ, MA. TERESA A., FERROLINO, NELLY A., FLORENDO, LILIA P., FLORINO, TRINIDAD V., FLORO, ELONOR M., FONTANILLA, MANUEL T., FORMOSO, ANATOLIO S., FRANCISCO, PRISCILLA B., FUENTES, ZENAIDA P., GABERTAN, ALEXIS F., GABIAZON, BELINDA B., GACIAS, JENNIFER T., GALIA, ANGELICA PAZ S., GALIA, MANUEL M., GAMMAD, FERIA P., GARCELLANO, CARLOS I., GARCIA, ADORACION L., GARCIA, GREGORIO P., JR., GARCIA, MARLYN V., GARCIA, REBECCA R., GARCIA, REYNALDO A., GAUUAN, EMILY G., GERONA, QUERUBIN C., GOMEZ, AGUSTIN M., JR., GOMEZ, LOURDES R., GOMEZ, NARDO A., GONZALES, ANTONIA B., GUCE, MARIA M., GUMABAO, REYNALDO C., GUMIRAN, EXPEDITO P., GUTIERREZ, GERONIMO C., HERMOSILLA, AUGUSTO C., HERNANDEZ, GREGORIO G., HERNANDEZ, MA. LYRA L., HIPOLITO, CARLITO L., IBARRA, EDGAR D., IBARRA, MILAGROS F., IDJAO, WINONA C., IGNACIO, ERNESTO M., ILAGAN, HEIDE A., INCHOCO, FELICITAS C., ITARALDE, JESUS N., JOSEPH, FIDO B., KALINGASAN, EDEN J., KINTANAR, SONIA L., LABATORIO, MELVIN G., LABOG, JORGE M., JR., LADAGA, REY C., LARA, ESTER D., LATOJA, EULALIO B., LAURENTE, EDDIE M., LAYO, MAE FLOR B., LAYOSA, FREDESVINDA F., LEDESMA, LORETO P., LEGASPI, EDNA R., LEGASPI, ELPIDIO E., LEPITEN, LOURDES J., LIM, LOURDES T., LIM, MARIA ELENA R., LIMBAGA, TELESFORO L., JR., LLANTO, ARLENE Z., LOMOLJO, EULALIO V., JR.,

LORENZO, ROSELLA S., LUGAY, JOSE GERMAN B., LUSTADO, LINDA L., MACARAEG, IMELDA B., MAGARIN, JOEL N., MAGAT, DINA G., MAGGAY, BENITO U., JR., MAGNAYE, DANILO A., MAGNAYON, RODELIO L., MAGPAYO, CORNELIO DC., MAGUYON, ADORACION Q., MAHADDI, GLICERIA M., MANA-AY, WILFREDO A., MANALAYSAY, ROMEO S., MANGAOANG, PACITA C., MANIO, ERLINDA M., MANONGAS, GERARDO A., MANRIQUE, FIDENCIO P., MARIQUIT, EMILIA E., MARQUEDA, BENJAMIN M., MARQUEZ, CLOTILDE R., MARZAN, LEO B., MATEO, JOEL B., MENDOZA, FLORENCITO D., MESA, RICARDO B., MIER, ARNULFO Z., MILA, RUTH G., MIZONA, MILAGROS P., MONDEZ, PRISCILLA P., MONTALBAN, JOSE M., MONTECLARO, NELSON D., MONTESA, BELEN T., MORALDA, MERLINA C., MORTA, NENITA H., MULA, FLUSCOLO L., MUYARGAS, JAIME M., NERI, JAIME B., NERI, RAMON C. III, NIMEZ, GREGORIO B., JR., NORIEGA, PILARITA L., OCHAVA, AVELINO A., OHNESWERE, ELLENOR C., OIRA, MIGUEL P., OLIVEROS, ELVIN T., OMAÑA, VICTOR T., OÑADA, LORNA JO, ONDEVILLA, FIDELIZA C., OPINION, HERBERT R., ORTIZ, ERNESTO A., PABILLORE, ELEUTERIO K., PADDAYUMAN, EVANGELINE A., PAGENTE, FARLEY L., PAGLINAWAN, ELVIRA S., PAGUILIGAN, EFREN C., PAJES, BENJAMIN C., PALATAN, ERLINDA M., PALERMO, AURORA E., PALLE, CARLITO S., PALMA, JORGE T., PAMA, ERNESTO C., JR., PANCHO, ANTERA R., PANELO, MELINDA H., PARAGAS, ALANNIE E., PASAY, PORFIRIO L., JR., PASION, ENRIQUETA V., PECSON, ISIDRO D., PEHIPOL, MANUEL C., PEÑAFLORIDA, JOVEN G., PEÑAVERDE, ROGELIO C., PERALTA, TERESITA C., PEREZ, FE B., PINGGOY, ROSALINDA D., PONCE, MARESA

T., PONCIANO, VALTONI F., PONTILAR, ADOLFO L., PUNO, JOSE S., QUIANZON, ESLEEN F., QUIJANO, JAIME R., QUIRIT, JEREMY S., QUISUMBING, ARNALDO J., RABUEL, GUILLERMO V., RACELIS, VIRGINIA S., RAFAEL, JOSEFINA L., RAGANDANG, LINO G., RAMIREZ, LILI B., RAMOS, MIRIAM A., RAMOS, SERAFIN L., REBONG, ANTONIO P., REMO, FEDERICO F., RESPICIO, ALMA BELLA R., REYES, ANSELMO D., REYES, ARTEMIO A., REYES, ISIDRO T., REYES, LOURDES J., RIBANO, GLORIETTA A., RIOS, GENOVEVA R., RIVERA, HELEN B., RIVERA, JOSE A., JR., RIVERA, REYNALDO P., ROA, LIBERATO C., ROMA, SAMUEL R., ROMERO, SERGIO E., ROQUE, LIBERTY L., RUIZ, ROMEO C., SALAZAR, ARNULFO C., SALDAÑA, VIRGILIO P., SALDIVAR, EMORY E., SALES, EPIFANIA A., SALLE, FILIPINAS R., SALVO, CAROLINA A., SAMBRANO, ADELFA G., SAN DIEGO, EDUARDO M., SAÑEZ, TOMAS R., JR., SANGALANG, VICTOR I., SAPITULA, CIRILO C., SELIBIO, AGNES S., SERRANO, CORAZON F., SETIAS, YVONEE B., SILANG, OFELIA I., SILVESTRE, DARIO G., SIMON, CONSTANTE R., SIMON, MA. CRISTINA R., SINGSON, EMMA G., SISICAN, EVANGELINE U., SISICAN, INOCENTES B., SORIANO, BENIGNO, SORIANO, LUIS C., SORIANO, PRISCILA Q., SUELA, ADELINA M., SULANGI, LIBERTAD R., SUMALPONG, ELADIO T., TABUCAN, CECILIA, TACDORO, JOSELITO E., TADIQUE, PERLA B., TAN, JESUS EDISON P., TAN, MARIA LUZ D., TANAMOR, RAMON O., TAPIA, ROMAN O., TERREL, NORMA O., TIBURCIO, CARMEN C., TICSAY, REINERIO S., TILLANO, JOSE MA. C., TIONGSON, NONA S., TUASON, MANUEL ANTOLE F., TUAZON, GLORIA C., TUMAMPOS, MA. VISITACION, TUPAS, JOSEFA S., UY, ALFREDO V., VALDEZ, FEDERICO S., JR., VAQUILAR,

DIVINA GRACE B., VERA, ELENA MAY S., VERGAVERA, NOEL B., VERSOLA, MARIA LUISA C., VICADA, JULITO T., VICTORIO, RODRIGO P., VILLALON, VISA ABAS, VILLACRUZ, JORLY L., VILLASIN, ELPIDIO A., JR., YAP, EMMANUEL J., ZAFRA, CARLOS T., ZAMORAS, ESTANISLAO L., *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (RA NO. 6758); COST OF LIVING ALLOWANCE (COLA) AND AMELIORATION ALLOWANCE (AA) ARE DEEMED INTEGRATED INTO THE STANDARD SALARY RATES OF GOVERNMENT WORKERS. — [T]his Court has long settled that all kinds of allowances except those specifically enumerated in Section 12 of R.A. No. 6758 are deemed integrated in the standardized salaries of government employees, including those of government-owned and controlled corporations and government financial institutions.

Under R.A. No. 6758, the COLA, as well as the AA, has been integrated into the standardized salary rates of government workers. Therefore, back payment to the former employees of DBP is unauthorized.

2. ID.; ID.; ID.; ID.; OTHER ALLOWANCES OR BENEFITS NOT EXPRESSLY EXCLUDED FROM THE INTEGRATION RULE MAY BE ALLOWED AS LONG AS THEY ARE NEEDED BY THE EMPLOYEES IN THE PERFORMANCE OF THEIR DUTIES; CASE AT BAR. — A clarification, however, was provided by this Court as to the granting of allowances or benefits which are not integrated in the standardized salary, to wit:

> x x x However, <u>there are allowances that may be given in addition to the standardized salary.</u> These non-integrated allowances are specifically identified in Section 12, x x x.
>
> x x x x

> In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.
>
> These additional non-integrated allowances, however, cannot be granted indiscriminately. Otherwise, the purpose and mandate of R.A. No. 6758 will be defeated. To reiterate, the non-integrated allowances that may be granted in addition to those specifically enumerated in Section 12 of R.A No. 6758 should be in the nature similar to those enumerated in the provision, that is, they are amounts needed by the employee in the performance of his or her duties.
>
> . . . [T]his Court can come to no other conclusion than to deny the payment of the COLA and AA on top of the respondents' basic salary from July 1, 1989 because: (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12, R.A. No. 6758; and (2) as explained in *Gutierrez*, the COLA is not granted in order to reimburse employees for the expenses incurred in the performance of their official duties.

3. ID.; ID.; ID.; STATUTORY CONSTRUCTION; THE VALIDITY OF R.A. NO. 6758 IS NOT AFFECTED BY THE NULLITY OF ITS IMPLEMENTING RULE; THE DEPARTMENT OF BUDGET AND MANAGEMENT'S ACTION IS NOT REQUIRED TO IMPLEMENT THE INTEGRATION RULE UNDER SECTION 12 OF RA NO. 6758. — In *Land Bank of the Philippines v. Naval, J., et al.*, it was clarified that the nullification of DBM-CCC No. 10 is irrelevant to the validity of the provisions of R.A. No. 6758. We ratiocinated in *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation* that:

> . . .
>
> x x x **The nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758.** It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute.

The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.

. . .

Furthermore, action by the DBM is not required to implement Section 12 for the integration of allowances into the standardized salary. Rather, an issuance by the DBM is required only if additional non-integrated allowances will be identified. Without this issuance from the DBM, the enumerated non-integrated allowances in Section 12 remain exclusive.

As held in *Philippine International Trading Corporation v. Commission on Audit*, the non-publication of the DBM issuance enumerating allowances that are deemed integrated in the standardized salary will not affect the execution of Section 12 of R.A. No. 6758. . . .

. . .

Nonetheless, the integration of allowances, such as COLA and AA, into the standardized salary rates is not dependent on the publication of CCC No. 10. This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration- "all allowances."

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; *MANDAMUS* DOES NOT LIE TO COMPEL THE PAYMENT OF ALLOWANCES THAT THE CLAIMANTS ARE NOT ENTITLED TO RECEIVE. — The Rules on Civil Procedure are clear that *mandamus* only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

As discussed, the respondents are not entitled to the payment of the allowances being claimed by virtue of Section 12, R.A. No. 6785. They have no legal right to the payment of such allowances. Therefore, there is no legal basis for them to seek mandamus for the payment thereof from the petitioner.

Also, the petitioner is under no duty, ministerial or discretionary, to pay the COLA and AA to the respondents. In fact, under Section 12, R.A. No. 6785, the payment of such allowances was disallowed by reason of their integration to the standardized salary rates.

APPEARANCES OF COUNSEL

DBP Office of the Legal Counsel for petitioner.
Danilo P. Cariaga for respondents.

D E C I S I O N

GAERLAN, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure are the Decision[2] dated June 6, 2012 and the Resolution[3] dated December 19, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 118640 which affirmed with modifications the Decision[4] dated September 22, 2010 of the Regional Trial Court (RTC) of Quezon City, Branch 98 in Special Civil Action No. Q-08-63099 for mandamus.

The Facts

On May 22, 1985, the Development Bank of the Philippines (DBP) Executive Committee approved Resolution No. 0236 which granted Additional Cost of Living Allowance (COLA) to the bank's officials and employees to be computed as follows:

1. Officials and employees receiving a monthly basic salary of ₱1,500.00 and below shall be granted a ₱150.00 per month additional COLA while those receiving a basic salary of ₱1,501.00 and above shall receive ₱100.00 additional COLA per month; x x x[5]

On April 13, 1988, the DBP Board of Directors issued Resolution No. 0210 which granted COLA of ₱200.00 per month to all bank personnel effective January 1, 1988.[6]

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[1] *Rollo*, pp. 55-104.

[2] Id. at 9-34; penned by Justice Leoncia Real-Dimagiba with Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring.

[3] Id. at 136-150.

[4] Id. at 274-313.

[5] Id. at 157.

[6] Id. at 158.

On July 1, 1989, the Congress enacted Republic Act (R.A.) No. 6758 otherwise known as the Compensation and Position Classification Act of 1989. Section 12 of the said law provides:

> **Section 12.** *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

For the purpose of implementation of the said law, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10 on October 2, 1989 which discontinued all allowances and fringe benefits, to wit:

> Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, x x x shall be discontinued effective 1 November 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursements of public funds.[7]

In light of the passage of R.A. No. 6758, implemented by DBP through CCC No. 10, payment of COLA to its officials and employees was discontinued.[8]

On August 12, 1998, the Court *en banc*, in the case of *De Jesus, et al. v. Commission on Audit, et al.*,[9] declared CCC

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[7] Id. at 200.

[8] Id.

[9] 355 Phil. 584 (1998).

No. 10 as ineffective and unenforceable because of its lack of publication in either the Official Gazette or in a newspaper of general circulation.[10]

Sometime in 1999, DBP offered its officers and employees an Early Retirement Incentive Program (ERIP). Under which, the availing employees were given additional cash benefits called "gratuities" in consideration for their early retirement.[11] Some of the respondents availed of the ERIP and received the gratuities. While some of them either retired under the regular retirement laws, resigned, dismissed from service or were still employed as of May 9, 2003.

On May 9, 2003, DBP issued Resolution No. 0137 which granted COLA to its personnel concerned covering the period of July 1, 1989 to February 28, 1999 to enable all its regular employees to pay off the soft loan granted under the Provident Fund in June 2002.[12]

On November 16, 2005, DBP, through its Executive Committee, issued Resolution No. 0151[13] which granted Amelioration Allowance (AA) to the bank's employees except the retirees or resignees who have executed any document waiving their claims against the bank.[14]

Respondents repeatedly made written and verbal demands to DBP for back payment of COLA and AA.[15]

On June 4, 2008, DBP, through its Chief Legal Counsel, wrote a letter addressed to the counsel of the respondents unequivocally denying their claims.[16]

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[10] *Rollo*, p. 591.

[11] Id. at 21-22, 59.

[12] Id. at 159.

[13] Id. at 161.

[14] Id. at 159.

[15] Id. at 204.

[16] Id.

In July 24, 2008, the respondents filed a petition for *writ of mandamus* against DBP under Section 3, Rule 65 of the 1997 Rules of Civil Procedure to enforce their alleged rights over the back payment of their COLA and AA[17] before the RTC of Quezon City, which was docketed as Special Civil Action No. Q-08-63099.

On September 22, 2010, the RTC rendered its Decision[18] on the petition. It denied and consequently dismissed the petition insofar as the respondents who availed of the ERIP ruling that their quitclaims barred them from claiming for COLA and AA. As for the other respondents, the trial court granted the petition, ruling that the concerned respondents are entitled to COLA and AA, and ordered DBP and its officers to settle and grant their claims and pay legal interest on the differentials, attorney's fees, and cost of suit. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant *Petition for Mandamus* is hereby ***DENIED DUE COURSE*** and is ordered ***DISMISSED*** on the part of petitioners who availed of the Early Retirement Incentive Program (ERIP).
>
> Insofar as petitioners **Nicolas Alcover, Nelly Ferrolino, Isidro Reyes, Lili Ramirez, Federico Remo, Eleuterio Pabillore, Ma. Cristina Simon and Eduardo Villalon** are concerned, their petition is however ***GRANTED***. Consequently, judgment is hereby rendered against respondent Development Bank of the Philippines, its President and Chief Executive Officer, Board of Directors and all concerned officers to:
>
> 1. Settle and grant the claim for differential pay of the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) of the above-named petitioners, beginning November 1, 1989 or from the time it was stopped or disallowed up to the time of said petitioner[s'] respective retirement or separation from DBP;
>
> 2. Pay the legal rate of interest on the respective differentials of the above-named petitioners beginning from the time it was ordered disallowed or from the time it was discontinued until fully paid;

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[17] Id. at 190-208.

[18] Id. at 274-313.

3. Pay the amount equivalent to twenty percent (20%) of the claims of the above-named petitioners or in the amount not less than Php20,000.00, as and by way of attorney's fees;

4. Pay the cost of suit.

SO ORDERED.[19]

Both parties filed their separate appeals to the CA. On May 11, 2011, they filed their respective Memoranda.[20]

On January 17, 2012, Isidro Reyes, Lili Ramirez, and Eleuterio Pabillore and DBP filed a partial satisfaction of judgment and joint motion for partial withdrawal of appeal alleging that they have received payment from the bank representing the whole and complete settlement of any and all amounts due and payable, and prayed that their respective appeals be withdrawn for being moot and academic. Later, the CA issued a resolution stating that the motion filed will be resolved simultaneously with the rendition of the decision on the appeal.[21]

On June 6, 2012, the CA promulgated its Decision[22] modifying the ruling of the trial court. It held that the respondents who availed of the ERIP are likewise entitled to COLA and AA. It explained that the COLA and AA were not integrated into the salaries of the employees.[23] Their quitclaims were ruled to be ineffective to bar recovery as quitclaims do not necessarily result in the waiver of their claims.[24] Moreover, the petition was dismissed with respect to the employees who were still employed with DBP as May 9, 2003 for lack of cause of action taking into account DBP Board Resolution No. 0137 which granted them payment of their COLA. The same is true to those still

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[19] Id. at 312-313.

[20] Id. at 22-23.

[21] Id. at 23.

[22] Id. at 9-34.

[23] Id. at 26-27.

[24] Id. at 28.

employed with DBP as November 16, 2005, as their AA were paid by virtue of DBP Board Resolution No. 0151. The dispositive portion of its decision reads:

WHEREFORE, premises considered, the petition is **GRANTED** and the assailed September 22, 2010 Decision is **MODIFIED** as follows:

1. Appellants who availed of the Early Retirement Incentive Program (ERIP), retired under the regular retirement laws, resigned or was dismissed from service except those appellants falling under paragraph 2 below, are entitled to receive the Cost of Living Allowance (COLA) and Amelioration Allowance (AA) covering the period November 1, 1989 to February 28, 1999 or date of retirement or separation from service, whichever comes first. Accordingly, Development Bank of the Philippines, its President and Chief Executive Officers and Board of Directors and all concerned officers are ORDERED:

a. To settle the claim of appellants referred above for differential pay covering the stated period.

b. Pay the legal interest of 6% *per annum* on the respective differential of the appellants from the date of demand on May 22, 2008 up to the time this judgment becomes final and executory. Henceforth, the legal rate of interest shall be 12% *per annum* until the satisfaction of judgment.

2. The petition for mandamus is hereby ordered **DISMISSED** with respect to appellants who were still employed with DBP as of May 9, 2003 for lack of cause of action. Said appellants were paid their Cost of Living Allowance (COLA) pursuant to DBP Board Resolution No. 0137. Likewise, the petition for Mandamus is **DISMISSED** with respect to the claim for Amelioration Allowance (AA) of appellants who were still employed with DBP as of November 16, 2005, it appearing that they were paid the same per DBP Board Resolution No. 0151. Further, the case is **ORDERED REMANDED** to the Regional Trial Court of Quezon City, Branch 98 for the purpose of determining who among the appellants were still employed with DBP as of May 9, 2003 and as of November 16, 2005.

3. **AFFIRMED** the decision of the *court a quo* insofar as petitioner Nicolas Alcover, Nelly Ferrolino, Isidro Reyes, Lili Ramirez, Federico Remo, Eleuterio Pabillore, Ma. Cristina Simon and Eduardo Villalon is concerned.

4. As prayed for by movants, the Release, Quitclaim and Waiver executed by appellants Isidro Reyes, Lili Ramirez, and Eleut[e]rio Pabillore in favor of DBP shall be treated as partial satisfaction of the judgment. Consequently, with respect to appellants Isidro Reyes, Lili Ramirez, and Eleuterio Pabillore their case for Mandamus against DBP and the appeal of DBP and the appeal of DBP as against them, are considered **CLOSED** and **TERMINATED**.

5. The award of attorney's fee[s] in the amount equivalent to twenty percent (20%) of the claims or in the amount not less than Php20,000.00 and cost of suit are ***AFFIRMED***.

SO ORDERED.[25]

On July 6, 2012, DBP moved for reconsideration of the CA decision which was denied in its Resolution dated December 19, 2012.[26]

Undaunted, DBP filed a petition for review on *certiorari* under Rule 45 of the Rules of Court averring that the appellate court, in resolving the case, failed to consider the ruling of this Court in the case of *Gutierrez, et al. v. Dep't. of Budget and Mgm't., et al.*[27]

The sole issue in this case is whether the respondents are entitled to payment of COLA and AA after the effectivity of Republic Act No. 6758 and Corporate Compensation Circular No. 10.

The Court's Ruling

We grant the petition.

To begin with, this Court has long settled that all kinds of allowances except those specifically enumerated in Section 12 of R.A. No. 6758 are deemed integrated in the standardized salaries of government employees, including those of

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[25] Id. at 31-33.

[26] Id. at 63-64.

[27] Id. at 69.

government-owned and controlled corporations and government financial institutions.

Under R.A. No. 6758, the COLA, as well as the AA, has been integrated into the standardized salary rates of government workers.[28] Therefore, back payment to the former employees of DBP is unauthorized.[29]

In *Gutierrez, et al. v. Dep't. of Budget and Mgm't., et al.*,[30] this Court exhaustively discussed the same legal issue, to wit:

At the heart of the present controversy is Section 12 of R.A. 6758 which is quoted anew for clarity:

> **Section 12. *Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.**

As will be noted from the first sentence above, "**all allowances**" were deemed integrated into the standardized salary rates except the following:

(1) representation and transportation allowances;

(2) clothing and laundry allowances;

(3) subsistence allowances of marine officers and crew on board government vessels;

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[28] *Ronquillo, Jr., et al. v. National Electrification Administration*, 785 Phil. 382 (2016).

[29] Id. at 407.

[30] 630 Phil. 1 (2010).

(4) subsistence allowances of hospital personnel;

(5) hazard pay;

(6) allowances of foreign service personnel stationed abroad; and

(7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

But, while the provision enumerated certain exclusions, it also authorized the DBM to identify such other additional compensation that may be granted over and above the standardized salary rates. In *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit*, the Court has ruled that while Section 12 could be considered self-executing in regard to items (1) to (6), it was not so in regard to item (7). The DBM still needed to amplify item (7) since one cannot simply assume what other allowances were excluded from the standardized salary rates. It was only upon the issuance and effectivity of the corresponding implementing rules and regulations that item (7) could be deemed legally completed. x x x

In this case, the DBM promulgated NCC 59 [and CCC 10]. But, instead of identifying some of the additional exclusions that Section 12 of R.A. 6758 permits it to make, the DBM made a list of what allowances and benefits are deemed integrated into the standardized salary rates. More specifically, NCC 59 identified the following allowances/additional compensation that are deemed integrated:

(1) Cost of Living Allowance (COLA);

(2) Inflation connected allowance;

(3) Living Allowance;

(4) Emergency Allowance;

(5) Additional Compensation of Public Health Nurses assigned to public health nursing;

(6) Additional Compensation of Rural Health Physicians;

(7) Additional Compensation of Nurses in Malacañang Clinic;

(8) Nurses Allowance in the Air Transportation Office;

(9) Assignment Allowance of School Superintendents;

(10) Post allowance of Postal Service Office employees;

(11) Honoraria/allowances which are regularly given except the following:

a. those for teaching overload;

b. in lieu of overtime pay;

c. for employees on detail with task forces/special projects;

d. researchers, experts and specialists who are acknowledged authorities in their field of specialization;

e. lecturers and resource persons;

f. Municipal Treasurers deputized by the Bureau of Internal Revenue to collect and remit internal revenue collections; and

g. Executive positions in State Universities and Colleges filled by designation from among their faculty members.

12. Subsistence Allowance of employees except those authorized under EO [Executive Order] 346 and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police;

13. Laundry Allowance of employees except those hospital/ sanitaria personnel who attend directly to patients and who by the nature of their duties are required to wear uniforms, prison guards and uniformed personnel of the Armed Forces of the Philippines and Integrated National Police; and

14. Incentive allowance/fee/pay except those authorized under the General Appropriations Act and Section 33 of P.D. 807.

The drawing up of the above list is consistent with Section 12 above. R.A. 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a

case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.

In any event, the Court finds the inclusion of COLA in the standardized salary rates proper. In *National Tobacco Administration v. Commission on Audit*, the Court ruled that the enumerated fringe benefits in items (1) to (6) have one thing in common — they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.[31] (Citations omitted, underscoring supplied)

Certainly, the six non-integrated allowances have clearly omitted the COLA. This is because the COLA is not an allowance that seeks to reimburse expenses incurred in the fulfillment of the government worker's official functions.[32]

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[31] Id. at 13-17.

[32] *Ronquillo, Jr., et al. v. National Electrification Administration*, supra note 28 at 400.

This Court reiterated the *Gutierrez* ruling in the 2012 case of *Abellanosa, et al. v. Commission on Audit, et al.*,[33] where the payment of incentive benefits or allowances of the employees of the National Housing Authority (NHA) granted by virtue of NHA Board Resolution No. 464 was ruled to have been validly disallowed, to quote:

> In this case, the incentive allowances granted under Resolution No. 464 are clearly not among those enumerated under R.A. 6758. Neither has there been any allegation that the allowances were specifically determined by the DBM to be an exception to the standardized salary rates. Hence, such allowances can no longer be granted after the effectivity of R.A. 6758.[34] (Underlining ours)

In 2014, this Court yet again, in *Land Bank of the Philippines v. Naval, Jr.*,[35] resonated the same resolution to the legal issue, thus:

> Since the COLA and the BEP are among those expressly excluded by the SSL from integration, they should be considered as deemed integrated in the standardized salaries of LBP employees under the general rule of integration.[36]

Thereafter, in *Maritime Industry Authority v. Commission on Audit*,[37] this Court, in deciding the validity of the grant of allowance and incentives to some officers and employees of petitioner Maritime Industry Authority, said:

> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. x x x[38]

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[33] 691 Phil. 589 (2012).

[34] Id. at 600.

[35] 750 Phil. 288 (2014).

[36] Id. at 549.

[37] 750 Phil. 288 (2015).

[38] Id. at 314-315.

A clarification, however, was provided by this Court as to the granting of allowances or benefits which are not integrated in the standardized salary, to wit:

> x x x However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, x x x.
>
> x x x x
>
> In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.[39]

These additional non-integrated allowances, however, cannot be granted indiscriminately. Otherwise, the purpose and mandate of R.A. No. 6758 will be defeated.[40] To reiterate, the non-integrated allowances that may be granted in addition to those specifically enumerated in Section 12 of R.A. No. 6758 should be in the nature similar to those enumerated in the provision, that is, they are amounts needed by the employee in the performance of his or her duties.[41]

Under the doctrine of *stare decisis et non quieta movere*, a point of law already established will be followed by the court in subsequent cases where the same legal issue is raised.[42] Verily, this Court can come to no other conclusion than to deny the payment of the COLA and AA on top of the respondents' basic salary from July 1, 1989 because: (1) it has not been expressly excluded from the general rule on integration by the first sentence of Sec. 12, R.A. No. 6758; and (2) as explained in *Gutierrez*, the COLA is not granted in order to reimburse employees for the expenses incurred in the performance of their official duties.[43]

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[39] Id. at 315.

[40] Id. at 320.

[41] Id. at 322.

[42] *Land Bank of the Philippines v. Naval, Jr.*, supra note 35 at 551.

[43] Id.

The respondents argued, in support of their claims for back payment of COLA and AA, that since the DBM-CCC No. 10 was rendered ineffective and unenforceable due to lack of publication in *De Jesus, et al. v. Commission on Audit, et al.*,[44] this resulted in the non-integration of such allowances in the standardized salary. They concluded that they are still entitled to the same.[45]

This Court cannot subscribe to the respondents' contention.

In *Land Bank of the Philippines v. Naval, Jr., et al.*,[46] it was clarified that the nullification of DBM-CCC No. 10 is irrelevant to the validity of the provisions of R.A. No. 6758.[47] We ratiocinated in *NAPOCOR Employees Consolidated Union (NECU) v. National Power Corporation*[48] that:

> We hold that Rep. Act No. 6758 *(Compensation and Classification Act of 1989)* can be implemented notwithstanding our ruling in *De Jesus vs. Commission on Audit*. While it is true that in said case, this Court declared the nullity of DBM-CCC No. 10, yet there is nothing in our decision thereon suggesting or intimating the suspension of the effectivity of Rep. Act No. 6758 pending the publication in the Official Gazette of DBM-CCC No. 10. For sure, in *Philippine International Trading Corporation vs. Commission on Audit*, this Court specifically ruled that the nullity of DBM-CCC No. 10 will not affect the validity of Rep. Act No. 6758. Says this Court in that case:
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> > x x x **The nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758**. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. **The validity of R.A. No. 6758 should**

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[44] Supra note 9.

[45] *Rollo*, p. 200.

[46] Supra note 35.

[47] Id. at 547.

[48] 519 Phil. 372 (2006).

not be made to depend on the validity of its implementing rules.[49] (Emphasis and underscoring supplied)

Furthermore, action by the DBM is not required to implement Section 12 for the integration of allowances into the standardized salary.[50] Rather, an issuance by the DBM is required only if additional non-integrated allowances will be identified.[51] Without this issuance from the DBM, the enumerated non-integrated allowances in Section 12 remain exclusive.[52]

As held in *Philippine International Trading Corporation v. Commission on Audit*,[53] the non-publication of the DBM issuance enumerating allowances that are deemed integrated in the standardized salary will not affect the execution of Section 12 of R.A. No. 6758.[54] Thus:

There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. Commission on Audit*, for lack of publication. The basis of COA in disallowing the grant of SFI was Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. Moreover, the nullity of DBM-CCC No. 10 will not affect the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.[55] (Underscoring supplied)

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[49] Id. at 382-383.

[50] *Maritime Industry Authority v. Commission on Audit*, supra note 37 at 315.

[51] Id.

[52] Id.

[53] 461 Phil. 737 (2003).

[54] Id. at 750.

[55] Id. at 749-750.

This Court is conscious of the long-settled rule that publication is required as a *condition precedent* to the effectivity of a law to inform the public of its contents before their rights and interests are affected by the same.[56] Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[57]

Nonetheless, the integration of allowances, such as COLA and AA, into the standardized salary rates is not dependent on the publication of CCC No. 10.[58] This benefit is deemed included in the standardized salary rates of government employees since it falls under the general rule of integration — "all allowances."[59]

The respondents, believing that they are entitled to back payment of COLA and AA under the ruling in *De Jesus*, opted to file a petition for *mandamus*. The petitioner, in its comment, argued that the petition has no cause of action since the respondents are not entitled to the subject allowances which were already integrated into their respective standardized salary by virtue of R.A. No. 6758.[60]

Mandamus lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty.[61]

A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his or her own judgment upon the propriety or impropriety of the act done.[62]

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[56] *Gutierrez, et al. v. Dep't. of Budget and Mgm't., et al.*, supra note 30 at 21.

[57] Id.

[58] Id.

[59] Id.

[60] *Rollo*, p. 251.

[61] *Sps. Go v. CA*, 322 Phil. 613, 616 (1996).

[62] *Spouses Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006).

The Rules on Civil Procedure are clear that *mandamus* only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act.[63]

As discussed, the respondents are not entitled to the payment of the allowances being claimed by virtue of Section 12, R.A. No. 6785. They have no legal right to the payment of such allowances. Therefore, there is no legal basis for them to seek mandamus for the payment thereof from the petitioner.

Also, the petitioner is under no duty, ministerial or discretionary, to pay the COLA and AA to the respondents. In fact, under Section 12, R.A. No. 6785, the payment of such allowances was disallowed by reason of their integration to the standardized salary rates.

Having established that respondents are not entitled to the COLA and AA by virtue of R.A. No 6785, and that there being no legal right on their part, *mandamus* shall not issue to compel DBP to pay their claims. For this reason, there is no need for the Court to pass upon the other issues raised.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The June 6, 2012 Decision and December 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP. No. 118640 are **REVERSED and SET ASIDE**. The petition for *mandamus* before the Regional Trial Court of Quezon City, Branch 98 docketed as Special Civil Action No. Q-08-63099 is hereby **DISMISSED**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Zalameda, JJ.*, concur.

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[63] *Knights of Rizal v. DMCI Homes, Inc., et al.*, 809 Phil. 453, 527 (2017).

THIRD DIVISION

[G.R. No. 220250. September 7, 2020]

IP E-GAME VENTURES, INC., *Petitioner, v.* **BEIJING PERFECT WORLD SOFTWARE CO., LTD.,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (R.A. NO. 9285); SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION (ADR); FOREIGN ARBITRAL AWARDS; THE SPECIAL ADR RULES SHALL CONTINUE TO APPLY TO AN APPEAL FROM THE REGIONAL TRIAL COURT'S DECISION ON ARBITRAL AWARD TO THE COURT OF APPEALS. — IPEGV's petition was filed on the basis of Rule 19.12 of the Special ADR Rules, which explicitly provides for recourse to the Court of Appeals in certain instances. While the actual arbitration between the parties ended upon the rendition of the Final Award, the conclusion of the actual arbitration did not take their dispute out of the ambit of the Special ADR Rules, because Rule 1.1 (i) and (j) explicitly state that the Special ADR Rules shall apply to recognition and enforcement of foreign arbitral awards, as well as to the recognition, enforcement, or setting aside of international commercial arbitral awards. . . .

While the first paragraph of Rule 2.1 [of the Special ADR Rules] states the policy in favor of solving disputes through arbitration, the second paragraph reserves to the courts the power to exercise judicial review over arbitration cases. The Special ADR Rules were designed precisely to define the scope of the courts' power of judicial review in arbitration cases. Rule 19.8 explicitly states that "[t]he remedy of an appeal through a petition for review x x x from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted **only in the manner, provided under this Rule**"; while Rule 19.12 explicitly provides that "[a]n appeal to the Court of Appeals through a petition for review" is allowed from an order of the RTC recognizing or enforcing either a

foreign arbitral award or an international commercial arbitral award. Furthermore, the Special ADR Rules make special provisions for these types of cases under Rules 19.13 to 19.25, which can only mean that the Special ADR Rules continue to apply to such disputes even when they move from the actual arbitral phase to the recognition and enforcement phase, the venue of which lies in the courts, as provided for in the Special ADR Rules.

2. ID.; ID.; ID.; FILING OF NOTICE OF APPEAL THROUGH A PRIVATE COURIER; ACTUAL DATE OF RECEIPT DEEMED AS DATE OF FILING; MIRANDA RULING, NOT APPLICABLE TO CASE AT BAR AND SUPERSEDED BY A.M. NO. 19-10-20-SC (THE 2019 AMENDMENTS TO THE RULES ON CIVIL PROCEDURE). — In *Heirs of Numeriano Miranda, Sr. v. Miranda*, We upheld the denial of an appeal from a decision in a suit for revival of judgment, partly because the notice of appeal was belatedly filed. Petitioners filed their notice of appeal on the 15th day of the 15-day appeal period through a private courier service; and We held that in such a case, the date of actual receipt of the pleading by the court is considered the date of filing, *viz*.:

> In this case, however, the counsel for petitioners filed the Notice of Appeal via a private courier, a mode of filing not provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court;" instead, "the date of actual receipt by the court . . . is deemed the date of filing of that pleading." Records show that the Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time.

However, this ruling does not apply to the case at bar, as it is governed by the Special ADR Rules. . . .

. . .

Even assuming *arguendo* that the *Heirs of Numeriano Miranda, Sr*. ruling is applicable to the case at bar, that doctrine has already been superseded by A.M. No. 19-10-20-SC, which applies to cases pending at the time it took effect on May 1, 2020.

3. ID.; ID.; ID.; ID.; SERVICE AND FILING OF PLEADINGS; FILING OF THE INITIATORY PLEADINGS WITH THE COURT BY COURIER IS ALLOWED. — IPEGV construes this provision [Rule 1.8 of the Special ADR Rules] to mean that the filing of initiatory pleadings by private courier is authorized. BPW counters that the provision only allows the court to serve the initiatory pleading to the respondent by courier; but the petitioner must file the same personally. This Court is more inclined to agree with IPEGV. While the first part of the provision makes no explicit statement as to whether initiatory pleadings can only be filed through personal service, paragraph (A) on proof of filing makes a clear reference to pleadings filed by courier. There is no indication in the rule of an intention to distinguish between initiatory pleadings which may only be filed personally and non-initiatory pleadings which may be filed by other means. Rather, when the provision states that "[t]he initiatory pleadings shall be filed directly with the court," it only means that the petitioner need only file such pleading with the court and not with the adverse party, because it is the court that will cause the pleading to be served upon the adverse party.

4. ID.; ID.; ID.; FAILURE TO ATTACH THE REQUIRED DOCUMENTS WARRANTS THE OUTRIGHT DISMISSAL OF THE PETITION FOR REVIEW. — It is undeniable from the foregoing [Rules 19.16 and 19.17 of the Special ADR Rules] that failure to attach the required documents to the petition for review merits dismissal of the petition. As correctly pointed out by BPW, the use of the word "shall" in Rule 19.17 indicates its mandatory nature.

This Court is not unaware of rulings which considered the subsequent submission of requisite documents as substantial compliance with procedural rules. However, most of these cases were either tried under the Rules of Court, which may be construed liberally in the interest of substantial justice, or involve labor or agrarian disputes, where the procedural rules are construed liberally in order to carry out the national policy on promoting social justice and advancing the welfare of workers.

> This case involves an arbitration dispute, which is governed by the . . . overarching policy. . . .
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> . . .
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> Consequently, We must construe the provisions of the Special ADR Rules in line with this declared policy in favor of arbitration; and accordingly, the plain meaning of Rule 19.17 must prevail. Since IPEGV admittedly failed to attach not only the RTC petition, but also the Comment/Opposition to the Petition, the parties' legal briefs, BPW's motion for partial execution, and its Motion for Reconsideration from the RTC decision, its petition for review was defective; and the CA did not err in dismissing the same.

5. ID.; ID.; ID.; THE COURT WILL NOT EXERCISE ITS POWER OF REVIEW IN THE ABSENCE OF SERIOUS AND COMPELLING REASONS AND WHEN FACTUAL ISSUES ARE RAISED.— Even if this Court excuses the . . . procedural lapses and admits IPEGV's petition, it nevertheless fails to pass the standards for review set by the Special ADR Rules, *viz.*:

> RULE 19.36. *Review Discretionary*. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. . . .

IPEGV argues that the Final Award cannot be enforced because its termination of the Publishing Agreement was not malicious and was based on a justifiable ground, *i.e.*, that the game version delivered to it by BPW was full of bugs and features unsuitable to the Philippine market, and BPW failed to remedy the same. A resolution of such issue would require this Court to go into the merits of the parties' dispute and resolve questions of fact which cannot be raised in a petition for review to this Court under the Special ADR Rules. Nevertheless, this Court has reviewed the assailed RTC Decision and has found nothing in it which warrants the exercise of its discretionary powers under the Special ADR Rules. The decision sufficiently addressed IPEGV's objections to the enforcement of the Final Award. ...

APPEARANCES OF COUNSEL

Baterina Baterina Casals Lozada & Tiblani Law Offices for petitioner.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

GAERLAN, *J.*:

This is a petition for review on certiorari under Rule 19.37 of the Special Rules of Court on Alternative Dispute Resolution,[1] assailing the February 5, 2015[2] and August 28, 2015[3] Resolutions issued by the Court of Appeals (CA) in CA-G.R. SP No. 138284, which dismissed the Petition for Review filed by petitioner IP E-Game Ventures, Inc. (IPEGV).

In 2008, IPEGV, a Philippine corporation, entered into a Publishing Agreement with Beijing Perfect World Software Company, Ltd. (BPW), an entity incorporated in the People's Republic of China which is engaged in the development and publication of computer games.[4] Under said Agreement,[5] which included an arbitration clause,[6] BPW gave IPEGV the authority to publish an Internet-based computer game called Zhu Xian Online in the Philippines.[7] IPEGV made an open beta[8] launch

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[1] Hereinafter referred to as the Special ADR Rules.

[2] *Rollo*, pp. 25-27; penned by Associate Justice Pedro B. Corales with the concurrence of Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of this Court).

[3] Id. at 22-24.

[4] Id. at 250.

[5] Id. at 66-88.

[6] Id. at 87-88.

[7] Id. at 250.

[8] Id. In an open beta launch, "a small part of the game data and the complete game engine is provided to a core group of individuals x x x who

of the game in December 2008 to comply with the Agreement but the full game was not launched until March 2009.[9] In August 2010, IPEGV ceased to operate Zhu Xian Online allegedly due to unfixed bugs[10] and the failure of BPW to change certain features of the game to make it competitive in the Philippine market.[11] Consequently, in January 2011, BPW filed a Request for Arbitration with the International Chamber of Commerce pursuant to the Agreement's arbitration clause.[12] In March 2011, at the urging of IPEGV, the parties agreed to change the venue of their arbitration process to the Singapore International Arbitration Centre.[13] The arbitration, which commenced in May 2011, was conducted with the full participation of both parties.[14]

On November 19, 2012, the appointed arbitrator issued a Final Award in favor of BPW.[15] IPEGV was ordered to pay specific sums of money, plus interest and costs.[16] BPW, through counsel, demanded in writing that IPEGV pay the amounts stated in the Final Award.[17] Without any action from IPEGV, BPW filed on December 2, 2013 a Petition for Recognition and Enforcement of the Final Award with the Regional Trial Court (RTC) of Manila.[18] After an exchange of pleadings, the RTC

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are part of the consumer market. While the open beta is not available to everyone, [it] help[s] game development teams identify weaknesses in their product before consumers actually start buying the game, finding bugs, and returning the product or calling technical support." Dan Irish, The Game Producer's Handbook 265 (2005).

[9] Id.

[10] A bug is "[a] flaw or mistake in a computer program that results in an error or undesired result." Black's Law Dictionary 222 (2009).

[11] *Rollo*, pp. 250-251.

[12] Id. at 686.

[13] Id.

[14] Id. at 687.

[15] Id. at 108-151; rendered by Lye Kah Cheong, Sole Arbitrator.

[16] Id. at 688-689.

[17] Id. at 689.

[18] Id.

granted BPW's petition in a Decision[19] dated July 25, 2014. IPEGV filed a motion for reconsideration, which the trial court denied in a Resolution dated October 25, 2014.[20] Consequently, upon motion of BPW, the trial court issued a writ of execution for the following sums: US$1,078,695.78, HK$430,542.05, and SG$71,080.55 plus interest of 12% per annum, representing IPEGV's liabilities under the Final Award; and ₱33,304.11 as costs of suit.[21]

IPEGV assailed the RTC decision before the CA via a petition for review under Rule 19.12 (j) of the Special ADR Rules. On February 5, 2015, the CA rendered the first assailed resolution, which We quote in full:

> This is a Petition for Review under Rule 19.12 of the Special Rules of Court on Alternative Dispute Resolution (ADR) assailing the July 25, 2014 Decision and October 21, 2014 Resolution of the Regional Trial Court (RTC), Branch 19, Manila in Civil Case No. 13-131118. The assailed Decision granted [BPW's] petition for recognition and enforcement of a foreign arbitral award. On the other hand, the questioned Resolution denied petitioner [IPEGV's] motion for reconsideration and ordered the issuance of a writ of execution.
>
> A perusal of the petition shows that the same is procedurally infirmed, warranting its outright dismissal, to wit:
>
> 1. There is no proof showing that Miguel Ramon Tomas B. Ladios (Ladios) is authorized to file the instant petition on behalf of [IPEGV]. Ladios did not also submit any proof that [IPEGV] authorized him to sign the verification and certification of against forum shopping; and
> 2. [IPEGV] failed to submit certified true copies of the following pleadings, in violation of Rule 19.16 of the Special Rules of Court on ADR: Petition for Recognition and Enforcement of a Foreign Arbitral Award; Comment/ Opposition to Petitioner's Petition for Recognition and Enforcement of a Foreign Arbitral Award dated April 4,

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[19] Id. at 837-843; penned by Presiding Judge Marlo A. Magdoza-Malagar.

[20] Id. at 252, 845-847.

[21] Id. at 848-850.

> 2014; the parties' legal briefs; Motion for Issuance of Partial Writ of Execution filed on August 12, 2014 by [BPW]; and [IPEGV]'s for Reconsideration filed on September 9, 2014.

Moreover, a careful examination of the records discloses that IP E-Game received a copy of the assailed Resolution on November 7, 2014 thereby giving it until November 22, 2014 to file its petition. However, considering that the last day of the reglementary period within which to file the instant petition fell on a Saturday, [IPEGV] had until November 24, 2014 which was the next working day to file its petition. Eventually, counsel for [IPEGV] mailed the present petition via LBC on November 24, 2014 which was received by this Court on November 28, 2014.

Under Section 3, Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt. In the second case, the date of mailing is the date of receipt. In this case, however, [IPEGV] filed the instant petition via private courier, a mode not provided in the Rules. It is established jurisprudence that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court. Instead, the date of actual receipt by the court is deemed the date of filing of that pleading. Here, the date of filing of the petition is the date of actual receipt by this Court on November 28, 2014 which is four (4) days beyond the reglementary period. Such being the case, the present petition warrants an outright dismissal for being filed out of time.

We emphasize that an appeal is not a matter of right, but of sound judicial discretion. Thus, an appeal may be availed of only in the manner provided by law and the rules. Failure to follow procedural rules merits the dismissal of the case, especially when the rules themselves expressly say so.

WHEREFORE, the instant petition is hereby **DISMISSED**.

SO ORDERED.[22] (Citations omitted, emphasis in the original)

IPEGV's Motion for Reconsideration dated March 11, 2015 was denied by the appellate court in the second assailed resolution, which reads:

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[22] Id. at 25-27.

On February 5, 2015, We issued a Resolution dismissing the instant petition for review for being formally and jurisdictionally defective.

Subsequently, [IPEGV] filed a Motion for Reconsideration while [BPW] filed its Comment thereto.

[IPEGV] insisted that the present petition was filed in accordance with the provisions of the Special Rules of Court on Alternative Dispute Resolution where filing via private courier is allowed. They also submitted certain documents to supposedly rectify the noted defects in the petition and stressed that a dismissal on purely technical grounds would result in miscarriage of justice.

On the other hand, BPW defended the Resolution of this Court. Personal service is mandatory in a non-summary proceeding for initiatory pleadings.

After a review of the parties' arguments, We are not convinced to reconsider.

Contrary to [IPEGV]'s postulate, the ADR is no longer applicable when the case has already been elevated to this Court. It bears stressing that Rule 1.12 of A.M. No. 07-11-08-SC, otherwise known as the Special Rules of Court on Alternative Dispute Resolution, explicitly states that it shall only apply to cases insofar as it refers to arbitration. Considering that the instant petition is not part of the arbitration proceedings, the Rules of Court should be applied in determining the proper mode of service and timeliness of the petition.

Even assuming that filing by special courier is not prohibited by the rules, the determination of the timeliness of filing would depend on the date of actual receipt by the court and not the date of delivery as held in Heirs of *Miranda, Sr. v. Miranda*. Records show that the petition was received by this Court four (4) days beyond the reglementary period mandated by law.

Thus, We do not find any cogent reason to re-examine the merits of the petition.

WHEREFORE, the petitioner IP E-Game Ventures, Inc.'s motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[23] (Citations omitted and emphasis in the original)

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[23] Id. at 22-24.

IPEGV now comes before this Court, claiming that the CA erred in: 1) not applying the Special ADR Rules; 2) dismissing IPEGV's petition without ruling on the merits thereof; 3) applying the doctrine in *Heirs of Numeriano Miranda, Sr. v. Miranda*;[24] 4) disregarding the Secretary's Certificate attached to IPEGV's motion for reconsideration; and 5) not considering as substantial compliance IPEGV's submission of the certified true copies of the pertinent pleadings together with its motion for reconsideration.[25]

Applicability of the Special ADR Rules

The CA erred in holding that the Special ADR Rules no longer apply to IPEGV's petition for review. Section 46 of Republic Act No. 9285 states:

> SECTION 46. *Appeal from Court Decisions on Arbitral Awards.* — A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court. x x x

Accordingly, the Supreme Court promulgated the Special ADR Rules on September 1, 2009.

IPEGV's petition was filed on the basis of Rule 19.12 of the Special ADR Rules, which explicitly provides for recourse to the Court of Appeals in certain instances. While the actual arbitration between the parties ended upon the rendition of the Final Award, the conclusion of the actual arbitration did not take their dispute out of the ambit of the Special ADR Rules, because Rule 1.1 (i) and (j) explicitly state that the Special ADR Rules shall apply to recognition and enforcement of foreign arbitral awards, as well as to the recognition, enforcement, or setting aside of international commercial arbitral awards.

Furthermore, Rule 2.1 of the Special ADR Rules states:

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[24] 713 Phil. 541 (2013).

[25] *Rollo*, pp. 253-254.

RULE 2.1. *General Policies*. — It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts. To this end, the objectives of the Special ADR Rules are to encourage and promote the use of ADR, particularly arbitration and mediation, as an important means to achieve speedy and efficient resolution of disputes, impartial justice, curb a litigious culture and to de-clog court dockets.

The court shall exercise the power of judicial review as provided by these Special ADR Rules. Courts shall intervene only in the cases allowed by law or these Special ADR Rules.

While the first paragraph of Rule 2.1 states the policy in favor of solving disputes through arbitration, the second paragraph reserves to the courts the power to exercise judicial review over arbitration cases. The Special ADR Rules were designed precisely to define the scope of the courts' power of judicial review in arbitration cases. Rule 19.8 explicitly states that "[t]he remedy of an appeal through a petition for review x x x from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted **only in the manner, provided under this Rule**"; while Rule 19.12 explicitly provides that "[a]n appeal to the Court of Appeals through a petition for review" is allowed from an order of the RTC recognizing or enforcing either a foreign arbitral award or an international commercial arbitral award. Furthermore, the Special ADR Rules make special provisions for these types of cases under Rules 19.13 to 19.25, which can only mean that the Special ADR Rules continue to apply to such disputes even when they move from the actual arbitral phase to the recognition and enforcement phase, the venue of which lies in the courts, as provided for in the Special ADR Rules. In fact, the CA used Rule 19.16 of the Special ADR Rules as basis for its first assailed resolution, only to reverse itself in the second assailed resolution by stating that the Special ADR Rules are "no longer applicable when the case has already been elevated to th[e CA]."

Applicability of Miranda *ruling and propriety of filing by courier*

In *Heirs of Numeriano Miranda, Sr. v. Miranda*,[26] We upheld the denial of an appeal from a decision in a suit for revival of judgment, partly because the notice of appeal was belatedly filed. Petitioners filed their notice of appeal on the 15th day of the 15-day appeal period through a private courier service; and We held that in such a case, the date of actual receipt of the pleading by the court is considered the date of filing, *viz.*:

> In this case, however, the counsel for petitioners filed the Notice of Appeal via a private courier, a mode of filing not provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court"; instead, "the date of actual receipt by the court . . . is deemed the date of filing of that pleading." Records show that the Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time.[27]

However, this ruling does not apply to the case at bar, as it is governed by the Special ADR Rules. Rule 1.8 thereof states:

> RULE 1.8. *Service and Filing of Pleadings, Motions and Other Papers in Non-summary Proceedings.* — The initiatory pleadings shall be filed directly with the court. The court will then cause the initiatory pleading to be served upon the respondent by personal service or courier. Where an action is already pending, pleadings, motions and other papers shall be filed and/or served by the concerned party by personal service or courier. Where courier services are not available, resort to registered mail is allowed.
>
> (A) *Proof of filing.* — The filing of a pleading shall be proved by its existence in the record of the case. If it is not in the record, but

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[26] Supra note 24.

[27] Id. at 550-551.

is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; if filed by courier, by the proof of delivery from the courier company. x x x

IPEGV construes this provision to mean that the filing of initiatory pleadings by private courier is authorized. BPW counters that the provision only allows the court to serve the initiatory pleading to the respondent by courier; but the petitioner must file the same personally. This Court is more inclined to agree with IPEGV. While the first part of the provision makes no explicit statement as to whether initiatory pleadings can only be filed through personal service, paragraph (A) on proof of filing makes a clear reference to pleadings filed by courier. There is no indication in the rule of an intention to distinguish between initiatory pleadings which may only be filed personally and non-initiatory pleadings which may be filed by other means. Rather, when the provision states that "[t]he initiatory pleadings shall be filed directly with the court," it only means that the petitioner need only file such pleading with the court and not with the adverse party, because it is the court that will cause the pleading to be served upon the adverse party.

Even assuming *arguendo* that the *Heirs of Numeriano Miranda, Sr.* ruling is applicable to the case at bar, that doctrine has already been superseded by A.M. No. 19-10-20-SC,[28] which applies to cases pending at the time it took effect on May 1, 2020. Said issuance amended Rule 13 of the Rules of Civil Procedure, *viz.*:

SECTION 3. *Manner of Filing.* — The filing of pleadings and other court submissions shall be made by:

x x x x

(c) Sending them by accredited courier; or x x x

[28] The 2019 Amendments to the Rules on Civil Procedure, promulgated on October 15, 2019 and published in the Philippine Daily Inquirer on December 7, 2019.

x x x x

SECTION 16. *Proof of Filing*. — The filing of a pleading or any other court submission shall be proved by its existence in the record of the case.

x x x x

(c) If the pleading or any other court submission was filed through an accredited courier service, the filing shall be proven by an affidavit of service of the person who brought the pleading or other document to the service provider, together with the courier's official receipt and document tracking number.

In the case at bar, IPEGV received the RTC's denial of its motion for reconsideration on November 7, 2014. Under Rules 19.14 and 1.7[29] of the Special ADR Rules, IPEGV had until November 24, 2014[30] to file its petition for review. IPEGV's petition having been filed on that date, it should be considered as timely filed.

Lack of authorization to file petition and failure to submit required attachments

Rules 19.16 and 19.17 of the Special ADR Rules states:

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[29] RULE 19.14. When to Appeal. — The petition for review shall be filed within fifteen (15) days from notice of the decision of the Regional Trial Court or the denial of the petitioner's motion for reconsideration.

RULE 1.7. Computation of Time. — In computing any period of time prescribed or allowed by the Special ADR Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded from the computation of the period.

[30] The fifteenth day of the period, November 22, 2014, was a Saturday.

RULE 19.16. *Contents of the Petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondent, (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review, (c) be accompanied by a clearly legible duplicate original or a certified true copy of the decision or resolution of the Regional Trial Court appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers, and (d) contain a sworn certification against forum shopping as provided in the Rules of Court. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

RULE 19.17. *Effect of Failure to Comply with Requirements*. — The court shall dismiss the petition if it fails to comply with the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, the contents and the documents, which should accompany the petition.

It is undeniable from the foregoing that failure to attach the required documents to the petition for review merits dismissal of the petition. As correctly pointed out by BPW, the use of the word "shall" in Rule 19.17 indicates its mandatory nature.

This Court is not unaware of rulings which considered the subsequent submission of requisite documents as substantial compliance with procedural rules.[31] However, most of these cases were either tried under the Rules of Court, which may be construed liberally in the interest of substantial justice,[32] or involve labor or agrarian disputes, where the procedural rules are construed liberally in order to carry out the national policy on promoting social justice and advancing the welfare of workers.[33] This case involves an arbitration dispute, which is governed by the following overarching policy:

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[31] *e.g.*, *Jaro v. Court of Appeals*, 427 Phil. 532 (2002).

[32] Rules of Court, Rule 1, Section 6.

[33] See *Novelty Philippines, Inc. v. Court of Appeals*, 458 Phil. 36 (2003); *Jaro v. Court of Appeals*, supra note 31.

SECTION 2. *Declaration of Policy*. — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from the time to time.[34]

In *Mabuhay Holdings Corp. v. Sembcorp Holdings Ltd.*,[35] where We sustained the CA's reversal of an RTC decision denying the enforcement of a foreign arbitral award, We made the following pronouncement:

Our jurisdiction adopts a policy in favor of arbitration. The ADR Act and the Special ADR Rules both declare as a policy that the State shall encourage and actively promote the use of alternative dispute resolution, such as arbitration, as an important means to achieve speedy and impartial justice and declog court dockets. This pro-arbitration policy is further evidenced by the rule on presumption in favor of enforcement of a foreign arbitral award under the Special ADR Rules x x x.[36]

In *Lanuza, Jr. v. BF Corporation, et al.*,[37] we said:

This jurisdiction adopts a policy in favor of arbitration. Arbitration allows the parties to avoid litigation and settle disputes amicably

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[34] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

[35] G.R. No. 212734, December 5, 2018.

[36] Id.

[37] 744 Phil. 612 (2014).

and more expeditiously by themselves and through their choice of arbitrators.

The policy in favor of arbitration has been affirmed in our Civil Code, which was approved as early as 1949. It was later institutionalized by the approval of Republic Act No. 876, which expressly authorized, made valid, enforceable, and irrevocable parties' decision to submit their controversies, including incidental issues, to arbitration.[38]

Consequently, We must construe the provisions of the Special ADR Rules in line with this declared policy in favor of arbitration; and accordingly, the plain meaning of Rule 19.17 must prevail. Since IPEGV admittedly failed[39] to attach not only the RTC petition, but also the Comment/Opposition to the Petition, the parties' legal briefs, BPW's motion for partial execution, and its Motion for Reconsideration from the RTC decision, its petition for review was defective; and the CA did not err in dismissing the same. In view of this finding, a discussion on the purported lack of authorization to file the petition before the CA petition would be superfluous.

The merits of the arbitral award

Even if this Court excuses the foregoing procedural lapses and admits IPEGV's petition, it nevertheless fails to pass the standards for review set by the Special ADR Rules, *viz.*:

RULE 19.36. *Review Discretionary*. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

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[38] Id. at 631.

[39] *Rollo*, pp. 272-273.

a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition.

RULE 19.37. *Filing of Petition with Supreme Court*. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals issued pursuant to these Special ADR Rules may file with the Supreme Court a verified petition for review on certiorari. **The petition shall raise only questions of law**, which must be distinctly set forth. (Emphasis and underlining supplied)

IPEGV argues that the Final Award cannot be enforced because its termination of the Publishing Agreement was not malicious and was based on a justifiable ground, *i.e.*, that the game version delivered to it by BPW was full of bugs and features unsuitable to the Philippine market, and BPW failed to remedy the same.[40]

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[40] Amended Petition, *id.* at 260-269.

A resolution of such issue would require this Court to go into the merits of the parties' dispute and resolve questions of fact which cannot be raised in a petition for review to this Court under the Special ADR Rules. Nevertheless, this Court has reviewed the assailed RTC Decision and has found nothing in it which warrants the exercise of its discretionary powers under the Special ADR Rules. The decision sufficiently addressed IPEGV's objections to the enforcement of the Final Award, *viz.*:

> A cursory scrutiny of the two grounds raised by IPEGV in its comment/opposition revealed that neither ground falls among the circumstances enumerated in Rule 13.4 [of the Special ADR Rules]. No allegation was made and no proof was presented by [IPEGV] regarding any party's incapacity or regarding the invalidity of the publishing agreement under Chinese laws to which the parties had subjected it or under Singaporean laws where arbitration was conducted. Moreover, there was no claim regarding the impropriety of the arbitration. Under the publishing agreement between the parties, it was agreed, under the subtitle "dispute resolution" that any "controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the Singapore International Chamber of Commerce in accordance with its Commercial Arbitration Rules." Under prevailing jurisprudence, submission to arbitration is a contract and that a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration can also be considered, in itself, a contract.
>
> There was also no showing that [IPEGV] made any objection to the appointment of Lye Kah Cheong as arbitrator. As evidenced by the arbitration proceedings painstakingly summed up by Cheong, both parties were notified of his appointment and neither of them had manifested any opposition to it. All told, both parties, [IPEGV] in particular, had actively participated in the arbitration proceedings such that neither can claim any irregularity in the conduct thereof.
>
> [IPEGV]'s objections on the ground that the arbitral award was contrary to the public policy that a judgment shall contain clearly and distinctly a statement of the facts proved or admitted, and the law upon which the judgment is based, is belied by this court's reading of the assailed foreign arbitral award. Scrutiny of the assailed award

showed that arbitrator Lye Kah Cheong had already tackled the very same grounds raised by [IPEGV] as bases for its objection to the enforcement of the award in this jurisdiction. More particularly, Lye Kah Cheong had addressed [IPEGV]'s allegations of breach on the part of [BPW] with thoroughness. The resolution Cheong rendered for every issue was made after consideration of all relevant facts. Thus it would appear that stripped to its bare essentials, respondent's opposition to the enforcement of the foreign arbitral award is premised solely on its assailment of the substantive merits of the arbitrator's findings and conclusions. As previously stated, the authority of this court, in acting on the instant petition, is limited only to the determination of whether the grounds enumerated exclusively in Rule 13.4. For this court to consider the two objections made by [IPEGV] would require it to review the substantive merits of the arbitral award, something which is beyond its jurisdiction.[41]

IN VIEW OF THE FOREGOING, the present petition is **DENIED**. The February 5, 2015 and August 28, 2015 Resolutions of the Court of Appeals in CA-G.R. SP No. 138284 are hereby **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Carandang, and *Lazaro-Javier,*[*] *JJ.,* concur.

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[41] RTC Decision, id. at 838-839.

[*] Additional Member per Raffle dated February 24, 2020.

SECOND DIVISION

[G.R. No. 236126. September 7, 2020]

ETERNAL GARDENS MEMORIAL PARK CORP., *Petitioner, v.* **KATHERINE JUNETTE B. PERLAS, KATHRYN JACQUELYN F. BOISER, and SPOUSES CLAUDIO AND ROSITA BONIFACIO,** *Respondents.*

SYLLABUS

1. **CIVIL LAW; AGENCY; ESTOPPEL; RULE ON APPARENT AUTHORITY. —** The rule on apparent authority is based on the principle of estoppel. Through 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. Thus, if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority. In this light, Spouses Bonifacio cannot be blamed for believing that Balbin and Resoles had the authority to transact for and on behalf of Eternal Gardens. Consequently, Eternal Gardens is estopped from denying Balbin and Resoles' authority.

2. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; A RECEIPT IS A WRITTEN AND SIGNED ACKNOWLEDGMENT THAT MONEY OR GOOD WAS DELIVERED OR RECEIVED. —** A receipt is a written and signed acknowledgment that money or good was delivered or received. Said principle being a mere presumption, Eternal Gardens has the burden to prove otherwise. Here, as properly noted by the RTC, no evidence was shown to refute the acknowledgment receipt except for a general denial that it was not an official receipt of Eternal Gardens. In this regard, the acknowledgment receipt which was the best evidence of the amount paid by Spouses Bonifacio through its employees could, therefore, be validly relied upon. Thus, Eternal Gardens cannot claim that it did not benefit from the transaction.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; NOTARIZATION; ALTHOUGH NOTARIAL ACKNOWLEDGMENT ATTACHES FULL FAITH AND CREDIT TO THE DOCUMENT CONCERNED, IT DOES NOT GIVE THE DOCUMENT ITS VALIDITY OR BINDING EFFECT; WHERE THE EVIDENCE SHOWS THAT THE DOCUMENT IS INVALID, THE PRESUMPTION OF REGULARITY OR AUTHENTICITY IS NOT APPLICABLE. — Although notarial acknowledgment attaches full faith and credit to the document concerned, it does not give the document its validity or binding effect. When there is evidence showing that the document is invalid, the presumption of regularity or authenticity is not applicable. In this case, it has not been established that Eternal Gardens even bothered to inquire or verify the authenticity of the submitted documents – the affidavit of loss and the deed of assignment. Had it exercised caution and prudence in dealing with the transfer, it could have easily determined that the said documents were falsified. Thus, it cannot be exonerated from liability.

APPEARANCES OF COUNSEL

Alexis S. Oco for petitioner.
Jaime De Paz Lee for respondents Sps. Bonifacio.
Hilario Rojo for respondents Perlas, *et. al.*

D E C I S I O N

DELOS SANTOS, *J.*:

Facts

Petitioner Eternal Gardens Memorial Park Corporation (Eternal Gardens) is an entity engaged in developing memorial parks and offers an array of memorial care products and services.[1]

Respondents Katherine Junette B. Perlas (Katherine) and Kathryn Jacquelyn F. Boiser (Kathryn; collectively, Boiser

[1] *Rollo,* p. 38.

siblings) are two (2) of the five (5) children of Narciso C. Boiser (Narciso) and Zenaida F. Boiser (Zenaida).[2]

During her lifetime, Zenaida purchased from Eternal Gardens 24 burial lots (subject property) covered by Certificate of Ownership No. 5595[3] issued on June 7, 1985. Zenaida died on September 13, 1999. Sometime in 2000, Boiser siblings found out that the subject property were sold to spouses Claudio and Rosita Bonifacio (Spouses Bonifacio) by Kathryn's former live-in partner, Michael Magpantay (Magpantay).[4] This prompted the filing of a Complaint[5] for nullification of contract by Boiser siblings against Magpantay, Spouses Bonifacio, and Eternal Gardens before the Regional Trial Court (RTC) of Caloocan City, Branch 131, docketed as Civil Case No. C-20192.

In their complaint, Boiser siblings averred that shortly after their mother's death, Kathryn instructed Magpantay to inquire from Eternal Gardens the status of the subject property. She was then informed by Magpantay that Zenaida had sold the subject property to a person who further sold them to another.[6]

Upon conducting their own investigation with the employees of Eternal Gardens, Boiser siblings learned that the subject property were sold by Zenaida to Magpantay in February 2000. The latter then sold the lots to Spouses Bonifacio. Boiser siblings made several attempts to communicate with Eternal Gardens to clarify the situation and requested to furnish them the documents evidencing the sale, but to no avail.[7]

Boiser siblings contended that Zenaida could have not sold the subject property to Magpantay in 2000 because she was already dead at the time of the transaction. They also alleged

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[2] Id.

[3] Not attached to the *rollo*.

[4] *Rollo*, p. 38.

[5] Id. at 84-87.

[6] Id. at 38.

[7] Id. at 38-39.

that Eternal Gardens conspired with Magpantay given the circumstances.[8]

In its Answer,[9] Eternal Gardens asseverated that Boiser siblings had no cause of action against it as Kathryn herself, together with Magpantay, submitted the Affidavit of Loss[10] with an Undertaking purported to be signed by Zenaida stating that the title to the subject property was lost. It also claimed that Kathryn had knowledge of the Deed of Assignment[11] covering the subject property executed in favor of Magpantay. Eternal Gardens denied that it conspired with Magpantay and instead avowed that Magpantay and Kathryn were actively following-up the release of the new title in the name of Magpantay. Upon its release, it was Kathryn who received the same and signed the receipt. Finally, Eternal Gardens insisted that the documents submitted to it being all public documents, it is not duty-bound to inquire beyond what are stated therein. Its duty to issue a certificate of ownership, according to it, becomes ministerial upon submission of the requirements for a valid transfer.[12]

Meanwhile, the other compulsory heirs of Zenaida, namely: Kathleen Kay F. Boiser, Kathreen Jennifer F. Boiser-Santiago (Kathreen), Kirk John F. Boiser, and Narciso, then filed a motion for intervention. The motion was denied for failure to append the complaint-in-intervention. However, the RTC allowed them to file their motion with the corresponding pleadings. Only Kathreen and her father Narciso (collectively, intervenors), however, re-filed the motion with the attached complaint-in-intervention, which was granted and admitted by the RTC.[13]

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[8] Id. at 39.

[9] Id. at 95-99.

[10] Id. at 72-73.

[11] Id. at 78.

[12] Id. at 39-40, 96.

[13] Id. at 40-41.

For their part, Spouses Bonifacio filed their Answer with Counterclaim and Cross Claim[14] contending that they are the absolute owners and buyers in good faith of the subject property as evidenced by a Certificate of Ownership No. 24095.[15] They asseverated that in April 2000, Magpantay executed a Deed of Assignment[16] in their favor transferring his rights over Lots 1-24, Section E, Block 28, Family Estate, Eternal Love-FE, then covered by Certificate of Ownership No. 24007[17] registered under Magpantay's name. Upon full payment of the purchase price of the subject property, Noli Balbin (Balbin) and Leandro Resoles (Resoles), employees of Eternal Gardens, issued an Acknowledgment Receipt.[18] A certificate of ownership was subsequently issued in their names.[19]

In its Answer to Cross-Claim,[20] Eternal Gardens denied the allegations of bad faith and conspiracy with Magpantay, pinning down Magpantay and Kathryn ultimately as the conspirators.[21]

Upon motion of both intervenors and Spouses Bonifacio, Magpantay was declared in default.[22]

In their Cross-Claim[23] (against Kathryn), intervenors prayed that Kathryn be ordered to pay the amount equivalent to the amount of the subject property, damages, and attorney's fees, in case it is proven that she conspired with Magpantay.[24]

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[14] Id. at 88-94.

[15] Id. at 83.

[16] Id. at 82.

[17] Id. at 79.

[18] Id. at 81.

[19] Id. at 41.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 42.

[22] Id. at 43.

[23] Not attached to the *rollo*.

[24] *Rollo*, p. 43.

In her defense, Kathryn denied any involvement in the transaction entered by Magpantay and claimed to have no knowledge of the same.[25]

On January 18, 2006, Branch 131 was designated as a family court, thus the case was re-raffled to Branch 122. Pre-trial and trial thereafter ensued. During the pendency of the case, Narciso died.[26]

RTC Ruling

The RTC, in its Decision[27] dated June 13, 2013, held Eternal Gardens liable to return the amount paid by Spouses Bonifacio less the value of the lot actually used as burial site for their grandchild. It brushed aside Eternal Gardens' claim that it did not authorize or know the participation of its employees in the transaction between Magpantay and Spouses Bonifacio. By issuing a certificate of ownership in favor of Spouses Bonifacio, the RTC ruled that Eternal Gardens ratified its employees' actions. It further pointed out that Kathryn's alleged participation in the transfer of the subject property in favor of Magpantay is insufficient to free Eternal Gardens from its obligation arising from the acts of its employees.[28]

The dispositive portion reads:

WHEREFORE, and in view of our disquisitions above, the Court resolves to:

1.) DECLARE as NULL AND VOID the Deed of Assignment between Zenaida Boiser in favor of Michael Magpantay dated February 22, 2000;

2.) CANCEL Eternal Gardens Memorial Park Corporation Certificate of Ownership No. 24007 issued under the name of Michael Magpantay and Eternal Gardens Memorial Park

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[25] Id.

[26] Id. at 44.

[27] Id. at 101-132.

[28] Id. at 125-128.

Corporation Certificate of Ownership No. 24095 issued in the name of Claudio and Rosita Bonifacio and REINSTATE Eternal Gardens Memorial Park Corporation Certificate of Ownership No. 5595 issued under the name of Zenaida F. Boiser; and

3.) DIRECT the defendant Eternal Gardens Memorial Park Corporation to return to Spouses Rosita and Claudio Bonifacio Two Million Two Hundred Thousand Pesos (Php2,200,000.00), deducting therefrom the amount/value of the lot where their grandchild was buried;

4.) DIRECT the defendant Michael Magpantay to pay plaintiffs and intervenor heirs of Zenaida Boiser the amount of One Hundred Thousand Pesos (Php100,000.00) as moral and exemplary damages, and DIRECT the defendant Michael Magpantay to pay Spouses Rosita and Claudio Bonifacio and Eternal Gardens moral and exemplary damages in the amount of One Hundred Thousand Pesos (Php100,000.00).

In so far as litigation expenses are concerned, prudence dictates that each party shall bear their respective expenses.

SO ORDERED.[29]

Aggrieved, Eternal Gardens appealed with the Court of Appeals (CA).

CA Ruling

The CA, in its Decision[30] dated August 25, 2017, partially granted the appeal. The CA agreed with the RTC's finding that the deed of assignment did not transfer any right to Magpantay as it was executed after the death of Zenaida. It, however, opined that Spouses Bonifacio cannot be faulted when they relied on the certificate of ownership registered in the name of Magpantay as it did not contain any defect on its face which would warrant to investigate on the seller's ownership. Thus, the CA upheld the ruling of the RTC on Eternal Gardens' liability to return the amount paid by Spouses Bonifacio after deducting the value of the lot used to bury their

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[29] Id. at 131-132.

[30] Id. at 37-56.

grandchild. It, however, also found Magpantay and Kathryn solidarily liable with Eternal Gardens as their participation was indispensable for the subsequent transaction involving Spouses Bonifacio. The CA disposed the case as follows:

> **WHEREFORE**, premises considered, the *Appeal* is partially granted. The Decision dated June 13, 2013 rendered by Regional Trial Court, Branch 122, Caloocan City in ***Civil Case No. C-20192*** is **AFFIRMED WITH MODIFICATIONS**, to wit:
>
> 1. The Deed of Assignment between Zenaida Boiser in favor of Michael Magpantay dated February 22, 2000 is declared **NULL** and **VOID**;
>
> 2. The defendant-appellant Eternal Gardens Memorial Park Corporation is ordered to **CANCEL** Certificate of Ownership No. 24007 issued under the name of Michael Magpantay, and Certificate of Ownership No. 24095 issued in the name of Claudio and Rosita Bonifacio[;]
>
> 3. The defendant-appellant Eternal Gardens Memorial Park Corporation is ordered to **REISSUE** Certificate of Ownership under the name of Zenaida F. Boiser for the burial lots excluding the lot where the grandchild of spouses Bonifacio was buried;
>
> 4. Defendant-appellant Eternal Gardens Memorial Park Corporation is ordered to **ISSUE** a Certificate of Ownership to Spouses Claudio and Rosita Bonifacio covering the burial lot of their grandchild;
>
> 5. Defendant-appellant Eternal Gardens Memorial Park Corporation, Michael Magpantay, and Kathryn Jacquelyn Boiser are **SOLIDARILY** ordered to **RETURN** to Spouses Rosita and Claudio Bonifacio Two Million Two Hundred Thousand Pesos (Php2,200,000.00), deducting therefrom the amount/value of the lot where spouses Bonifacio's grandchild was buried;
>
> 6. The defendant-appellant Eternal Gardens, Michael Magpantay, and Kathryn Jacquelyn Boiser are **SOLIDARILY** ordered to **PAY** to plaintiff-appellee Katherine Junette B. Perlas and intervenor Kathreen Jennifer Boiser-Santiago, the value of the burial lot where the grandchild of Spouses Claudio and Rosita Bonifacio was buried;

> 7. Defendant-appellant Eternal Gardens, Michael Magpantay, and Kathryn Jacquelyn Boiser are **SOLIDARILY** ordered to **PAY** plaintiff-appellee Katherine Junette B. Perlas and intervenor Kathreen Jennifer Boiser-Santiago the amount of Fifty Thousand Pesos (Php50,000.00) as moral damages and Fifty Thousand Pesos (Php50,000.00) as exemplary damages, and **SOLIDARILY PAY** Spouses Rosita and Claudio Bonifacio damages in the amount of One Hundred Thousand Pesos (Php100,000.00).
>
> **SO ORDERED**.[31]

Eternal Gardens filed its Motion for Reconsideration,[32] but same was denied in the assailed Resolution[33] dated December 12, 2017.

Thus, Eternal Gardens filed the present Petition for Review on *Certiorari*[34] submitting the following issues for the Court's consideration:

I.

WHETHER OR NOT THE PETITIONER SHOULD BE MADE LIABLE FOR THE ULTRA VIRES ACTS OF ITS EMPLOYEES.

II.

WHETHER OR NOT THE COURT SERIOUSLY ERRED IN FAILING TO APPLY THE PRINCIPLE IN AGENCY PARTICULARLY ARTICLE 1897 OF THE CIVIL CODE DESPITE THE CLEAR SHOWING THAT THE EMPLOYEES OF ETERNAL GARDENS WERE NOT AUTHORIZED BY ETERNAL GARDENS TO SELL THE MEMORIAL LOTS.

III.

WHETHER OR NOT THE DOCTRINE OF APPARENT AUTHORITY APPLIES IN THE INSTANT CASE EVEN IF SPS. BONIFACIO KNEW FOR A FACT THAT IT IS MAGPANTAY WHO AUTHORIZED BALBIN AND RESOLES TO SELL THE MEMORIAL LOT.

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[31] Id. at 54-55. (Emphasis in the original)

[32] Id. at 57-65.

[33] Id. at 68-71.

[34] Id. at 3-30.

IV.

WHETHER OR NOT THE COURT HAS SERIOUSLY ERRED IN FINDING ETERNAL GARDENS MEMORIAL PARK CORP., LIABLE TO RETURN THE AMOUNT OF TWO MILLION TWO HUNDRED THOUSAND PESOS (P2,200,000.00) TO SPOUSES [CLAUDIO] AND ROSITA BONIFACIO WHEN IN FACT THERE IS NO CREDIBLE EVIDENCE SHOWING THAT ETERNAL GARDENS MEMORIAL RECEIVED EVEN A SINGLE CENT FROM THE SALE OF THE MEMORIAL LOTS.

V.

WHETHER OR NOT THE COURT SERIOUSLY ERRED IN FAILING [TO] HOLD KATHRYN JACQUELYN [BOISER] AND MICHAEL MAGPANTAY LIABLE TO PAY ETERNAL GARDENS ATTORNEY'S FEES AND LITIGATION COST DESPITE THE FACT THAT BECAUSE OF THEIR ACTS, ETERNAL GARDENS WAS FORCED TO LITIGATE AND DEFEND ITS RIGHT.[35]

Eternal Gardens disowned the acts of its employees, Balbin and Resoles, for being *ultra vires* because as its employees, they were only authorized to act within the scope of their duties. It stated that Balbin's task as Assistant Operations Manager was to oversee the operations of the memorial park and did not include the selling of memorial lots as the said duties belong to Eternal Gardens' sales agents. Thus, it argued that in selling the privately-owned memorial lots, they already exceeded their authority and became personally liable for their actions. As such, the doctrine of apparent authority is inapplicable.[36]

Eternal Gardens further contended that it would be a height of injustice to return to Spouses Bonifacio the amount of ₱2,200,000.00 less the amount of the used burial lot, considering that it was Balbin and Resoles who received the payment upon issuing a falsified acknowledgment receipt of Eternal Gardens.[37]

Lastly, Eternal Gardens insisted that Kathryn and Magpantay should be made liable to pay moral damages as their acts of

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[35] Id. at 12-13.

[36] Id. at 14-24.

[37] Id. at 24-25.

falsifying the deed of assignment and affidavit of loss defrauded Eternal Gardens in issuing a certificate of ownership in favor of Magpantay. It added that they were also liable to pay exemplary damages, attorney's fees, and litigation costs on the ground that it was compelled to litigate and to incur expenses to protect its interest.[38]

In their Comment/Opposition,[39] Boiser siblings asserted that Eternal Gardens is liable to return the amount paid by Spouses Bonifacio for its failure to exercise prudence in processing the transfer of ownership of the subject property from Zenaida to Magpantay and from the latter to Spouses Bonifacio. Whether the transaction that caused the transfer was sanctioned by the corporation does not matter because, according to them, Eternal Gardens as the employer is answerable for the adverse consequence of the acts of its employees.[40]

The Court's Ruling

The petition has no merit.

Notably, the issues raised by Eternal Gardens in this case are factual. The existence of an agency, whether or not an agency was created, whether Balbin and Resoles were authorized by Eternal Gardens to act as its agent relative to the sale of the subject property, whether they acted within the bounds of their apparent authority, and whether Eternal Gardens is estopped to deny the apparent authority of its agents, are questions of fact to be resolved on the basis of the evidence on record.[41] The findings of the trial court on such issues, as affirmed by the CA, are binding and conclusive upon the Court and may not be reviewed on appeal.[42] The Court finds no cogent reason to depart from its findings.

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[38] Id. at 25-27.

[39] Id. at 225-230.

[40] Id. at 227.

[41] See *Lintonjua, Jr. v. Eternit Corporation*, 523 Phil. 588 (2006).

[42] See *Republic v. Regional Trial Court, Branch 18, Roxas City, Capiz*, 607 Phil. 547 (2009).

It must be stressed that questions of fact, which would require a re-evaluation of the evidence, are inappropriate under Rule 45 of the Rules of Court as the Court is not a trier of facts.[43] There are, however, recognized exceptions[44] which allow the Court to review factual issues, but none of those is availing in this case. Indeed, the assailed Decision of the CA is supported by the evidence on record and the law.

Essentially, Eternal Gardens imputes error on the part of the CA in holding it solidarily liable with Magpantay and Kathryn to pay the monetary award and damages to Spouses Bonifacio, Katherine, and Kathreen.

Eternal Gardens reiterated in its Reply[45] that it is not liable because Balbin and Resoles acted beyond the authority given to them by becoming agents of Magpantay in selling the subject property to Spouses Bonifacio. Eternal Gardens even cited Article 1897 of the Civil Code, which provides:

> Art. 1897. The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

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[43] See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529 (2015).

[44] (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. [*Spouses Miano v. Manila Electric Company*, 800 Phil. 118, 123 (2016); citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990)].

[45] *Rollo*, pp. 244-248.

It should be emphasized that the principle of agency, specifically Article 1897, finds no application in this case. As correctly found by the CA, Balbin and Resoles were not authorized to sell the subject property in the name of Magpantay. A special power of attorney is required before an agent can enter into any contract on behalf of the principal where the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.[46] Here, there was none. Both the RTC and the CA found that no such authority was given by Magpantay to sell the subject lots to Spouses Bonifacio.

This notwithstanding, Eternal Gardens still cannot be absolved from liability to Spouses Bonifacio. It can no longer deny the authority of its employees, Balbin and Resoles, in transacting with Spouses Bonifacio under the doctrine of apparent authority. In *Engineering Geoscience, Inc. v. Philippine Savings Bank*,[47] the Court explained:

> Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. Furthermore, the principal's liability is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was actually given.[48]

In this case, as aptly concluded by the CA, by issuing the certificate of ownership to Spouses Bonifacio, Eternal Gardens acknowledged the authority of its employees to transact business on its behalf. It can no longer renege on its duty when it knowingly accepted the documents accomplished by its own employees.

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[46] Article 1878, paragraph 5 of the Civil Code.

[47] G.R. No. 187262, January 10, 2019.

[48] Id., citing *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, 639 Phil. 35 (2010).

The rule on apparent authority is based on the principle of estoppel. Through 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.[49] Thus, if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.[50] In this light, Spouses Bonifacio cannot be blamed for believing that Balbin and Resoles had the authority to transact for and on behalf of Eternal Gardens. Consequently, Eternal Gardens is estopped from denying Balbin and Resoles' authority.

On the matter of restitution of the amount paid by Spouses Bonifacio for the subject property, Eternal Gardens denied liability as there was no evidence that it received the amount of ₱2,200,000.00. It alleged that only Kathryn and Magpantay should be liable for the return of the amount.

The argument fails to convince.

It should be recalled that Eternal Gardens itself issued the certificate of ownership in the name of Spouses Bonifacio upon receipt of the amount by its employees, Balbin and Resoles, who issued an acknowledgment receipt. A receipt is a written and signed acknowledgment that money or good was delivered or received.[51] Said principle being a mere presumption, Eternal Gardens has the burden to prove otherwise. Here, as properly noted by the RTC, no evidence was shown to refute the acknowledgment receipt except for a general denial that it was not an official receipt of Eternal Gardens. In this regard, the acknowledgment receipt which was the best evidence of the amount paid by Spouses Bonifacio through its employees could,

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[49] Article 1431 of the Civil Code.

[50] *Engineering Geoscience, Inc. v. Philippine Savings Bank*, supra note 47.

[51] *Ogawa v. Menigishi*, 690 Phil. 359, 365 (2012).

therefore, be validly relied upon. Thus, Eternal Gardens cannot claim that it did not benefit from the transaction. The Court finds favor in the CA's findings, *viz.*:

> In the case at bench, Eternal Gardens' employees were the ones who received the said amount from spouses Bonifacio. It did not present any proof that Magpantay empowered its employees, Balbin and Resoles, to transact with spouses Bonifacio on his behalf. Neither was it proven that the amount paid by spouses Bonifacio was transmitted to Kathryn and Magpantay. Furthermore, **Eternal Gardens lacked prudence, due diligence, and supervision of its employees which contributed to facilitate the fraudulent transactions**.
>
> Kathryn and Magpantay themselves presented the Affidavit of Loss to Eternal Gardens and eventually the Deed of Assignment which caused the transfer of the burial lots to Magpantay's name. Kathryn's participation is further bolstered by the receipt she signed stating that she received the original copy of Certificate of Ownership No. 24007, the title covering burial lots registered in Magpantay's name. Without these prior transactions and resulting deeds/documents, Balbin and Resoles could have not effected the subsequent transfer of the lands to spouses Bonifacio. Hence, the Court believes that **Eternal Gardens, Magpantay, and Kathryn are equally liable for the return of the amount paid by Spouses Bonifacio**.[52] (Emphases supplied)

On the argument that Eternal Gardens was only performing its ministerial duty claiming that it merely processed the transfer of ownership from Zenaida to Magpantay as the required documents were duly notarized giving them the presumption of regularity, Eternal Gardens should be reminded that such presumption may be rebutted by strong, complete and conclusive proof to the contrary. Although notarial acknowledgment attaches full faith and credit to the document concerned, it does not give the document its validity or binding effect. When there is evidence showing that the document is invalid, the presumption of regularity or authenticity is not applicable.[53] In this case, it has not been established that Eternal Gardens even bothered to

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

[53] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 452 (2016).

inquire or verify the authenticity of the submitted documents — the affidavit of loss and the deed of assignment. Had it exercised caution and prudence in dealing with the transfer, it could have easily determined that the said documents were falsified. Thus, it cannot be exonerated from liability.

Even on the assumption that Balbin and Resoles acted outside the scope of their duties and responsibilities, Eternal Gardens is not left without recourse. It is not precluded from instituting the proper action against the two (2) employees for the fraud allegedly committed.

On the claim for payment of moral and exemplary damages, attorney's fees, and costs of suit, the matter has already been sufficiently discussed by the CA in this wise:

> Generally, corporations are not entitled to moral damages. However, an exception would be in cases of violation of Articles 19, 20 and 21 of the Civil Code.Furthermore, the claim for damages under Article 21 must satisfy the following requisites:
>
> Article 21 deals with acts *contra bonus mores*, and has the following elements:
>
> 1. There is an act which is legal,
> 2. But which is contrary to morals, good custom, public order, or public policy, and
> 3. It is done with intent to injure.
>
> The acts perpetrated by Kathryn and Magpantay were illegal as falsification of public documents is a crime punishable under the Revised Penal Code. For failing to satisfy the requisites to be entitled to claim under Article 21 of the Civil Code, the Court is constrained to rule that Eternal Gardens is not entitled to moral damages.
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> As to exemplary damages, Article 2234 clearly states that,
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> x x x x
>
> In the present case, Eternal Gardens failed to prove that it is entitled to moral damages, hence, an award of exemplary damages cannot be given. Moreover, **Eternal Gardens cannot be said to have been compelled to litigate since the corporation could have prevented**

the transfer of the burial lots as early as the presentation of the falsified Affidavit of Loss by the person other than the owner of the registered burial lots if it had been more prudent in its transactions. Finally, since exemplary damages are not awarded, the Court will no longer dwell on the propriety of awarding attorney's fees and litigation costs.[54] (Emphasis supplied)

Lastly, on the basis of the totality of the acts of Eternal Gardens, Magpantay, and Kathryn for the fraud committed against the latter's siblings which ultimately caused their suffering, the award of ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages to Katherine and Kathreen are warranted. Similarly, the award of moral damages amounting to ₱100,000.00 to Spouses Bonifacio, for the suffering sustained by them when they used their hard-earned savings to purchase the subject property, is also justified under the circumstances.

The CA, therefore, committed no error when it held Eternal Gardens solidarily liable with Magpantay and Kathryn to pay the monetary award and damages to Spouses Bonifacio, Katherine, and Kathreen.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 25, 2017 and the Resolution dated December 12, 2017 of the Court of Appeals in CA-G.R. CV No. 102247 are **AFFIRMED**.

SO ORDERED.

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

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

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

SECOND DIVISION

[G.R. No. 236351. September 7, 2020]

ELIZA GRACE A. DAÑO, *Petitioner, v.* **MAGSAYSAY MARITIME CORPORATION, SAFFRON MARITIME LIMITED and/or MYLA BELZA,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); REPORTORIAL REQUIREMENT; WHEN A SEAFARER SUFFERS A WORK-RELATED INJURY OR ILLNESS IN THE COURSE OF EMPLOYMENT, THE EMPLOYER IS OBLIGED TO REFER THE SEAFARER TO A COMPANY-DESIGNATED PHYSICIAN FOR POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN THREE (3) WORKING DAYS FROM HIS/HER RETURN; EXCEPTIONS. — Pursuant to Section 20 of the POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of employment, the employer is then obliged to refer the latter to a company-designated physician. Under Section 20(A)(3), upon repatriation, the seafarer shall submit himself or herself to a post-employment medical examination within three (3) working days from his/her return. x x x [T]he Court recognized exceptions to the requirement of a post-employment medical examination by the company-designated physician within three (3) days from the seafarer's repatriation, to wit: "(1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician."

2. ID.; ID.; ID.; ID.; SEAFARER'S RIGHT TO RECEIVE HIS/HER DISABILITY BENEFITS CANNOT BE DEFEATED DUE TO THE OUTRIGHT REFUSAL OF THE EMPLOYER TO COMPLY WITH THEIR OBLIGATION TO REFER THE SEAFARER FOR POST-EMPLOYMENT

MEDICAL EXAMINATION. — Accordingly, the CA committed a reversible error in refusing to grant petitioner's disability claim on account that she failed to submit herself to post-employment medical examination within three (3) days from her repatriation. Petitioner's right to receive her disability benefits cannot be defeated due to the outright refusal of respondents to comply with their obligation to refer petitioner for a post-employment medical examination under Section 20 of the POEA-SEC. Indeed, respondents were remiss in their obligation to safeguard the welfare of petitioner after having suffered a work-connected injury.

APPEARANCES OF COUNSEL

Justiniano B. Panambo, Jr. for petitioner.

Alafriz Domingo Bartolome Lachica and *Agpaoa* for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

The Facts

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated 2 June 2017 and the Resolution[3] dated 7 December 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146843 which dismissed the disability benefits claim of Eliza Grace A. Daño (petitioner).

The instant case originated from a complaint filed by petitioner against Magsaysay Maritime Corporation (Magsaysay), Saffron Maritime Limited (Saffron), and Myla Belza (collectively,

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[1] *Rollo*, pp. 11-35.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Pedro B. Corales and Jhosep Y. Lopez, concurring; *id.* at 36-45.

[3] Id. at 46-47.

respondents) before the National Labor Relations Commission (NLRC) National Capital Region Arbitration Branch.[4]

In her Position Paper,[5] petitioner claimed that she was employed as a Cocktail Waitress by Magsaysay, a manning agency, and Saffron, Magsaysay's foreign principal. Petitioner's tour duty was for nine (9) months and she was officially deployed on 21 February 2014 on board the vessel, M/V Saga Sapphire. On 14 June 2014, while petitioner was inside the vessel, she slipped and her waist landed on a steel basin and her back hit a steel frame.[6] After her fall, petitioner was then examined by the shipside physician on duty. Petitioner claimed that the pain in her back persisted despite taking pain relievers.[7] On 21 June 2014, petitioner underwent a magnetic resonance imaging (MRI) at Karolinska University Hospital in Stockholm, Sweden. On 23 June 2014, petitioner underwent medical treatment in St. Petersburg, Russia. Petitioner was then brought to American Medical Clinic in Russia. In the said clinic, Dr. Alexander Markovich (Dr. Markovich) found that petitioner sustained a "right XI rib fracture." On 11 September 2014, petitioner was repatriated back to the Philippines.[8]

Petitioner claimed that within three (3) days from her repatriation, she reported to respondents and asked for medical assistance. Petitioner alleged that respondents denied giving her any medical assistance, and instead offered her a new contract of engagement. Due to the throbbing pain in her back, petitioner went to St. Dominique Hospital in Bacoor, Cavite, where she was advised to undergo physiotherapy.[9] Petitioner went back to respondents to present the physician's medical findings. However, respondents again denied giving petitioner medical

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[4] Id. at 37.

[5] Not attached to the *rollo*.

[6] *Rollo*, p. 37.

[7] Id. at 20, 37.

[8] Id. at 37.

[9] Id. at 22, 38.

assistance.[10] On 6 February 2015, petitioner underwent another MRI. Dr. Manuel Magtira (Dr. Magtira) then issued a medical report where petitioner was found to have suffered "*L5-S1 disc desiccation, diffuse disc bulge, central posterior annular fissure ligamentum [flavum] thickening and facet joint hypertrophy resulting to mild neuroforaminal narrowing; L4-L5 ligamentum [flavum] thickening and facet joint arthrosis causing mild left neuroforaminal narrowing; mild leftward tilting of the spine*."[11] On 12 February 2015, Dr. Magtira declared petitioner permanently unfit in any capacity as a seafarer.[12]

As their defense, respondents claimed that on 11 September 2014, petitioner finished her contract and was thereafter repatriated back to the Philippines. Respondents claimed that when petitioner reported to their office on 16 September 2014 it was merely for an exit interview. Respondents claimed that in the said interview petitioner even revealed that she was, in fact, ready to be deployed by December 2014. Respondents then informed petitioner that she was included in the line-up of crew members that were scheduled to depart on 18 December 2014. Respondents contended that petitioner underwent her pre-employment medical examination in the Physician's Diagnostic Services Center where petitioner was declared fit for sea duty.[13]

According to respondents, petitioner's new contract was verified and approved by the Philippine Overseas Employment Administration (POEA). Petitioner called them to inform them that she was still not ready to be deployed on 18 December 2014. Respondents claimed that they even gave petitioner another deployment schedule on 25 January 2015 but petitioner did not report. Again, respondents rescheduled petitioner's deployment on 16 February 2015. Respondents contended that

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[10] Id.

[11] CA *rollo*, p. 34.

[12] Id.

[13] *Rollo*, p. 38.

instead of honoring her employment on the said date, she filed the present case.[14]

The Labor Arbiter Ruling

In a Decision[15] dated 28 August 2015, the Labor Arbiter (LA) granted petitioner's permanent disability claim. The LA held that petitioner was clearly repatriated with a medical condition. Petitioner's injury was in fact supported by the medical findings of other hospitals where petitioner was deployed. The LA ruled that it was respondents who denied petitioner her medical referral for her post-employment medical examination and instead offered her a new contract. Due to respondents' actions, petitioner's injury was never documented upon repatriation. The dispositive portion of the LA Decision provides:

> **WHEREFORE,** premises considered, respondents Magsaysay Maritime Corporation and Saffron Maritime Limited are ordered, jointly and solidarily, to pay complainant the amount of US$60,000.00, in its peso equivalent at the time of payment, as disability benefits; the sum of US$3,200, in its peso equivalent at the time of actual payment, as sick wage allowance; and, ten percent (10%) of the total judgment award as attorney's fees. Other claims are denied.
>
> **SO ORDERED**.[16]

Respondents then filed a Memorandum of Appeal[17] dated 14 October 2015 before the NLRC.

The NLRC Ruling

In a Decision[18] dated 7 March 2016, the NLRC granted respondents' appeal. The NLRC reversed the LA Decision and partially granted respondents' appeal. The NLRC ruled that

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[14] Id.

[15] Penned by Labor Arbiter Romelita N. Rioflorido; CA *rollo*, pp. 48-56.

[16] Id. at 56. (Emphasis in the original)

[17] Id. at 78-96.

[18] Penned by Commissioner Gina F. Cenit-Escoto, with Commissioners Gerardo C. Nograles and Romeo L. Go, concurring; id. at 33-43.

there is no clear showing that petitioner complied with the mandatory reporting within three (3) days from repatriation. The NLRC held that notwithstanding the medical findings overseas, the enabling act that would set the rule in claiming disability benefits is the seafarer's immediate submission to a medical examination by the company-designated physician within three (3) days from repatriation. The NLRC ruled that non-compliance with Section 20(A)(3) of the POEA-Standard Employment Contract (SEC) militates against any claim for benefits.[19] The dispositive portion of the NLRC Decision provides:

> **WHEREFORE**, the appeal of the respondents is **GRANTED**. The Labor Arbiter's grant of disability benefits to the complainant is **REVERSED AND SET ASIDE**. The claim is denied for lack of basis.
>
> However, the sickness allowance and attorney's fees granted by the Labor Arbiter, which were not assailed, STAND.
>
> **SO ORDERED**.[20]

In a Resolution[21] dated 31 May 2016, the NLRC denied petitioner's Motion for Reconsideration.[22] Petitioner then filed a Petition for *Certiorari*[23] before the CA.

The CA Ruling

In a Decision[24] dated 2 June 2017, the CA affirmed the NLRC Decision and denied petitioner's claim for disability benefits. The CA held that the right of seafarer to disability benefits is a matter governed by law, contract, and medical findings.

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[19] Id. at 39-42.

[20] Id. at 42. (Emphasis in the original)

[21] Id. at 44-47.

[22] Id. at 55-77.

[23] Id. at 4-32.

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

Section 20(A) of the POEA-SEC provides that the seafarer is required to comply with the three (3)-day mandatory post-employment medical examination and the seafarer must report regularly to the company-designated physician. The CA ruled that petitioner failed to submit herself to a post-employment medical examination within three (3) days from her return. As a consequence, petitioner lost her right to and shall be barred from claiming any disability benefit under her contract.[25]

The dispositive portion of the CA Decision provides:

WHEREFORE, the instant petition is **DISMISSED** for lack of merit.

SO ORDERED.[26]

Petitioner then filed a Motion for Reconsideration[27] on 20 July 2017. In a Resolution[28] dated 7 December 2017, the CA denied petitioner's Motion for Reconsideration.

Issue

The issue for the Court's resolution is whether the CA committed a reversible error in denying petitioner's claim for disability benefits.

The Court's Ruling

We grant the petition.

Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his or her employment contract, to wit:

SEC. 20. COMPENSATION AND BENEFITS. —

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[25] Id. at 40-43.

[26] Id. at 45. (Emphasis in the original)

[27] CA *rollo*, pp. 264-274.

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

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

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

Pursuant to Section 20 of the POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of

employment, the employer is then obligated to refer the latter to a company-designated physician. Under Section 20 (A) (3), upon repatriation, the seafarer shall submit himself or herself to a post-employment medical examination within three (3) working days from his/her return. Due to the conflicting findings between the CA, the NLRC, and the LA as to whether petitioner submitted herself to a post-employment medical examination upon her repatriation, the Court deems it necessary to inquire into the records of the case.

It is clearly undisputed that petitioner suffered her injury while on board the vessel M/V Saga Sapphire. However, respondents claim that petitioner was repatriated without a medical condition and due to the expiration of her contract of employment.

We do not agree.

Firstly, petitioner was engaged by respondents as a Cocktail Waitress for a period of nine (9) months on 21 February 2014 and was repatriated on 11 September 2014 back to the Philippines. Accordingly, petitioner was repatriated prematurely or on the seventh (7^{th}) month out of her nine (9)-month contract of employment. Clearly, respondents are wrong in their defense that petitioner's contract had expired. In fact, petitioner's contract was still in effect when she was repatriated back to the Philippines. In addition, the records show that petitioner's work-connected injury was supported by the following medical findings: (1) the findings of the shipside physician right after her fall on 14 June 2014; (2) the MRI findings from Karolinska University Hospital in Stockholm, Sweden on 21 June 2014 finding that petitioner suffered a back contusion and recommended respondents to further check if petitioner suffered a hematoma that could cause other obstructions;[29] (3) the findings of another ship doctor, Dr. Kok Ching Ng, that after 18 hours of examination, petitioner's back pain did not improve and that there was already a clinical impression of soft tissue injury to

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[29] CA *rollo*, p. 51.

the right loin area of petitioner;[30] and (4) the findings of Dr. Markovich of American Medical Clinic in Russia that petitioner sustained a "right XI rib fracture" on 23 June 2014. Taken together, the facts show that petitioner already had a pre-existing injury when she was repatriated.

While Section 20 (A) (3) of the POEA-SEC strictly requires that the seafarer undergo a post-employment medical examination within three (3) days from repatriation, the said provision also highlights the obligation of the shipping company to provide proper medical referral or treatment to the injured seafarer within the given period. The Court takes credence of the findings of the LA that petitioner indeed reported to respondents' company-designated physician within three (3) days from her repatriation to the Philippines. Considering the abundant medical reports of petitioner's injury prior to her repatriation, it was incumbent upon respondents to receive petitioner for medical treatment within three (3) days upon her repatriation. Despite having access to the preliminary medical findings of petitioner's injury while on board the vessel, respondents still denied petitioner's medical referral and instead conveniently claimed that petitioner was repatriated due to the expiration of her contract of employment. Instead of giving petitioner the proper medical treatment for her work-connected injury, respondents offered petitioner a new contract.

In *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*[31] *(De Andres)*, the Court recognized exceptions to the requirement of a post-employment medical examination by the company-designated physician within three (3) days from the seafarer's repatriation, to wit: "(1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician."[32] In *De Andres*, the Court

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[30] Id.

[31] 813 Phil. 746 (2017).

[32] Id. at 763.

also cited the Court's ruling in *Apines v. Elburg Shipmanagement Philippines, Inc.*[33] where the Court emphasized that the employer, and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor.[34]

Notably, the purpose of the medical examination is to determine and to confirm the seafarer's injury upon repatriation. Since respondents denied petitioner her medical referral and treatment, petitioner was constrained to secure the assessment of her injury from her chosen physician wherein she was declared to have suffered "*L5-S1 disc desiccation, diffuse disc bulge, central posterior annular fissure ligamentum [flavum] thickening and facet joint hypertrophy resulting to mild neuroforaminal narrowing; L4-L5 ligamentum [flavum] thickening and facet joint arthrosis causing mild left neuroforaminal narrowing; mild leftward tilting of the spine*."[35] Accordingly, the fact that petitioner was already found to have suffered an injury by the shipside physician and two other doctors during her duty established respondents' obligation to ensure petitioner's proper medical referral for examination within three (3) days upon her return. There is no evidence on record showing respondents agreed to give medical treatment to petitioner after she showed up in their office for her post-employment medical examination within three (3) days from her repatriation.

In *Interorient Maritime Enterprises, Inc. v. Remo*,[36] the Court emphatically ruled that "the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal"[37] of the shipping company. Accordingly, the CA committed a reversible error in refusing to grant petitioner's

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[33] 799 Phil. 220 (2016).

[34] Supra note 31, at 763.

[35] CA *rollo*, p. 34.

[36] 636 Phil. 240 (2010).

[37] Id. at 250-251.

disability claim on account that she failed to submit herself to post-employment medical examination within three (3) days from her repatriation. Petitioner's right to receive her disability benefits cannot be defeated due to the outright refusal of respondents to comply with their obligation to refer petitioner for a post-employment medical examination under Section 20 of the POEA-SEC. Indeed, respondents were remiss in their obligation to safeguard the welfare of petitioner after having suffered a work-connected injury.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision dated 2 June 2017 and the Resolution dated 7 December 2017 of the Court of Appeals in CA-G.R. SP No. 146843 are **REVERSED**. Respondents Magsaysay Maritime Corporation, Saffron Maritime Limited, and/or Myla Belza are jointly and solidarily ordered to pay petitioner Eliza Grace A. Daño US$60,000.00 as permanent and total disability benefits, US$3,200.00 as sick wage allowance, and attorney's fees equivalent to ten percent (10%) of this amount. Legal interest of 6% per *annum* is imposed on the total judgment award from the finality of this Decision until fully paid.

SO ORDERED.

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

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 237661. September 7, 2020]

CHRISTIAN B. GUILLERMO and VICTORINO B. GUILLERMO, *Petitioners, v.* **ORIX METRO LEASING AND FINANCE CORPORATION,** *Respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE (PD NO. 1529); PRIOR MORTGAGE LIEN AND SALE OF A PROPERTY ARE SUPERIOR OVER SUBSEQUENT LEVY ON EXECUTION. — From the foregoing established facts, it is evident that the CA erred when it declared that TCT No. N-328930 was a clean title, that is, without any previous liens and encumbrances at the time when the Notice of Levy in favor of Orix was annotated on August 17, 2012. The Real Estate Mortgage in favor of BPI was annotated in TCT No. N-328930 on April 28, 2009 or three years prior to the registration of the Notice of Levy. Assuming We agree with Orix that the Cancellation of Real Estate Mortgage and Deed of Absolute Sale was registered on September 3, 2012, it means that when Sheriff Mendoza levied upon the property on August 17, 2012, the mortgage in favor of BPI was still existing. BPI's mortgage lien is therefore a senior encumbrance on the property superior to the claim of Orix. Under Section 12, Rule 39 of the 1997 Rules, a levy on execution shall create a lien in favor of the judgment obligee over the right, title, and interest of the judgment obligor at the time of the levy, subject to the liens and encumbrances then existing. In this case, the levy on execution in favor of Orix is subject to the existing senior lien of BPI. The annotation of BPI's mortgage constituted a constructive notice to Orix and Sheriff Mendoza that the property they sought to levy upon on execution was encumbered by a prior mortgage.

Significantly, when the petitioners fully paid the loan obligation of Sps. Cando to BPI, they stepped into the shoes of BPI and acquired whatever rights and obligations appertaining thereto, such as being of the holder of a senior lien. Necessarily, before Orix may lay any claim over the property covered by TCT No. N-328930, it must first pay petitioners the total amount

of ₱9,921,600.00 or the amount that petitioners paid to BPI. Circumstances will simply not allow Orix to have preferential right over the property, considering that its lien is subordinate to that of BPI and/or the petitioners.

2. ID.; ID.; ID.; THE CANCELLATION OF THE REAL ESTATE MORTGAGE AND THE DEED OF ABSOLUTE SALE ARE DEEMED REGISTERED EARLIER THAN THE REGISTRATION OF THE NOTICE OF LEVY ON EXECUTION. — We rule that the Cancellation of the Real Estate Mortgage and the Deed of Absolute Sale should be deemed registered as of July 26, 2012. On said date, the petitioners had fulfilled all that are needed of them for the registration and annotation of their transfer documents. This was evidenced by the completed checklist appearing in the Assessment Form and Payment Order Form dated July 26, 2012. . . . Atty. Alcantara, the acting RD of QC, admitted before the RTC that the Cancellation of Real Estate Mortgage and the Deed of Absolute Sale was entered in the Electronic Primary Entry Book on July 26, 2012 with Electronic Primary Entry Nos. 21579 and 21582, respectively. If this were the case, how come TCT No. 004-2012009967 in the name of petitioners was issued only on September 3, 2012, and why was the Cancellation of Real Estate Mortgage and Deed of Absolute Sale annotated only in TCT No. N-328930 on September 3, 2012?

. . .

Atty. Alcantara's explanation for the delay in the issuance of a new TCT in favor of petitioners is suspect. . . . The duty to annotate rests with the Register of Deeds and not with the registrant. Hence, petitioners should not be penalized for the unreasonable delay on the part of the RD of QC.

3. ID.; ID.; ID.; NOTICE OF LEVY ON EXECUTION CAN BE VALIDLY ANNOTATED IF THE PROPERTY TO BE LEVIED UPON BELONGS TO THE JUDGMENT DEBTOR. — Pursuant to Section 52 of PD 1529, the registration of the Cancellation of the Real Estate Mortgage and the Deed of Absolute Sale on July 26, 2012 in the primary entry book or day book of the Register of Deeds operates as a constructive notice to the whole world that the property covered by TCT No. N-328930 is no longer owned by the Sps. Cando. As such, the property can no longer be answerable to any judgment against Sps. Cando because it is now owned by the petitioners.

The Notice of Levy on Execution cannot be validly annotated in the title of petitioners on August 17, 2012. While Section 9(b), Rule 39 of the 1997 Rules authorizes satisfaction by levy upon the properties of the judgment obligor of every kind and nature if he/she cannot pay all or part of his/her obligation, this presupposes that the property to be levied upon belongs to and is owned by the judgment debtor. The RTC is therefore correct in granting the third-party claim and in ordering Sheriff Mendoza to release and cancel the notice of levy on execution.

4. ID.; PROPERTY; OWNERSHIP; ACTUAL AND CONSTRUCTIVE DELIVERY, DEFINED; OWNERSHIP OF A PROPERTY IS TRANSFERRED BY ACTUAL AND CONSTRUCTIVE DELIVERY. — Similar to *Miranda*, the ownership of the property in the case before Us vested to the petitioners before the registration of the levy on execution in favor of Orix. Article 1477 of the Civil Code provides that "the ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." There is actual delivery when the thing sold is placed in the control and possession of the vendee, while there is constructive delivery when the sale is made through the execution of a public instrument, unless the contrary appears in the deed. Ownership of the property was constructively delivered by the Sps. Cando to the petitioners upon the execution of the Deed of Absolute Sale on June 5, 2012. There was also an actual delivery of the property on February 10, 2012 when petitioners and the Sps. Cando entered into a Contract of Lease of the property, where petitioners were referred as the lessors and Sps. Cando as the lessees, for a term of one year commencing on the date of execution of the lease until February 10, 2013, without renewal. The characterization of the petitioners as the lessors of the property means that they already have actual possession of the property even before the execution of the sale contract.

Accordingly, the governing rule in this case is, a judgment debtor can only transfer property in which he/she has interest to the purchaser at a public execution sale. Considering that Sps. Cando no longer owns the property as early as February 10, 2012, there can be no lien that may be created in favor of Orix by reason of the levy dated August 17, 2012.

5. ID.; SALE; THE DEED OF SALE EXECUTED IN FAVOR OF PETITIONERS PERTAINS TO THE PARCEL OF LAND IN QUEZON CITY, NOT A CONDOMINIUM UNIT. — The confusion as to the object of the Deed of Absolute Sale arose from the apparent clerical error in the face of the Deed. . . .

> [W]hile the first paragraph of the Deed referred to and described only a parcel of land, the second paragraph mentioned "the above-described condominium unit" as the one being conveyed by the Sps. Cando. As between the two, We are inclined to believe that the object of the sale is the land stated in the first paragraph. There is clearly no condominium unit described in any part of the Deed. Moreover, the Acknowledgment part of the Deed stated that: "[t]his instrument refers to a DEED OF ABSOLUTE SALE, pertaining to TCT No. N-328930 x x x."

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LEVY ON EXECUTION; ORDER BY WHICH THE PROPERTY OF A JUDGMENT DEBTOR MAY BE EXECUTED UPON, EXPLAINED; THE LEVY OF THE REAL PROPERTY IS IMPROPER WHEN THE JUDGMENT DEBTOR IS DEPRIVED OF THE OPPORTUNITY TO HAVE PERSONAL PROPERTIES LEVIED UPON FIRST. — Rule 39, Section 9 of the 1997 Rules, as amended, provides the order by which the property of a judgment debtor may be executed upon for the satisfaction of a money judgment. First is by immediate payment on demand by means of cash or certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter. Second is through satisfaction by levy upon the properties of the judgment obligor of every kind and nature, giving the latter the option to choose which property or a part thereof to be levied upon. In case the judgment obligor does not exercise the option, the sheriff shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment. Third is garnishment of the debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties.

> In this case, it did not escape Our attention that there is a dearth of evidence showing that the sheriff first levied upon the personal property of EMC Northstar or the Sps. Cando. There was only a Notice of Demand to Pay dated August 2, 2012, Notice of Levy Upon Real Property dated August 2, 2012, and Notice of Garnishment dated August 3, 2012. Orix did not dispute the claim of petitioners that EMC Northstar has buses with plate nos. NMQ-191, NMO-121, and NOQ-106. Yet these were not levied upon execution. Hence, Sps. Cando were deprived of the opportunity to have their personal properties levied upon first before their real property. There was also no showing that the garnishee made a written report to the court that EMC Northstar or the Sps. Cando has no sufficient funds or credits to satisfy the money judgment. This makes the levy on the subject real property improper.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates for petitioners.
Jovellanos-Kho Malcontento and Associates for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 29, 2017 and the Resolution[3] dated February 19, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 145809. The CA annulled and set aside the Orders dated December 17, 2015[4] and March 4, 2016[5] of the Regional Trial

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

[2] Penned by Justice Elihu A. Ybañez, with the concurrence of Associate Justices Magdangal M. De Leon and Ma. Luisa C. Quijano-Padilla; id. at 73-87.

[3] Id. at 89-90.

[4] Penned by Presiding Judge Eugene C. Paras; id. at 91-92.

[5] Id. at 293.

Court (RTC) of Makati City, Branch 58 in Civil Case No. 10-1064, a complaint for *replevin*, sum of money, and damages.

On October 29, 2009 and November 26, 2009, EMC Northstar Transport, Inc. (EMC Northstar), represented by spouses Edwin and Margarita Cando (Sps. Cando), obtained loans from respondent Orix Metro Leasing and Finance Corporation (Orix) in the amounts of ₱6,374,328.00 and ₱2,012,952.00, respectively. Each loan is evidenced by a promissory note, providing that the loaned amount is payable in 24 successive monthly installments. In case of nonpayment of any amount which EMC Northstar is obliged to pay under the note, the entire balance of the obligation then remaining unpaid shall become due and demandable. The first loaned amount was secured by a chattel mortgage on two units of Daewoo air-conditioned buses, while the second loaned amount was secured by another Daewoo air-conditioned bus. Sps. Cando, in their personal capacity, also executed a Continuing Surety where they undertook to guarantee the punctual payment of all loans which are now or may hereafter become due or owing to Orix.[6]

EMC Northstar defaulted in its obligations and refused to relinquish possession of the mortgaged properties, prompting Orix to file Civil Case No. 10-1064 before the RTC on October 20, 2010. Orix impleaded EMC Northstar and Sps. Cando as defendants in the case. As of September 6, 2010, the total outstanding debt of EMC Northstar was ₱6,034,974.00 inclusive of interest and penalty charges.[7]

In their Answer (with Compulsory Counterclaim), EMC Northstar and Sps. Cando did not deny that they were indebted to Orix but they argued that they are entitled to know the exact amount of their debt because Orix failed and refused to give updated the statement of accounts. They asserted that in July 2010, Orix already agreed to the restructuring of their loans.

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[6] Id. at 74.

[7] Id. at 75.

The latter demanded immediate payment for the mortgaged vehicles, which EMC Northstar and Sps. Cando promptly paid. Hence, they believed that the filing of the complaint in court was done in haste, since the matter could be threshed out in a conference between the parties.[8]

Consequently, EMC Northstar, Sps. Cando, and Orix entered into a compromise agreement, which the RTC approved in its Compromise Judgment[9] dated February 9, 2012. The Compromise Judgment stated that EMC Northstar and Sps. Cando admit their outstanding obligation to Orix in the amount of ₱9,019,500.00 inclusive of interest, penalties, and expenses. To pay for the said amount, EMC Northstar and Sps. Cando undertook to deliver 24 post-dated checks in the amount of ₱100,000.00 each and 36 post-dated checks in the amount of ₱185,808.00 each commencing on July 15, 2011 until June 15, 2016. Should they fail to comply fully with the schedule, Orix shall be entitled to an immediate Writ of Execution for the recovery of the total unpaid balance as of the date of default plus penalty charges at the rate of 5% per month until fully paid and attorney's fees equivalent to 30% of the total amount still due and owing to Orix.[10]

EMC Northstar and Sps. Cando failed to comply with the compromise agreement. They defaulted in the payment of their monthly installments for September 2011, October 2011, and the succeeding months. Repeated demands for payment were futile, hence, Orix moved for the issuance of a Writ of Execution for the recovery of the total outstanding balance of ₱8,424,036.33.[11] The RTC granted the motion for execution in its Order[12] dated July 23, 2012. It directed the Branch Clerk of Court to issue a Writ of Execution in favor of Orix to implement and enforce the Compromise Judgment[13] dated February 9, 2012.

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[8] Id.

[9] Penned by Presiding Judge Eugene C. Paras; id. at 107-109.

[10] Id.

[11] Id. at 110-113.

[12] Penned by Presiding Judge Eugene C. Paras; id. at 114.

[13] Id.

On August 3, 2012, Deputy Sheriff Antonio Mendoza (Sheriff Mendoza) served the Writ of Execution,[14] the RTC Order[15] dated July 23, 2012, and the Compromise Judgment[16] upon EMC Northstar and the Sps. Cando. On August 17, 2012, Sheriff Mendoza served upon the Registry of Deeds of Quezon City (RD of QC) a copy of the Notice of Levy upon Real Property pursuant to the Writ of Execution.[17] The levy was made upon a parcel of land owned by Sps. Cando covered by Transfer Certificate of Title (TCT) No. N-328930[18] (property) with an area of 1,383 square meters.[19]

On September 18, 2012, Christian Guillermo and Victorino Guillermo (collectively, petitioners) filed a Third-Party Claim with Motion to Lift Notice of Levy on Execution upon TCT No. 004-2012009967[20] (Third-Party Claim) in Civil Case No. 10-1064. They alleged that they are the owners of the property levied upon by Sheriff Mendoza. They narrated that Sps. Cando made fuel purchases from their corporation, World Fuel Philippines, Inc. As part of their settlement agreement, petitioners agreed to buy Sps. Cando's property in Barrio Pasong Putik, Quezon City, which was then mortgaged to BPI Family Savings Bank (BPI) to secure a ₱9,921,600.00 loan.[21] Petitioners, with the consent of the bank, fully paid the loan of Sps. Cando, causing the cancellation of the real estate mortgage over the property on January 31, 2012.[22] Recognizing petitioners' right

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[14] Id. at 115-116.

[15] Supra note 16.

[16] Supra note 13.

[17] *Rollo*, p. 119.

[18] Id. at 121.

[19] Id.

[20] Id. at 129-135.

[21] Id. at 164.

[22] Id. at 136.

over the property, Sps. Cando executed a Contract of Lease[23] with themselves as the lessees and petitioners as the lessors for a term of one year from February 10, 2012 to February 10, 2013, without renewal.[24] On June 5, 2012, Sps. Cando executed a Deed of Absolute Sale[25] over the property in favor of petitioners. After payment of capital gains tax on June 5, 2012 and transfer tax on July 13, 2012, the pertinent transfer documents were filed on July 26, 2012 in the RD of QC.[26] However, the RD of QC took an unreasonable length of time to effect the transfer of title in the name of petitioners. It was only on September 3, 2012 that TCT No. N-328930 was cancelled and TCT No. 004-2012009967[27] was issued in petitioners' name. Petitioners were surprised that a Notice of Levy[28] dated August 17, 2012 was annotated in their title. On July 26, 2012, Edwin Cando died before the levy on execution over the property was effected.[29]

Petitioners alleged that the levy on the property was invalid, and its registration was ineffective for failure of Sheriff Mendoza to give a copy of the notice of levy to the occupant. The levy was also improper because the property does not belong to the estate of the Sps. Cando but is owned by the petitioners in fee simple. Thus, petitioners asked the RTC to direct Sheriff Mendoza to release and cancel the notice of levy on execution upon TCT No. 004-2012009967.[30]

Orix filed an Opposition to the Third-Party Claim,[31] arguing that the levy on execution was annotated and registered prior

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[23] Id. at 137-139.

[24] Id. at 137.

[25] Id. at 140-141.

[26] Id. at 130.

[27] Id. at 142.

[28] Id. at 144.

[29] Id. at 19.

[30] Id. at 132-133.

[31] Id. at 148-156.

to petitioners' Deed of Absolute Sale. The levy through the Writ of Execution was annotated in the Memorandum of Encumbrances of TCT No. N-328930 on August 17, 2012, while the Deed of Absolute Sale was registered on September 3, 2012. Orix insisted that at the time of levy, the property was still owned by Sps. Cando with no liens and encumbrances existing thereon as to affect the primacy of the levy on execution. Citing relevant jurisprudence, Orix argued that a levy on execution duly registered takes preference over a prior unregistered sale, otherwise the preference created by the levy would be meaningless and illusory. Meanwhile, any defect in the levy by lack of notice is cured by service of notice of sale upon the judgment debtor prior to the sale. However, the Sheriff's Partial Report dated August 28, 2012 stated that Sheriff Mendoza served on August 3, 2012 copies of the Writ of Execution dated July 13, 2012, Orders dated February 3, 2012, July 23, 2012, Compromise Agreement dated February 9, 2012, and Notice of Demand to Pay upon EMC Northstar and Sps. Cando.[32]

Petitioners filed a Reply with Motion to Set Case for Evidentiary Hearing,[33] alleging that they are the assignees of the credit of BPI, having paid the loan of Sps. Cando. As such, they stepped into the shoes of the bank. The mortgage lien of BPI annotated in the title of the property as Entry No. 7185 dated April 28, 2009 constituted a prior and superior claim in time than the Notice of Levy on execution as Entry No. 2012023646 dated August 17, 2012. Petitioners reiterated that they filed for registration of their transfer documents with the Register of Deeds of QC as early as July 26, 2012 evidenced by the Registration Application Acknowledgment and Claim Form/Assessment Form and Payment Order of the same date at 1:47:08pm. However, the RD of QC only issued a new TCT in their favor on September 3, 2012.[34]

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[32] Id. at 151-156.

[33] Id. at 163-170.

[34] Id. at 164-168.

Ruling of the Regional Trial Court

In its Order[35] dated December 17, 2015, the RTC granted the Third-Party Claim and ordered Sheriff Mendoza to release and cancel the notice of levy on execution upon TCT No. 004-2012009967.

The RTC noted that the Deed of Absolute Sale of the property was executed by the Sps. Cando on June 5, 2012, while the notice of levy was served to the RD of QC on August 17, 2012 or when the property was no longer owned by the Sps. Cando but by the petitioners.[36]

Orix moved for reconsideration[37] which the RTC denied in its Order[38] dated March 4, 2016. It elevated the case to the CA via Petition for *Certiorari* with application for issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitory Injunction.[39]

Ruling of the Court of Appeals

In its Decision[40] dated June 29, 2017, the CA annulled and set aside the Order of the RTC, directing Sheriff Mendoza to proceed with the completion of the execution proceedings.

The CA held that Rule 39, Section 12 of the 1997 Rules of Court (1997 Rules) states that "[t]he levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing."[41] Here, when the notice of levy was annotated on August 17, 2012, TCT No. N-328930 then registered in the

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[35] Supra note 4.

[36] *Rollo*, pp. 91-92.

[37] Id. at 285-292.

[38] Supra note 5.

[39] *Rollo*, pp. 294-319.

[40] Supra note 2.

[41] *Rollo*, p. 82.

name of Sps. Cando had no previous encumbrances and liens. It was a clean title. Hence, the levy on execution effectively created a lien on the land without it being subject and subordinate to the claim of any third person. The Deed of Absolute Sale was executed on June 5, 2012 but it was registered only on September 3, 2012. Under Section 51[42] of Presidential Decree No. (PD) 1529 or the Property Registration Decree, the act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned. Since the Deed of Absolute Sale was unrecorded at the time the property was levied on execution, it merely operates as a contract between the petitioners and the Sps. Cando. On the other hand, the registration and annotation of the Notice of Levy on the title amounts to a constructive notice to all persons, whether or not party to the original case filed before the RTC.[43]

Citing *Uy v. Spouses Medina*,[44] the CA ruled that levy on attachment duly registered takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land.[45]

As a final note, the CA stated that object of the Deed of Absolute Sale executed by Sps. Cando in favor of the petitioners is not the property in question but a condominium unit, which is not even described in the Deed. Petitioner Christian Guillermo admitted this in the February 12, 2013 hearing for the reception of evidence on their Third-Party Claim.[46]

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[42] Section 51. *Conveyance and Other Dealings by Registered Owner*. — x x x.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned x x x.

[43] *Rollo*, pp. 82-85.

[44] 641 Phil. 368 (2010).

[45] *Rollo*, pp. 83-84.

[46] Id. at 87.

Petitioners filed a Motion for Reconsideration,[47] which the CA denied in its Resolution[48] dated February 19, 2018. Aggrieved, they filed this petition before Us.

Issue

Whether the CA erred in declaring that the registered levy on execution in favor of Orix takes precedence over the prior sale of the property to the petitioners.

Arguments of Petitioners

In their Petition for Review[49] dated April 13, 2018, petitioners argued that the doctrine that "a levy on execution duly registered takes precedence over a prior unregistered sale"[50] and the case of *Uy v. Spouses Medina*[51] are inapplicable in this case. Petitioners emphasized that prior to the issuance of Writ of Execution in favor of Orix, they already filed and perfected an application for registration of the sale as evidenced by the Assessment Form and Payment Order[52] dated July 26, 2012. This was weeks before the RD's receipt of the Notice of Levy on August 17, 2012.[53] The case of *Uy v. Spouses Medina* does not apply because there the Deed of Absolute Sale was registered after the annotation of the levy on execution.[54] Here, the Deed of Absolute Sale executed by the Sps. Cando should be deemed registered after the petitioners completed all documentary requirements[55] and paid all the taxes and fees for registration on July 26, 2012.

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[47] Id. at 380-386.

[48] Supra note 3.

[49] Supra note 1.

[50] *Rollo*, p. 42.

[51] Supra note 43.

[52] *Rollo*, pp. 412-413.

[53] Id. at 44.

[54] Id.

[55] Referring to Release of Mortgage Contract, Owner's Duplicate of Title TCT No. N-328930, Deed of Sale dated June 5, 2012, Tax Declaration, and Transfer Tax Receipt/Clearance.

Petitioners averred that they should not be penalized for the delay in the issuance of a new title by the RD of QC. They further alleged that to apply *Uy v. Spouses Medina* would run afoul of the *terceria* doctrine, which allows third-party claimants to challenge the levy made on their property. They further claimed that they were deprived of due process because of the summary levy on execution.[56]

Petitioners maintained that they were purchasers in good faith because no levy was annotated in the title of the property at the time of their purchase. They pointed out that the loans in this case were secured by a chattel mortgage but Orix did not go after the buses with plate nos. NMQ-191, NMO-121, and NOQ-106. The compromise agreement and the execution thereof is exclusive to Orix and the Sps. Cando. Those should not burden third parties and the properties owned by them.[57]

Lastly, petitioners argued that the issuance of title should have retroactive effect to the date of application.[58] Constructive notice to third persons should have taken effect when petitioners submitted all the required documents and paid for the taxes and fees on July 26, 2012. On this date, Orix should be considered notified of the transfer of the property to the petitioners, hence it may no longer levy on the property.[59]

Accordingly, petitioners pray for the reinstatement of the RTC Decision[60] dated December 17, 2015 and the cancellation of the levy on their property.[61]

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[56] *Rollo*, pp. 48-51.

[57] Id. at 56-58.

[58] Id. at 59-60.

[59] Id. at 64.

[60] Supra note 4.

[61] *Rollo*, p. 64.

Arguments of Orix

In its Comment,[62] Orix alleged that the principle of *primus tempore, potior jure* applies in the case. Prior registration of a lien (that is, the notice of levy on execution) creates a preference in favor of the registrant as the act of registration is the operative act that conveys or affects the property.[63]

Orix claimed that Atty. Carlo B. Alcantara (Atty. Alcantara), the Acting RD of QC, testified that the cancellation of the real estate mortgage and registration of the Deed of Absolute Sale were initially entered on July 26, 2012 under Entry Nos. 21579 and 21682 upon application of Lilibeth Crisostomo (Crisostomo). However, Crisostomo subsequently withdrew the transaction from the Primary Entry Book. A handwritten notation appears on the Assessment Form and Payment Order[64] by the Deeds Examiner Merceles, which reads: "BIR/Transfer tax computations-defers." Due to this notation, the registration would be denied based on the rules of the Register of Deeds. The registration of the cancellation of the real estate mortgage and the Deed of Absolute Sale were withdrawn from the system on August 22, 2012 after the withdrawal of Crisostomo. The Assessment Form and Payment Form filed by Crisostomo only reached the stage of claim assessment wherein after the entries were made, the computer-generated assessment would be issued. The stage of payment of registration and IT fees was not reached because of the withdrawal of the application, which is tantamount to abandonment of said application. The cancellation of real estate mortgage and registration of the Deed of Absolute Sale were annotated in the title of the property only on September 3, 2012 upon application of Gladys Tanguilan, which again started the entire process of applying for registration. Atty. Alcantara noted that the date of the effectivity of the registration of a transaction in the Registry is the date of entry in the Electronic Primary Entry Book. Even if the actual registration may take

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[62] Id. at 472-485.

[63] Id. at 472.

[64] Id. at 412-413.

later, the annotation in the title would retroact to the date of entry in the Electronic Primary Entry Book. Atty. Alcantara confirmed that the levy on execution was annotated on August 17, 2012 before the September 3, 2012 entry of the Cancellation of the Real Estate Mortgage and the Deed of Absolute Sale. Orix claimed that the petitioners neither disputed nor rebutted the testimony of Atty. Alcantara on the withdrawal of the application for registration.[65]

Subsequently, Orix argued that the CA did not err in applying *Uy v. Spouses Medina*[66] because the facts of that case are similar with the present case. There, the notice of levy was annotated and registered prior to the earlier executed but unrecorded Deed of Sale. More, Orix alleged that the mere submission of the documentary requirements and payment of taxes and fees for registration cannot be equated to registration itself since this would be contrary to Section 51 of PD 1529. The conveyance between the vendor and the vendee will only be valid and binding against third persons upon the registration of the sale. Here, it was undisputed that at the time the levy on execution was registered, the title of the property was clean. The sale between petitioners and Sps. Cando was not yet annotated in the title. Thus, the sale is not binding to Orix. The right of petitioners to the property is subordinate and subject to the preference created over the earlier annotate levy in favor of Orix.[67]

Petitioners filed a Reply,[68] reiterating their arguments in the petition. They hastened to add that the person and authority of Crisostomo had never been discussed nor had been addressed by the CA. Without proof that Crisostomo was indeed a representative of petitioners, the alleged withdrawal, assuming arguendo it happened, would have been invalid in the first place. The authority of Crisostomo must first be established before

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[65] *Id.* at 477-479.

[66] Supra note 48.

[67] *Rollo*, pp. 480-484.

[68] *Id.* at 457-460.

the court could conclude that there was a withdrawal made. Petitioners asserted that they do not know Crisostomo and they were not aware of the alleged withdrawal of application until the presentation of the RD during the trial in the RTC. They claimed that the withdrawal was merely an excuse on the part of the RD to cover the delay and its adverse effects.[69]

Ruling of the Court

The petition is impressed with merit.

At the outset, We note that, as a rule, petitions for review under Rule 45 should raise only pure questions of law. The Court is not a trier of facts. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court. However, the rule admits of exceptions, such as in this case, when the findings of fact of the RTC and the CA are conflicting and when the judgment of the CA is based on misapprehension of facts.[70] The RTC found that petitioners have preferential right over the property by virtue of the Deed of Absolute Sale dated June 5, 2012, while the CA declared that the registered levy on execution in favor of Orix enjoys preference over the prior but unregistered sale to petitioners. Thus, We shall delve into the record of the case to resolve the issue on who has preferential right over the property.

BPI's mortgage lien is superior over Orix's levy on execution

The following are the material facts and chronology of events as borne by the evidence on record. Spouses Edwin B. Cando and Margarita R. Cando were the registered owners of the property covered by the TCT No. N-328930[71] with an area of 1,383 square meters located in Quezon City.[72] The property

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[69] Id. at 458-459.

[70] See *Neri v. Yu*, G.R. No. 230831, September 5, 2018.

[71] *Rollo*, p. 220.

[72] Id.

was mortgaged to BPI by virtue of a Real Estate Mortgage[73] dated April 27, 2009 as a guarantee for a loan obligation in the amount of ₱9,921,600.00. Said mortgage was annotated in TCT No. N-328930 per Entry No. 7185[74] inscribed on April 28, 2009. Sps. Cando made fuel purchases on World Fuels Philippines, Inc., a company owned by petitioners. To settle payment for the same, petitioners agreed to purchase the property covered by TCT No. N-328930, which was then about to be foreclosed by BPI.[75] After securing the consent of BPI, petitioners fully paid the loan, thus on January 30, 2012, the bank issued a Cancellation of Real Estate Mortgage.[76] On February 10, 2012, petitioners and the Sps. Cando entered into a Contract of Lease[77] of the land covered by TCT No. N-328930, with the former as the lessors and the latter as the lessees, for a term of one year commencing on the date of execution of the lease until February 10, 2013, without renewal.[78] On June 5, 2012, Sps. Cando, as vendors, executed a Deed of Absolute Sale[79] over the property covered by TCT No. N-328930 in favor of the petitioners, as vendees, in consideration of ₱3,042,600.00.[80]

Meanwhile, on July 23, 2012, the RTC issued a Writ of Execution[81] in Civil Case No. 10-1064 in favor of Orix. Recall that in said case, EMC Northstar and the Sps. Cando entered into a Compromise Agreement with Orix for the payment of two loans. The Compromise Agreement was approved by the RTC in its Compromise Judgment[82] dated February 9, 2012.

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[73] Id. at 232-235.

[74] Id. at 221.

[75] Id. at 129.

[76] Id. at 136.

[77] Id. at 137-139.

[78] Id. at 137.

[79] Id. at 236-237.

[80] Id.

[81] Supra note 18.

[82] Supra note 13.

EMC Northstar and the Sps. Cando defaulted in their obligation under the compromise, hence a Writ of Execution was issued against them upon motion[83] of Orix. Three days later or on July 26, 2012, petitioners filed before the RD of QC, the necessary transfer documents for the registration of the Cancellation of Real Estate Mortgage and Deed of Absolute Sale, which include copies of the: (1) Release of Mortgage Contract; (2) Owner's Duplicate Copy of Title; (3) Deed of Absolute Sale; (4) BIR CAR/Tax Clearance Certificate; (5) Realty Tax Clearance; (6) Tax Declaration; and (7) Transfer Tax Receipt/Clearance. The application was evidenced by the Assessment Form and Payment Order[84] with Electronic Primary Entry Book (EPEB) dated July 26, 2012 at 13:35. The Cancellation of Real Estate Mortgage was numbered as EPEB 2012021579, while the Deed of Absolute Sale was numbered as EPEB 2012021582. The name of the presenter is Lilibeth Crisostomo.[85]

On August 17, 2012, Sheriff Mendoza served to the RD of QC a Notice of Levy upon Real Property pursuant to a Writ of Execution[86] upon TCT No. N-328930. On even date, the levy was annotated in the title per Entry No. 2012023646 at 2:25 p.m.[87] On September 3, 2012, a certain Gladys Tanguilan applied for registration of the Cancellation of Real Estate Mortgage[88] and Deed of Absolute Sale[89] upon TCT No. N-328930, submitting the same requirements[90] filed during the July 26 Application. The application was numbered EPEB 2012024862 for the Cancellation of Real Estate Mortgage and EPEB 2012024863

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[83] *Rollo*, pp. 110-112.

[84] Id. at 196-197.

[85] Id. at 196.

[86] Id. at 119-120.

[87] Id. at 222.

[88] Id. at 136.

[89] Id. at 140-141.

[90] Referring to Release of Mortgage Contract, Owner's Duplicate of Title TCT No. N-328930, Deed of Sale dated June 5, 2012, Tax Declaration, and Transfer Tax Receipt/Clearance.

for the Deed of Absolute Sale at 8:45. These two transactions were annotated in TCT No. N-328930 on the same day.[91] Consequently, by virtue of the Deed of Absolute Sale, TCT No. N-328930[92] was cancelled, and TCT No. 004-2012009967[93] was issued in the name of petitioners on September 3, 2012. Carried over and annotated in TCT No. 004-2012009967 was Entry No. 2012023646 or the Notice of Levy on Execution in favor of Orix.[94]

From the foregoing established facts, it is evident that the CA erred when it declared that TCT No. N-328930 was a clean title, that is, without any previous liens and encumbrances at the time when the Notice of Levy in favor of Orix was annotated on August 17, 2012.[95] The Real Estate Mortgage in favor of BPI was annotated in TCT No. N-328930 on April 28, 2009[96] or three years prior to the registration of the Notice of Levy. Assuming We agree with Orix that the Cancellation of Real Estate Mortgage and Deed of Absolute Sale was registered on September 3, 2012, it means that when Sheriff Mendoza levied upon the property on August 17, 2012, the mortgage in favor of BPI was still existing. BPI's mortgage lien is therefore a senior encumbrance on the property superior to the claim of Orix. Under Section 12, Rule 39 of the 1997 Rules,[97] a levy on execution shall create a lien in favor of the judgment obligee over the right, title, and interest of the judgment obligor at the time of the levy, subject to the liens and encumbrances then

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[91] *Rollo*, p. 222.

[92] Id. at 220.

[93] Id. at 142-144.

[94] Id. at 144.

[95] Supra note 2 at 82-83.

[96] Said mortgage was annotated in TCT No. N-328930 per Entry No. 7185. Exhibit 2-C of Petitioners' Formal Offer of Evidence, *rollo*, p. 221.

[97] Section 12. *Effect of levy on execution as to third person.* — The levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing.

existing. In this case, the levy on execution in favor of Orix is subject to the existing senior lien of BPI. The annotation of BPI's mortgage constituted a constructive notice to Orix and Sheriff Mendoza that the property they sought to levy upon on execution was encumbered by a prior mortgage.[98]

Significantly, when the petitioners fully paid the loan obligation of Sps. Cando to BPI, they stepped into the shoes of BPI and acquired whatever rights and obligations appertaining thereto, such as being of the holder of a senior lien. Necessarily, before Orix may lay any claim over the property covered by TCT No. N-328930, it must first pay petitioners the total amount of ₱9,921,600.00 or the amount that petitioners paid to BPI. Circumstances will simply not allow Orix to have preferential right over the property, considering that its lien is subordinate to that of BPI and/or the petitioners.

The Cancellation of Real Estate Mortgage and Deed of Absolute Sale are deemed registered on July 26, 2012

The records show that Sps. Cando sold the property covered by TCT No. N-328930 to the petitioners by virtue of the Deed of Absolute Sale[99] dated June 5, 2012. Its registration was however made only on September 3, 2012 despite petitioners' application for registration as early as July 26, 2012.[100] In the interim, the Notice of Levy on Execution in favor of Orix was registered on August 17, 2012.[101] Thus, it appeared that the levy was made while the property is still in the name of the Sps. Cando. Petitioners thus pray that We consider July 26, 2012 as the date of registration of their transfer documents, considering that as of such date they had already submitted all the documentary requirements and paid all the required fees.

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[98] See *Martinez v. Garcia*, 625 Phil. 377 (2010).

[99] *Rollo*, pp. 140-141.

[100] Id. at 130-131.

[101] Id.

It was the RD of QC who took an unreasonable length of time in effecting the transfer.[102] We agree with the petitioners.

Sections 51, 53, 56, and 57 of PD 1529 outline the procedure in effecting the registration of conveyances and other dealings by a registered owner, to wit:

> Section 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**.
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> Section 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.
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> **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.
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> Section 56. *Primary Entry Book; Fees; Certified Copies*. — **Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land.** He shall, as a preliminary

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[102] Id. at 53-55.

process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date**: *Provided*, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

Section 57. *Procedure in Registration of Conveyances.* — **An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law.** The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled." The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed. (Emphasis supplied)

Hence, an owner of a registered land who conveys his/her property in fee simple shall execute a deed of conveyance or a deed of sale in favor of the purchaser. For the conveyance to

be registered, the deed together with the owner's duplicate certificate of title must be presented to the Register of Deeds. The production of the owner's duplicate certificate of title serves as a conclusive proof from the registered owner to the Register of Deeds to enter a new certificate of title or to make a memorandum of registration in the instrument. Upon payment of the entry fee, the Register of Deeds shall enter in his/her primary entry book or day book all the deeds/instruments that he/she received, in the order of his/her reception, noting the date, hour, and minute of receipt. The instrument shall be deemed registered from the time it is noted in the primary entry book, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date.

In *Saberon v. Ventanilla, Jr.*[103] *(Saberon)*, We held that in cases of voluntary registration of documents, an innocent purchaser for value becomes the registered owner, and, in contemplation of the law the holder of a certificate of title, the moment he/she presents a duly notarized and valid deed of sale and the same is entered in the day book and at the same time he/she surrenders or presents the owners duplicate certificate of title covering the land sold and pays for the registration fees, because what remains to be done lies not within his/her power to perform. The Register of Deeds is duty bound to perform it.[104] Thus, the prevailing rule is that there is effective registration

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[103] 733 Phil. 275 (2014). In Saberon, the RD of QC inadvertently failed to carry over a notice of levy on execution (dated May 31, 1991) in favor of the Ventanillas upon the titles of Manila Remnant, Inc. (MRCI). As a result, when MRCI sold the property to Marquez, the title appeared to be a clean title. Marquez subsequently sold the property to the Saberons, who now claims that they are purchasers in good faith. While the levy was not annotated in the title of the property, the same was entered in the entry book of the RD of QC prior to the issuance of the TCT in the name of the Saberons. Thus, the Supreme Court accorded superiority and preference in rights to the registration of the levy on attachment. In cases of involuntary registration, an entry in the day book is a sufficient notice to all persons even if the owner's duplicate certificate of title is not presented to the register of deeds.

[104] Id. at 300.

once the registrant has fulfilled all that is needed of him/her for purposes of entry and annotation, so that what is left to be accomplished lies solely in the Register of Deeds.

Applying *Saberon*, We rule that the Cancellation of the Real Estate Mortgage and the Deed of Absolute Sale should be deemed registered as of July 26, 2012. On said date, the petitioners had fulfilled all that are needed of them for the registration and annotation of their transfer documents. This was evidenced by the completed checklist appearing in the Assessment Form and Payment Order Form[105] dated July 26, 2012. Petitioners presented the following documents to the RD of QC: (1) Release of Mortgage Contract; (2) Owner's Duplicate Copy of Title; (3) Deed of Absolute Sale; (4) BIR CAR/Tax Clearance Certificate; (5) Realty Tax Clearance; (6) Tax Declaration; and (7) Transfer Tax Receipt/Clearance. Atty. Alcantara, the acting RD of QC, admitted before the RTC that the Cancellation of Real Estate Mortgage and the Deed of Absolute Sale was entered in the Electronic Primary Entry Book on July 26, 2012 with Electronic Primary Entry Nos. 21579 and 21582, respectively.[106] If this were the case, how come TCT No. 004-2012009967 in the name of petitioners was issued only on September 3, 2012, and why was the Cancellation of Real Estate Mortgage and Deed of Absolute Sale annotated only in TCT No. N-328930 on September 3, 2012?

Atty. Alcantara claimed that the two transactions were subsequently withdrawn by Lilibeth Crisostomo from the Primary Entry Book and there was no reason cited for the withdrawal of the documents, except that it was requested; and that the registration of the Cancellation of Real Estate Mortgage and Deed of Absolute Sale was effected anew by virtue of a new application made on September 3, 2012.[107]

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[105] *Rollo*, pp. 174-175.

[106] *See* Memorandum for the Third-Party Claimants, p. 257, citing TSN dated 29 April 2013, pp. 24-26.

[107] Id. at 39.

Atty. Alcantara's explanation for the delay in the issuance of a new TCT in favor of petitioners is suspect. The record is bereft of evidence of the said withdrawal of application by Lilibeth Crisostomo. Also, it was not established that Crisostomo was authorized by petitioners to make such withdrawal. It is contrary to human experience that an application for registration would be withdrawn just because, and with no apparent reason, especially since all the required documents were already submitted. In his Judicial Affidavit,[108] petitioner Christian Guillermo narrated that almost every day since July 26, 2012, he and his brother followed up the transfer of title in their names but the RD of QC had a lot of reasons in delaying the registration of the title in their names like computerization, overpayment of transfer tax, and the asking of facilitation fee of ₱35,000.00 by one of the Register of Deeds Examiner.[109] The duty to annotate rests with the Register of Deeds and not with the registrant.[110] Hence, petitioners should not be penalized for the unreasonable delay on the part of the RD of QC.

Pursuant to Section 52[111] of PD 1529, the registration of the Cancellation of the Real Estate Mortgage and the Deed of Absolute Sale on July 26, 2012 in the primary entry book or day book of the Register of Deeds operates as a constructive notice to the whole world that the property covered by TCT No. N-328930 is no longer owned by the Sps. Cando. As such, the property can no longer be answerable to any judgment against Sps. Cando because it is now owned by the petitioners.

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[108] *Rollo*, pp. 177-187.

[109] Id. at 180-181.

[110] *Mendoza v. Spouses Garana*, 765 Phil. 744, 755 (2015).

[111] *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.

The Notice of Levy on Execution cannot be validly annotated in the title of petitioners on August 17, 2012. While Section 9 (b), Rule 39 of the 1997 Rules[112] authorizes satisfaction by levy upon the properties of the judgment obligor of every kind and nature if he/she cannot pay all or part of his/her obligation, this presupposes that the property to be levied upon belongs to and is owned by the judgment debtor.[113] The RTC is therefore correct in granting the third-party claim and in ordering Sheriff Mendoza to release and cancel the notice of levy on execution.

Ownership of the property was transferred to the petitioners by actual and constructive delivery before the registration of the levy in favor of Orix

Even assuming that the Notice of Levy was registered first before the Cancellation of Real Estate Mortgage and Deed of Absolute Sale, still Orix cannot have a preferential right over the property. The case of *Miranda v. Spouses Mallari*[114] teaches that the jurisprudential rule that preference is to be given to a duly registered levy or execution over a prior unregistered sale is circumscribed by the settled rule that a judgment debtor can only transfer property in which he/she has interest to the purchaser at a public execution sale. The former rule applies in case

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[112] Section 9. *Execution of judgments for money, how enforced.*— x x x

(b) Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x x x x x x x

[113] *Miranda v. Spouses Mallari*, G.R. No. 218343, November 28, 2018.

[114] G.R. No. 218343, November 28, 2018.

ownership has not vested in favor of the buyer in the prior unregistered sale before the registered levy on attachment or execution, and the latter applies when, before the levy, ownership of the subject property has already been vested in favor of the buyer in the prior unregistered sale.[115]

In *Miranda*, the property subject of the case was levied upon on execution by the judgment obligee, Sps. Mallari, having obtained a favorable ruling against Sps. Reyes, the original owner of the property, in a case for damages. Sps. Mallari won as the highest bidder in the public auction of the property. The levy and certificate of sale were annotated in the title of the property on April 3, 2003 and September 17, 2003, respectively. However, upon inspection of the property, it appeared that it was in the possession of Miranda who claimed ownership over the same by virtue of Deed of Sale executed by Sps. Reyes on March 20, 1996. Miranda failed to register the Deed of Sale because he lost the owner's copy of the TCT. Despite the prior registration of the levy on execution, We ruled in favor of Miranda. We found that ownership of the property was transferred from Sps. Reyes to Miranda as early as March 1996 through constructive delivery when the Deed of Absolute Sale, a public instrument, was executed conformably with Article 1498 of the Civil Code, and through real delivery when actual possession of the property was turned over to Miranda pursuant to Article 1497 of the Civil Code.Thus, on April 3, 2003 or at the time of the registration of the levy in favor of Sps. Mallari, the property was no longer owned by the judgment obligor, Sps. Reyes. A judgment creditor or purchaser at an execution sale acquires only whatever rights that the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property, there is nothing for him/her to transfer.[116]

Similar to *Miranda*, the ownership of the property in the case before Us vested to the petitioners before the registration

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[115] Id.

[116] Id.

of the levy on execution in favor of Orix. Article 1477 of the Civil Code provides that "the ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."[117] There is actual delivery when the thing sold is placed in the control and possession of the vendee,[118] while there is constructive delivery when the sale is made through the execution of a public instrument, unless the contrary appears in the deed.[119] Ownership of the property was constructively delivered by the Sps. Cando to the petitioners upon the execution of the Deed of Absolute Sale on June 5, 2012. There was also an actual delivery of the property on February 10, 2012 when petitioners and the Sps. Cando entered into a Contract of Lease of the property, where petitioners were referred as the lessors and Sps. Cando as the lessees, for a term of one year commencing on the date of execution of the lease until February 10, 2013, without renewal. The characterization of the petitioners as the lessors of the property means that they already have actual possession of the property even before the execution of the sale contract.

Accordingly, the governing rule in this case is, a judgment debtor can only transfer property in which he/she has interest to the purchaser at a public execution sale. Considering that Sps. Cando no longer owns the property as early as February 10, 2012, there can be no lien that may be created in favor of Orix by reason of the levy dated August 17, 2012.

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[117] Article 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.

[118] Article 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

[119] Article 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

In fine, the CA committed a reversible error when it held that the registered levy on execution in favor of Orix takes precedence over the sale of the subject property to the petitioners.

The Deed of Absolute Sale pertains to the parcel of land in Brgy. Pasong Putik, Quezon City

At the end of its assailed Decision,[120] the CA declared that the Deed of Absolute Sale executed by Sps. Cando in favor of the petitioners refers to a condominium unit and not the property covered by TCT No. N-328930.[121] The CA is mistaken.

The confusion as to the object of the Deed of Absolute Sale[122] arose from the apparent clerical error in the face of the Deed. The Deed provides:

WITNESSETH:

That the VENDOR is the registered owner of several parcels of land located in Barangay Pasong Putik, Quezon City, Manila, and embraced in and covered by Transfer Certificate of Title No. N-328930, more particularly described as follows:

TCT No. N-328930

A parcel of land (Lot 3-B-1 of the subdivision plan (LRA) Psd-399359 as approve as non subdivision. Project, being a portion of Lot 3-B, Psd-007494-032007-D, LRC Rec. No. 6563), situated in Bo. of Pasong Putik, Quezon City, M-Mla., Island of Luzon x x x; containing an area of ONE THOUSAND THREE HUNDRED EIGHTY THREE (1,383) SQ. METERS, more or less.

x x x x

NOW, THEREFORE, for and in consideration of the premises and sum of Three Million Forty-Two Thousand Six Hundred Pesos Only (P3,042,600.00), Philippine Currency, receipt whereof in full is hereby acknowledged by the VENDOR from the VENDEES, the VENDOR does hereby SELL, CEDE, TRANSFER and ASSIGN,

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[120] Supra note 4.

[121] *Rollo*, p. 87.

[122] Id. at 140-141.

absolutely and forever, in favor of the VENDEES, their heirs, executors, administrators and assigns the above-described condominium unit and all the improvements found therein, free from any and all lines and encumbrances whatsoever and whomsoever.[123] (Underscoring supplied)

Hence, while the first paragraph of the Deed referred to and described only a parcel of land, the second paragraph mentioned "the above-described condominium unit"[124] as the one being conveyed by the Sps. Cando. As between the two, We are inclined to believe that the object of the sale is the land stated in the first paragraph. There is clearly no condominium unit described in any part of the Deed. Moreover, the Acknowledgment part of the Deed stated that: "[t]his instrument refers to a DEED OF ABSOLUTE SALE, pertaining to TCT No. N-328930 x x x."[125]

Final note

Rule 39, Section 9 of the 1997 Rules,[126] as amended, provides the order by which the property of a judgment debtor may be

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[123] Id. at 236.

[124] Id.

[125] Id. at 141.

[126] Section 9. *Execution of judgments for money, how enforced.* — (a) Immediate payment on demand. — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amounts coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts

executed upon for the satisfaction of a money judgment. First is by immediate payment on demand by means of cash or certified

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to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) Satisfaction by levy. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effects as under a writ of attachment.

(c) Garnishment of debts and credits. — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee

bank check payable to the judgment obligee, or any other form of payment acceptable to the latter. Second is through satisfaction by levy upon the properties of the judgment obligor of every kind and nature, giving the latter the option to choose which property or a part thereof to be levied upon. In case the judgment obligor does not exercise the option, the sheriff shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment. Third is garnishment of the debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties.

In this case, it did not escape Our attention that there is a dearth of evidence showing that the sheriff first levied upon the personal property of EMC Northstar or the Sps. Cando. There was only a Notice of Demand to Pay[127] dated August 2, 2012, Notice of Levy upon Real Property[128] dated August 2, 2012, and Notice of Garnishment[129] dated August 3, 2012. Orix did not dispute the claim of petitioners that EMC Northstar has buses with plate nos. NMQ-191, NMO-121, and NOQ-106. Yet these were not levied upon execution. Hence, Sps. Cando

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holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee.

[127] *Rollo*, p. 117.

[128] Id. at 119-120.

[129] Id. at 118.

were deprived of the opportunity to have their personal properties levied upon first before their real property. There was also no showing that the garnishee made a written report to the court that EMC Northstar or the Sps. Cando has no sufficient funds or credits to satisfy the money judgment. This makes the levy on the subject real property improper.[130]

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated June 29, 2017 and the Resolution dated February 19, 2018 of the Court of Appeals in CA-G.R. SP No. 145809 are hereby **REVERSED** and **SET ASIDE**. The Order dated December 17, 2015 of the Regional Trial Court of Makati City, Branch 58 in Civil Case No. 10-1064 is **REINSTATED**. Deputy Sheriff Antonio O. Mendoza is **DIRECTED** to release and cancel the notice of levy on execution upon Transfer Certificate of Title No. 004-2012009967.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

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[130] See *24-K Property Ventures, Inc. v. Young Builders Corp.*, 801 Phil. 793 (2016).

SECOND DIVISION

[G.R. No. 240694. September 7, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ERNALYN PALICPIC *y* MENDOZA *a.k.a.* "Ermalyn Mendoza," "Lyn," and "Malyn,"** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; MIGRANT WORKERS OVERSEAS FILIPINO ACT OF 1995 (RA 8042); ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS. — The offense of Illegal Recruitment in Large Scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Section 6 of RA 8042; (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and (3) accused committed the same against three or more persons individually or as a group.

2. ID.; ID.; ID.; ID.; CASE AT BAR. — *First*, the RTC found appellant to have undertaken a recruitment activity without having the requisite license and/or authority when she promised the complainants employment in Qatar for a fee. x x x *Second*, the Certification issued by the POEA unmistakably reveals that appellant neither had the license nor the authority to recruit workers for overseas employment. This fact was stipulated upon by the defense when the testimony of POEA Rep. Dumigpi was dispensed with. *Third*, there are at least three (3) victims in this case which makes appellant liable for large-scale illegal recruitment.

3. ID.; ESTAFA; ELEMENTS. — Meanwhile, the elements of Estafa as charged are, namely: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation.

4. ID.; ID.; PROPER IMPOSABLE PENALTY. — Under RA 10951, when the amount involved is over ₱40,000.00 but not exceeding ₱1,200,000.00, the prescribed penalty is only *arresto mayor*, in its maximum period to *prision correccional*, in its

minimum period, *i.e.*, four (4) months and one (1) day to two (2) years and four (4) months. However, applying the Indeterminate Sentence Law, the minimum term should be taken from *arresto mayor*, in its minimum and medium periods, *i.e.*, one (1) month and one (1) day to four (4) months, while the maximum term should be within the medium period of the prescribed penalty, *i.e.*, one (1) year and one (1) day to one (1) year and eight (8) months there being no aggravating or mitigating circumstances present in this case. Thus, the Court finds it proper to impose a penalty of four (4) months of *arresto mayor*, a minimum, to one (1) year and one (1) month of *prision correccional*, as maximum. On the other hand, if the amount involved is less than ₱40,000.00, the imposable penalty is only *arresto mayor*, in its medium and maximum periods, *i.e.*, two (2) months and one (1) day to six (6) months, as is applicable to Criminal Case Nos. 10-276565 and 10-276568. The provisions of the Indeterminate Sentence Law no longer apply because the imposable penalty is less than one (1) year. Thus, a straight penalty of six (6) months of *arresto mayor*, in its maximum period is proper.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court is an ordinary Appeal[1] filed by accused-appellant Ernalyn Palicpic *y* Mendoza *a.k.a.* "Ermalyn Mendoza," "Lyn," and "Malyn" (appellant) assailing the Amended Decision[2] dated 30 January 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06619, which affirmed with modifications

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[1] *Rollo*, pp. 46-48.

[2] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez, concurring; id. at 2-11.

the Decision[3] dated 23 July 2013 of the Regional Trial Court (RTC) of Manila, Branch 47, in Criminal Case Nos. 10-276564, 10-276565, 10-276566, and 10-276568 convicting appellant of Illegal Recruitment in Large Scale, as defined and penalized under Section 6 (l) and (m) in relation to Section 7 (b) of Republic Act No. (RA) 8042, otherwise known as the Migrant Workers Overseas Filipino Act of 1995, and three (3) counts of Estafa under Article 315, paragraph 2 (a) of the Revised Penal Code (RPC).

The Facts

After appellant was apprehended in an entrapment operation conducted by the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG), she was charged with Illegal Recruitment in Large Scale docketed as Criminal Case No. 10-276564, the accusatory portion of which states:

Criminal Case No. 10-276564

That on or about 10:30 in the morning of May 12, 2009 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, accused ERNALYN PALICPIC y MENDOZA a.k.a. ERMALYN MENDOZA, LYN/MALYN[,] representing herself to have the capacity to contract, transport, refer, procure and or (sic) enlist workers for employment to Qatar, did then and there willfully, unlawfully and feloniously recruit and renew her promise of overseas employment to four (4) persons, namely: Mary Ann Tucay, Christopher Yambao, Edgardo Ramirez, and Richard Peroche, without first securing a license and/or permit to recruit workers for overseas employment from the Philippine Overseas Employment Administration (POEA) contemplated under Article 139[(f)] of Presidential Decree No. [442], as amended, otherwise known as the Labor Code of the Philippines. Further, said accused failed to deploy without valid reason the said workers and despite said failure to deploy them said accused failed to reimburse the expenses incurred by the said workers in connection with their documentation and processing for purposes of deployment, to their damage and prejudice.

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[3] Penned by Presiding Judge Paulino Q. Gallegos; CA *rollo*, pp. 111-130.

CONTRARY TO LAW.[4]

Appellant was also charged with four (4) counts of Estafa, of which only three (3) resulted to a conviction and hence, appealed before the Court. The Informations are similarly worded, save for the details pertaining to the date of the commission of the offense, the name of the complainant, job recruited for, and the amount involved:

Criminal Case No. 10-276565

That on or about April 8, 2009 to April 20, 2009 in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ERNALYN PALICPIC y MENDOZA a.k.a. ERMALYN MENDOZA, LYN/MALYN, did then and there willfully, unlawfully, and feloniously defraud Christopher Yambao, the accused under false and fraudulent representations made to the effect that [she] would secure Christopher Yambao employment as mechanical engineer in Qatar, if Christopher Yambao would deliver to her the amount of Php43,500.00 to cover the cost of placement fee, visa processing, documentation and plane ticket and by means of other similar deceit, which representations she well knew were false and fraudulent since she knew that she's not a licensee nor have (sic) the authority to recruit overseas worker and were only made to induce Christopher Yambao to give and deliver as in fact the said Christopher Yambao gave and delivered the amount of Php43,500.00, and once in possession of said amount, willfully, unlawfully, and feloniously misappropriated, misapplied, and converted the amount of Php43,500.00 to her own personal use and benefit, to the damage and prejudice of Christopher Yambao.

CONTRARY TO LAW.[5]

The variation in the Informations of the other two (2) criminal cases, are summarized below:

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[4] Id. at 112, 190.

[5] Id. at 112-113, 191.

Criminal Case No.	Date of Commission	Complainant's Name	Job Recruited For	Amount Involved
10-27656[6]	April 8 to 20, 2009	Mary Ann Tucay (Tucay)	Receptionist	₱43,500.00
10-27656[7]	March 23 to April 28, 2009	Edgardo Ramirez (Ramirez)	Waiter	₱34,000.00

Upon motion of the prosecution, the criminal cases were consolidated. When arraigned, appellant pleaded not guilty.

Version of the Prosecution

The prosecution presented seven witnesses: complainants (1) Ramirez, (2) Tucay, and (3) Christopher Yambao (Yambao); police officers (4) Police Officer 2 Zandro B. Llacuna (PO2 Llacuna), (5) Senior Police Officer 4 Ronald Alvaira (SPO4 Alvaira), and (6) Senior Police Officer 3 Valerian Papelleras (SPO3 Papelleras); and (7) Philippine Overseas Employment Administration (POEA) Representative Eraida Dumigpi (POEA Rep. Dumigpi).[8]

Ramirez testified that sometime in March 2009, he was referred to Jennifer Magat (Magat) who, at that time, was in Bongabon, Nueva Ecija looking for job applicants. Magat instructed him to go to a medical clinic in Malvar Street, Manila and paid ₱5,000.00 for the processing of documents. Thereafter, Magat introduced him to appellant, whom she identified as her boss. Appellant represented herself as a licensed agent of Pert/CPM Manpower Exponents Company, Inc. (Pert/CPM Manpower) and promised him that he would be deployed to Qatar as a waiter within six (6) months. Afterwards, appellant took the job application documents of Ramirez for processing and Ramirez paid her a total of ₱34,000.00 as payment for the training fee, medical examination, visa application, and POEA Certificate.

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[6] Id. at 113.

[7] Id. at 114.

[8] Id. at 115-123.

Ramirez demanded for a receipt but appellant did not issue one. Eventually, Ramirez and the other complainants discovered that appellant was not an agent of Pert/CPM Manpower and reported the matter to PNP-CIDG. Police officers took Ramirez's statement and thereafter, devised a plan to conduct an entrapment operation against appellant. During the entrapment operation, Tucay, Yambao, and Richard Peroche[9] (Peroche), handed their payments to appellant who was thereafter, apprehended.[10]

Tucay testified that in April 2009, she met Magat, who instructed her and a certain Emil Catacutan to go to Manila if they wanted to apply for work abroad. In Manila, Tucay paid Magat ₱8,000.00 for her medical examination and processing of documents. Tucay kept following up the status of her application but Magat insisted that these were still being processed. Tucay threatened to file a case against Magat, who in turn, returned ₱5,000.00 to her.

Magat introduced Tucay and the latter's boyfriend, Yambao, to appellant whom she identified as her boss. Appellant told Tucay and Yambao that she will be the one to process their applications. Appellant promised Tucay that she would be hired as a receptionist while Yambao would be hired as a mechanical engineer. In exchange for appellant's services, she paid appellant a total of ₱43,500.00. However, Tucay was not deployed to Qatar as promised, instead appellant asked for an additional ₱5,000.00 from Tucay, Yambao, and Peroche for the issuance of a POEA Certificate. Meanwhile, Tucay, Peroche, and Yambao discovered that appellant was not a licensed agent so they reported her to the PNP. During the entrapment operation, Tucay, Yambao, and Peroche met appellant to pay her the additional amounts and they were accompanied by police officers wearing civilian

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[9] One of the complainants in the Illegal Recruitment in Large Scale under Criminal Case No. 10-276564 but whose individual case for Estafa against appellant docketed as Criminal Case No. 10-276567 did not prosper as Richard Peroche did not testify to substantiate his claim.

[10] TSN, 19 October 2010, pp. 3-46.

clothes. After Peroche handed appellant the envelope containing the marked money, the police officers arrested appellant.[11]

Yambao corroborated the testimony of Tucay to the effect that appellant promised that she would process their job applications for abroad. Yambao paid appellant ₱37,500.00 as payment for his medical examination and processing fee. Yambao likewise confirmed that appellant demanded from them an additional ₱5,000.00 for the release of their POEA Certificates. During the entrapment operation, Yambao confirmed that after Peroche paid appellant the marked money, the police officers arrested appellant.[12]

PO2 Llacuna and SPO3 Papelleras conducted the entrapment operation against appellant. PO2 Llacuna stated that on 12 May 2009, two (2) pieces of ₱100.00 bills containing ultraviolet fluorescent powder (marked money) were given to the complainants. The police officers proceeded to Jollibee, Taft Avenue corner Pedro Gil Street, Manila (Jollibee Pedro Gil) for the operation. He was assigned as the perimeter backup and was in uniform while three (3) police officers wearing civilian clothes were inside Jollibee Pedro Gil. When SPO3 Papelleras gave the pre-arranged signal, he went inside Jollibee Pedro Gil and assisted in the arrest of appellant. Appellant was brought to the crime laboratory where her hands yielded positive results for the presence of ultraviolet fluorescent powder, the same substance used on the marked money.[13]

SPO3 Papelleras confirmed that an entrapment operation was conducted in Jollibee Pedro Gil. Donning civilian clothes, he observed Tucay, Peroche, and Yambao talking to appellant inside the fast food chain. When Peroche handed the marked money to appellant, he arrested her.[14]

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[11] Id. at 26-93.

[12] TSN, 16 March 2011, pp. 2-40.

[13] TSN, 11 November 2011, pp. 2-25.

[14] TSN, 01 December 2011, pp. 9-35.

Finally, the parties stipulated on the testimonies of POEA Rep. Dumigpi and SPO4 Alvaira. As regards POEA Rep. Dumigpi: (a) she was the duly authorized representative of the POEA; and (b) she brought a POEA Certification stating that appellant is neither licensed nor authorized to recruit workers for overseas employment.[15] Meanwhile, with regard to SPO4 Alvaira: (a) he was the investigator of the case; (b) he was part of the entrapment operation but was not inside Jollibee Pedro Gil when it transpired; (c) he prepared the marked money; (d) he took and prepared the individual *Sinumpaang Salaysay*[16] of the complainants prior to the entrapment operation; (e) he took and prepared the *Pinagsamang Sinumpaang Salaysay*[17] of the complainants; (f) he prepared the booking sheet; and (g) he referred appellant for laboratory examination and thereafter, endorsed the latter for inquest proceedings.[18]

Version of the Defense

The defense presented appellant as the sole witness who interposed the defense of denial and claimed that she, too, was seeking employment abroad.

Appellant narrated that she met Ramirez at Angelicum Clinic when they were both undergoing medical examination for overseas employment. Thereafter, Ramirez introduced her to Tucay. Tucay and Ramirez had planned to transfer to her agency but this plan did not push through when she was accosted by the PNP-CIDG.

On the day of the entrapment operation, appellant claimed that she met Tucay and Yambao at Jollibee Pedro Gil. While they were eating, Tucay suddenly shouted, "*Hulihin niyo na yan*" and the police officers appeared to apprehend her. Appellant was shocked that the complainants identified her as an illegal

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[15] CA *rollo*, pp. 120, 196.

[16] Not attached to the *rollo*.

[17] Not attached to the *rollo*.

[18] TSN, 01 December 2011, pp. 2-8.

recruiter. On the way to the police station, a female police officer held her hands, comforting her. Thereafter, she was brought to the crime laboratory for examination. Appellant claimed that she was framed, surmising that the female police officer she met earlier had clandestinely placed ultraviolet fluorescent powder on her hands.

Finally, appellant denied knowing Magat, claiming that she knew of her as the person who victimized Tucay earlier. She was jobless at that time and was likewise seeking employment abroad and thus, familiar with some of the basic requirements like passport, medical examination, placement fees, and tickets.[19]

RTC Ruling

On 23 July 2013, the RTC rendered a Decision,[20] finding appellant guilty beyond reasonable doubt of the offense of Illegal

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[19] TSN, 21 March 2013, pp. 2-37.

[20] CA *rollo*, pp. 111-130. The dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered against ***ERNALYN PALICPIC y MENDOZA***, alias "Ernalyn Mendoza["], ["]Lyn/ Malyn["], as follows:

1. In ***Criminal Case No. 10-276564***, for the offense of Illegal Recruitment in large scale, the Court finds accused ERNALYN PALICPIC Y MENDOZA ***GUILTY*** beyond reasonable doubt of the said offense and she is hereby sentenced to suffer the penalties of life imprisonment and fine of Five Hundred Thousand Pesos ([₱]500,000.00);

2. In ***Criminal Case No. 10-276565***, for the Crime of Estafa (under Article 315, 2 (a) of the Revised Penal Code), the Court finds accused ERNALYN PALICPIC Y MENDOZA ***GUILTY*** beyond reasonable doubt of the crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of Six (6) years and One (1) day of Prision Mayor minimum as minimum to Eight (8) years and One (1) day of Prision Mayor Medium as Maximum.

Accused is also ordered to indemnify private complainant Christopher Yambao the amount of [₱]37,500.00 representing the accused's civil liability therefore (sic);

3. In ***Criminal Case No. 10-276566***, for the crime of Estafa (under Article 315, 2 (a) of the Revised Penal Code[)], the Court finds accused ERNALYN PALICPIC y MENDOZA ***GUILTY*** beyond reasonable doubt of the Crime of Estafa and she is hereby sentenced to suffer the indeterminate imprisonment of six (6) years and one (1) day of Prision Mayor minimum

Recruitment in Large Scale and three (3) counts of Estafa. In so ruling, the RTC held that the complainants' positive, consistent, and categorical testimonies as to how appellant defrauded them of their money outweigh appellant's defense of pure denial. Likewise, the RTC noted that appellant never contested that she received money from the complainants.[21]

CA Ruling

In a Decision[22] dated 23 August 2017, the CA sustained the judgment of the lower court, stating that the prosecution was

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as minimum to Nine (9) years and One (1) day of Prision Mayor medium as maximum.

Accused is also ordered to indemnify complainant Mary Ann Tucay the amount of Forty Three Thousand Five Hundred Pesos ([₱]43,500.00) representing the accused's civil liability therefore (sic);

4. In ***Criminal Case No. 10-276567***, for the Crime of Estafa (under Article 315, (2) a of the Revised Penal Code[)], the Court finds the accused ERNALYN PALICPIC Y MENDOZA ***NOT GUILTY*** beyond reasonable doubt and she is hereby accordingly ACQUITTED of the charge; and

5. In ***Criminal Case No. 10-276568***, for Estafa (under Article 315[,] 2 (a) of the Revised Penal Code), the Court finds accused Ernalyn Palicpic y Mendoza[,] ***GUILTY*** beyond reasonable doubt of the said offense and she is hereby sentenced to suffer the indeterminate imprisonment of Six (6) years and One (1) day of Prision Mayor minimum as minimum to Eight (8) years and One (1) day of Prision Mayor Medium as Maximum.

Accused is also ordered to indemnify private complainant Edgardo Ramirez the amount of Thirty Four Thousand Pesos ([₱]34,000.00) representing the accused (sic) civil liability therefore (sic).

SO ORDERED. (Emphasis and italics in the original)

[21] Id. at 128-129.

[22] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez, concurring; id. at 189-222. The dispositive portion of which states:

WHEREFORE, premises considered, the instant Appeal filed by accused-appellant Ernalyn Palicpic y Mendoza alias "Ermalyn Mendoza," "Lyn," and "Malyn" is hereby **DENIED**. The assailed Decision dated July 23, 2013 of Branch 47, Regional Trial Court of Manila in Criminal Case No. 10-276564 finding accused-appellant **GUILTY** beyond reasonable doubt of the crime of illegal recruitment in large scale and is hereby sentenced to

able to establish all the elements of Illegal Recruitment in Large Scale and Estafa beyond reasonable doubt. The CA considered doubtful appellant's defense that she was a fellow aspiring overseas Filipino worker in view of her failure to produce any documentation to that effect. The CA however modified the penalties imposed to properly graduate the same in accordance with the Indeterminate Sentence Law[23] and to provide for the imposition of six percent (6%) interest *per annum* on the civil liabilities awarded.

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suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP500,000.00) is **AFFIRMED** with the following **MODIFICATIONS**:

1. In Criminal Case No. 10-276565, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to seven (7) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Christopher C. Yambao the amount of thirty-seven thousand five hundred pesos (PhP37,500.00).

2. In Criminal Case No. 10-276566, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to eight (8) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Mary Ann Dela Cruz Tucay the amount of forty-three thousand five hundred pesos (PhP43,500.00).

3. In Criminal Case No. 10-276568, accused-appellant is found **GUILTY** beyond reasonable doubt of the crime of estafa as defined and punished under Article 315 (2) (a) of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of four (4) years of *prision correccional* as minimum to seven (7) years, eight (8) months, and twenty-one (21) days of *prision mayor* as maximum. Furthermore, accused-appellant is hereby ordered to indemnify private complainant Eduardo M. Ramirez, Jr. the amount of thirty-four thousand pesos (PhP34,000.00).

4. Interest at the rate of 6% *per annum* is imposed on the civil liabilities awarded, to be computed from the finality of this decision until such amounts are fully paid.

SO ORDERED. (Emphasis and italics in the original)

[23] Act No. 4103, as amended.

Upon Motion for Reconsideration,[24] appellant prayed, among others, the application of the provisions of RA 10951[25] which effectively reduced the penalty imposed for the crime of Estafa based on the amount involved.

On 30 January 2018, the appellate court rendered the Amended Decision[26] which partially granted appellant's Motion and reduced the penalty of imprisonment for the three (3) counts of Estafa in view of RA 10951, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Motion for Reconsideration filed by Ernalyn Palicpic y Mendoza alias "Ermalyn Mendoza", "Lyn", and "Malyn" is **PARTLY GRANTED.**
>
> Accordingly, the Decision dated August 23, 2017 of this Court: (1) finding accused-appellant Ernalyn Palicpic y Mendoza alias "Ermalyn Mendoza," "Lyn", and "Malyn" GUILTY beyond reasonable doubt of the crime of illegal recruitment in large scale and sentencing accused-appellant to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (PhP500,000.00) in Criminal Case No. 10-276564; (2) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code in Criminal Case No. 10-276565 and ordering accused-appellant to indemnify private complainant Christopher C. Yambao the amount of thirty-seven thousand five hundred pesos (Php37,500.00); (3) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code in Criminal Case No. 10-276566 and ordering accused-appellant to indemnify private complainant Mary Anne Dela Cruz Tucay the amount of forty-three thousand five hundred pesos (Php43,500.00); (4) finding accused-appellant GUILTY beyond reasonable doubt of the crime of estafa as defined and punished under Article 315(2)(a)

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[24] CA *rollo*, pp. 232-238.

[25] 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" (2017).

[26] *Rollo*, pp. 2-11.

of the Revised Penal Code in Criminal Case No. 10-276568 and ordering accused-appellant to indemnify private complainant Edgardo M. Ramirez, Jr. the amount of thirty-four thousand pesos (Php34,000.00); and (5) imposing interest at the rate of 6% *per annum* on the civil liabilities awarded, to be computed from the finality of the Decision until such amounts are fully paid, is **AFFIRMED** with the following **MODIFICATIONS**:

1. In Criminal Case No. 10-276565, accused-appellant is hereby sentenced to suffer the straight penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*.

2. In Criminal Case No. 10-276566, accused-appellant is hereby sentenced to suffer an indeterminate penalty of three (3) months of *arresto mayor*, as minimum, to one (1) year and eight (8) months of *prision correccional*, as maximum.

3. In Criminal Case No. 10-276568, accused-appellant is hereby sentenced to suffer the straight penalty of imprisonment of four (4) months and one (1) day of *arresto mayor*.

SO ORDERED.[27]

The Issue

Whether the guilt of appellant for the crimes of Illegal Recruitment in Large Scale and Estafa were proven beyond reasonable doubt.

The Court's Ruling

After a judicious study of the case, the Court resolves to dismiss the appeal for failure of appellant to sufficiently show that the CA committed any reversible error in rendering the Amended Decision as to warrant the exercise of the Court's appellate jurisdiction. Thus, the Court sustains appellant's conviction for Illegal Recruitment in Large Scale and three (3) counts of Estafa. However, the Court deems it proper to further modify the penalties for Estafa in view of the Indeterminate Sentence Law.

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[27] Id. at 9-10.

The offense of Illegal Recruitment in Large Scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Section 6 of RA 8042; (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and (3) accused committed the same against three or more persons individually or as a group.[28]

These elements are obtaining in this case.

First, the RTC found appellant to have undertaken a recruitment activity without having the requisite license and/or authority when she promised the complainants employment in Qatar for a fee.[29] This factual finding was affirmed by the CA who observed that:

> A thorough examination of the evidence on record reveals that the prosecution clearly established that accused-appellant represented herself to be a licensed agent of the local manning agency named Pert/CPM Manpower Exponents Company, Incorporated x x x. Accused-appellant induced, offered, and promised Edgardo Ramirez, Mary Ann Tucay, and Christopher Yambao ("private complainants", collectively) employment in Qatar—Ramirez would be hired as a waiter, Tucay would be hired as a receptionist, and Yambao would be hired as a mechanical engineer. Private complainants were convinced and made to believe that accused-appellant was authorized to hire them and capable of sending them to Qatar. Accused-appellant took the resumes, medical examination results, and other documentation from Ramirez, Tucay, and Yambao, promising that accused-appellant would be the one to process their applications. In the guise of processing their applications, accused-appellant asked for sums of money from private complainants. x x x Despite receiving sums of money from private complainants, accused-appellant did not issue any receipts. However, private complainants were not deployed to Qatar. This prompted Ramirez, Yambao, and another aspiring applicant, Richard Peroche, to verify with the Philippine Overseas Employment Administration (POEA) whether accused-appellant had a license to recruit. They discovered that accused-appellant was neither licensed

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[28] *People v. Matheus*, 810 Phil. 626, 636 (2017).

[29] CA *rollo*, p. 128.

nor authorized to recruit workers for overseas employment, as evinced by the POEA Certification dated May 24, 2011.[30]

As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge,[31] who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. When such findings have been affirmed by the CA, these are generally binding and conclusive upon the Court. This attains more significance in this case as appellant's bare denial cannot prevail over the positive and categorical testimonies[32] of Ramirez, Tucay, and Yambao. Absent any evidence that the complainants were motivated by improper motives, the trial court's assessment of the credibility of the witnesses shall not be interfered with by this Court,[33] as in this case.

Second, the Certification issued by the POEA unmistakably reveals that appellant neither had the license nor the authority to recruit workers for overseas employment. This fact was stipulated upon by the defense when the testimony of POEA Rep. Dumigpi was dispensed with. *Third*, there are at least three (3) victims in this case which makes appellant liable for large-scale illegal recruitment. Clearly, the existence of the offense of Illegal Recruitment in Large Scale was duly proven by the prosecution.

Meanwhile, the elements of Estafa as charged are, namely: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation.[34]

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[30] Id. at 209-210.

[31] *People v. Mateo*, 759 Phil. 179, 183-184 (2015).

[32] See *People v. Ganigan*, 584 Phil. 710 (2008).

[33] *People v. Gallo*, 630 Phil. 153, 168-169 (2010).

[34] *People v. Tolentino*, 762 Phil. 592, 614 (2015).

The active representation by appellant of having the capacity to deploy Ramirez, Tucay, and Yambao abroad despite not having the authority or license to do so from the POEA constituted deceit as the first element of Estafa. Her representation induced the complainants to part with their money, resulting in damage that is the second element of the Estafa. Considering that the damage resulted from the deceit, the CA's affirmance of her guilt for Estafa as charged was in order.

Appellant's argument that there was no proof that she received money from the complainants deserves no credence. Suffice it to say that money is not material to a prosecution for illegal recruitment considering that the definition of "illegal recruitment" under the law includes the phrase "whether for profit or not."[35] Besides, even if there is no receipt for the money given by the complainants to appellant, the former's respective testimonies and affidavits clearly narrate the latter's involvement in the prohibited recruitment.

Penalties

Finally, as to the penalties imposed, the CA was correct in applying the provisions of RA 10951 to the imposable penalties for Estafa based on the amount defrauded in its Amended Decision. However, the Court deems it proper to further modify the penalties to properly apply the provisions of the Indeterminate Sentence Law. Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[36]

The defrauded amounts involved in this case are: ₱43,500.00 in *Criminal Case No. 10-276566*; ₱37,500.00 *in Criminal Case No. 10-276565*; and ₱34,000.00 in *Criminal Case No. 10-276568.*

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[35] *People v. Mateo*, supra note 31, at 184.

[36] See *People v. Racho*, 819 Phil. 137 (2017).

Under RA 10951,[37] when the amount involved is over ₱40,000.00 but not exceeding ₱1,200,000.00, the prescribed penalty is only *arresto mayor*, in its maximum period to *prision correccional*, in its minimum period, *i.e.*, four (4) months and one (1) day to two (2) years and four (4) months. However, applying the Indeterminate Sentence Law, the minimum term should be taken from *arresto mayor*, in its minimum and medium periods, *i.e.*, one (1) month and one (1) day to four (4) months, while the maximum term should be within the medium period of the prescribed penalty, *i.e.*, one (1) year and one (1) day to one (1) year and eight (8) months there being no aggravating or mitigating circumstances present in this case. Thus, the Court finds it proper to impose a penalty of four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum.

On the other hand, if the amount involved is less than ₱40,000.00, the imposable penalty is only *arresto mayor*, in its medium and maximum periods, *i.e.*, two (2) months and one (1) day to six (6) months, as is applicable to Criminal Case Nos. 10-276565 and 10-276568. The provisions of the Indeterminate Sentence Law no longer apply because the imposable penalty is less than one (1) year. Thus, a straight penalty of six (6) months of *arresto mayor*, in its maximum period is proper.[38]

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[37] The relevant provision, as amended, reads:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

ART. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40,000); x x x.

[38] See *People v. Racho*, supra note 36.

WHEREFORE, the appeal is **DISMISSED**. The Amended Decision dated 30 January 2018 in CA-G.R. CR-HC No. 06619 is **AFFIRMED** with **MODIFICATIONS** as to the imposable penalties for Estafa:

1. In Criminal Case No. 10-276565, appellant is hereby sentenced to suffer the penalty of imprisonment of six (6) months of *arresto mayor*;
2. In Criminal Case No. 10-276566, appellant is hereby sentenced to suffer an indeterminate penalty of four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; and
3. In Criminal Case No. 10-276568, appellant is hereby sentenced to suffer the penalty of imprisonment of six (6) months of *arresto mayor*.

The rest of the assailed Decision **STANDS**.

SO ORDERED.

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

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 248898. September 7, 2020]

BRYAN L. UYSIPUO, *Petitioner, v.* **RCBC BANKARD SERVICES CORPORATION,** *Respondent.*

SYLLABUS

CIVIL LAW; LOANS; INTEREST; MONETARY AND COMPENSATORY INTEREST, DISTINGUISHED. — Case law states that there are two (2) types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest). Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case ***the legal rate of interest prevailing at the time the agreement was entered into*** would have to be applied by the Court. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money. Such monetary interest should be computed from default, *i.e.*, from extrajudicial or judicial demand, until full payment[.] In addition, the aforesaid monetary interest shall itself earn compensatory interest at the prevailing legal rates, pursuant to Article 2212 of the Civil Code, which states that '[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.' To be sure, [the

foregoing provision] contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest, which has accrued when demand was judicially made.

APPEARANCES OF COUNSEL

R.E. Manzano & Associates for petitioner.
Panopio Escober and *Associates* for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 11, 2019 and the Resolution[3] dated August 20, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 109701 which affirmed with modification the Decision[4] dated March 24, 2017 of the Regional Trial Court of Pasig City, Branch 268 (RTC) in Civil Case No. 72809-PSG, and accordingly, directed petitioner Bryan L. Uysipuo (petitioner) to pay respondent RCBC Bankard Services Corporation (RCBC) the following sums: *(a)* ₱787,500.00 as the principal obligation; *(b)* an amount equivalent to six percent (6%) per annum of the principal obligation computed from the date of extra-judicial demand, *i.e.*, November 26, 2010, until full payment, as legal interest; *(c)* an amount equivalent to six percent (6%) per annum of the principal obligation computed from August 2009 until full payment, as late payment interest; *(d)* ₱50,000.00 as attorney's fees; and *(e)* costs of litigation.

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[1] *Rollo*, pp. 37-68.

[2] Id. 71-86. Penned by Associate Justice Priscilla J. Baltazar-Padilla (now a member of this Court) with Associate Justices Marie Christine Azcarraga-Jacob and Louis P. Acosta, concurring.

[3] Id. at 32-34.

[4] Id. at 110-115. Penned by Presiding Judge Maria Cheryl E. Laqui-Ceguera.

The Facts

Sometime in 2009, petitioner applied for and was issued a credit card by Bankard, Inc. (Bankard), a domestic banking corporation engaged in the business of extending credit,[5] allowing the former to avail of the latter's credit services. Under the terms and conditions governing the issuance and use of the said card, a copy of which was given to petitioner, the cardholder was required to settle his account on or before the due date indicated in his statement of account, subject to the payment of interest and late payment charges, in case of default, at the respective monthly rates of three point five percent (3.5%) and seven percent (7%). Subsequently, petitioner started making purchases with the use of the credit card, and, for a certain period, was duly paying his obligations. However, he later defaulted in his payments, and, as of May 9, 2010, had incurred an unpaid balance of ₱1,757,024.53, inclusive of interests and late payment charges. Later, a formal letter of demand was sent to petitioner, which he duly received on November 26, 2010 but failed to heed.[6] Thus, on December 15, 2010, Bankard filed a complaint[7] with the RTC praying for the payment of the amount of ₱1,757,024.53, plus interest and late payment charges, attorney's fees, and costs of suit. Bankard was later substituted by respondent RCBC Bankard Services Corporation (RCBC).[8]

For his part, petitioner asserted that his credit card purchases only amounted to ₱300,000.00, which ballooned to the amount of ₱1,757,024.53 because of the imposition of illegal interests and surcharges.[9]

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[5] Id. at 119.

[6] See Demand Letter dated November 26, 2010; id. at 124.

[7] Id. at 119-121.

[8] Id. at 71-75. See also id. at 110-113.

[9] See Answer dated April 18, 2012; id. at 116-118.

The RTC Ruling

In a Decision[10] dated March 24, 2017, the RTC ruled in RCBC's favor, and accordingly, ordered petitioner to pay RCBC: *(a)* the total outstanding obligation in the amount of ₱1,757,024.53; *(b)* interest on the total outstanding obligation at the rate of 12% per annum from November 26, 2010 until June 30, 2013 and 6% per annum from July 1, 2013 until full payment; *(c)* interest on accrued interest at the rate of 12% per annum from the date of the filing of the complaint, *i.e.*, December 15, 2010 until June 30, 2013 and 6% per annum from July 1, 2013 until full payment; *(d)* attorney's fees in the amount of ₱50,000.00; and *(e)* costs of litigation.[11] The RTC found that RCBC had sufficiently established a valid claim against petitioner, as it was proven that he used his credit card to make purchases and had voluntarily accepted the terms and conditions governing the issuance and use of the same.[12]

Aggrieved, petitioner appealed[13] to the CA.

The CA Ruling

In a Decision[14] dated April 11, 2019, the CA **affirmed** the decision of the RTC with **modification**. The CA found that the stipulated amount of interest and late penalty charges, at the respective monthly rates of three point five percent (3.5%) and seven percent (7%), were excessive and unconscionable, and thus, equitably reduced each of them to the prevailing legal rates. Anent the amount of the principal obligation, the CA found the same to be in the amount of ₱787,500.00, which was the balance due to be paid within August 2009.[15] Accordingly,

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[10] Id. at 110-115.

[11] Id. at 115.

[12] Id. at 113.

[13] See Notice of Appeal dated August 18, 2017; CA *rollo*, pp. 14-16.

[14] *Rollo*, pp. 71-86.

[15] Id. at 76-85.

the CA ordered petitioner to pay RCBC: *(a)* the amount of ₱787,500.00 as the principal obligation; *(b)* an amount equivalent to six percent (6%) per annum of the principal obligation computed from the date of extra-judicial demand, *i.e.*, November 26, 2010, until full payment as legal interest; *(c)* an amount equivalent to six percent (6%) per annum of the principal obligation computed from August 2009 until full payment as late payment interest; *(d)* attorney's fees in the amount of ₱50,000.00; and *(e)* costs of litigation.[16]

Undeterred, petitioner moved for reconsideration,[17] which was denied in a Resolution[18] dated August 20, 2019; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in ordering the payment of the amount of ₱787,500.00 as the principal obligation, plus interest and late payment interest thereon at the prevailing legal rates.

The Court's Ruling

The petition is without merit.

I.

At the outset, the Court notes that petitioner admits his indebtedness to RCBC on account of his use of the credit card issued to him. However, he insists that he should only be made to pay the principal obligation amounting to ₱300,000.00, as RCBC's imposition of illegal interests and late payment charges should be struck down for being unconscionable.[19] On the other hand, the courts *a quo* valued the principal obligation differently, in that the RTC pegged the same at ₱1,757,024.53, while the CA lowered it to ₱787,500.00. While factual findings of the

[16] Id. at 84-85.

[17] See Motion for Reconsideration dated May 14, 2019; id. at 26-31.

[18] Id. at 32-33.

[19] See id. at 64.

lower courts are generally considered final and binding on this Court,[20] the Court is nevertheless allowed to make its own when, among others, the factual findings of the lower courts are conflicting,[21] as in this case. Guided by the foregoing considerations, the Court deems it proper to make its own findings to determine petitioner's principal obligation to RCBC.

Records show that, from April 2009 to October 8, 2009, petitioner made purchases with the use of his credit card in the total amount of ₱4,834,774.18,[22] and merely paid the total amount of ₱3,623,773.85,[23] leaving a difference of **₱1,211,000.33** as the total unpaid obligation. Such finding may be gathered from a review of petitioner's statement of account covering the aforesaid period, as summarized by the CA:[24]

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[20] See *Borja v. Miñoza*, 812 Phil. 133, 142 (2017).

[21] See *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 215 (2005).

[22] See *rollo*, p. 79. Computed as follows:

Statement Date	**Purchases**
May 10, 2009	₱631,535.68
June 8, 2009	₱787,500.00
July 8, 2009	₱787,500.00
August 9, 2009	₱264,738.50
September 8, 2009	₱1,083,500.00
October 8, 2009	₱1,280,000.00
	₱4,834,774.18

[23] See id. Computed as follows:

₱631,535.68	Payment for the balance due as of June 8, 2009
₱787,500.00	Payment for the balance due as of July 8, 2009
₱265,000.00	Payment for the balance due as of August 9, 2009
₱864,000.00	Payment for the balance due as of September 8, 2009
₱1,075,738.17	Payment for the balance due as of October 8, 2009
₱3,623,773.85	**Total**

[24] See id.

Statement Date	Previous Balance	Purchases	Payments	Interest/ Fees/ Charges	Late Charges	Balance Due
05/10/2009	₱116,716.00	₱631,535.68	₱116,716.00			₱631,535.68
06/08/2009	₱631,535.68	₱787,500.00	₱631,535.68			₱787,500.00
07/08/2009	₱787,500.00	₱787,500.00	₱787,500.00			₱787,500.00
08/09/2009	₱787,500.00	₱264,738.50	₱265,000.00	₱32,238.17		₱819,476.67
09/08/2009	₱819,476.67	₱1,083,500.00	₱864,000.00			₱1,038,976.67
10/08/2009	₱1,038,976.67	₱1,280,000.00	₱1,075,738.17			₱1,243,238.50
11/08/2009	₱1,243,238.50			₱58,615.28	₱4,351.34	₱1,306,205.12
12/08/2009	₱1,306,205.12			₱45,770.01	₱8,994.86	₱1,360,969.99
01/10/2010	₱1,360,969.99			₱52,511.34	₱13,906.69	₱1,427,388.02
02/08/2010	₱1,427,388.02			₱52,016.56	₱19,132.05	₱1,498,536.63
03/08/2010	₱1,498,536.63			₱48,981.40	₱24,692.64	₱1,572,210.67
04/08/2010	₱1,572,210.67			₱57,004.89	₱30,602.81	₱1,659,818.37
05/09/2010	₱1,659,818.37			₱60,289.00	₱36,917.16	**₱1,757,024.53**

Based on the foregoing, the CA erred in finding that the principal obligation merely amounted to the sum of ₱787,500.00, which was the balance due to be paid within the month of August of 2009, considering that such amount was already paid by petitioner in the succeeding months of September and October of 2009, within which the latter made further purchases on credit. Accordingly, the Court finds that petitioner's principal obligation to RCBC should amount to **₱1,211,000.33**, which, as previously explained, remains unpaid.

II.

Anent the proper amount of **interest and late payment charges**, the CA correctly found that the monthly interest rate of 3.5% as well as the penalty charge for late payment of 7% was excessive, iniquitous, unconscionable, and exorbitant, and hence, must be equitably tempered.[25] Nonetheless, the Court deems it appropriate to adjust the interest rates imposed by the CA in accordance with prevailing jurisprudence.

Case law states that there are two (2) types of interest, namely, monetary interest and compensatory interest. Monetary interest

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[25] See id. at 82-85.

is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).[26]

Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case ***the legal rate of interest prevailing at the time the agreement was entered into*** would have to be applied by the Court. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.[27] Such monetary interest should be computed from default, *i.e.*, from extrajudicial or judicial demand, until full payment.[28]

In addition, the aforesaid monetary interest shall itself earn compensatory interest at the prevailing legal rates, pursuant to Article 2212 of the Civil Code, which states that '[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.' To be sure, [the foregoing provision] contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest,

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[26] *Isla v. Estorga*, G.R. No. 233974, July 2, 2018, 869 SCRA 410, citing *Spouses Pen v. Spouses Julian*, 776 Phil. 50, 60 (2016).

[27] Id. at 417-418; citations omitted.

[28] See *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, August 28, 2019.

which has accrued when demand was judicially made. In contrast, Article 2212 of the Civil Code finds no application if there was no stipulated/monetary interest agreed upon by the parties which could further earn compensatory interest.[29]

In this case, the courts *a quo* correctly found that petitioner voluntarily agreed to the payment of interest and late payment charges as stipulated in the credit card terms and conditions.[30] Notably, both impositions partook the nature of monetary interest as it was intended as compensation for the use or forbearance of money arising from petitioner's purchases on credit.[31] Since the stipulated rates were struck down for being unconscionable, the Court finds that a straight monetary interest at the prevailing rate of twelve percent (12%) per annum[32] should instead be imposed on the principal obligation, reckoned from the date of default, *i.e.*, from extrajudicial demand on November 26, 2010, until full payment. Additionally, the accrued monetary interest itself shall earn compensatory interest at the rate of twelve percent (12%) per annum from the date of judicial demand, *i.e.*, the filing of the complaint on December 15, 2010 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until full payment. Finally, the award of attorney's fees in the amount of ₱50,000.00 shall also earn legal interest at the rate of 6% per annum from the finality of this Decision until full payment.

WHEREFORE, the petition is **DENIED**. The Decision dated April 11, 2019 and the Resolution dated August 20, 2019 of the Court of Appeals in CA-G.R. CV No. 109701 are hereby

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[29] *Isla v. Estorga*, supra note 26. See also *Park v. Choi*, G.R. No. 220826, March 27, 2019.

[30] See *rollo*, p. 113.

[31] "[C]redit card obligation consists of a loan or forbearance of money." (*Ledda v. Bank of the Philippine Islands*, 699 Phil. 273, 280 [2012]).

[32] "The 6% per annum legal interest prescribed under BSP-MB Circular No. 799 took effect on 1 July 2013 and could only be applied prospectively." *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, supra note 28.

AFFIRMED with **MODIFICATION**. Accordingly, petitioner Bryan L. Uysipuo is ordered to pay RCBC Bankard Services Corporation the following amounts:

1) The principal obligation in the amount of ₱1,211,000.33;

2) Monetary interest on the principal obligation at the rate of twelve percent (12%) per annum from the date of default, *i.e.*, from extrajudicial demand on November 26, 2010, until full payment;

3) Compensatory interest on the accrued monetary interest at the rate of twelve percent (12%) per annum from the date of judicial demand, *i.e.*, the filing of the complaint on December 15, 2010 until June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until full payment;

4) Attorney's fees in the amount of ₱50,000.00, plus legal interest thereon at the rate of six percent (6%) per annum, reckoned from the finality of this Decision until full payment; and

5) Costs of suit.

SO ORDERED.

Hernando, Carandang,[*] and *Delos Santos, JJ.*, concur.

Inting, J., on official leave.

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[*] Designated Additional Member per raffle dated August 26, 2020.

SECOND DIVISION

[G.R. No. 250578. September 7, 2020]

BERT PASCUA *y* VALDEZ, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GRAVE ABUSE OF DISCRETION, WHEN PRESENT.— "[G]rave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." In this regard, case law instructs that there is grave abuse of discretion when an act: *(a)* is done contrary to the Constitution, the law or jurisprudence, or executed whimsically, capriciously or arbitrarily, out of malice, ill will, or personal bias; or *(b)* manifestly disregards basic rules or procedures.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT); PLEA BARGAINING IN DRUGS CASES; SECTION 23 THEREOF EXPRESSLY DISALLOWING PLEA-BARGAINING IN DRUGS CASES, UNCONSTITUTIONAL FOR CONTRAVENING THE RULE-MAKING AUTHORITY OF THE SUPREME COURT.— To recall, plea bargaining in cases involving drugs cases was recently allowed through the Court's promulgation of *Estipona, Jr. v. Lobrigo*, which declared the provision in RA 9165 expressly disallowing plea bargaining in drugs cases, *i.e.*, Section 23, Article II, unconstitutional for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases.

3. ID.; ID.; ID.; POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; A.M. NO. 18-03-16-SC; PLEA

BARGAINING FRAMEWORK IN DRUGS CASES; RATIONALE.— In A.M. No. 18-03-16-SC, the Court enumerated, in table format, several violations of RA 9165 which could be subject to plea-bargaining. Included therein is violation of Section 5, Article II thereof, particularly for the sale, trading, *etc*. of *shabu* **weighing less than 1.00 gram**. The rationale for this particular exception was explained by the Court in its Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*, to wit:

> It bears emphasis that the main reason of the Court in stating in A.M. No. 18-03-16-SC dated April 10, 2018 that **"plea bargaining is also not allowed under Section 5 (Sale, Trading, *etc*. of Dangerous Drugs) involving all other kinds of dangerous drugs, except *shabu*** and marijuana" **lies in the diminutive quantity of the dangerous drugs involved.** Taking judicial notice of the volume and prevalence of cases involving the said two (2) dangerous drugs, as well as the recommendations of the Officers of the PJA, **the Court is of the view that illegal sale of 0.01 gram to 0.99 gram of methamphetamine hydrochloride (*shabu*) is very light enough to be considered as necessarily included in the offense of violation of Section 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs), while 1.00 gram and above is substantial enough to disallow plea bargaining.** The Court holds the same view with respect to illegal sale of 0.01 gram to 9.99 grams of marijuana, which likewise suffices to be deemed necessarily included in the same offense of violation of the same Section 12 of R.A. No. 9165, while 10.00 grams and above is ample enough to disallow plea bargaining.

4. ID.; ID.; ID.; PROBATION, DEFINED; IN APPLYING THEREFOR, WHAT IS ESSENTIAL IS NOT THE OFFENSE CHARGED, BUT THE OFFENSE TO WHICH THE ACCUSED IS ULTIMATELY FOUND GUILTY OF.— It bears stressing that it is only after the trial court arrives at a judgment of conviction can the provisions of the Probation

Law apply. "Probation" is defined under Section 3 (a) thereof as "a disposition under which a defendant, **after conviction and sentence**, is released subject to conditions imposed by the court and to the supervision of a probation officer." Section 9 thereof, which lists the disqualified offenders, also highlights that the disqualifications pertain to the **nature** of the convictions meted out to the prospective applicant.

. . .

It is clear from both Section 24, Article II of RA 9165 and the provisions of the Probation Law that in applying for probation, **what is essential is not the offense charged but the offense to which the accused is ultimately found guilty of**.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA-BARGAINING IN CRIMINAL CASES, DEFINED; WITH THE ACCEPTANCE OF A PLEA BARGAIN, THE JUDGMENT, PENALTY, AND OTHER CONSEQUENCES WOULD BE BASED ON THE LESSER OFFENSE SUBJECT OF THE PLEA; CASE AT BAR.— [U]pon acceptance of a plea bargain, the accused is actually found guilty of the lesser offense subject of the plea. According to jurisprudence, "[p]lea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge."

Thus, regardless of what the original charge was in the Information, the judgment would be for the lesser offense to which the accused pled guilty. This means that the penalty to be meted out, as well as all the attendant accessory penalties, and other consequences under the law, including eligibility for probation and parole, would be based on such lesser offense. Necessarily, even if Pascua was originally charged with violation of Section 5, Article II of RA 9165 in Criminal Case No. 18805, he was ultimately convicted of the lower offense of violation of Section 12, Article II of the same law. Since the foregoing effectively removed Pascua's case from the coverage of Section 24, Article II of RA 9165, he should, at the very least, be allowed to apply for probation.

6. CRIMINAL LAW; PROBATION; GRANT OR DENIAL OF THE APPLICATION THEREFOR LIES IN THE SOUND DISCRETION OF THE REGIONAL TRIAL COURT; CASE AT BAR.— [I]t is well to clarify that this ruling does not, *per se* make Pascua eligible for probation. This ruling is limited to the deletion of the RTC's pronouncement that Pascua is "ineligible to apply for probation", thereby allowing him to file such application. If he files for the same, the grant or denial thereof will then lie in the sound discretion of the RTC after due consideration of the criteria laid down in the Probation Law, *e.g.,* Section 8 thereof.

APPEARNCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 13, 2019 and the Resolution[3] dated November 21, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 160653 which upheld the Orders dated January 29, 2019[4] and February 26, 2019[5] of the Regional Trial Court of Balanga City, Bataan, Branch 1 (RTC) in Criminal Case No. 18805, allowing petitioner Bert Pascua *y* Valdez (Pascua) to enter a plea of guilty for violation of Section 12, Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive

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[1] *Rollo*, pp. 11-33.

[2] Id. at 40-51. Penned by Acting Presiding Justice Remedios A. Salazar-Fernando with Associate Justices Samuel H. Gaerlan (now a member of this Court) and Germano Francisco D. Legaspi, concurring.

[3] Id. at 53-55.

[4] Id. at 83-85. Penned by Judge Angelito I. Balderama.

[5] Id. at 87-89.

[6] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT

Dangerous Drugs Act of 2002," but declared him "ineligible to apply for probation."[7]

The Facts

The instant case stemmed from two (2) Informations[8] filed before the RTC, docketed as Criminal Case Nos. 18805 and 18806, respectively charging Pascua with violations of Sections 5 and 11, Article II of RA 9165 for selling 0.024 gram and possessing 0.054 gram of *methamphetamine hydrochloride*, or *shabu*.[9] Upon arraignment, Pascua pleaded "not guilty" to the crimes charged. However, he later filed a **Motion to Allow Accused to Enter into Plea Bargaining Agreement** wherein he offered to enter a plea of "guilty" to the lesser offense of **violation of Section 12,**[10] **Article II of RA 9165** for both criminal cases.[11] The prosecution filed its Comment and Opposition thereto, stressing that, per Department of Justice Department Circular No. 027-18,[12] the State's consent is necessary before the accused can plead to a lesser offense.[13]

The RTC Ruling

On January 29, 2019, the RTC issued separate Orders[14] allowing Pascua to enter a plea of guilty to the lesser offense

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NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[7] *Rollo*, p. 85.

[8] Id. at 91 and 93-94.

[9] Id. at 42.

[10] "Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs."

[11] *Rollo*, p. 42.

[12] "RE: AMENDED GUIDELINES ON PLEA BARGAINING FOR REPUBLIC ACT NO. 9165 OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" issued on June 26, 2018.

[13] See *rollo*, pp. 42-43.

[14] Id. at 83-85 and 102-103.

of violation of Section 12, Article II of RA 9165 in both Criminal Case Nos. 18805 and 18806. However, it was expressly stated in the dispositive portion of the Order pertaining to Criminal Case No. 18805 that Pascua was "ineligible to apply for probation."[15]

Accordingly, Pascua applied for probation as regards Criminal Case No. 18806, which the RTC acted upon issuing an Order[16] dated February 26, 2019 which, among others, directed the Bataan Parole and Probation Officer to conduct an investigation on Pascua in accordance with Sections 5 and 7 of Presidential Decree No. 968,[17] as amended,[18] otherwise known as the "Probation Law of 1976" (Probation Law).

On the other hand, Pascua moved for reconsideration[19] as to the Order made in Criminal Case No. 18805, particularly for declaring him ineligible for probation. He argued that A.M. No. 18-03-16-SC[20] only prohibits probation if the accused is actually found **guilty** of sale of illegal drugs (Section 5), and not when he is found guilty to the lesser offense of "possession of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs" (Section 12).[21]

In an Order[22] dated February 26, 2019, the RTC issued an Order denying the motion for reconsideration for lack of merit.

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[15] Id. at 85.

[16] Id. at 106.

[17] Entitled "ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES" (July 24, 1976).

[18] Republic Act No. 10707, entitled "AN ACT AMENDING PRESIDENTIAL DECREE NO. 968, OTHERWISE KNOWN AS THE 'PROBATION LAW OF 1976,' AS AMENDED," approved on November 26, 2015.

[19] Dated February 4, 2019. *Rollo*, pp. 107-111.

[20] Entitled "ADOPTION OF THE PLEA BARGAINING FRAMEWORK IN DRUGS CASES" dated April 10, 2018.

[21] See *rollo*, pp. 43 and 108.

[22] Id. at 87-89.

The RTC held that probation is not a matter of right but a special privilege which is discretionary upon the court.[23] It held that the framers of A.M. No. 18-03-16-SC clearly intended that persons charged with sale of illegal drugs would not be qualified for probation if they choose to plead guilty to a lesser offense.[24]

Aggrieved, Pascua filed a petition for *certiorari*[25] with the CA.

The CA Ruling

In a Decision[26] dated September 13, 2019, the CA affirmed the RTC ruling. The CA held that a reasonable interpretation of A.M. No. 18-03-16-SC would lead to the conclusion that the Supreme Court intended for drug trafficking and pushing (Section 5) to still be covered by the "no probation rule" under Section 24, Article II of RA 9165.[27] It rejected Pascua's contention that A.M. No. 18-03-16-SC should apply to the lesser offense allowed instead of the offense actually charged.[28] The CA opined in this wise: "[t]his interpretation will result to absurdity, since Section 5 is not among the enumerated lesser offenses to which an accused can admit guilt to in lieu of being convicted of a higher offense. If this was really the intention of the Supreme Court, it would not have included this provision since there is no acceptable plea to which this exception to the general rule would be applicable. It is therefore rational and logical to conclude that persons charged [with] violating Section 5 who subsequently avail of plea bargaining may not apply for probation[,] x x x it would mean that every person accused of sale of illegal drugs would simply have to plead guilty to the lesser offense of violation of Section 12, apply

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[23] Id. at 88.

[24] Id.

[25] See id. at 60-81.

[26] Id. at 40-51.

[27] Id. at 48.

[28] Id. at 48-49.

for probation, then be released scot-free."[29] It likewise held that even assuming Pascua was eligible for probation, the same is still within the discretion of the lower court.[30]

Pascua moved for reconsideration[31] but was denied in a Resolution[32] dated November 21, 2019; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly ruled that the RTC did not gravely abuse its discretion in holding that Pascua is ineligible for probation in Criminal Case No. 18805 after pleading guilty to the lesser offense of violation of Section 12, Article II of RA 9165.

The Court's Ruling

The petition has partial merit.

"[G]rave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[33] In this regard, case law instructs that there is grave abuse of discretion when an act: *(a)* is done contrary to the Constitution, the law or jurisprudence, or executed whimsically, capriciously or arbitrarily, out of malice, ill will, or personal bias; or *(b)* manifestly disregards basic rules or procedures.[34]

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[29] Id.

[30] Id. at 50.

[31] Dated October 9, 2019. Id. at 131-138.

[32] Id. at 53-55.

[33] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, 809 Phil. 212, 220 (2017), citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 188-189 (2016).

[34] See *Sayre v. Xenos*, G.R. Nos. 244413, 244415-16, February 18, 2020, citations omitted.

Guided by the foregoing considerations and as will be explained hereunder, the Court finds that the CA erred in finding no grave abuse of discretion on the part of the RTC in declaring Pascua ineligible for probation after pleading guilty to the lesser offense of violation of Section 12, Article II of RA 9165.

To recall, plea bargaining in cases involving drugs cases was recently allowed through the Court's promulgation of *Estipona, Jr. v. Lobrigo*,[35] which declared the provision in RA 9165 expressly disallowing plea bargaining in drugs cases, *i.e.*, Section 23,[36] Article II, unconstitutional for contravening the rule-making authority of the Supreme Court. Following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases.[37]

In A.M. No. 18-03-16-SC, the Court enumerated, in table format, several violations of RA 9165 which could be subject to plea-bargaining.[38] Included therein is violation of Section 5, Article II thereof, particularly for the sale, trading, *etc*., of *shabu* **weighing less than 1.00 gram**. The rationale for this particular exception was explained by the Court in its Resolution dated April 2, 2019 in *Re: Letter of Associate Justice Diosdado M. Peralta on the Suggested Plea Bargaining Framework Submitted by the Philippine Judges Association*,[39] to wit:

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[35] 816 Phil. 789 (2017).

[36] Section 23, Article II of RA 9165 reads:

Section 23. *Plea-Bargaining Provision*. — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

[37] See OCA Circular Nos. 90-2018, subject: "PLEA BARGAINING FRAMEWORK IN DRUGS CASES" issued on May 4, 2018 and 104-2019 subject: "COURT *EN BANC* RESOLUTION DATED 4 JUNE 2019 IN A.M. NO. 18-03-16-SC (RE: ADOPTION OF PLEA BARGAINING FRAMEWORK IN DRUG CASES)" issued on July 5, 2019.

[38] See Resolutions issued on April 10, 2018 and June 4, 2019.

[39] See also OCA Circular No. 80-2019, subject: "MINUTE RESOLUTION DATED 02 APRIL 2019 IN A.M. NO. 18-03-16-SC (RE: LETTER OF

It bears emphasis that the main reason of the Court in stating in A.M. No. 18-03-16-SC dated April 10, 2018 that "**plea bargaining is also not allowed under Section 5 (Sale, Trading, *etc.*, of Dangerous Drugs) involving all other kinds of dangerous drugs, except *shabu*** and marijuana" **lies in the diminutive quantity of the dangerous drugs involved**. Taking judicial notice of the volume and prevalence of cases involving the said two (2) dangerous drugs, as well as the recommendations of the Officers of the PJA, **the Court is of the view that illegal sale of 0.01 gram to 0.99 gram of methamphetamine hydrochloride *(shabu)* is very light enough to be considered as necessarily included in the offense of violation of Section 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs), while 1.00 gram and above is substantial enough to disallow plea bargaining.** The Court holds the same view with respect to illegal sale of 0.01 gram to 9.99 grams of marijuana, which likewise suffices to be deemed necessarily included in the same offense of violation of the same Section 12 of R.A. No. 9165, while 10.00 grams and above is ample enough to disallow plea bargaining. (Emphases and underscoring supplied)

A.M. No. 18-03-16-SC also provides, among others, in the "Remarks" column of the aforesaid offense that "if accused applies for probation in offenses punishable under R.A. No. 9165, other than for illegal drug trafficking or pushing under Section 5 in relation to [Section] 24 thereof, then the law on probation apply."[40] Notably, Section 24, Article II of RA 9165 provides that any person **convicted for drug trafficking or pushing** under Section 5 of the law cannot avail of the benefits of the Probation Law, *viz.*:

Section 24. *Non-Applicability of the Probation Law for Drug Traffickers and Pushers.* — Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.

ASSOCIATE JUSTICE DIOSDADO M. PERALTA ON THE SUGGESTED PLEA BARGAINING FRAMEWORK SUBMITTED BY THE PHILIPPINE JUDGES ASSOCIATION)" issued on May 30, 2019.

[40] See Resolution dated June 4, 2019.

In this case, the CA construed the aforementioned remark in A.M. No. 18-03-16-SC as disqualifying persons originally charged with violation of Section 5, Article II of RA 9165 but were convicted of the lesser offense of violation of Section 12, Article II of the same law — such as Pascua — from applying for probation.

However, the CA is mistaken as the said remark should be simply regarded as a recognition and reminder of the general rule provided in Section 24 that "[a]ny person **convicted for drug trafficking or pushing** under this Act"[41] shall be ineligible for probation. Moreover, the CA's view is not supported neither by the very wording of Section 24, Article II of RA 9165 nor the provisions of the Probation Law. It likewise disregards the legal consequences of plea bargaining.

It bears stressing that it is only after the trial court arrives at a judgment of conviction can the provisions of the Probation Law apply. "Probation" is defined under Section 3 (a) thereof as "a disposition under which a defendant, **after conviction and sentence**, is released subject to conditions imposed by the court and to the supervision of a probation officer."[42] Section 9 thereof, which lists the disqualified offenders, also highlights that the disqualifications pertain to the **nature** of the convictions meted out to the prospective applicant:

> Section 9. *Disqualified Offenders*. — The benefits of this Decree shall not be extended to those:
>
> (a) **sentenced** to serve a maximum term of imprisonment of more than six (6) years;
>
> (b) **convicted** of any crime against the national security;
>
> (c) who have **previously been convicted by final judgment** of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of not more than one thousand pesos (P1,000.00);

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[41] Emphasis and underscoring supplied.

[42] Emphasis supplied.

(d) **who have been once on probation** under the provisions of this Decree; and

(e) who are **already serving sentence** at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof." (Emphases supplied)

It is clear from both Section 24, Article II of RA 9165 and the provisions of the Probation Law that in applying for probation, **what is essential is not the offense charged but the offense to which the accused is ultimately found guilty of**.

In this regard, it is worth emphasizing that upon acceptance of a plea bargain, the accused is actually found guilty of the lesser offense subject of the plea. According to jurisprudence, "[p]lea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge."[43]

Thus, regardless of what the original charge was in the Information, the judgment would be for the lesser offense to which the accused pled guilty. This means that the penalty to be meted out, as well as all the attendant accessory penalties, and other consequences under the law, including eligibility for probation and parole, would be based on such lesser offense. Necessarily, even if Pascua was originally charged with violation of Section 5, Article II of RA 9165 in Criminal Case No. 18805, he was ultimately convicted of the lower offense of violation of Section 12, Article II of the same law. Since the foregoing effectively removed Pascua's case from the coverage of Section 24, Article II of RA 9165, he should, at the very least, be allowed to apply for probation.

The foregoing notwithstanding, it is well to clarify that this ruling does not, *per se* make Pascua eligible for probation. This

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[43] *Daan v. Sandiganbayan*, 573 Phil. 368, 375 (2008).

ruling is limited to the deletion of the RTC's pronouncement that Pascua is "ineligible to apply for probation," thereby allowing him to file such application. If he files for the same, the grant or denial thereof will then lie in the sound discretion of the RTC after due consideration of the criteria laid down in the Probation Law, *e.g.*, Section 8[44] thereof.

WHEREFORE, the petition is partly **GRANTED**. The Decision dated September 13, 2019 and the Resolution dated November 21, 2019 of the Court of Appeals in CA-G.R. SP No. 160653 are **REVERSED** and **SET ASIDE**. The Order dated January 29, 2019 of the Regional Trial Court of Balanga City, Bataan, Branch 1 in Criminal Case No. 18805 is hereby **MODIFIED**, in that the sentence: "Make it of record that the accused is ineligible to apply for probation" is **DELETED**. Petitioner Bert Pascua *y* Valdez is hereby given a period of fifteen (15) days from notice of this Decision within which to file his application for probation before the court *a quo*.

SO ORDERED.

Hernando and *Delos Santos, JJ.*, concur.

Inting, J., on official leave.

Baltazar-Padilla, J., on leave.

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[44] Section 8 of the Probation Law reads:

Section 8. *Criteria for Placing an Offender on Probation.* — In determining whether an offender may be placed on probation, the court shall consider all information relative, to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. Probation shall be denied if the court finds that:

(a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(b) there is undue risk that during the period of probation the offender will commit another crime; or

(c) probation will depreciate the seriousness of the offense committed.

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— The legal relationship created by adoption extends only to the adopter and the adoptee for this reason. (Reyes *v*. Elquiero, represented by attorney-in-fact, Daisy Elquiero-Benavidez, G.R. No. 210487, Sept. 2, 2020) p. 66

Purpose — The purpose of the proceeding for adoption is to effect this new status of relationship between the child and its adoptive parents, the change of name which frequently accompanies adoption being more an incident than the object of the proceeding. (Suzuki *v*. Office of the Solicitor General, G.R. No. 212302, Sept. 2, 2020) p. 90

Rules on — An alien is disqualified to adopt, except when he or she seeks to adopt the legitimate child of his or her Filipino spouse; under the Family Code, not all persons are qualified to adopt; the following persons may not adopt: … (3) An alien, except: (b) One who seeks to adopt the legitimate child of his or her Filipino spouse; aliens not included in the foregoing exceptions may adopt Filipino children in accordance with the rules on inter-country adoptions as may be provided by law. (Suzuki *v*. Office of the Solicitor General, G.R. No. 212302, Sept. 2, 2020) p. 90

— Under Article III, Section 7, the following may adopt: (b) any alien possessing the same qualifications as above stated for Filipino nationals, provided that the requirements on residency and certification of the alien's qualification to adopt in his/her country may be waived for the following: or (ii) one who seeks to adopt the legitimate son/daughter of his/her Filipino spouse; Under Section 8, the following may be adopted: (b) the legitimate son/daughter of one spouse by the other spouse. (*Id*.)

AGENCY

Apparent authority — The rule on apparent authority is based on the principle of estoppel; through 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; thus, if a corporation knowingly

ALIBI

Defense of — For alibi to prosper, it must be demonstrated that it was physically impossible for accused-appellant to be present at the place where the crime was committed at the time of commission. (People *v.* DDD @ Adong, G.R. No. 243583, Sept. 3, 2020) p. 482

ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (R.A. NO. 9285)

Application of — RULE 19.36. Review Discretionary. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. (IP E-Game Ventures, Inc. *v.* Beijing Perfect World Software Co., Ltd., G.R. No. 220250, Sept. 7, 2020) p. 691

— The Special ADR Rules were designed precisely to define the scope of the courts' power of judicial review in arbitration cases; Rule 19.8 explicitly states that "the remedy of an appeal through a petition for review from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted only in the manner, provided under this Rule." (*Id.*)

— While the first paragraph of Rule 2.1 of the Special ADR Rules states the policy in favor of solving disputes through arbitration, the second paragraph reserves to the courts the power to exercise judicial review over arbitration cases. (*Id.*)

ANTI-MONEY LAUNDERING ACT (R.A. NO. 9160), AS AMENDED

Freeze order — A freeze order is an extraordinary and interim relief issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of R.A. No. 9160. (Republic represented by the Anti-Money Laundering Council (AMLC) *v.*

Petition for review under Rule 43 — It was settled that the 10-day period stated in Article 276-A should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration; only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing a petition for review within 15 days from notice under Section 4 of Rule 43 of the Rules of Court. (Bahia Shipping Services, Inc., *et al. v.* Castillo, G.R. No. 227933, Sept. 2, 2020) p. 227

— Petitioner in this case had fifteen (15) days from receipt of the Resolution denying his motion for reconsideration to file his petition for review with the CA. (Chin *v.* Maersk-Filipinas Crewing, Inc., *et al.*, G.R. No. 247338, Sept. 2, 2020) p. 308

— The Court acknowledged the variance in its rulings and categorically declared that the correct period to appeal the decision or award of the Voluntary Arbitrator or Panel of Arbitrators to the CA via a petition for review under Rule 43 of the Rules of Court is the fifteen (15)-day period set forth in Section 4 thereof reckoned from notice or receipt of the VA's resolution on the motion for reconsideration, and that the ten (10)-day period provided in Article 276 of the Labor Code refers to the period within which an aggrieved party may file said motion for reconsideration. (*Id.*)

— The grant of any extension for the filing of a Petition for Review under Rule 42 is discretionary and subject to the condition that the full amount of the docket and lawful fees are paid before the expiration of the reglementary period; the full payment of docket fees within the prescribed period is mandatory and necessary to perfect the appeal; corollarily, the non-payment of docket fees is a ground to dismiss the appeal. (Ang *v.* Court of Appeals, *et al.*, G.R. No. 238203, Sept. 3, 2020) p.422

— As the Court has held, disciplinary and disbarment proceedings against lawyers are considered *sui generis* in nature with the main aim of preserving the integrity of the legal profession; the proceedings, which the Court may even *motu proprio* initiate, have neither plaintiffs nor prosecutors; the Court will look into the conduct and behavior of lawyers in order to determine if they are fit to exercise the privileges of the legal profession. if found guilty, the erring lawyers shall be dealt with accordingly and will be held accountable for any misconduct or misbehavior, committed in violation of the Code of Professional Responsibility. (Rigon, Jr. *v.* Subia, A.M. No. 10249, Sept. 7, 2020) p. 588

— In disbarment proceedings the burden of proof rests upon the complainant; jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant; the complainant must then prove by substantial evidence the allegations in his complaint. (Capinpin *v.* Espiritu, A.C. No. 12537, Sept. 3, 2020) p. 318

— Under Section 1, Rule 139-B of the Rules of Court, the following must be present in the institution of disbarment and disciplinary proceedings of attorneys: (a) verified complaint of any person; (b) the complaint must state clearly and concisely the act complained of; (c) the complaint must be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts. (Rigon, Jr. *v.* Subia, A.M. No. 10249, Sept. 7, 2020) p. 588

Disbarment and suspension — The Court has repeatedly stressed that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence; preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it; the *onus probandi* lies on the complainant, who is duty-bound to prove the veracity of the allegations in his

at once; an order of forfeiture is preliminary to a judgment on the bond; being interlocutory, it does not conclusively resolve the case; a judgment on the bond, on the other hand, is a final order "which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (Heirs of Bondsman Basilio Nepomuceno, namely: Delsa N. Trasmonte, *et al. v.* Hon. Castillo, in his capacity as Acting Presiding Judge of the RTC, 8th Judicial Region, Branch 12, Ormoc City, *et al.*, G.R. No. 205099, Sept. 2, 2020) p. 40

Right to — Bail is the security given by an accused who is in the custody of the law for their release to guarantee their appearance before any court as may be required; it is furnished by either the person in custody of the law or the bondspersons, which may be in the form of corporate surety, property bond, cash deposit, or recognizance. (Heirs of Bondsman Basilio Nepomuceno, namely: Delsa N. Trasmonte, *et al. v.* Hon. Castillo, in his capacity as Acting Presiding Judge of the RTC, 8th Judicial Region, Branch 12, Ormoc City, *et al.*, G.R. No. 205099, Sept. 2, 2020) p. 40

— To be released on bail means that the accused is delivered in contemplation of law, yet not commonly in real fact, to others who become entitled to their custody and responsible for their appearance when and where agreed; upon accepting a bail obligation, the bondspersons become in law the jailers of their principal; they must then ensure that the accused is under their close monitoring—a duty that would remain until the bond is canceled or the surety is discharged. (*Id.*)

BUREAU OF JAIL MANAGEMENT AND PENOLOGY (BJMP)

BJMP Standard Operating Procedure No. 2010-05 (BJMP SOP No. 2010-05) — Each type of body search is covered by procedures discussed in great detail in the SOP; the same document likewise directs when a search may escalate from a pat/frisk/rub search to a strip search: If

CERTIORARI

Petition for — A motion for reconsideration (MR) is a prerequisite to the filing thereof. (Coca-cola Femsa Philippines, Inc. *v.* Central Luzon Regional Sales Executive Union of Coca-cola San Fernando (FDO) Plant, G.R. No. 233300, Sept. 3, 2020) p. 392

— May be entertained without a prior MR when the issues raised therein are the same as those raised and passed upon by the lower tribunals. (*Id.*)

— Nonetheless, the doctrine of hierarchy of courts is not an iron-clad rule as it in fact admits the jurisprudentially established exceptions thereto, viz.: (a) direct resort to this court is allowed 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 warrant a direct resort to this court; (d) the constitutional issues raised are better decided by this court; (e) the time element; (f) the filed petition reviews the act of a constitutional organ; (g) petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law; 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. (Sierra Grande Realty Corporation *v.* Ragasa, in her capacity as Presiding Judge of the RTC of Pasay, Br. 108, *et al.*, G.R. No. 218543, Sept. 2, 2020) p. 132

— Well-established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions, to wit: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower

under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its dockets. (Sierra Grande Realty Corporation *v*. Ragasa, in her capacity as Presiding Judge of the RTC of Pasay, Br. 108, *et al.*, G.R. No. 218543, Sept. 2, 2020) p. 132

COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (R.A. NO. 6758)

Application of — The validity of R.A. No. 6758 is not affected by the nullity of its implementing rule; the Department of Budget and Management's action is not required to implement the integration rule under Section 12 of R.A. No. 6758. (Development Bank of the Philippines *v.* Ronquillo, et al., G.R. No. 204948, Sept. 7, 2020) pp. 666-671

Cost of living allowance and amelioration allowance — There are allowances that may be given in addition to the standardized salary; these non-integrated allowances are specifically identified in Section 12; in addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary. (Development Bank of the Philippines *v.* Ronquillo, *et al.*, G.R. No. 204948, Sept. 7, 2020) pp. 666-671

— This Court has long settled that all kinds of allowances except those specifically enumerated in Section 12 of R.A. No. 6758 are deemed integrated in the standardized salaries of government employees, including those of government-owned and controlled corporations and government financial institutions. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal sale of dangerous or prohibited drugs — Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. (People *v*. Goyenoche, G.R. No. 243985, Sept. 3, 2020) p. 513

Section 23 — Expressly disallowing plea bargaining in drug cases, unconstitutional for contravening the rule-making authority of the Supreme Court; Section 23, Article II, unconstitutional for contravening the rule-making authority of the Supreme Court; following this pronouncement, the Court issued A.M. No. 18-03-16-SC providing for a plea bargaining framework in drugs cases, which was required to be adopted by all trial courts handling drugs cases. (Pascua *v.* People, G.R. No. 250578, Sept. 7, 2020) p. 802

Section 24 — Probation is defined under Section 3 (a) thereof as a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer; Section 9 thereof, which lists the disqualified offenders, also highlights that the disqualifications pertain to the nature of the convictions meted out to the prospective applicant; it is clear from both Section 24, Article II of R.A. No. 9165 and the provisions of the Probation Law that in applying for probation, what is essential is not the offense charged but the offense to which the accused is ultimately found guilty of. (Pascua *v.* People, G.R. No. 250578, Sept. 7, 2020) p. 802

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165), AS AMENDED BY R.A. NO. 10640

Chain of custody — As part of the chain of custody procedure, R.A. No. 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation;

enjoyment; it may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. (*Id.*)

— Ideas can be either abstract or concrete. It is the concrete ideas that are generally referred to as expression: the words "abstract" and "concrete" arise in many cases dealing with the idea/expression distinction; the Nichols court, for example, found that the defendant's film did not infringe the plaintiffs play because it was "too generalized an abstraction from what plaintiff wrote only a part of her ideas." (*Id.*)

— To create a thing that may be entitled to a copyright requires something more than the giving of ideas and concepts; ideas should translate to or transition into something that is tangible or physical; in other words, something capable of being perceived must be produced. (*Id.*)

Copyright protection — The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which took effect in the Philippines on January 1, 1995, states that "copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such"; more commonly referred to as the "idea/expression dichotomy," the principle in copyright protection is that "ideas are not protectable" and only expressions of those ideas may be subject to copyright protection. (Republic of the Philippines, through the Philippine National Police (PNP) *v.* Heirs of Jose C. Tupaz, IV, namely: Ma. Corazon J. Tupaz, *et al.*, G.R. No. 197335, Sept. 7, 2020) p. 625

Rationale — Copyright has two rationales: the economic benefit and social benefit; the economic benefit is reaped by the author from his work while the social benefit manifests when it creates impetus for individuals to be creative; copyright, like other intellectual property rights, grants legal protection by prohibiting the unauthorized reproduction of the author's work. (Republic of the

with prevailing conventions when it was enacted; under the Berne Convention and the Universal Copyright Convention, authors of original works retain the exclusive right of control over their works. (*Id.*)

— Section 6 of Presidential Decree No. 49 states: If the work in which copyright subsists was made during and in the course of the employment of the creator, the copyright shall belong to: (a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer; (b) The employer, if the work is the result of the performance of his regularly assigned duties, unless there is an agreement, express or implied to the contrary; the second exception refers to commissioned works. (*Id.*)

— The enumeration under Section 2 of Presidential Decree No. 49 is substantially similar to that which can be found in Section 172.1 of the subsequent law, Republic Act No. 8293; under both laws, the copyright vests upon the sole fact of creation; Presidential Decree No. 49 requires the registration and deposit of some works with the National Library; noncompliance with this rule "does not deprive the copyright owner of the right to sue for infringement"; however, it limits the remedies of copyright owners, denies them of the right to recover damages, and subjects them to certain sanctions. (*Id.*)

— Under Section 2 of Presidential Decree No. 49, the copyright belongs to the creator of the work or the creator's heirs or assigns. If the work is created by two (2) or more persons, they shall own the copyright jointly; the same principles are embodied in Sections 178.1 and 178.2 of Republic Act No. 8293. (*Id.*)

— Unlike Republic Act No. 8293, which defines an author as the "natural person who has created the work"; Presidential Decree No. 49 does not provide a definition of an author or a creator; despite the law's silence, an author, for purposes of copyright ownership, should be

deemed as one who fixes an abstract idea into something tangible. (*Id.*)

Classes of copyrightable works protected from the moment of creation — Section 2 of Presidential Decree No. 49 enumerates different classes of copyrightable works, which are protected from the moment of creation: SECTION 2. The rights granted by this Decree shall, from the moment of creation, subsist with respect to any of the following classes of works: (A) Books, including composite and cyclopedic works, manuscripts, directories, and gazetteers; (B) Periodicals, including pamphlets and newspapers; (C) Lectures, sermons, addresses, dissertations prepared for oral delivery; (D) Letters; (E) Dramatic or dramatico-musical compositions; choreographic works and entertainments in dumb shows, the acting form of which is fixed in writing or otherwise; (F) Musical compositions, with or without words; (G) Works of drawing, painting, architecture, sculpture, engraving, lithography, and other works of art; models or designs for works of art; (H) Reproductions of a work of art; (I) Original ornamental designs or models for articles of manufacture, whether or not patentable, and other works of applied art; (J) Maps, plans, sketches, and charts; (K) Drawings or plastic works of a scientific or technical character; (L) Photographic works and works produced by a process analogous to photography; lantern slides; (M) Cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings; (N) Computer programs; (0) Prints, pictorial illustrations, advertising copies, labels, tags, and box wraps; (P) Dramatizations, translations, adaptations, abridgements, arrangements and other alterations of literary, musical or artistic works or of works of the Philippine Government as herein defined, which shall be protected as provided in Section 8 of this Decree; (Q) Collections of literary, scholarly, or artistic works or of works referred to in Section 9 of this Decree which by reason of the selection and arrangement of their contents constitute intellectual

executed prior to or simultaneously with the commission of the fraud; in this situational context, the offended party must have relied on the false pretense, fraudulent act or fraudulent means used by accused-appellant Bautista and sustained damages as a result thereof. (*Id.*)

— To be convicted of estafa through misappropriation or conversion, it is necessary that the offender had both material and juridical possession of the money, goods, or other personal properties he misappropriated. (Libunao *v*. People of the Philippines, G.R. No. 194359, Sept. 2, 2020) p. 25

Elements of — Estafa through misappropriation or conversion is defined and penalized under Article 315, paragraph 1(b) of the RPC; the elements of the said crime 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 a denial of the receipt thereof; (3) that the misappropriation, conversion, or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender. (Libunao *v*. People of the Philippines, G.R. No. 194359, Sept. 2, 2020) p. 25

— The elements of Estafa as charged are: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation. (People *v.* Palicpic *a.k.a*. "Ermalyn Mendoza," "Lyn," and "Malyn," G.R. No. 240694, Sept. 7, 2020) p. 774

EVIDENCE

Admissibility of — The Rules on Electronic Evidence provides that persons authorized to authenticate the video or CCTV recording is not limited solely to the person who made the recording but also by another competent witness

EXECUTION

Notice of levy — The cancellation of the real estate mortgage and the deed of absolute sale are deemed registered earlier than the registration of the notice of levy on execution. (Guillermo, *et al. v.* Orix Metro Leasing and Finance Corporation, G.R. No. 237661, Sept. 7, 2020) p. 740

FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (R.A. NO. 10142)

Application of — A commencement order issued by the rehabilitation court includes a stay order which has the effect of suspending all actions for the enforcement of claims against the debtor and consolidating the resolution of all legal proceedings by and against it; indeed, an essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation; R.A. No. 10142 makes no distinction as to the claims that are suspended once a Commencement Order is issued. (Kaizen Builders, Inc. (Formerly known as Megalopolis Properties, Inc.), *et al. v.* Court of Appeals, *et al.*, G.R. No. 226894, Sept. 3, 20200) p. 375

— Case law explains that rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency; a corporate rehabilitation case is a special proceeding in rem where the basic issues concern the viability and desirability of continuing the business operations of the distressed corporation. (*Id.*)

— Creditors of the distressed corporation are not without remedy as they may still submit their claims to the rehabilitation court for proper consideration so that they may participate in the proceedings, keeping in mind the general policy of the law to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure

work does not simply copy the existing work but creates an original work entitled to a separate copyright. (*Id.*)

— Derivative works right is inseparable from the adaptation right of the original work's author; adaptation right is included in the bundle of rights granted to a recognized author or owner of an intellectual property. (*Id.*)

— No exact definition of derivative works is found in Presidential Decree No. 49 and Republic Act No. 8293; however, both laws provide examples consistent with the Berne Convention; under Article 2(3) of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) to which the Philippines is a contracting party, derivative works pertain to translations, adaptations, arrangements of music and other alterations of a literary or artistic work. (*Id.*)

— The new designs are considered alterations of artistic works under Section 2(P) of Presidential Decree No. 49; however, they can only be copyrighted if they were produced with the consent of the creator of the pre-existing designs and if there is distinction between the new designs and the pre-existing designs. (*Id.*)

— The test of whether the new designs are copyrightable independently from the pre-existing works is the presence of originality in the derivative work; the new work, although similar to the pre-existing work in some of its expressive elements, must be substantially distinct from the pre-existing work. (*Id.*)

INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN (R.A. NO. 8043)

Application of — R.A. No. 8043 was enacted to establish the rules governing inter-country adoptions of Filipino children; the Inter-Country Adoption Board (ICAB) was created to serve as the central authority in matters relating to inter-country adoptions. (Suzuki *v*. Office of the Solicitor General, G.R. No. 212302, Sept. 2, 2020) p. 90

not because a party litigant thereby gains another opportunity to reopen the already final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with. (*Id.*)

— Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy; it may be invoked only on two grounds, namely, extrinsic fraud and lack of jurisdiction. (*Id.*)

— This remedy extends only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment is no longer available through no fault of said party. (*Id.*)

Effect of — A judgment of the court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court; as a general rule, a person not impleaded and not given the opportunity to present his or her case cannot be bound by the decision; however, having acquired alleged interest over the subject property only after the finality of the case, he is bound by the judgment and the determination of rights of the original parties therein. (Calubad *v.* Aceron, *et al.*, G.R. No. 188029, Sept. 2, 2020) p. 9

Execution of — Rule 39, Section 9 of the 1997 Rules, as amended, provides the order by which the property of a judgment debtor may be executed upon for the satisfaction of a money judgment; first is by immediate payment on demand by means of cash or certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter; second is through satisfaction by levy upon the properties of the judgment obligor of every kind and nature, giving the latter the option to choose which property or a part thereof to be levied upon; in case the judgment obligor does not exercise the option, the sheriff shall first levy on the personal properties, if any, and then on the real properties if the personal

to certain conditions that vary in different countries; in the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law; they are limited to the question of whether to extend the effect of the foreign judgment in the Philippines. (*Id.*)

— The foreign judgment against a person is already presumptive evidence of a right as between the parties; upon judicial recognition of the foreign judgment, the right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry. (*Id.*)

— The Philippine courts are precluded from deciding on the foreign judgment obtained by an alien concerning his family rights and duties, or his status, condition and legal capacity; as to the foreign judgment of adoption of a Filipino citizen obtained by alien, if proven as a fact, the Philippine courts are limited to the determination of whether to extend its effect to the Filipino party. (*Id.*)

— The recognition and enforcement of foreign judgments, there is no obligatory rule derived from treaties or conventions that require the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof; however, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. (*Id.*)

Immutability of judgment — A judgment that has become final is immutable and unalterable and can no longer be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. (Calubad *v.* Aceron, *et al.*, G.R. No. 188029, Sept. 2, 2020) p. 9

Penalty and damages — If no other aggravating circumstance was present in the killing, the awards of civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each. (People *v*. Manansala, G.R. No. 233104, Sept. 2, 2020) p. 261

NOTARY PUBLIC

Duties — A lawyer, who is commissioned as a notary public, has the duty to exercise utmost diligence and to discharge with faithfulness the sacred duties of his profession, which is impressed with public interest; a notary public's negligence has inimical repercussions to the public, such as in this case, a family lost a portion of their inheritance and was forced to come to court for relief; thus, the Court has always been strict in the discipline of lawyers who are remiss in their duties as notaries public as it will undermine the public's faith and confidence in notarial acts and in notarized documents. (Rigon, Jr. *v*. Subia, A.M. No. 10249, Sept. 7, 2020) p. 588

— A notary public is expected to observe a high degree of diligence and prudence in complying with the parameters set forth under the notarial rules; time and time again, the Court has stressed that the duties of notaries public are dictated by public policy and the act of notarization is imbued with substantial public interest. (*Id.*)

— Notaries public are responsible for all the entries in their notarial register. (*Id.*)

— Notarizing a document without verifying that the parties therein were already dead constitutes a breach of the notarial rules. (*Id.*)

OMBUDSMAN, OFFICE OF THE (OMB)

Ombudsman Rules of Procedure — Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides: Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure

MANDAMUS

Petition for — The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act. (Development Bank of the Philippines *v.* Ronquillo, *et al*., G.R. No. 204948, Sept. 7, 2020) pp. 666-671

MIGRANT WORKERS OVERSEAS FILIPINO ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment in large scale — The offense of Illegal Recruitment in Large Scale has the following elements: (1) the person charged undertook any recruitment activity as defined under Section 6 of R.A. No. 8042; (2) accused did not have the license or the authority to lawfully engage in the recruitment of workers; and (3) accused committed the same against three or more persons individually or as a group. (People *v.* Palicpic *a.k.a.* "Ermalyn Mendoza," "Lyn," and "Malyn," G.R. No. 240694, Sept. 7, 2020) p. 774

MITIGATING CIRCUMSTANCES

Voluntary surrender — Acknowledgment of guilt is not a condition sine qua non of the mitigating circumstance of voluntary surrender; it is sufficient that the accused spontaneously submits himself to the authorities because he wishes to save them the trouble and expenses necessary for his search and capture. (People *v*. Fruelda, G.R. No. 242690, Sept. 3, 2020) p. 434

MORTGAGE, FORECLOSURE OF

Equity redemption — The effect of the failure of the mortgagee to make the subordinate lien holder a defendant is that the decree entered in the foreclosure proceeding would not deprive the subordinate lien holder of his right of redemption; a decree of foreclosure in a suit to which the holders of a second lien are not parties leaves the equity of redemption in favor of the lien holders

Penalty and damages — If no other aggravating circumstance was present in the killing, the awards of civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each. (People *v*. Manansala, G.R. No. 233104, Sept. 2, 2020) p. 261

NOTARY PUBLIC

Duties — A lawyer, who is commissioned as a notary public, has the duty to exercise utmost diligence and to discharge with faithfulness the sacred duties of his profession, which is impressed with public interest; a notary public's negligence has inimical repercussions to the public, such as in this case, a family lost a portion of their inheritance and was forced to come to court for relief; thus, the Court has always been strict in the discipline of lawyers who are remiss in their duties as notaries public as it will undermine the public's faith and confidence in notarial acts and in notarized documents. (Rigon, Jr. *v*. Subia, A.M. No. 10249, Sept. 7, 2020) p. 588

— A notary public is expected to observe a high degree of diligence and prudence in complying with the parameters set forth under the notarial rules; time and time again, the Court has stressed that the duties of notaries public are dictated by public policy and the act of notarization is imbued with substantial public interest. (*Id.*)

— Notaries public are responsible for all the entries in their notarial register. (*Id.*)

— Notarizing a document without verifying that the parties therein were already dead constitutes a breach of the notarial rules. (*Id.*)

OMBUDSMAN, OFFICE OF THE (OMB)

Ombudsman Rules of Procedure — Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides: Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure

latter to a company-designated physician; under Section 20(A)(3), upon repatriation, the seafarer shall submit himself or herself to a post-employment medical examination within three (3) working days from his/her return; exceptions to the requirement of a post-employment medical examination by the company-designated physician within three (3) days from the seafarer's repatriation to wit: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. (Daño *v.* Magsaysay Maritime Corporation, *et al.*, G.R. No. 236351, Sept. 7, 2020) p. 728

— Seafarer's right to receive his/her disability benefits cannot be defeated due to the outright refusal of the employer to comply with their obligation to refer the seafarer for post-employment medical examination. (*Id.*)

— The absence of a definite assessment of a seafarer's fitness or disability or failure to show how the partial disability assessment was arrived at is akin to a declaration of permanent and total disability; in the absence of a definite assessment of respondent's fitness or disability, or failure to show how the partial disability assessment was arrived at, or without any evidence to support the assessment, then this is akin to a declaration of permanent and total disability. (Magsaysay Maritime Corp., *et al. vs.* Zanoria, G.R. No. 233071, Sept. 2, 2020) p. 728

— Well-settled is the rule that a partial disability signifying a continuing capacity to perform one's customary task is undeniably incompatible with the finding that a seafarer is unfit for duty. (*Id.*)

Permanent or total disability — A seafarer's mere inability to perform his or her usual work after 120 days does not automatically lead to entitlement to permanent and total disability benefits because the 120-day period for treatment and medical evaluation by a company-designated physician

— The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment; when it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. (*Id.*)

RAPE

Commission of — In reviewing rape cases, the Court is guided by the following three principles: (1) to accuse a man of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense; corollary to these is the dictum that when a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof. (People *v.* Fruelda, G.R. No. 242690, Sept. 3, 2020) p. 434

— It is almost a matter of judicial notice that crimes against chastity have been committed in many different places which may be considered as unlikely or inappropriate and that the scene of the rape is not always or necessarily isolated or secluded for lust is no respecter of time or place; thus, rape can be and has been committed in places where people congregate, e.g., inside a house where there are occupants, a five-meter room with five people inside or even in the same room which the victim is sharing with the sister of the accused. (People *v.* DDD @ Adong, G.R. No. 243583, Sept. 3, 2020) p. 482

return for a lighter sentence than that for the graver charge. (*Id.*)

Jurisdiction — The Court had ruled that there are recognized exceptions to the strict observance of the Rules:1) most persuasive and weighty reasons; 2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; 3) good faith of the defaulting party by immediately paying within reasonable time from the time of the default; 4) existence of special or compelling circumstances; 5) merits of the case; 6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; 7) a lack of any showing that the review sought is merely frivolous and dilatory; 8) the other party will not be unjustly prejudiced thereby; 9) fraud, accident, mistake or excusable negligence without appellant's fault; 10) peculiar legal and equitable circumstances attendant to each case; 11) in the name of the substantial justice and fair play; 12) importance of the issues involved; and, 13) exercise of sound discretion by the judge guided by the attendant circumstances. (Republic of the Philippines represented by The Presidential Commission on Good Government (PCGG), *et al. v.* Martinez, *et al.*, G.R. Nos. 224438-40, Sept. 3, 2020) p. 359

— The Court has the power to suspend its own rules or to except a particular case from its operation whenever the purpose of justice requires it; the Court is mindful of the policy of affording litigants the amplest opportunity for the determination of their cases on the merits and of dispensing the technicalities whenever compelling reasons so warrant or when the purpose of justice so require it. (*Id.*)

— The Supreme Court has the power to except a particular case from the operation of the rule whenever the purpose of equity and substantial justice requires it; it bears stressing that aside from matters of life, liberty, honor or property which would warrant the suspension of the

property of another without the latter's consent. (Libunao *v*. People of the Philippines, G.R. No. 194359, Sept. 2, 2020) p. 25

Elements of — The elements of the crime of theft are: (1) there was 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 with intent to gain; and (5) the taking was done without violence or intimidation against person, or force upon things. (Libunao *v*. People of the Philippines, G.R. No. 194359, Sept. 2, 2020) p. 25

TREACHERY

Concept — Even a frontal attack could be treacherous when unexpected on an unarmed victim who would be in no position to repel the attack or avoid it. (People *v*. Rebato, G.R. No. 242883, Sept. 3, 2020) p. 460

— Paragraph 16, Article 14 of the Revised Penal Code defines treachery as the direct employment of means, methods, or forms in the execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. (*Id*.)

— Paragraph 16, Article 14 of the RPC defines treachery as the direct employment of means, methods, or forms in he execution of the crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. (People *v*. Manansala, G.R. No. 233104, Sept. 2, 2020) p. 261

Elements — The two elements of treachery are: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and

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